



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 1. Overview of Bankruptcy

5.9.1 Overview of Bankruptcy

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Manual Transmittal

November 09, 2015

Purpose

(1) This transmits a revised IRM 5.9.1, *Bankruptcy and Other Insolvencies - Overview of Bankruptcy*, with table of contents, text and exhibits.

Material Changes

(1) IRM 5.9.1, *Overview of Bankruptcy*, has been updated to provide clarification and expansion of existing material. The following table illustrates changes within this IRM revision.

Section	Description of Change
5.9.1.3.2 and throughout	Paragraph (4) has been removed as there are no longer Special Assistant United States Attorneys (SAUSA). References to SAUSAs throughout this IRM section have been removed.
5.9.1.4(3)	Clarified complex issues. Installment agreement (IA) requests have been removed from the list of complex issues since requests for post-petition IAs are now considered non-processable.
5.9.1.4(4)	Clarified non-complex issues that need to be worked by Field Insolvency. Removed lock-in letters as the Withholding Compliance Function no longer accepts referrals for their issuance.
5.9.1.4.1(4)	Procedures for processing a change of venue are clarified.
Exhibit 5.9.1-1	Additional terms added.
Exhibit 5.9.1-2	Additional acronyms added. The web address for the ReferenceNet Acronym Database is provided.
Throughout	Editorial changes were made through the section to add clarity and to update or correct citations.

Effect on Other Documents

This material supersedes IRM 5.9.1, dated August 11, 2014.

Audience

All Operating Divisions

Effective Date

(11-09-2015)

Kristen Bailey, Director, Collection Policy

5.9.1.1 (08-11-2014)

Internal Revenue Manual 5.9

1. **Overview.** IRM 5.9.1 is the introductory insolvency IRM for insolvency case processing. It is mainly used by Centralized Insolvency Operation (CIO) and Field Insolvency (FI) caseworkers. Other employees in the Small Business/Self Employed (SB/SE) Division and other functions within the Service may also refer to it.
2. **The Insolvency Proceedings IRM.** Internal Revenue Manual (IRM) 5.9, *Bankruptcy and Other Insolvencies*, contains the Service's position, procedures, information, instructions, guidance, and references concerning bankruptcy cases, stockbroker insolvencies, receiverships, assignments for the benefit of creditors, corporate dissolutions, and bulk sales. The text in this manual chapter may be helpful for the Service at large. However, it is specifically addressed to the FI and CIO functions and Revenue Officers in the Advisory function. IRM 5.9 provides processing actions that Insolvency and Advisory employees take on the insolvency cases assigned to them.

Note:

Due to the rarity of Chapter 9 bankruptcies and the complexity of Chapter 15 bankruptcies, only minimal information is provided in IRM 5.9 on governmental and cross-border bankruptcy filings.

3. **Users.** Most IRS employees outside of Insolvency will be able to find basic information on bankruptcies in IRM 5.9, Sections 1 through 4. Insolvency employees should refer to all sections in IRM 5.9 as needed. Revenue Officers in the Advisory function should refer to IRM 5.9.20, *Non-Bankruptcy Insolvencies*.
4. **Sections in the Insolvency Proceeding IRM.** The sections of IRM 5.9 listed below may apply in varying degrees to Service employees having contact with taxpayers who have filed bankruptcy or whose cases have insolvency issues.

A. Overview of Bankruptcy

- B. *The Bankruptcy Code and Collection*
- C. *Debtors' Delinquent Accounts*
- D. *Common Bankruptcy Issues*
- E. *Opening a Bankruptcy Case*
- F. *Processing Chapter 7 Bankruptcy Cases*
- G. *Processing Chapter 9 and Chapter 15 Bankruptcy Cases*
- H. *Processing Chapter 11 Bankruptcy Cases*
 - I. *Processing Chapter 12 Bankruptcy Cases*
 - J. *Processing Chapter 13 Bankruptcy Cases*
- K. *Insolvency Mail Processing*
- L. *Insolvency Automated Processes*
- M. *Manual Proofs of Claim and Common Claim Issues*
- N. *Automated Proofs of Claim (APOC)*
 - O. *Payments in Bankruptcy*
 - P. *Insolvency Case Monitoring*
 - Q. *Closing a Bankruptcy Case*
 - R. *Automated Discharge System (ADS)*
 - S. *Insolvency Disclosure and Telephone Procedures*
 - T. *Non-Bankruptcy Insolvencies*
 - U. *Electronic Proofs of Claim (EPOC)*

5. **Counsel Advice.** While all bankruptcies are filed under the Bankruptcy Code, the interpretation and application of that law varies from one judicial district to another. As a result, IRM 5.9 cannot be all-inclusive. Caseworkers should seek guidance from Counsel when necessary, research other sources and become familiar with local rules and standing orders.

Note:

Advice from local Counsel is restricted to case-specific issues. Questions concerning IRM procedures and policy decisions surrounding case processing must be directed to Collection Policy, Insolvency, in SBSE Headquarters.

**5.9.1.2 (08-11-2014)
Federal Bankruptcy Law**

1. **Authority.** The U.S. Constitution grants Congress authority to enact federal bankruptcy laws. The Bankruptcy Act of 1898 formed the basis of federal bankruptcy law until 1979, when enactment of the Bankruptcy Code (11 USC) repealed the old law and codified procedures making the bankruptcy process less burdensome for the debtor. The Bankruptcy Reform Act of 1994 (BRA 94) brought about a major amendment to the Bankruptcy Code affecting the government's treatment of debtors, notably granting permission to assess taxes while the debtor is under the protection of the automatic stay.
2. **The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA).** On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) was signed into law. Most of the provisions of this act became effective October 17, 2005, although some provisions, such as those dealing with Chapter 12 bankruptcies, were effective upon the date of enactment.
3. **Principle of Bankruptcy.** The general underlying principle of bankruptcy is to provide a debtor an avenue to pay what the debtor can afford while receiving forgiveness for debt that cannot be satisfied.
4. **Automatic Stay.** Prior to October 17, 2005, when a debtor filed a petition in bankruptcy court, a stay of collection actions went into effect in every case and immediately stopped ongoing and future (during the pendency of the bankruptcy) attempts by creditors to collect pre-petition debts owed by the debtor or otherwise exercise control over property of the estate or the debtor (11 USC § 362). This essential feature of bankruptcy law created what is known as the *automatic stay*. For most debtors, the automatic stay remains in effect during the pendency of the bankruptcy. But, for debtors who file bankruptcy on or after October 17, 2005 and have had one or more bankruptcy cases dismissed within the preceding twelve month period, the automatic stay may either terminate within 30 days with respect to the debtor and the debtor's property that is not property of the bankruptcy estate, or not go into effect at all. (See IRM 5.9.5.7, *Serial Filers*.)
5. **Debtor.** Most bankruptcy proceedings begin when the debtor files a petition in bankruptcy court seeking financial relief from creditors. Individuals, corporations, partnerships, Limited Liability Companies (LLCs), railroads, municipalities, and other forms of government have the right to file bankruptcy. *Exhibit 5.9.1-1, Glossary of Common Insolvency Terms*, defines "person" as it relates to bankruptcy.

Note:

Throughout this IRM chapter, a taxpayer in an insolvency proceeding is generally referred to as a *debtor*.

6. **Advantages to Debtors.** When negotiations with creditors to pay debts fail, debtors may be faced with immediate garnishment of salaries and repossession of their assets. Business debtors may have their businesses closed through repossession or foreclosure. Bankruptcy is attractive to debtors because it can offer:
 - A. Immediate temporary relief from creditor pressure by staying all creditor actions against the debtor;
 - B. Long-term relief by allowing a debtor to extend the time for payment of a debt; and
 - C. Permanent relief by discharging debts. The relief provisions of the Bankruptcy Code can give the debtor a "fresh start".
7. **Creditor.** Creditors include persons and entities who have claims against the debtor, usually for debts incurred before the bankruptcy was filed (pre-petition debts). Because bankruptcy estates may continue to incur debts after the bankruptcy petition date, entities can also hold post-petition administrative expense claims against the bankruptcy estate. In certain circumstances, creditors can force debtors into bankruptcy by involuntary means.
8. **Advantages to Creditors.** Bankruptcy offers advantages to creditors, such as the following:
 - A. A greater recovery on creditors' claims. Traditional debtor/creditor remedies may lead to piecemeal dismantling of the debtor's business through repossession and sale of the debtor's assets. Such actions by creditors may cause a business to fail.

- B. The potential to preserve the going-concern value of a business which can exceed its liquidation value.
- C. Allowing the sale of a business as an operating enterprise and restraining creditors from precipitous actions.
- D. Distributing an equitable share of the available funds to each creditor.

9. **Bankruptcy Code.** The Bankruptcy Code provides an orderly method for the debtor's financial rehabilitation (Chapters 11, 12, and 13) or the liquidation and distribution of a debtor's assets (Chapter 7). This federal law is intended to be applied uniformly among all states and possessions.

5.9.1.3 (09-10-2010) The Bankruptcy Court

1. **Jurisdiction.** Bankruptcy courts generally have jurisdiction over all matters concerning payment of a debtor's financial obligations under the Bankruptcy Code and administration of the bankruptcy estate. Bankruptcy court jurisdiction includes the authority to determine the amount of tax due by the debtor or estate and what taxes will be discharged, meaning the debtor no longer will be personally liable. The bankruptcy court also has jurisdiction over any matters concerning collection of tax debts at issue in the bankruptcy case or collection from any property of the estate.
2. **Bankruptcy Judges.** Bankruptcy judges are appointed by the appellate circuit courts for a term of 14 years, as provided under Article I of the U.S. Constitution.

5.9.1.3.1 (08-11-2014) Associate Area Counsel

1. **Office of Division Counsel.** The Office of Division Counsel SB/SE provides primary legal services on a local basis to the SB/SE and Wage and Investment (W&I) Operating Divisions. It holds responsibility for collection and bankruptcy work, regardless of the type of taxpayer entity involved.
2. **Area Counsels/Associate Area Counsels.** The Office of Division Counsel SB/SE, headquartered in New Carrollton, Maryland, is divided into nine SB/SE Area Counsels with 49 local offices. Associate Area Counsels report to the Area Counsel for their geographic area.
3. **Local Associate Area Counsel.** FI offices should deal directly with attorneys in their local Associate Area Counsel (SB/SE) offices on issues requiring case-specific legal advice and guidance. The CIO is assigned an Associate Area Counsel attorney in Philadelphia to deal with general bankruptcy questions. CIO questions dealing with complex issues or requiring Counsel action are transferred to the appropriate FI group for referral to local Associate Area Counsel. Throughout IRM 5.9, *Bankruptcy and Other Insolvencies*, the term "Counsel" refers to Associate Area Counsel (SB/SE).
4. **Communication – Counsel and Insolvency.** A good working relationship between Insolvency and Counsel fosters quality bankruptcy programs. Ongoing communication between Insolvency and Counsel should be maintained to ensure proper actions are taken by Insolvency. Counsel can apprise Insolvency of current court decisions and litigation issues that affect case processing, particularly at the local level.
5. **Outreach.** Insolvency and Counsel are encouraged to interact with trustees and members of the bar association and work cooperatively at the local level to resolve matters of mutual concern. Outreach efforts afford an informal venue to resolve recurring bankruptcy issues and concerns with stakeholders.

5.9.1.3.2 (08-11-2014) Department of Justice - Tax Division

1. **The Service's Lawyer.** Under federal law, the Department of Justice (DOJ) is the Service's lawyer representing the Internal Revenue Service (IRS) in bankruptcy court.
2. **Delegation of Authority.** Although the Assistant Attorney General (Tax Division) has the authority to handle most bankruptcy referrals, normally that authority is delegated to the United States Attorney in routine proceedings.
3. **Direct Referrals.** Pursuant to guidelines established by the Department of Justice, the United States Attorneys, and the IRS Office of Chief Counsel, Insolvency has the authority to refer some types of cases directly to the U. S. Attorney's Office (USAO). (See Delegation Order 25-9.) All other cases must be referred to Area Counsel who will make the referral to the USAO or to the Assistant Attorney General (Tax Division). See IRM 5.9.4.14.1, *Direct Referrals*, for detailed information.

5.9.1.3.3 (08-11-2014) United States Attorney

1. **IRS Representative for Bankruptcy Court.** In its capacity as the IRS representative for bankruptcy proceedings, the USAO is served with all legal bankruptcy documents. Although primary litigation responsibility rests with the Department of Justice Tax Division, it may be delegated to the local United States Attorney's Office depending on the judicial district, the legal issues inherent in the case, and the type of proceeding involved in the specific case. Assistant United States Attorneys (AUSAs) frequently represent the government in bankruptcy court proceedings for formal court appearances.

Note:

In addition to representing the IRS in bankruptcy proceedings, AUSAs serve as legal representatives for other governmental agencies.

5.9.1.4 (11-09-2015) The Role of Insolvency

1. **Introduction.** Bankruptcy law is the prevailing authority when a taxpayer files bankruptcy. Bankruptcy laws are separate from tax laws, and coordination is necessary to comply with both. Insolvency, a part of the Collection function in the SB/SE Operating Division of the IRS, is responsible for administering that coordination.
2. **Insolvency Organization.** Insolvency is divided into a field operation (FI), consisting of more than 80 posts of duty geographically distributed throughout the country, and a single campus operation (CIO) in Philadelphia.
 - A. The CIO performs most clerical duties for all bankruptcy chapters, including loading cases on the Automated Insolvency System (AIS). CIO works Chapter 7 No Asset cases. However, responsibilities in certain large dollar Chapter 7 No Asset cases are shared by CIO and FI. CIO monitors Chapter 13 cases for confirmation of the plan after the case is transferred from FI to the CIO, and processes Chapter 13 trustee payments. Upon closure of a Chapter 13 case by the bankruptcy court, the CIO makes any necessary account adjustments and closes the case on AIS. Generally, the CIO works Chapter 7 Asset business and individual cases transferred to them by FI after the initial case review has been completed, all proofs of claim have been acknowledged and there are no issues that require the case to remain in FI.
 - B. FI completes the initial case review in Chapter 13 cases and ensures that any required proofs of claim are completed and acknowledged. If there are no field issues, the case is generally transferred to CIO to monitor for confirmation. Similar to the Chapter 13 case, FI works Chapter 7 Asset cases and transfers most Chapter 7 Asset cases to the CIO once there are no issues that require the case to remain in FI. This includes completing all proofs of claim, ensuring all proofs of claim are acknowledged, ensuring the Trust Fund Recovery Penalty (TFRP) investigation is completed (when required), etc. The Chapter 7 Asset case of a partnership is not transferred to CIO. The partnership case must remain in FI. FI takes all case actions in Chapter 11 and Chapter 12 cases, except for those actions taken at case closure by CIO. (See IRM 5.9.17.21.1, *MFT 31 Mirror Modules*, and IRM 5.9.17.23(1), *Addressing Prior Installment Agreements*, for additional information.) FI caseworkers review schedules and plans in Chapter 13, Chapter 11, and Chapter 12 cases, make referrals to Counsel in all chapters, appear in court as expert witnesses, attend § 341 meetings, participate in outreach efforts, and negotiate with debtors or their representatives. FI makes collection determinations and pursues collection from exempt, abandoned or excluded property in certain large dollar Chapter 7 No asset cases. Additionally, FI handles all aspects of receiverships, Chapter 9 and Chapter 15 cases.

C. A toll-free number (1-800-973-0424) has been established at the CIO in Philadelphia to handle most Chapter 7 and Chapter 13 bankruptcy inquiries. (See IRM 5.9.19, *Insolvency Disclosure and Telephone Procedures*.)

When calls come into FI, the FI caseworkers should work the cases until all actions are completed for:

- Chapter 9, 11, and 12 cases;
 - Chapter 7 Asset cases in FI inventory;
 - Chapter 13 cases currently assigned to a FI group; and
 - Complex cases identified in paragraph (3) below or non-complex cases identified in paragraph (4) below.
- All other cases should be referred to the CIO.

Note:

The CIO liaison may contact the FI liaison for assistance with technical questions unique to a court jurisdiction or a specific case.

3. **Complex Issues.** Regardless of chapter or dollar amount, FI will handle the following tasks deemed as complex issues with a timeliness appropriate to the nature of the issue:

- Acting as expert witnesses
- Responding to adversarial motions
- Responding to objections
- Filing objections
- Preparing proofs of claim
- Amending or withdrawing claims
- Negotiating adequate protection agreements
- General Receiverships
- FDIC Receiverships of insolvent financial institutions (generally handled by FI in Dallas)
- Securities Investor Protection Act (SIPA) cases (handled by FI groups in Manhattan and St. Paul)
- Assignments for the benefit of creditors
- Commodity broker bankruptcies
- Dealing with Abusive Tax Avoidance Transactions (ATAT)
- Pursuing exempt, excluded, and abandoned assets (except for the initial screening done by the CIO)
- Dealing with lien priority issues
- Negotiating plans
- Addressing Tax Equity and Fiscal Responsibility Act (TEFRA) issues
- Working cases with accepted offers in compromise
- Addressing Foreign Bank and Financial Account Report (FBAR) penalties
- Handling any case requiring action by the United States Attorney or Area Counsel
- Trust Fund Recovery Penalties
- Trustee refund turnover splits allocating refund amounts between the non-debtor spouse's share and the debtor's share to be sent to the trustee
- Cases with a criminal restitution assessment

4. **Non-Complex Issues to Be Worked by FI.** Issues not considered complex, but still required to be worked by FI include the following:

- Defaulted Chapter 13 plans
- Amended Chapter 13 claims
- Post-petition liabilities with an aggregate amount due above the tolerance in IRM 5.9.16.3.2(2) for which the debtor has *not* requested an IA, or post-petition liabilities for which the debtor has requested an IA but does not qualify for a guaranteed IA. See IRM 5.9.10.9, *Post-Petition Tax Liabilities*, for detailed information.
- Consolidated or jointly administered claims
- Requests for an agreement, conditional dismissal, or settlement of the tax
- Asset determinations in community property states
- Requests for court action or action by the U.S. Attorney or Counsel
- Escrow payoff requests for all chapters except Chapter 7 cases assigned to the CIO
- 341 meeting attendance, if needed
- Bankruptcy fraud referrals

5. **Insolvency Responsibilities.** Together, the two Insolvency operations handle all bankruptcy cases and are primarily responsible for the IRS bankruptcy program.

A. FI and CIO must both ensure actions are taken to suspend collection upon the filing of a bankruptcy, when appropriate. Each monitor their respectively assigned cases. In addition, FI must ensure any required proofs of claim are prepared and acknowledged.

Note:

Caseworkers must report to their managers when tasks involving Bankruptcy Code compliance, protection of the government's interests, or compliance monitoring may not be completed, so the manager can redirect inventory or provide training.

B. All Insolvency staff (clerical, paraprofessional, and professional) are charged with protection of the government's interests while the debtor's accounts are under the jurisdiction of the bankruptcy court.

C. Insolvency caseworkers must be knowledgeable about the Bankruptcy Code and understand its impact on the collection of taxes.

6. **Cessation of Collection Actions.** Filing bankruptcy usually gives a debtor immediate relief from all demands for payment and collection enforcement actions. Upon learning of a bankruptcy, IRS employees should generally cease all demands and enforcement actions directed against the bankrupt taxpayer (debtor), and take prompt and appropriate corrective actions *unless* the court determines the automatic stay is not in effect. Revenue Officers in the midst of a seizure when a bankruptcy is filed should work with Insolvency and Counsel before proceeding. Failure to observe an automatic stay may result in the Service being sued for damages and attorney fees, although punitive damages cannot be awarded.
7. **Coordination with Other Functions.** Insolvency is charged with processing bankruptcy cases involving the IRS, as well as coordinating the activities of other functions on all bankruptcy cases. Insolvency caseworkers, leads, and managers must assist other Service employees when bankruptcy-related case issues arise, and elevate the more complicated and significant issues to Counsel.
8. **Balancing the Interests of the Debtor and the Government.** Insolvency must follow established procedures to ensure debtors are afforded protections guaranteed to them under the Bankruptcy Code. Insolvency caseworkers are charged with processing bankruptcy cases fairly and efficiently, and in a manner that balances the interests of the debtor with the interests of the government while attempting to collect the proper amount of tax.
9. **Redacted TINs.** To protect taxpayers' privacy, documents submitted to the court cannot provide the full Social Security Number (SSN) or the full Employer Identification Number (EIN) of the debtor. Only redacted TINs, giving the last four numbers of the SSN or EIN, are allowed.
10. **Avoiding Litigation.** To avoid unnecessary litigation when disputes arise between a debtor and the Service, in most cases, Insolvency caseworkers should negotiate with debtors or their representatives to arrive at a mutually agreeable solution before resorting to a referral to Counsel.

Exception:

Insolvency caseworkers should refer "sensitive" or high dollar cases to Counsel rather than engaging in direct negotiations themselves.

If a case is referred to Counsel without the caseworker negotiating with the debtor or the debtor's representative, justification for doing so must be entered in the AIS history. Caseworkers must exercise expertise and tact during the negotiation process, dealing with debtors according to the provisions of the Bankruptcy Code.

11. **Deadlines/Referrals.** Insolvency employees must analyze pending litigation issues and meet strict deadlines. When necessary, Field Insolvency caseworkers prepare referrals to Counsel so that the government can prepare a timely and effective case position. In bankruptcy matters involving high volume Chapter 13 cases, Insolvency must work efficiently to meet the short time frames between petition dates and confirmation hearings.
12. **First Meeting of Creditors.** FI caseworkers or Revenue Officers (ROs) may attend the first meeting of creditors (§ 341 meeting) to question the debtor. (See IRM 5.9.2.5, *First Meeting of Creditors*.)
13. **Expert Witness.** FI caseworkers testify in bankruptcy court as expert witnesses on behalf of the Service. This duty requires intensive preparation. The employee must understand the issues in dispute and capably provide expert testimony to protect the government's interests.
14. **Overall Responsibilities.** Overall, Insolvency's responsibilities extend to a commitment of the following:
 - Prevention and correction of violations of the Bankruptcy Code
 - Timely case freezes and resolution of pre-petition issues
 - Quality preparation and timely filing of proofs of claim
 - Entering into meaningful negotiations to avoid litigation
 - Timely reviews and objections to plans
 - Monitoring debtor tax compliance, including trust fund taxes and the pyramiding of business taxes
 - Overall protection of the government's interests

Note:

IRM 5.9.3.2, *Insolvency's Responsibilities and Authority*, provides additional information on Insolvency's role within the Service.

5.9.1.4.1 (11-09-2015)
Coordination within Insolvency

1. **Responsibility for Bankruptcy Freezes.** The Centralized Insolvency Operation (CIO) ensures freezes are input on accounts when notification of a bankruptcy filing is received by the CIO. When Field Insolvency (FI) personnel learn of a bankruptcy before notification is received by the CIO, the FI employee is responsible for advising the CIO so the case can be loaded on AIS. The FI employee must fax Form 14522, *New Case Request Checklist for Chapters 7, 11, 12 or 13*, to the CIO at (855) 235-6787, to request CIO load the case to AIS. (See IRM 5.9.5.2(3), *FI Requests for CIO to Add a Case to AIS*, for additional information.) If the probability of a stay violation exists before a systemic bankruptcy freeze can be posted to the account, the FI caseworker should input the freeze manually and load the case on AIS.
2. **Claim Preparation.** For Chapters 7 Asset, 11, 12 and 13, the initial proof of claim usually generates through the Automated Proof of Claim (APOC) system. APOC case flags and APOC period flags result from claims that cannot be completed through APOC without manual intervention. Amended proofs of claim are generated systemically through the APOC Amends process when litigation transcript data triggers an automated amended proof of claim. (See IRM 5.9.14, *Automated Proofs of Claim (APOC)*, for additional information.)

FI caseworkers must perfect the claim flags in their respective inventories so APOC can complete claim generation. When a debtor files bankruptcy in an area other than where the delinquent accounts are located, the Insolvency office where the bankruptcy is pending has the responsibility for perfecting IRS claims and taking all necessary pre-confirmation actions.
3. **Coordination of Efforts.** When FI identifies tax accounts assigned to its local area, but learns the taxpayer has a bankruptcy pending in a court jurisdiction elsewhere, the FI unit having the tax accounts must make prompt contact with the other FI group. The two Insolvency groups must coordinate actions in the case, such as resolving outstanding levies, identifying all accounts, and performing lien research.
4. **Change of Venue.** A bankruptcy case may be transferred from the jurisdiction of one court to the jurisdiction of another court. For cases assigned to the CIO, the change will be made by the CIO. For cases assigned to FI, this movement may require the reassignment of the case from one office to another. The managers of the groups involved must coordinate the transfer of AIS information and any paper or electronic files, as appropriate.
5. **Mail Received by Insolvency.** The CIO has a national mailing address for Insolvency correspondence. However, FI still receives some mail, notably correspondence dealing with receiverships, SIPA proceedings, assignments for the benefit of creditors, and Chapter 9, 11, or 12 bankruptcies. IRM 5.9.11, *Insolvency Mail Processing*, details mail handling by both FI and the CIO. IRM 5.9.12.7, *Electronic Noticing System*, discusses bankruptcy notices transmitted electronically to the IRS through the Bankruptcy Noticing Center (BNC).
6. **Payments.** The CIO receives and posts Chapter 7 and Chapter 13 remittances. FI posts payments for Chapters 9, 11, and 12. See IRM 5.9.15, *Payments in Bankruptcy*.

5.9.1.5 (08-11-2014)

Coordination with Other Government Agencies

1. **Other Government Agencies.** Frequently, governmental departments and agencies, other than the Department of Treasury, have an interest in a pending bankruptcy proceeding. Their interest may result from:
 - A. A contractual relationship with the debtor;
 - B. A determination the debtor received excessive profits which should be repaid;
 - C. The debtor's defrauding the government in some way; or
 - D. Any activity causing a department or agency to owe money to, or have a claim against a debtor.
2. **Service Cooperation.** The Service has a responsibility to cooperate and assist in collecting debts due the United States which arise out of the activities of any other department or agency. However, after the debtor files for protection of the bankruptcy court, the collection of those debts may be prohibited by the automatic stay. In these and similar situations, it will sometimes be necessary to deal with other departments or agencies of the government.
3. **Refund Setoffs – Other Agencies.** A debtor might owe no federal taxes and be due a federal tax refund. A department or agency might seek a setoff of an amount to cover an indebtedness through the tax refund due the debtor. While such setoffs are prohibited once a bankruptcy is filed because of the automatic stay imposed by the bankruptcy (except those for domestic support in cases filed on or after October 17, 2005), the other agency may be able to obtain relief from the stay to allow setoff. Before disclosing or acknowledging the existence of a tax refund and making it available for setoff to another government agency (other than for domestic support), disclosure consent must be obtained from the taxpayer. Guidance from Counsel should be obtained whenever the Service is asked to freeze a debtor's tax refund so it may be setoff against another agency's debt.
4. **Counsel Guidance.** When coordination with other government agencies or departments (except Treasury) becomes necessary in a pending or actual bankruptcy proceeding, any problems and/or recommendations should be presented to Counsel. IRM 5.9.4.4.3, *Offsets to Other Agencies*, and IRM 5.9.4.4.4, *Federal Payment Levy Program (FPLP)*, provide additional information.

Exhibit 5.9.1-1

Glossary of Common Insolvency Terms

Term	Definition
Abandonment	<p>Abandonment is the process of severing a bankruptcy estate's interest in property. Under the Bankruptcy Code, the bankruptcy court may permit the trustee to abandon any property of the estate that is burdensome or of inconsequential value to the estate. Abandonment to avoid adverse tax consequences is an issue when the debtor is an individual in Chapter 7 or Chapter 11.</p> <p><i>Affirmative Act:</i> The trustee may actively abandon or a party in interest may request abandonment. The trustee may abandon to the debtor or a party with a possessory interest. Notice of hearing is required, although hearing notice can be general, and a hearing is not always held.</p> <p><i>Administrative Abandonment:</i> If the property is listed in the schedules, but it is not administered by the trustee (i.e., sold), then it is abandoned to the debtor upon closing of the case.</p>
Adequate Protection	<p>Under the Bankruptcy Code, a secured creditor is allowed to have its secured interest "adequately protected" while the automatic stay is in effect. This arises when the property is depreciating or, in some cases, when the accrued interest on a defaulted loan is diminishing the equity in the property. The court may award the creditor some protection against the loss of value rather than modifying the automatic stay. Adequate protection most commonly consists of periodic cash payments and replacement liens in post-petition assets.</p>
Adequate Protection Agreement	<p>An agreement between a debtor and a secured creditor to protect the creditor's secured portion until a plan of reorganization is confirmed.</p>
Administrative Expense	<p>A liability incurred by the bankruptcy estate for actual, necessary expenses of preserving the estate. This generally includes tax liabilities for periods ending post-petition and before discharge or dismissal for which the estate is liable. The IRS is entitled to payment of these taxes from the estate as a priority tax (generally paid at time of confirmation). 11 USC § 503 defines allowable administrative expenses and IRC § 1398(h) explains the proper handling of these expenses on the bankruptcy estate's tax return.</p>
Adversary Proceeding	<p>A lawsuit within the bankruptcy case in which one party files a complaint to seek relief (for example, to recover money or property, to determine the validity of a "lien" , to determine dischargeability of a debt, or to obtain an injunction). Adversary proceedings involve more legal formalities than contested matters.</p>
AIMS	<p>Examination function systems that Insolvency frequently uses while researching tax accounts.</p>
AMDIS	<p><u>AIMS</u> — The Audit Information Management System used by Examination function.</p>
AMDISA	<p><u>AMDIS</u> — The Audit Management Display Information System; one of the Command Codes used on the Integrated Data Retrieval System (IDRS) by Examination to show any return that is being audited by the Examination function.</p> <p><u>AMDISA</u> — Same as AMDIS, except it displays specific information on an open tax period.</p>
AIS	<p>Automated Insolvency System (AIS). The bankruptcy database maintained by Insolvency. Its many functions work together to allow Insolvency to manage all of the bankruptcy cases in Insolvency's inventory.</p>
ASED	<p>The Assessment Statute Expiration Date (ASED) marks the date the statutory period of time for <i>assessing</i> a tax ends. The time frame for assessing a tax is normally three years from the due date, or three years from the date the return is filed, whichever is later (IRC § 6501).</p>
Asset Case	<p>A bankruptcy case in which the debtor has assets which are non-exempt (i.e., available for use in satisfying creditors' claims). In a no asset case, the debtor has only exempt or excluded assets, such as a personal home or a retirement plan, that are not available to pay claims.</p>
Automatic Stay	<p>An injunction that arises by operation of bankruptcy law when a bankruptcy petition is filed (11 USC § 362). The automatic stay is effective as of the date of the filing of the bankruptcy petition. It is a prohibition on the commencement or continuation of any legal or enforcement activities against the debtor, the debtor's property, and property of the estate (subject to certain exceptions).</p> <ul style="list-style-type: none">• The stay stops all debt collection activities, solicitation, and foreclosure, as well as commencement or continuation of proceedings against the debtor, the debtor's property, and/or the estate's property.• Any willful violation of the stay may give the debtor the right to claim actual damages and attorneys fees (but not punitive damage fees).
	<p>Note:</p> <p>Creditors may ask the court for relief from the automatic stay to permit them to pursue collection remedies, such as a foreclosure action on real property, or to offset a tax refund.</p>
Bankruptcy	<p>Refers to a judicial process to resolve a debtor's problems in paying debts incurred by the debtor. The term <i>bankruptcy</i> is used in connection with the federal bankruptcy laws enacted by Congress. <i>Bankruptcy case</i> refers to a case filed in a federal bankruptcy court under one of the chapters of the Bankruptcy Code (Title 11). The terms <i>insolvency proceeding</i> and <i>receivership</i> refer to proceedings brought under state laws and supervised by the state courts. A bankruptcy can either be voluntary or involuntary. 11 USC § 303 provides the requirements to file an involuntary petition.</p>
Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)	<p>An act that amended the Bankruptcy Code. Most of the provisions of BAPCPA are effective for cases filed on or after October 17, 2005. However, some BAPCPA provisions, such as certain provisions relating to Chapter 12 debtors, took effect on April 20, 2005, the date of enactment. Many provisions of BAPCPA are intended to keep debtors from abusing the bankruptcy system. Such provisions may limit the imposition of the automatic stay in cases of serial filings, require tax compliance from individual debtors, and establish a means test for Chapter 7 debtors. BAPCPA also added a new Chapter 15 to deal with cross-border bankruptcies.</p>
Bankruptcy Code	<p>The laws of bankruptcy codified under Title 11, United States Code, §§ 101 through 1532.</p>
Bankruptcy	<p>U.S. District Courts have standing orders referring all cases arising under Title 11 to bankruptcy judges, which are referred to as bankruptcy courts. See 28</p>

Court	U.S.C. 157.
Bankruptcy Estate	See <i>Estate</i> .
Bankruptcy Petition	The form filed by the debtor (or against the debtor by creditors in an involuntary bankruptcy) with the bankruptcy court requesting relief from debts. It is filed to commence a case under a specific chapter of the Bankruptcy Code.
Bankruptcy Reform Act of 1994 (BRA 94)	An act that amended the bankruptcy code, signed into law and effective for all bankruptcy cases filed on or after October 22, 1994. It made changes to the bankruptcy law such as permitting assessments and issuing notice and demand during the automatic stay and the filing of late proofs of claim in Chapter 7 cases.
Bankruptcy Rules	Rules of procedure that govern the practice and procedure in bankruptcy cases.
Bar Date	The date fixed by the court or by statute as the date by which a creditor must file a proof of claim. The Service is allowed a minimum of 180 days after the order for relief in which to file a proof of claim. The court may grant extensions for cause.
BLARE	Bankruptcy Law Advisory Rules Engine (BLARE) is a web-based automated search engine that contains Chapter 7 and Chapter 13 core knowledge. Topics accessible in BLARE include disclosure, dischargeability, installment agreements, levies, liens, refunds, stay violations, and local rules pertaining to the 284 bankruptcy courts nationwide.
Case Docket	The official record of the bankruptcy case. It shows every event and every document filed in the case. The docket is maintained by the bankruptcy clerk's office.
Cash Collateral	11 USC § 363(a) defines cash collateral as "cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents," which are property of the estate and in which the IRS or other creditor has a secured interest.
Change of Venue	Change of location of the bankruptcy filing; usually due to the debtor relocating from one part of the country to another. The bankruptcy jurisdiction is changed to a court in the debtor's new location.
Chapter 7	A case filed under Chapter 7 of the Bankruptcy Code by an individual, business, or other entity, where creditors are paid by liquidation and distribution of the debtor's available assets.
Chapter 9	A bankruptcy case for a governmental unit. In order to qualify as a debtor under Chapter 9, an entity must, among other things: be a municipality, be authorized to be a debtor by state law, be insolvent or unable to meet its debts as they mature, and desire to effect a plan to adjust such debts.
Chapter 11	A reorganization case filed under Chapter 11 of the Bankruptcy Code by an individual, business, or other entity. The case is intended to result in a reorganization plan, although Chapter 11 plans can provide for the liquidation of the debtor, as well. A plan can last several years; however, a large percentage eventually liquidate. Unless the court orders otherwise for cause, an individual debtor may receive a discharge upon completion of the Chapter 11 plan or a "hardship discharge."
Chapter 12	This chapter applies to family farmers and fishermen. It closely resembles a Chapter 13 but without a <i>super discharge</i> that was available to Chapter 13 debtors in bankruptcies filed prior to October 17, 2005. Creditors are paid pursuant to a plan. Payments may be paid seasonally. Individual debtors may receive a discharge upon completion of the Chapter 12 plan or a "hardship discharge".
Chapter 13	This chapter applies to individuals with regular income, including wage earners, sole proprietors, and other self-employed individuals. Chapter 13 is a reorganization case where creditors are paid pursuant to a plan. Plan payments are paid through a trustee who handles all disbursements. The debtor may receive a discharge upon completion of all plan payments or a "hardship discharge".
Chapter 15	This chapter applies when (1) a foreign court or a foreign representative seeks assistance in the United States in connection with a foreign insolvency proceeding; (2) assistance is requested in a foreign country in connection with a case under 11 USC; (3) a foreign insolvency proceeding and a domestic bankruptcy for the same debtor are pending concurrently; or (4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under Title 11 USC.
Claim	A right to payment, even if un-liquidated, contingent, or disputed. Proofs of claim may include tax liabilities which have not been assessed. Also, see <i>Proof of Claim</i> .
Co-Debtor Stay	Under Chapter 13 of the Bankruptcy Code, the co-debtor stay applies only to consumer debts. <i>It does not apply to taxes. See Consumer Debt.</i>
Commencement Date	The day on which a bankruptcy petition is filed.
Commodity Futures	A speculative investment in a good that is mined or agriculturally produced.
Complaint	A pleading filed by a party to the bankruptcy case that initiates an adversary proceeding.
Confirmation	The time when the court grants final approval to the debtor's plan of reorganization. Applicable only in Chapters 11, 12, and 13 bankruptcies.
Consumer Debt	A debt incurred by an individual primarily for personal, family, or household purposes. <i>Does not include taxes. See Co-Debtor Stay.</i>
Conversion	When a debtor voluntarily or involuntarily changes from one chapter of bankruptcy to another chapter with the approval of the bankruptcy court.
Cram Down	In the event any class of claims or interests is impaired under a plan of reorganization in Chapter 11 and does not garner the minimum percentage of votes to accept the plan, the plan's proponent may request the court to confirm the plan by the alternative <i>cram down</i> method. As long as at least one class of creditors approves the plan, the plan does not discriminate unfairly, and meets the fair and equitable treatment of creditors as required by the Bankruptcy Code, the court may confirm the plan.
Creditor	Person or entity with a claim against the debtor and/or property of the debtor at the time the bankruptcy petition is filed.
Customer Creditor	A customer creditor is someone who has engaged the services of a broker who is now engaged in an insolvency proceeding. The customer has entrusted the broker with securities (typically funds) to hold in the normal course of business and for the purposes of conducting business on the customer's behalf.
CSED	The date on which the collection statute expires is called the Collection Statute Expiration Date (CSED). The statutory period for collecting a tax is normally ten years from the date of assessment (IRC § 6502).
Debtor	The person or entity (corporation, partnership, municipality) that: (1) files a voluntary petition, or (2) has an order of relief entered against it when an involuntary petition is filed with the bankruptcy court.
Debtor-in-Possession (DIP)	The debtor in a Chapter 11 reorganization is known as a debtor-in-possession (DIP) of the assets of the estate unless a trustee is appointed. The DIP has the rights and powers of a bankruptcy trustee.
De Minimis Discharge	Lacking significance or importance. In regards to IRM 5.9, referring to dollar amounts, <i>de minimis</i> means ≡ ≡ ≡ ≡ ≡ ≡ ≡ . A court order that prohibits the collection of many pre-petition debts as a personal liability of the debtor. It is the event that triggers forgiveness of debt in a bankruptcy case. Generally, a discharge is granted: <ul style="list-style-type: none"> A. In an individual debtor's Chapter 7 case 60 days after the date set for the first meeting of creditors (11 USC § 341 Meeting); B. In a Chapter 11 case of a corporation when the plan is confirmed; C. In a Chapter 11 case of an individual when the plan is completed or when the court grants a hardship discharge; and D. In Chapter 12 and 13 cases, when the plan is completed (3-5 years) or when the court grants a hardship discharge to the debtor.
Discharge Date	The date the court records the discharge.
Discharge, Denial of	The situation in which a debtor goes through a bankruptcy case but is not granted a discharge.
Discharge Injunction	Under 11 USC § 524, a discharge operates as an injunction against any attempt to collect discharged debts as a personal liability of the debtor. A discharge does not prevent the collection of debts from property of the estate to which the lien attached pre-petition if a notice of federal tax lien was properly filed before the bankruptcy. Damages against the IRS could result if the Service violates the discharge injunction. Also, see <i>Violation of Stay</i> .
Disclosure Statement	In a Chapter 11 case, an approved disclosure statement must generally accompany the proposed plan of reorganization before the plan is confirmed. The disclosure statement must contain adequate information concerning the affairs of the debtor to allow the creditors to make an informed judgment about the plan. However, for post-BAPCPA cases, electing small businesses may be subject to less stringent disclosure statement requirements (11 USC § 1125(f)).
Dismissal	The term used when a bankruptcy case is terminated prematurely. The debtor does not receive a discharge. Upon dismissal, the debtor is no longer protected by the automatic stay and the IRS can resume administrative collection.

Distribution Order	A distribution order authorizes the trustee to pay creditors the amounts listed in the order, in accordance with the bankruptcy priority scheme. It is usually prepared by the Chapter 7 case trustee and entered by the court.
Estate	A bankruptcy estate is created upon the filing of the bankruptcy case. It generally consists of all of the debtor's interests in any property at the time the case is filed, plus property acquired by the estate after the petition is filed. Note: The estate may also include a non-debtor spouse's community property interests. In an <i>individual</i> Chapter 7 or 11 case, the bankruptcy estate is a separate taxable entity. In Chapter 13 cases and in individual Chapter 11 cases filed on or after October 17, 2005, certain assets acquired by the debtor post-petition may also be included in the estate along with post-petition earnings from services performed by the debtor (11 USC §§ 1306 and 1115).
Examiner	An examiner may be appointed in a Chapter 11 case to investigate the financial affairs of the debtor. An examiner does not replace the debtor-in-possession as a Chapter 11 trustee does.
Excluded Asset	A property interest of the debtor that does not become property of the bankruptcy estate upon the filing of the petition. A pre-petition Notice of Federal Tax Lien (NFTL) is not required to collect discharged taxes from excluded property, although a statutory lien is required. Non-dischargeable taxes may also be collected from excluded assets.
Exempt Property	The debtor is entitled to exempt certain property from property of the estate. Exempt property that was included in the bankruptcy estate and exempted by the debtor is not liable for discharged tax debts after the bankruptcy unless a notice of federal tax lien was filed before the bankruptcy. See 11 U.S.C. 522(c)(2)(B). Depending upon state law, a debtor may choose between state and federal exemptions. Only <i>individuals</i> can exempt property (e.g., a homestead, vehicles, personal furnishings).
53 Account - CNC	A balance due account that is considered <i>Currently Not Collectible</i> (CNC). Frequently used in Chapter 7 corporate accounts and Chapter 11 liquidating bankruptcies at close of bankruptcy. Processed by use of Form 53.
Final Decree	Order entered by the bankruptcy court in a Chapter 11 case that closes the case after the case has been fully administered, and the court has discharged the trustee of his/her duties.
First Meeting of Creditors (FMC) (341 Meeting)	The meeting at which the debtor is required to testify under oath about financial affairs and to respond to questions from creditors and the trustee. Usually held within 20 to 50 days after a case is commenced under any chapter of the Bankruptcy Code. It is also referred to as the <i>Section 341 Meeting</i> , <i>341 Meeting</i> , or <i>341 Hearing</i> (11 USC § 341).
Fraudulent Transfer	A transfer of any property by the debtor within two years before the bankruptcy petition with the intent to hinder, defraud, or delay a creditor. When brought to light, the trustee can successfully challenge the transfer and request turnover of the property to the estate (11 USC § 548). For cases filed on or after October 17, 2005, the look back period is one year.
Fresh Start	Refers to the goal of bankruptcy to give the debtor a new financial life free from many past debts.
Gap Period Taxes	Tax liabilities and penalties which accrue during the interim period after an <i>involuntary</i> bankruptcy case is filed and before an order for relief is entered.
General Unsecured Claims	See <i>Unsecured General Claim</i> .
Hardship Discharge	When circumstances beyond the debtor's control prevent the <i>Chapter 13</i> debtor from modifying or completing the plan, the debtor can receive the same type of discharge that would have been received had the debtor been discharged in a Chapter 7 case – if certain requirements are met (11 USC § 1228(b)). <i>Chapter 12</i> affords a similar discharge but under more limited circumstances (11 USC § 1228(b)). Similar to the Chapter 13 case, the court may grant an individual in a <i>Chapter 11</i> case a hardship discharge in appropriate circumstances per 11 USC § 1141(d)(5).
Individual Debtor	A person who files bankruptcy as an individual rather than as a partnership, limited liability company (LLC) or corporation. The individual debtor may file singularly or jointly with a spouse.
Insider	If the debtor is an individual, an insider includes a relative or partner of the debtor, a partnership in which the debtor is a general partner, a general partner of the debtor, or a corporation of which the debtor is a director, officer, or person in control. If the debtor is a corporation, an insider includes a director of the debtor, officer of the debtor or a person in control of the debtor (11 USC § 101(31)). An insider may be subject to different treatment under the Bankruptcy Code. For example, the time period for recovering preferential transfers to an insider is one year as opposed to 90 days for transfers made to non-insiders.
Insolvency	Generally, understood to mean an inability to pay debts as they become due. However, the Bankruptcy Code refers to an insolvent entity as one whose debts are greater than the fair market value of its assets (11 USC § 101(32)). A debtor need not be insolvent to file bankruptcy. See <i>Bankruptcy</i> .
Involuntary Bankruptcy Petition	The situation in which creditors file a bankruptcy petition, forcing a debtor into bankruptcy involuntarily. See <i>Bankruptcy</i> and <i>Order for Relief</i> .
IRC § 6020(b)	Section 6020(b) of the Internal Revenue Code allows the IRS to prepare and execute a return when a taxpayer fails to make a required return or makes a false or fraudulent return. 6020(b) returns are not returns for dischargeability purposes under 11 USC § 523.
Joint Petitioners	When a married couple files a bankruptcy, a joint petition may be filed by an individual and spouse, and the joint filing is typically administered as one proceeding.
Joint Return/Separate Bankruptcy Petitions Filed by Each Spouse	The situation in which spouses file a joint income tax return and file separate bankruptcy petitions either on the same date or on different dates. The cases may or may not be "consolidated" into a single case.
Joint Return/Single Debtor (Debtor and Non-Debtor Spouse)	The situation in which spouses file a joint income tax return but <i>only one spouse</i> declares bankruptcy. The person who files for bankruptcy protection is known as the <i>debtor</i> and the other spouse, who does not file bankruptcy, is known as the <i>non-debtor spouse</i> .
Levy	An IRS enforcement tool used to attach tangible and intangible assets. Pre-petition tax liabilities cannot be collected by levy when the automatic stay is in effect.
Lien	An encumbrance on property or rights to property as security for a debt or obligation. The Service is prohibited from filing a Notice of Federal Tax Lien with regard to a pre-petition tax debt against property of the debtor until the stay is lifted. The Service is also prohibited from filing any NFTL against the property of the estate, regardless of when the tax arose. A re-filing of a tax lien is allowed. See <i>NFTL</i> .
Lifting the Automatic Stay	Relief obtained by a specific creditor from the bankruptcy court that lifts the injunction under 11 USC § 362 against that creditor to permit a certain action, such as selling assets seized prior to the petition date. The automatic stay, except the stay against property of the estate, is automatically terminated as to all creditors when the discharge is granted or the case is closed or dismissed. For cases filed on or after October 17, 2005, § 362 outlines new provisions which may eliminate the need to seek relief from the stay where the debtor is abusing the bankruptcy system (11 USC §§ 362(b)(21), 362(c)(3) & (4), and 362(n)).
Liquidation	The act of reducing tangible and intangible assets to cash. This applies to Chapter 7 cases in which the business ceases to exist and its assets are sold. For individuals, the liquidation is limited to non-exempt assets. Some debtors liquidate through a Chapter 11 bankruptcy case.
Local Rules	Each bankruptcy court may make and amend its own local rules governing its practice and procedures in that specific jurisdiction. However, the local rules cannot be inconsistent with the Federal Bankruptcy Rules.
Monthly Operating Reports	The reports required to be filed in all Chapter 11 cases by debtors-in-possession or trustees. Generally, the reports include a cash receipts and disbursements journal, income statement, and balance sheet analysis.
No Asset Case	A Chapter 7 no asset case is one where no equity in the debtor's assets is available to pay unsecured creditors because all of the debtor's assets are exempt, excluded, fully encumbered by secured liens, or have little value (Chapter 7). Generally, the Service and other creditors do not file claims in Chapter 7 no asset cases, unless or until the bankruptcy trustee provides further notice that assets have been found (Bankruptcy Rules 2002(e) and 3002(c)(5)).
Non-Exempt Assets	Assets which are part of the bankruptcy estate (i.e., the property available to satisfy creditors' claims). Also, see <i>Asset Case</i> .
Non-Pecuniary Loss Penalty	A non-pecuniary loss penalty is a punitive penalty or fine. Examples are failure to file, failure to pay, and frivolous, fraud, and willful misconduct penalties. Generally, the Service receives only minimal payments on these types of penalties.
NFTL	Notice of Federal Tax Lien (NFTL). For tax purposes, a properly filed NFTL secures the tax liability up to the value of the equity in the debtor's assets. Also see <i>Secured Claim</i> .
Objection to	A motion filed with the bankruptcy court by a debtor, creditor, or trustee to object to all or parts of a claim. A hearing will be held to resolve the dispute. Most

Claim	bankruptcy court litigation, including objections to claim, are brought by motion pursuant to the less formal contested matter procedures.
180-Day Reports	Each Chapter 7 trustee must submit to the United States Trustee an interim report on each asset case that was open at the beginning of the reporting period. The interim report consists of an Estate Property Record and Report and a Cash Receipts and Disbursements Record.
Order for Relief	The filing of a bankruptcy petition constitutes an order for relief in a <i>voluntary</i> bankruptcy case. In an <i>involuntary</i> case, the court orders relief after notice and hearing (Bankruptcy Rule 1013).
PACER	Public Access to Court Electronic Records (PACER). An electronic court notification/information system providing ready information to the public on court records. PACER maintains records and provides a current status on the majority of bankruptcy cases.
Pecuniary Loss Penalty	Assessed to reimburse and compensate the government for an actual loss of taxes. A pecuniary loss penalty is always treated as a priority classification on the Service's proof of claim, unless entitled to a secured position when a valid NFTL is recorded.
Person	As used for bankruptcy purposes, includes an individual, partnership, and corporation, but not a governmental unit (11 USC § 101(41)).
Petition Date	The date the bankruptcy petition was filed in the bankruptcy court.
Plan of Reorganization	A proposed method of payment submitted by the debtor and/or other interested parties in a bankruptcy case to the bankruptcy court and creditors for review and approval. Creditors have the right to accept or reject the plan. Plans are filed in Chapters 11, 12, and 13 bankruptcy cases. When the terms of the proposed plan are not adequate to satisfy the outstanding debt, the FI caseworker may refer the case to Counsel and/or the U.S. Attorney's Office to request an objection to confirmation of the proposed plan.
Post-confirmation	The period that occurs after the plan is confirmed.
Post-petition	The period after the bankruptcy petition is filed.
Post-petition Pre-confirmation	The period from the petition date to the confirmation date.
Post-petition Taxes	Taxes incurred after the filing of the bankruptcy petition. Income taxes are incurred on the last day of the income tax year.
Preference	A pre-petition transfer of the debtor's property to a creditor made on or within 90 days before the filing of bankruptcy (or one year if the transfer is to an insider), which enables the creditor to receive more than in a Chapter 7 liquidation. The trustee may avoid the transfer and recover the property for the estate unless one of several exceptions apply, including the exception for payments of debts made in the ordinary course of business (11 USC § 547). The voluntary pre-petition payment by the debtor of trust fund taxes to the Service is not a payment of property of the debtor, and thus cannot be recovered as a preference.
Pre-packaged Bankruptcies	A Chapter 11 plan of reorganization that the debtor and primary creditors negotiate and accept <i>prior</i> to the filing of the bankruptcy petition.
Pre-petition	The period of time before the bankruptcy petition was filed.
Pre-petition Taxes	Taxes incurred, whether or not assessed, prior to the filing of the bankruptcy petition. Income taxes are incurred on the last day of the income tax year.
Priority	The concept relating to the order and the extent to which the various creditors' unsecured claims are satisfied out of the available assets of the bankruptcy estate (11 USC § 507).
Priority Claim	An unsecured claim with priority over other unsecured claims. 11 USC § 507 lists categories of priority claims in order of priority. Post-petition taxes incurred by the estate are entitled to second priority. Pre-petition income taxes are generally entitled to eighth priority if: <ul style="list-style-type: none"> A. The return was due after three years prior to the petition date, B. The assessment was made within 240 days before the petition date, or C. The tax was unassessed but assessable prior to the petition date.
	Trust fund taxes are always entitled to priority, <i>unless secured by a NFTL</i> , in which case they will be filed as a secured claim. Other types of taxes are generally entitled to priority if the return was due after three years prior to the bankruptcy.
Proof of Claim	A document a creditor files with the bankruptcy court to assert a right of payment from the bankruptcy estate for pre-petition debts. A claim can also be filed for post-petition debts in some instances (e.g., § 1305 claims in Chapter 13).
Property of the Estate	All legal or equitable interests of the debtor in property at the time the bankruptcy is filed. This includes potential claims and lawsuits the debtor may yet file against a third party. Property of the estate also includes interests in property that the estate acquires post-petition and post-petition earnings of individual Chapter 11 debtors and Chapter 13 debtors (11 USC §§ 1115 and 1306). In a Chapter 7 case or liquidating Chapter 11, the trustee liquidates property of the estate to pay creditors. In reorganization cases, property of the estate is used to determine the value of a secured claim or the extent to which secured and unsecured general claims must be paid through a plan.
Pro rata	According to a calculated share; distributed proportionately.
Receivership	See under term <i>Bankruptcy</i> .
Reorganization	The process through which a Chapter 11, 12, or 13 debtor promises to resolve or pay creditors' claims.
Res Judicata	The principle that an existing final judgment rendered on the merits by a court of competent jurisdiction is conclusive. It bars the parties from re-litigating in another proceeding the same issues that were litigated in the first proceeding or claims that could have been litigated in the first proceeding.
Rule 2004 Examination Schedules	Similar to a deposition but broader in scope. It permits any party in interest to examine any entity about the acts, conduct, or property of the debtor, the liabilities and financial condition of the debtor, or about any matter which may affect the administration of the debtor's estate, or the debtor's right to a discharge. After a bankruptcy is filed, all debtors must timely file: (1) schedules of assets and liabilities, (2) a schedule of current income and current expenditures, and (3) a statement of financial affairs.
Section 341 Meeting	See <i>First Meeting of Creditors</i> .
Secured Creditor	A creditor having a lien, security interest, or other encumbrance which has been properly perfected as required by law with respect to property owned by the debtor. The creditor has a secured claim to the extent of the value of the collateral or to the extent of the creditor's right to offset a <i>mutual debt</i> owed to the debtor against the creditor's claim against the debtor (11 USC § 506(a)). For tax purposes, a properly filed Notice of Federal Tax Lien secures the tax liability up to the value of the equity in the assets. A federal tax liability may also be secured because the Service has a setoff right against a debtor's right to federal tax refunds or overpayment of tax, or by amounts other federal agencies may owe the debtor.
Securities	Instruments that evidence the holder's ownership rights in a firm (e.g., stock), the holder's creditor relationship with a firm or government (e.g., a bond), or the holder's other rights (e.g., an option).
Short Year Election	A situation in which an individual debtor (and spouse) has the option of filing short year income tax returns for the pre-petition and post-petition portions of the tax year. This election applies to individual taxpayers who have filed a Chapter 7 or 11 bankruptcy case (IRC § 1398(d)). The election allows the tax relating to the pre-petition portion of the income tax for the tax year in which the bankruptcy petition was filed to be paid as a (priority) claim in the bankruptcy case.
Security Investor Protection Act (SIPA)	The law that establishes the Security Investor Protection Corporation, which maintains a special reserve fund mandated by Congress to protect the customers of insolvent members. The Securities Investor Protection Corporation either acts as trustee or works with an independent court-appointed trustee in a missing asset case to recover funds.
Small Business Case	A Chapter 11 case where the debtor's liabilities do not exceed \$2,490,925 and no active creditor's committee exists. The debt limitation is adjusted every three years under 11 USC § 104 to reflect the Consumer Price Index.
Sovereign Immunity	The doctrine that the United States is immune from suit for damages or other monetary recovery unless the United States waives its immunity from suit (e.g., by a statute permitting a damages suit against the United States).
Statutory Lien	By statute, a lien arises on a taxpayer's property once the Service makes an assessment, gives notice and demands payment, and the taxpayer neglects or refuses to pay. See IRC 6321. (As a matter of IRS policy, the taxpayer is normally given 10 days from notification to pay the amount due.)
Stock	The outstanding capital of a company, the shares of a particular company, or the certificate of ownership of such stock.
Substitute for	A procedure by which the Examination function of the IRS establishes an account and examines the records of taxpayer when the taxpayer/debtor refuses or is

Return (SFR) unable to file a return, and information received by the Service indicates a return should be filed. The Substitute for Returns (SFR) program under IRC § 6020(b) uses Statutory Notice of Deficiency (SNOD) procedures (i.e., 30–day Letter and 90–day Letter).

Super Discharge *For cases filed prior to October 17, 2005:* The discharge granted to an individual debtor upon the successful completion of a Chapter 13 plan. All pre-petition tax debts provided for in a Chapter 13 plan are discharged. In the case of a corporation or partnership in Chapter 11 that is not liquidating, all pre-confirmation debts, *including administrative period taxes*, are generally discharged.

Trustee In a case under Chapters 7, 12, or 13, the trustee is the officer appointed by the United States Trustee to administer the bankruptcy estate. The trustee is the representative of the bankruptcy estate and has a fiduciary duty to unsecured creditors. In a case under Chapter 11, the debtor-in-possession (DIP) generally has the rights and powers of a trustee unless the court orders a trustee be appointed. Listed are several definitions of a trustee and the corresponding Chapter(s) of bankruptcy:
•Chapter 7 trustee: A disinterested person appointed by the United States Trustee or elected by creditors to administer the Chapter 7 case. Referred to as a panel trustee or case trustee. The Chapter 7 trustee is responsible for a particular Chapter 7 case.
•Chapter 11 trustee: The court can order the appointment of a Chapter 11 trustee to replace the debtor-in-possession. The DIP, or the Chapter 11 trustee, is a fiduciary responsible for administering the Chapter 11 case. The United States Trustee or a party in interest may request the court appoint a Chapter 11 trustee for cause.
•Chapter 12 trustee: A trustee is appointed in every Chapter 12 case. The trustee typically reviews the debtor's proposed plan and recommends modifications, as needed. After confirmation, the trustee typically serves as disbursing agent of the debtor's payments under the plan.
•Chapter 13 trustee: A trustee is appointed in every Chapter 13 case. The trustee typically reviews the debtor's proposed plan and recommends modifications, as needed. After confirmation, the trustee typically serves as disbursing agent of the debtor's payments under the plan.

United States Trustee An employee of the Department of Justice charged with supervision of the administration of all bankruptcy cases (28 USC § 586). The United States Trustee has a statutory right to appear and be heard on any issue in any bankruptcy case (11 USC § 307).

Unsecured Creditor A creditor who has no security interest in property of the estate to secure its claim, or no right of setoff, or to the extent the value of the creditor's collateral or right of setoff is less than the amount of the debt (11 USC § 506(a)). Unsecured creditors may be either priority or general unsecured creditors.

Unsecured Creditors Committee Appointed in Chapter 11 cases by the United States Trustee. The committee is comprised of creditors willing to serve, who generally hold the largest unsecured claims, and whose claims are representative of the type of unsecured debt in the case.

Unsecured General Claim A claim that is not entitled to either secured or priority status. General unsecured creditors may recover a low percentage on their claims or may recover nothing at all.

Violation of Stay An improper collection action made during the period in which the automatic stay is in effect. Examples of collection actions prohibited during the automatic stay (on pre-petition tax liabilities) include the solicitation of an installment agreement, making demand for payment, or the serving of a levy. (However, giving notice and demand after assessment is not prohibited by the stay. 11 USC § 362(b)(9).) The Service can be liable for damages and attorneys fees for violations of the automatic stay, but punitive damages cannot be awarded. Also see *Discharge Injunction*.

Exhibit 5.9.1-2 Acronyms and Abbreviations

Common acronyms acceptable for use in the AIS history are listed in the table below. Additional acceptable acronyms and abbreviations are found in the ReferenceNet Acronym Database, which may be viewed at: <http://rnet.web.irs.gov/OldRnet/Other/acronymdb.asp>.

Abbreviation	Meaning
ACS	Automated Collection System
ADJ	Adjustment
ADS	Automated Discharge System
AGI	Adjusted Gross Income
AIS	Automated Insolvency System
ALS	Automated Lien System
AMT	Amount
APOC	Automated Proof of Claim
ASED	Assessment Statute Expiration Date
ATTY	Attorney
ATAT	Abusive Tax Avoidance Transaction
AUSA	Assistant United States Attorney
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
BC	Bankruptcy Code
BD	Balance Due
BK	Bankruptcy
BMF	Business Master File
C&F	Call and Fax
CCFU	Court Closure Follow-up
CFL	Called Field Liaison
CNC	Currently Not Collectible
CONV	Conversion
CPP	Confirmed Plan Payment
CRDBAL	Credit Balance
CSED	Collection Statute Expiration Date
CT	Credit Transfer
DDR	Discharge Determination Report
DI	Debt Indicator
DISCH	Discharge
DISCH DET	Discharge Determination
DISM	Dismissal
DOJ	Department of Justice
DV	Disclosure Verified
EAEP	Exempt, Abandoned, and Excluded Property
EIC	Earned Income Credit
EIN	Employer Identification Number
ENS	Electronic Noticing System
EPOC	Electronic Proof of Claim
ERISA	Employee Retirement Income Security Act
ETP	Estimated Tax Payment
FBAR	Foreign Bank and Financial Account Report
FLD LSON	Field Liaison

FLD SPEC	Field Specialist
FMC	First Meeting of Creditors
FP	Full Pay
FPLP	Federal Payment Levy Program
FRE&CLR	Free and Clear
FS	Filing Status
FTD	Federal Tax Deposit
FU	Follow Up
FWDTF	Forward to Field
IA	Installment Agreement
ICS	Integrated Collection System
IDRS	Integrated Date Retrieval System
IIP	Insolvency Interface Program
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
LAMS	Litigation Account Management System
LCBM	Left Callback Message
LRF	Last Return Filed
LTS	Litigation Transcript System
MAN R	Manual Refund
MFT	Master File Tax
MRR	Manual Refund Report
MOT	Motion
NAN	No Action Needed
ND CLM	Need to File Proof of Claim
NDS	Non-Debtor Spouse
NFTL	Notice of Federal Tax Lien
NL	No Liability
NMF	Non-Master File
NOA	Notice of Assets
NOD	Notice of Dividends
NOH	Notice of a Hearing
OBJ 2 CLM	Objection to Claim
OI	Other Investigation
OIC	Offer in Compromise
P & I	Penalty and Interest
PD	Posting Delay
PDTN	Penalties dischargeable, Tax Is Not
PIT	Potentially Invalid TIN
PMI	Per Manager's Instructions
PMT DET	Prompt Determination
POC	Proof of Claim
PP or POST	Post-petition
PYMT or \$	Payment
RESGN FLD SPEC	Reassigned to Field Specialist
RIM	Received in mail
RO	Revenue Officer
ROL	Release of Levy
RQ	Request
RVU	Reviewed
SAL/RE	Sale of Real Estate
SSN	Social Security Number
SIPA	Security Investor Protection Act
TAO	Taxpayer Assistance Order
TC	Transaction Code
TCFTP	Telephone Call from Taxpayer
TCFMrTP	Telephone Call from Mrs. Taxpayer
TCFMrTP	Telephone Call from Mr. Taxpayer
TCFNDS	Telephone Call from Non-Debtor Spouse
TEFRA	Tax Equity and Fiscal Responsibility Act
TFRP	Trust Fund Recovery Penalty
TIN	Taxpayer Identification Number
TOP	Treasury Offset Program
TP	Taxpayer
TTEE	Trustee
TTR	Trustee Turnover Request
TY	Tax Year
UP	Unpostable
UR	Unfiled Return
URP	Underreporter Program
USC	United States Code
UT	Untimely
VOS	Violation of Automatic Stay
WD	Withdraw

XREF	Cross Reference
4MGR APP	For Manager's Approval

**Exhibit 5.9.1-3
Case Assignments**

Cases may be assigned to the CIO or FI based on chapter type, tax liability, and complexity. Some cases will necessarily flow back and forth between FI and the CIO. Assignment of work duties between FI and the CIO may change due to resources or workload, as determined by the Director, Specialty Collection Insolvency.

Except as noted in IRM 5.9.12.5.1, *IIP Status Reports*, and IRM 5.9.12.5.2, *Potentially Invalid TIN (PIT) List*, cases will be worked as follows:

IF ...	THEN...
The taxpayer files under Chapter 13,	<ul style="list-style-type: none"> • CIO will process bankruptcy notifications, run IIP, status reports, PIT reports, and LTS reports before assignment to the FI group where the bankruptcy is pending. Unless there are issues that require the case to remain in FI, once the initial case review has been completed and all proofs of claim have been acknowledged, the Chapter 13 case is transferred from FI to CIO. FI notates any special actions required by the CIO in the "Summary History" prior to the transfer to the CIO. CIO posts payments from the Chapter 13 trustee. After court closure, the CIO will complete closing actions. • FI completes an initial case review and will prepare original and amended proofs of claim using APOC, as appropriate; review the plan and prepare referrals, if needed; add the confirmed plan to the AIS Payment Monitoring screen, if confirmed prior to transfer to CIO; add 02/02/2222 as the confirmation date on the CPM Screen and Taxpayer Screen, if the case is reassigned to CIO to monitor for confirmation; add a "Summary History" on AIS prior to transfer to CIO; and, resolve cases involving defaulted plans or post-petition issues.
The taxpayer files under Chapter 9, 11, or 12,	<ul style="list-style-type: none"> • The CIO will process bankruptcy notifications, run IIP, status reports, and work PIT reports before assignment to the FI group where the bankruptcy is pending. • FI will prepare original and amended proofs of claim using APOC, as appropriate; review the plan and prepare referrals, if needed; add the confirmed plan to the CPM Screen; monitor plan payments after confirmation; work LTS reports; recommend actions on defaulted plans and perform all closing actions (except MFT 31 transfers and addressing prior installment agreements) upon dismissal, discharge or closure of the case by the court.
The taxpayer files under Chapter 7 and assets are available	<ul style="list-style-type: none"> •The CIO will process bankruptcy notifications, run IIP, status reports, and work PIT reports before assignment to the FI group where the bankruptcy case is pending. <p>After FI has completed the initial case review of all business cases (except partnerships), all claims have been prepared and acknowledged, and there are no issues that require the case to remain in FI, FI will enter a "Summary History" on AIS to provide guidance for closing actions to be taken by the CIO. The CIO will take all necessary closing actions on the case and post any payment received from the bankruptcy trustee.</p> <p>After FI has completed the initial case review of all individual cases, all claims have been prepared and acknowledged, and there are no issues that require the case to remain in FI, FI will enter a "Summary History" on AIS to provide guidance for closing actions to be taken by the CIO, upon dismissal or discharge. CIO will monitor the case for dismissal or discharge, post any payment received from the bankruptcy trustee and take all necessary closing actions on the case.</p> <ul style="list-style-type: none"> •FI will complete the initial case review and prepare original and amended claims. Once all claims have been acknowledged and there are no issues that require the case to remain in FI, FI will enter a "Summary History" in the case with any specific instructions for actions needed by CIO during case closure. The case will be transferred to the CIO.
The taxpayer files under Chapter 7 and no assets are available	<ul style="list-style-type: none"> •The CIO will process bankruptcy notifications, run IIP, status reports, and work PIT reports. CIO conducts the screening process on large dollar Chapter 7 No Asset cases to determine if there are assets that require a transfer of the case to FI for further investigation. Generally, the CIO takes all closing actions on Chapter 7 No Asset cases, except for taking collection action from EAEP after the discharge. •If the outstanding liability meets the amount pre-determined by the Director, Specialty Collection Insolvency, for a large dollar Chapter 7 No Asset review, the case will be transferred to the FI group where the case is pending. If FI determines that there is no collection potential from exempt, abandoned or excluded property, no badges of fraud present, or, a preponderance of evidence that the debtor willfully evaded payment of the tax, the FI caseworker will document the case history with the results of their review. The case will then be transferred back to the CIO for monitoring and completion of closing actions upon receipt of the closing notice. (See IRM 5.9.17.4, <i>Exempt, Abandoned or Excluded Property</i>, for additional information.)

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 2. The Bankruptcy Code and Collection

5.9.2 The Bankruptcy Code and Collection

- 5.9.2.1 [Overview](#)
- 5.9.2.2 [Introduction to the Bankruptcy Code – 11 USC](#)
- 5.9.2.3 [Bankruptcy Code Chapter Organization](#)
- 5.9.2.4 [Chapters in Bankruptcy](#)
- 5.9.2.5 [First Meeting of Creditors](#)
- 5.9.2.6 [Applicable Sections of the Bankruptcy Code](#)
- 5.9.2.7 [Bankruptcy Rules](#)
- 5.9.2.8 [Local Rules and Standing Orders](#)
- 5.9.2.9 [Trustee](#)
- 5.9.2.10 [The Effect of Bankruptcy on Collection](#)

Manual Transmittal

August 11, 2014

Purpose

(1) This transmits a revision of IRM 5.9.2, *Bankruptcy and Other Insolvencies, The Bankruptcy Code and Collection*.

Material Changes

(1) IRM 5.9.2, *The Bankruptcy Code and Collection*, has been updated to provide clarification and expansion of existing material. The following table details changes to this IRM section:

IRM	Change
5.9.2.1	An overview of IRM 5.9.2 has been added.
5.9.2.2(4)	The latest scheduled adjustments of the dollar amounts allowed under specific bankruptcy chapters was April 1, 2013.
5.9.2.4(2)	Chapter 11, 12, or 13 individuals may receive a hardship discharge prior to completion of the bankruptcy plan.
5.9.2.5(3)	341 attendance outside the caseworkers physical jurisdiction and/or authorized travel area is discussed.
5.9.2.5(4)	There is no longer a requirement to transfer a case from CIO to FI when CIO needs FI to question a debtor at the 341 in a Chapter 7 case.
5.9.2.5(7)	Caseworkers cannot assume the debtor previously received Publication 1.
5.9.2.6(5)	BAPCPA extinguished the "super discharge" in Chapter 13 cases.
5.9.2.10(2)	A NFTL is not required to collect dischargeable liabilities from abandoned or excluded property. The liabilities can be collected from the statutory lien of the Service.
5.9.2.10.1(2)(f)	Interest on non-dischargeable taxes in a post-BAPCPA Chapter 13 will survive the bankruptcy.
5.9.2.10.1.1(2)	When excluded property is listed as exempt property in the 9th Circuit, a referral to Area Counsel may be needed.
5.9.2.10.1.1(4)	A new paragraph has been added to discuss the statutory lien of the Service and attachment to abandoned or excluded assets.
5.9.2.10.1.2(5)	Dischargeability of a return filed after assessment of a substitute for return (SFR) is discussed.

(2) Editorial changes were made throughout this section to add clarity and to update or correct citations.

Effect on Other Documents

This material supersedes IRM 5.9.2, dated September 10, 2010. This revision incorporates interim guidance SBSE 05-0614-0047, *Reissuance of Determining Dischargeability of Late Filed Returns in which a Substitute for Return was Prepared Under IRC § 6020(b)*, issued June 12, 2014.

Audience

All Operating Divisions

Effective Date

(08-11-2014)

Rocco A. Steco, Acting Director,
Collection Policy

5.9.2.1 (08-11-2014)

Overview

1. **Overview.** IRM 5.9.2 introduces the reader to the U.S. Bankruptcy Code (USBC). It discusses the effect the filing of a bankruptcy petition has on collections. The IRM section is used primarily by Insolvency caseworkers in Field Insolvency (FI) and at the Centralized Insolvency Operation (CIO). It may be referred to by other SB/SE employees; such as, Revenue Officers (ROs) and Advisors. However, employees in functions other than SB/SE may refer to the subsection when dealing with a taxpayer that has filed bankruptcy.

5.9.2.2 (08-11-2014)

Introduction to the Bankruptcy Code – 11 USC

1. **"Fresh Start" Concept.** Federal bankruptcy law embraces the entire field of debtor-creditor relationships to provide a uniform and equitable method to distribute the debtor's assets to the debtor's creditors. At the same time, it gives the debtor an opportunity to start over with a clean (or at least improved) financial slate. This section deals with the Bankruptcy Code and its impact on tax collection.

Note:

See *IRM 5.9.2.10.1, Bankruptcy Discharges and Collection*, at the end of this section for a summary of the effects bankruptcy discharges have on the overall collection process.

2. **The Bankruptcy Code.** Initially, individual states, not the federal government, enacted insolvency laws. Bankruptcy law is now codified in Title 11 of the United States Code (11 USC) and known as the Bankruptcy Code which establishes the law under which bankruptcy proceedings are commenced, administered, and closed.
3. **Chapters of the Bankruptcy Code.** The Bankruptcy Code is divided into chapters:
 - Chapters 1, 3, and 5 contain general provisions applicable to all types of bankruptcies
 - Chapter 7 deals with liquidating bankruptcies
 - Chapter 9 concerns debts of a municipality
 - Chapter 11 provides information on reorganizations of individuals and businesses, including corporations, partnerships, and Limited Liability Companies (LLCs)
 - Chapter 12 concerns family farmer and family fisherman reorganizations
 - Chapter 13 deals with reorganizations of individuals with regular income
 - Chapter 15 addresses cross-border bankruptcies
4. **Adjustments of Dollar Amounts in Bankruptcy Code.** At three-year intervals, automatic adjustments of dollar amounts in effect under certain sections of the Bankruptcy Code are made to reflect changes in the Consumer Price Index (11 USC § 104(b)(2)). The latest scheduled automatic adjustments were on April 1, 2013. Future adjustments will continue at each three-year period ending on April 1, thereafter. The next scheduled adjustments will be on April 1, 2016. The various sections of the Bankruptcy Code affected include:
 - 101(18) & (19A) - debt limits under definition of family farmer and family fisherman
 - 101(51D) - definition of small business debtor
 - 109(e) - allowable debt limits for filing under Chapter 13
 - 507(a) - priority claims
 - 522 - exemptions allowed to the debtor
 - 707(b) - means testing provisions
 - 1322(d) - current monthly income levels for determining duration of Chapter 13 plans
 - 1325(b) - definition of disposable income

These amounts are published in the Federal Register one month before the effective dates of the changes. These adjustments do not apply to cases filed before the date of such adjustments (11 USC § 104).

5.9.2.3 (03-01-2006)

Bankruptcy Code Chapter Organization

1. **Organization.** Chapters 1, 3, and 5 of the Bankruptcy Code apply to all proceedings unless modified by a specific provision under a proceeding type. The Bankruptcy Code sections listed under each chapter are not all inclusive but have been added as a general reference.
2. **Chapter 1, General Provisions.**
 - Section 101, *Definitions*
 - Section 105, *Power of Court*
 - Section 106, *Waiver of Sovereign Immunity*
 - Section 109, *Who May be a Debtor*
3. **Chapter 3, Case Administration.**
 - Section 302, *Joint Cases*
 - Section 361, *Adequate Protection*
 - Section 362, *Automatic Stay*
4. **Chapter 5, Creditors, Debtor, and the Estate.**
 - Section 522, *Exemptions*
 - Section 523, *Exceptions to Discharge*
 - Section 524, *Effect of Discharge*
 - Section 541, *Property of the Estate*
 - Section 542, *Turnover of Property of the Estate*
 - Section 553, *Setoff*

5.9.2.4 (08-11-2014)

Chapters in Bankruptcy

1. **Bankruptcy Options.** Bankruptcy is separated into two general categories:

- A. Liquidation — Chapter 7 and liquidating Chapter 11 — liquidation of assets to pay off debts; or
- B. Reorganization — Chapters 11, 12, and 13 — reorganizing to pay creditors over a period of time through a plan.

2. **Chapters of Bankruptcy.** The chapters under which persons can file for bankruptcy protection are:

- A. Chapter 7 - Liquidation. A proceeding filed by an individual, business, or other entity, including corporations and partnerships, to pay creditors through liquidation and distribution of the debtor's assets.
- B. Chapter 9 - Adjustment of a Municipal Debt. A bankruptcy filed by a municipality, generally authorized to be a debtor by state law, which is insolvent or unable to meet its debts as they mature, and desires to effect a plan to adjust those debts.
- C. Chapter 11 - Reorganization. A proceeding filed by an individual (except stockbrokers or commodity brokers) or business, including corporations, partnerships, or LLCs, where creditors are paid under a plan which may last for several years, depending on the type of claims held by the creditor. The individual that files Chapter 11 may receive a discharge under 11 USC § 1141(d)(5)(A) after completion of plan payments unless the court orders otherwise for cause. Similar to the Chapter 13 case, the court may grant the Chapter 11 individual a hardship discharge in appropriate circumstances per 11 USC § 1141(d)(5)(B). Non-individual Chapter 11 debtors generally receive a discharge upon confirmation of the plan.
- D. Chapter 12 - Family Farmers and Fishermen. A reorganization proceeding for family farming or fishing operations, with characteristics of bankruptcy issues in both Chapters 11 and 13. (The farmer or fisherman is allowed to remain in business while formulating a plan to pay creditors.) The Chapter 12 debtor generally receives a discharge under 11 USC § 1228(a) upon completion of plan payments. The individual debtor may receive a hardship discharge under 11 USC § 1228(b) prior to the completion of plan payments.
- E. Chapter 13 - Individuals. A voluntary reorganization of debts for individual debtors (including wage earners and sole proprietors) under the direction of a trustee who disburses payments to creditors. Repayment is through a plan, which the court can approve for up to 60 months. For bankruptcies commencing prior to October 17, 2005, the debtor receives a super discharge after successful completion of the plan. Certain tax debts are excepted from discharge for bankruptcies commencing on or after October 17, 2005. The Chapter 13 debtor may receive a discharge upon completion of all bankruptcy plan payments under 11 USC § 1328(a). The debtor may also receive a hardship discharge due to exigent circumstances when the plan cannot be completed per 11 USC § 1328(b).
- F. Chapter 15 - Cross-Border. Opened when a foreign court or a foreign representative seeks assistance in the United States in connection with a foreign proceeding; assistance is requested in a foreign country in connection with a case under 11 USC; a foreign proceeding and a domestic bankruptcy for the same debtor are pending concurrently; or creditors or other persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under 11 USC.

5.9.2.5 (08-11-2014)

First Meeting of Creditors

- 1. **Section 341 Meeting.** The debtor must attend the first meeting of creditors (often called the 341 meeting) if held, to be questioned under oath by creditors and the trustee concerning financial affairs, debts, and property issues. The Service can obtain pertinent information at the 341 meeting on specific tax matters. (See paragraph (4) below.)
- 2. **Order Not to Hold 341 Meeting.** For cases filed on or after October 17, 2005, the court may, after notice and hearing, order the trustee not to hold a 341 meeting if:
 - A. A party in interest requests no meeting be held;
 - B. The debtor has filed a plan; and
 - C. The debtor has solicited acceptances to the plan from the creditors prior to the commencement of the case.

Caution:

If IRS's acceptance of the plan was not solicited, if unresolved issues exist, or if the caseworker wants to question the debtor at a 341 hearing, Insolvency should refer the case to Counsel to object to the motion to forgo the first meeting of creditors.

- 3. **Insolvency Attendance.** Field Insolvency (FI) will attend any 341 hearings, including hearings for cases assigned to the CIO, if warranted. When the caseworker determines that 341 attendance is necessary, arrangements should be made for attendance. This may involve coordination with the FI manager in situations where a case is assigned outside of the caseworker's physical jurisdiction and/or authorized travel area. Some courts will not permit Insolvency caseworkers to question the debtor at the 341 hearing. BAPCPA has not changed this limitation. If an Insolvency caseworker feels (s)he will not be allowed to question the debtor, the case should be referred to Counsel to ask for legal representation at the hearing.
- 4. **CIO Cases.** If a CIO caseworker determines attendance may be warranted at the first meeting of creditors for a Chapter 7 case assigned to CIO in order to question the taxpayer, CIO will contact the appropriate FI caseworker.
 - A. The CIO will document the issues that need to be questioned at the meeting of creditors in the AIS history.
 - B. The FI caseworker that attended the hearing will update the AIS history with the information secured at the meeting of creditors.
 - C. The CIO caseworker will take action based on the information provided by FI.
- 5. **Possible 341 Hearing Issues.** After reviewing available information, an IRS representative may determine attendance at a 341 hearing is warranted. (S)he can pursue information such as:
 - Potential Trust Fund Recovery Penalty liability (including names, duties, and responsibilities of officers)
 - Employment tax obligations
 - Self-employment tax issues
 - Assets not disclosed or undervalued on the schedules
 - Fraud referral potential
 - Deadlines for unfiled tax returns
 - Unreported income
 - Improperly scheduled items; such as, scheduling the Service's secured liability as unsecured or listing excluded property as exempt on *Schedule C - Property Claimed as Exempt*
- 6. **Questioning Debtors.** Caseworkers questioning debtors during the 341 meeting or when providing testimony, must communicate clearly, efficiently, and professionally so they may obtain information necessary to develop their cases while protecting the confidentiality of tax return information. Questions to the debtors should be open-ended to prompt full disclosure on the issues raised.

7. **Publication 1.** If a representative of the Service attends a 341 meeting to question a debtor, and the debtor has no current outstanding liabilities (for example, the IRS is there to secure unfiled tax returns), the Service employee should present the debtor with a copy of Publication 1, *Your Rights as a Taxpayer*, at the time of the hearing, if one has not been mailed to the debtor before the 341 meeting. Do not assume that the debtor has previously received Publication 1.

5.9.2.6 (08-11-2014)

Applicable Sections of the Bankruptcy Code

1. **Introduction.** Particular sections of the Bankruptcy Code impact the Service's position during the pendency of a bankruptcy. The Service's awareness of debtor rights increases when caseworkers are knowledgeable of the provisions of the bankruptcy code. Caseworkers must ensure debtor rights are not violated while the debtors are under the protection of the bankruptcy court. The Service can be held liable for damages if a debtor's rights are violated.
2. **Sovereign Immunity.** In certain situations listed therein, 11 USC § 106 waives the *sovereign immunity* of the IRS and other governmental units. The doctrine of sovereign immunity asserts the United States cannot be sued unless it specifically waives its exemption from suit, such as by passing a statute permitting a damages suit against the United States.
3. **Section 362, Automatic Stay.** This provision of the Bankruptcy Code imposes an *automatic stay* (prohibition) on certain actions of creditors, including the United States, as of the petition date.

- A. Some of the acts prohibited under the stay include acts to collect debts incurred before the filing of the bankruptcy petition and acts to take possession of, or exercise control over, property of the estate and the debtor.
- B. Exceptions to the automatic stay are found in 11 USC § 362(b). The Bankruptcy Reform Act of 1994 (BRA 94) expanded the list of exceptions to include: assessment of tax, issuance of notices of deficiencies, audits to determine tax liability, solicitation of tax returns, and the issuance of a notice and demand for payment of an assessment. BAPCPA added exceptions for the setoff of pre-petition income tax refunds against pre-petition income tax liabilities and the interception of income tax refunds for setoff against past due domestic support obligations.
- C. BAPCPA restricts the duration of the stay in certain individual "serial filer" cases where the debtor had a prior bankruptcy dismissed for reasons other than failure to pass the means test. If the individual debtor had one prior bankruptcy dismissed within 365 days of the current case, the stay will terminate on the 30th day in the current case, unless the court extends the stay. (See 11 U.S.C. § 362(c)(3).) If the individual debtor had two or more prior bankruptcies dismissed within 365 days of the current case, the stay will not go into effect in the current case. In either instance, the stay against the debtor and property of the debtor that is not property of the estate may be affected. The stay remains in effect on property of the estate, *except for cases where the stay does not go into effect at all due to multiple prior bankruptcies*. Where uncertainty exists regarding the stay, Insolvency should refer the case to Counsel to seek an order confirming the status of the stay. (See IRM 5.9.5.7, *Serial Filers*, for additional information.)

Note:

A party in interest may request a stay be instituted or extended in the above situations.

4. **Section 522, Exemptions.** Provided in this section of the code are property exemptions a debtor may select. The federal exemptions apply unless the state in which the debtor is domiciled has enacted specific legislation authorizing or mandating the use of state exempted property limitations.
 - A. Under 11 USC § 362, collection may not be pursued against property exempt under § 522 *while the automatic stay is in effect*.
 - B. Upon discharge, exempt property is subject to collection of dischargeable taxes for which a Notice of Federal Tax Lien (NFTL) was filed prior to the petition date.

Note:

Exempted property is not subject to liquidation by the court.

5. **Section 523, Exceptions to Discharge.** Exceptions to discharge for individual debtors' tax liabilities are listed in 11 USC § 523(a)(1). Not discharged are those pre-petition tax liabilities given priority status by 11 USC § 507. In addition, non-dischargeable taxes include taxes for which a return was not filed, taxes due on a late return filed after two years before the date of the bankruptcy petition, a fraudulent return, and taxes the debtor willfully attempted to evade or defeat. Liabilities for restitution-based assessments are also excepted from discharge. (See IRM 5.9.17.7.8, *Discharge and Restitution Assessments*, for additional information.)

Note:

In a Chapter 13 bankruptcy filed prior to October 17, 2005, an individual may qualify for a "super discharge" of all pre-petition tax debts without regard to § 523 exceptions. BAPCPA establishes exceptions to Chapter 13 discharge for bankruptcies filed on or after October 17, 2005. BAPCPA limited the "super discharge" of all tax liabilities in Chapter 13 cases by adding certain tax exceptions.

6. **Section 524, Effect of Discharge.** The collection of discharged tax liabilities as a personal liability of the debtor is prohibited by this code section. The Service can be sued for damages, including attorney fees, for violating the discharge injunction under 11 USC § 524. However, punitive damages cannot be awarded.
7. **Section 541, Property of the Estate.** The filing of a bankruptcy petition creates an estate comprised of all property of the debtor as of the commencement of the case. The estate comes under the court's jurisdiction as of the date a bankruptcy petition is filed.
8. **Section 542, Turnover of Property to the Estate.** The conditions under which property must be turned over to the estate for the trustee's use, sale, or lease are defined. This "turnover" may include a refund due an individual debtor unless the refund may be offset to IRS liabilities.
9. **Section 547, Preferences.** The trustee is authorized to avoid certain *transfers* of the debtor's property made *on or within 90 days* before the date of the bankruptcy filing or *between 90 days and one year* before the petition date, if the transfer is to an insider. An "insider" may include a relative of the debtor or an officer or director of a corporate debtor, among others (11 USC § 101(31)). This section on preferences encompasses property seized by the government, as the term *transfer* also relates to *involuntary* payments. However, it does not include payments of tax liabilities made in the ordinary course of business.
10. **Section 553, Setoff.** A creditor's right to set off a *mutual debt* owed by the creditor to the debtor that arose before the bankruptcy proceeding began is preserved. This authority allows the IRS to credit a refund that arose before the petition date against a pre-petition tax liability of the debtor, *provided the automatic stay has been lifted for cases filed prior to October 17, 2005*. The IRS may temporarily freeze a refund to protect its right of setoff without permission of the court. BAPCPA has eliminated the requirement to ask the court for a lift of stay to apply pre-petition income tax refunds to pre-petition income tax liabilities on cases filed on or after October 17, 2005.

5.9.2.7 (08-11-2014)

Bankruptcy Rules

1. **Bankruptcy Rules.** The Bankruptcy Rules and Forms govern procedures in cases under Title 11 of the United States Code. The rules shall be cited as the *Federal Rules of Bankruptcy Procedure* and the forms as the *Official Bankruptcy Forms* (e.g., Form B10, *Proof of Claim*). The Bankruptcy Rules were adopted to secure the just, speedy, and inexpensive determination of every case and proceeding as stated in Bankruptcy Rule 1001. These rules provide a structure to the bankruptcy process by standardizing the formats, timeframes, and methods to follow in the implementation of the Bankruptcy Code.
2. **Pertinent Bankruptcy Rules.** Insolvency employees should familiarize themselves with the Bankruptcy Rules that pertain to the issues affecting the Service. Examples of the relevant rules include:
 - **Rule 1007.** When a debtor files a petition (order for relief), certain schedules or statements must also be filed.
 - **Rule 2002(a)(7).** Creditors must receive notice of the bar date.

- **Rule 2002(j).** Notice of a Chapter 11 case must be mailed to the IRS where the case is pending, whether or not the IRS is a creditor; notice of Chapter 7, 12, and 13 cases must be given to the IRS when it is listed as a creditor in the debtor's schedules.
- **Rule 2004.** On motion of any party in interest, the court may order the examination of any entity.
- **Rule 7001.** Adversary Proceedings are subject to the formal procedural rules of Part VII of the Bankruptcy Rules; the rules in Part VII govern the procedural aspects of litigation involving the matters referred to in this rule.

Example:

A proceeding to object to or revoke a discharge, and to determine the dischargeability of a debt, is known as an Adversary Proceeding.

- **Rule 7004.** A copy of summons and complaint must be mailed to the Attorney General, the United States Attorney for the district where the action is brought, and "the officer or agency" involved.
- **Rule 9014.** Contested matters are less formal than adversary proceedings; most proceedings under the Bankruptcy Code fall under the scope of this rule.

Example:

Contested matters can include objections to proofs of claim, objections to confirmation, relief from the automatic stay, or request for use of cash collateral.

**5.9.2.8 (09-10-2010)
Local Rules and Standing Orders**

1. **Local Court Practices.** Each bankruptcy court may make and amend its own local rules governing its practices and procedures. Insolvency caseworkers must know how to access any *local rules or standing orders* that provide specific guidelines for each bankruptcy court having jurisdiction over their inventories. Employees must understand local court practices impacting the judicial actions in their assigned areas. Actions forbidden in one judicial district may be allowed in another. Similarly, actions requiring a court hearing and ruling in one jurisdiction may be resolved administratively in another district.

Note:

The CIO can research local rules regarding the disposition of credits by court on the Bankruptcy Law Advisory Rules Engine (BLARE) on SERP under the tab marked "Local/Sites/Other." In addition, Insolvency employees can research the local rules of any bankruptcy court at <http://www.uscourts.gov/rules/bk-localrules.html>

2. **Counsel Assistance.** Insolvency must confer with Counsel when interpretations are required covering local court practices. Judges in different districts may render divergent court decisions, and even trustees in the same district can each handle matters differently.

**5.9.2.9 (08-11-2014)
Trustee**

1. **Bankruptcy Trustees.** Bankruptcy trustees have the fiduciary responsibility to administer the bankruptcy estate. The trustee ensures creditors are paid according to the provisions of the Bankruptcy Code as reflected in the debtor's plan. Trustees are appointed to serve in specific Chapter 7 cases as *panel or case trustees*. For Chapters 12 and 13, *standing trustees* are appointed to serve in all cases in the district. While a trustee may be appointed in a Chapter 11 case, the debtor in possession usually administers the bankruptcy estate (11 USC § 1104).
2. **The United States Trustee.** The role of the United States Trustee (employed by the Justice Department) is as a supervisory entity charged with, among other things, monitoring:
 - The performance of all Chapter 7 trustees
 - The performance of each Chapter 12 and 13 standing trustee
 - Certain matters in Chapter 11 cases

Note:

Exhibit 5.9.1-1, *Glossary - Bankruptcy Terms*, and other specific sections of this IRM pertain to the role of trustees in the different chapters of bankruptcy.

**5.9.2.10 (08-11-2014)
The Effect of Bankruptcy on Collection**

1. **Bankruptcy and the Collection of Taxes.** The filing of a bankruptcy petition immediately affects the collection of taxes. The actions the IRS may take depend on various factors, including, but not limited to the:

- A. Debtor's being an individual, corporation, LLC, or partnership;
- B. Chapter of bankruptcy filed;
- C. Date the bankruptcy commenced;
- D. Presence of complex or unusual issues, such as trust fund, adequate protection, or pyramiding of taxes;
- E. The tax liability's being for pre-petition or post-petition periods;
- F. The progress of the case as it moves through the bankruptcy processing stream; and
- G. Debtor's prior history of filing bankruptcy, for cases filed on or after October 17, 2005.

2. **Impact on Collection.** The following table demonstrates the impact bankruptcy has on collection actions. Because of the variation of permissible actions among the courts, guidance on all possible actions cannot be provided in this IRM. Actions that are a violation of the automatic stay, and actions that are not a violation of the automatic stay, are discussed further in IRM 5.9.3.6 , *Automatic Stay*, and subsections. The automatic stay in serial filer cases is discussed in detail in IRM 5.9.5.7 , *Serial Filers*, and related exhibits.

Note:

Service employees should contact Insolvency, which, in turn, may consult with Counsel when assistance is required on complex bankruptcy-related issues.

Event	CH	Pre-BAPCPA	Post-BAPCPA	11 USC Section
Bankruptcy	All Cases	<i>The automatic stay is imposed upon the filing of the</i>	No change, except offsets of pre-petition income tax refunds	§ 362,

petition filed with no previous bankruptcies dismissed within the past one year period		<p><i>petition</i>. All actions against the property of the estate must be suspended, and all actions to collect pre-petition liabilities must be suspended as of the date the bankruptcy petition is filed.</p> <p>The Collection Statute Expiration Date (CSED) is suspended for the time period during which the automatic stay prohibits the Service from collecting, plus six months.</p>	against pre-petition income tax liabilities are not stayed.	Automatic Stay; §541, Property of the Estate; § 1306, Property of the Estate (CH 13s only); § 1115, Property of the Estate Note: Property of the estate has been expanded by BAPCPA for individual CH 11s.
Petition filed by an individual in a CH 7, 11, or 13 bankruptcy less than 12 months after having been dismissed from one individual CH 7, 11, or 13 bankruptcy	CH 7, 11, 13 Individual	Not applicable	The stay will terminate with respect to the debtor and the debtor's property that is not property of the bankruptcy estate on the 30th day after the filing of the later case unless a party in interest demonstrates the filing in the latest case is in good faith, or if the previous case was a CH 7 dismissed under 11 USC § 707(b) (which includes the means test and other factors), and the later case is not a CH 7 case. The stay only terminates as to actions by any creditor to collect a debt against the debtor personally or against the debtor's property securing such debt, unless that property is property of the estate. The stay does not terminate as to property of the estate. The termination applies to any creditor whether or not such creditor had taken any pre-petition collection action.	§ 362(c)(3), Automatic Stay
Petition filed by an individual in a CH 7, 11, 12, or 13 bankruptcy less than 12 months after having been dismissed from more than one individual CH 7, 11, 12, or 13 bankruptcy	CH 7, 11, 12, or 13 Individual	Not applicable	The stay will <i>not</i> go into effect at all unless a party in interest demonstrates, by clear and convincing evidence, the filing in the latest case is in good faith or if the previous case was a CH 7 dismissed because of the means test.	§ 362(c)(4), Automatic Stay
Case dismissed	All Cases	<p>Collection may be pursued for any tax and against any property after the order of dismissal is final. A debtor generally is allowed fourteen days to file an appeal of a dismissal order.</p> <p>The CSED is suspended for the time period during which the automatic stay prohibits the Service from collecting, plus six months.</p> <p>The CSED may also be suspended after confirmation of a Chapter 11 plan until dismissal.</p> <p>Caution: Counsel should be consulted on CH 11 cases with confirmed plans.</p>	No change	§ 362(c), Automatic Stay; § 707, Dismissal (CH 7); § 1112, Conversion or Dismissal (CH 11); § 1208, Conversion or Dismissal (CH 12); § 1307, Conversion or Dismissal (CH 13)
Case awaiting confirmation for bankruptcy petition filed more than one year since any preceding dismissal	CH 11, 12, and 13	<i>Automatic stay remains in effect.</i> In CH 11 or 12 cases, substantial liability may accrue between the petition date and the filing of the plan and its confirmation. In CH 13 cases, the delay is usually limited. Insolvency should monitor these bankruptcy cases to take steps to reduce pyramiding of delinquent post-petition tax liabilities.	No change	§ 503, Allowance of Admin. Expenses (CH 11); § 1305 post-petition claim (CH 13); § 1112(b)(4)(I)
Individual case awaiting confirmation with one dismissal of a previous individual CH 7, 11, or 13 bankruptcy within the last 12 months before the petition date.	CH 11 Individual, CH 13	Automatic stay remains in effect until case closure.	Automatic stay remains in effect for 30 days after the petition date unless extended by the court due to evidence it was filed in good faith or if the previous case was a CH 7 dismissed because of the means test. The stay will not terminate as to property of the bankruptcy estate.	§ 362(c)(3), Automatic Stay
Individual case awaiting confirmation with more than one dismissal of a previous individual CH 7, 11, 12, or 13 bankruptcy within the last 12 months before the petition date.	CH 11 Individual, CH 12 Individual, or CH 13	Automatic stay remains in effect until case closure.	Automatic stay will <i>not</i> go into effect at all unless a party in interest demonstrates, by clear and convincing evidence, the filing in the latest case is in good faith, or if the previous case was a CH 7 dismissed because of the means test.	§ 362(c)(4), Automatic Stay

At confirmation	CH 11 Business	<i>The automatic stay is lifted unless the plan provides otherwise. Pre-petition taxes are paid through the plan. Post-petition taxes, that are administrative expense taxes, should be paid in full by the plan effective date. However, if the plan provides otherwise and the Service did not appeal, the Service may be bound by the plan. Post-confirmation taxes are fully collectible through the normal collection process. Field Collection may need to contact Insolvency to ensure the taxes in question are post-confirmation taxes.</i>	No change.	§ 1141, Effect of Confirmation
At confirmation for bankruptcy petition filed more than one year since any preceding dismissal	CH 11 Individual	<i>The automatic stay is lifted unless the plan provides otherwise. Pre-petition taxes are paid through the plan. Post-petition taxes, that are administrative expense taxes, should be paid in full by the plan effective date. If the Service consents, these taxes may be paid in deferred installments under the terms of the plan. Post-confirmation taxes are fully collectible through the normal collection process.</i>	Unless otherwise ordered, the discharge is not granted until completion of all plan payments, thus the automatic stay is in effect the duration of the bankruptcy. <i>Pre-petition taxes are paid through the plan. Post-petition taxes are grounds for dismissal or conversion. Defaulted plans:</i> Since the automatic stay is in effect the Service may need to seek dismissal for collection of taxes.	§ 1141, Effect of Confirmation, § 1112(b)(4)(I)
At confirmation for bankruptcy petition filed more than one year since any preceding dismissal	CH 13, CH 12	<i>The automatic stay remains in effect after confirmation and during the entire pendency of the plan. Collection of all pre-petition taxes, and also post-petition taxes for which claims are filed under 11 USC § 1305 and provided for in the plan, is limited to payments under the plan. Limited administrative collection of post-petition taxes may be possible depending on local law and practice. Counsel should be consulted to formulate the most effective legal means of dealing with post-petition non-compliance in a particular bankruptcy court jurisdiction.</i>	No change to pre-petition taxes. Note: Unfiled post-petition tax returns are now grounds for dismissal. The taxing authority may request the court enter an order converting or dismissing the case. If the debtor fails to file a post-petition tax return, or fails to properly obtain an extension of the due date, within 90 days of the request, the court shall convert or dismiss the case.	§ 1227, Effect of Confirmation (CH 12); § 1327, Effect of Confirmation (CH 13); § 521(j)
At discharge	CH 7	In an asset case, the trustee liquidates certain assets to pay pre-petition claims. The stay is lifted at discharge against all property – including exempt, excluded, or abandoned property, except for property that remains property of the estate (i.e., the property is being administered by the trustee). Caution: Care must be taken when releasing either non-discharged pre-petition taxes or post-petition taxes to systemic collection procedures when the risk of attaching property that is being liquidated by the trustee exists. Local procedures may call for control of these cases through the use of <i>Other Investigations</i> (OIs). The principal difference between no asset and asset cases, for collection purposes is, usually no property will be distributed through the no asset bankruptcy, and the IRS will generally not participate in the case. At discharge, property exempted by the debtor is available to collect pre-petition discharged taxes for which a NFTL was filed before the filing of the petition. (This can be done in either 7 Asset or No Asset cases.) Abandoned or excluded property is available to collect pre-petition discharged taxes due to the Service's statutory lien. Also, the Service can pursue collection of non-dischargeable liabilities from any exempt, excluded, abandoned, non-administered, or after-acquired property of an <i>individual</i> debtor. In both asset and no asset cases, unless the taxes are excepted from discharge under 11 USC § 523, all pre-petition debts are discharged.	No change.	§ 727, Discharge; § 522, Exemptions; § 523, Exceptions to Discharge
At Discharge	CH 11 Individual	Discharge is generally granted after the plan has been confirmed and becomes effective. Reminder: Confirmation does not discharge an individual debtor from certain taxes under 11 USC § 523.	The discharge is granted when all plan payments are complete unless the court ordered otherwise for cause. A hardship discharge may be granted to an individual who has not completed the plan, if certain conditions are met.	§ 1141(d), Effect of Confirmation; § 523(a), Exceptions to Discharge; § 727(a), Discharge
At discharge	CH 11 Business	Discharge is generally granted after the plan has been confirmed and becomes effective. Exception: If the plan provides for <i>liquidation</i> of all or most of the property of the estate, confirmation will <i>not</i> result in a discharge.	No change.	§ 1141(d), Effect of Confirmation; § 523(a), Exceptions to Discharge; § 727(a), Discharge.
At Discharge	CH 12	Discharge granted at completion of payments, or if the debtor cannot complete the plan, a <i>hardship</i> discharge is granted, which is similar to a CH 7 discharge. Certain debts are excepted under 11 USC § 523.	No change.	§ 522, Exemptions; § 523, Exceptions to Discharge; § 1228 (a) and §1228 (b)
At Discharge	CH 13	With a super discharge, all pre-petition taxes and any post-petition taxes provided for in the plan are discharged. Post-petition taxes not provided for in the plan can be released to normal collection. <i>With a hardship:</i> discharge, all pre-petition debts, except for debts excepted from discharge under 11 USC § 523, are discharged just as if the case were a CH 7.	Certain tax debts are excepted from discharge. (See IRM 5.9.17.7, <i>Discharge and Exceptions to Discharge.</i>)	§ 1328(a), Discharge; § 522, Exemption; § 523, Exceptions to Discharge; § 1328(b), Hardship

Closing	All Cases	Upon the closing of Chapter 7 or 13 cases, and Chapter 11 cases of individuals, collection may be pursued from all non-discharged liabilities. Discharged liabilities may be collected from pre-petition exempt property, if the Service filed a NFTL before the bankruptcy case was filed. Discharged liabilities may also be collected from abandoned or excluded property, for which the IRS has a statutory lien, but only to the extent of the property interest that existed pre-petition, even if a NFTL was not filed before the bankruptcy. Exception: In Chapter 11 cases of corporations that have closed, the Service will generally be bound by the terms of a confirmed Chapter 11 plan with regard to all <i>pre-confirmation liabilities</i> unless the debtor has defaulted on the plan. If the debtor has defaulted on the plan, liabilities are considered to not be discharged to the extent the plan provided for their payment; the non-dischargeable portion of the liabilities can be collected.	Pursuit of excluded, exempt, or abandoned property may increase for taxes excepted from discharge in Chapter 13 cases.	Discharge § 523
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5.9.2.10.1 (08-11-2014)

Bankruptcy Discharges and Collection

1. **Introduction.** The objective of a debtor's filing bankruptcy is to gain relief by being granted a discharge from debt. The discharge bars creditors from collecting discharged debts. IRM 5.9.17 deals in depth with discharge issues for the various bankruptcy chapters. Listed below are summaries of the overall impact of bankruptcy discharges on the Service's collection process.

2. **Discharge - Individual Debtors.** The effects of discharge on individual debtors are listed below in chapter order.

A. **Chapter 7.** The court grants a discharge, subject to the exceptions in 11 USC § 523 for *individual* debtors (11 USC § 727(a)). A court may deny a discharge if one of the criteria in 11 USC § 727 is met.

B. **Chapter 11 Filed Prior to October 17, 2005.** The confirmation of a plan discharges all pre-confirmation debts except for those listed in 11 USC § 523 for *individual* debtors, regardless of whether a proof of claim has been filed (11 USC § 1141(d)(1)).

Note:

A Chapter 11 confirmation does not act as a discharge (1) if the plan provides for the liquidation of all or substantially all of the property of the estate; (2) if the debtor does not engage in business after the plan is confirmed; and (3) if one of the criteria of 11 USC § 727 is met (11 USC § 1141(d)(3)).

C. **Chapter 11 Filed by Individuals on or after October 17, 2005.** BAPCPA changed the rules of discharge for individuals filing Chapter 11 bankruptcies. Discharge takes place after all plan payments are completed. Also, to the extent that a Chapter 11 individual debtor is unable to complete the plan payments, the debtor may still be able to obtain a *hardship discharge* under special circumstances.

D. **Chapter 12.** Once the debtor has completed payments under the plan, the court will issue a discharge of all debts provided for in the plan, except for those listed in 11 USC § 523 (11 USC § 1228(a)). In certain circumstances, a judge can issue a *hardship discharge* before the plan is completed (11 USC § 1228(b)).

E. **Chapter 13 Filed Prior to October 17, 2005.** When a debtor has completed plan payments, the court grants a *super discharge* (11 USC § 1328(a)). All tax debts provided for in the plan and disallowed claims are discharged. After a plan is confirmed, but before it is completed, the court may grant a *hardship discharge*, subject to the exceptions in 11 USC § 523.

Note:

In a hardship discharge, the Chapter 13 debtor must show: (1) the failure to complete the plan is due to circumstances beyond the debtor's control; (2) the value of the property actually distributed is at least what would have been distributed in a Chapter 7 proceeding; and (3) modification of the plan is not practical.

F. **Chapter 13 Filed on or after October 17, 2005.** BAPCPA changed the Chapter 13 discharge provisions to except from discharge trust fund taxes, taxes related to unfiled returns and certain late returns, taxes related to fraudulent returns, and willful attempts to evade or defeat taxes. These non-dischargeable taxes and related interest must be paid in full in the plan, or they will survive the bankruptcy.

3. **Discharge - Corporate Debtors.** The effects of discharge on corporate debtors are listed below in chapter order.

A. **Chapter 7.** A discharge is not available for corporate debtors (11 USC § 727(a)(1)).

B. **Chapter 11.** For cases filed prior to October 17, 2005, a corporate discharge is a super discharge (11 USC § 1141(d)(1)). For cases filed on or after October 17, 2005, a corporate debtor does not receive a discharge of any taxes for which it filed a fraudulent return or willfully attempted in any manner to evade or defeat the payment of tax. (11 USC § 1141(d)(6)).

C. **Liquidating Chapter 11.** A corporation is not entitled to a discharge in a liquidating Chapter 11 proceeding (11 USC § 1141(d)(3)).

D. **Chapter 12 (Family Farmer/Fisherman).** Refer to IRM 5.9.9.2, *Chapter 12 Eligibility*. Note in particular, paragraph (3), *50 and 80 Percent Rules - Partnerships/Corporations*, for Chapter 12 bankruptcies.

4. **Exceptions from Discharge - Individuals.** Under 11 USC § 523(a), the following taxes and related interest are not discharged in an *individual* Chapter 7, 11, or 12 bankruptcy:

A. Priority tax claims (except priority administrative claims). (See IRM 5.9.13.19.3, *Unsecured Priority*.)

B. Taxes for which a return was not filed. 11 USC § 523(a)(1)(B) denies a debtor a discharge of taxes when a return was not filed. See IRM 5.9.2.10.1.2 below, for an explanation on what does and does not constitute a valid tax return. Also, see IRM 5.9.17.7.1, *Determining Dischargeability of Late Filed Returns in which a SFR was Prepared*, IRM Exhibit 5.9.17-6 and IRM Exhibit 5.9.17-7, for additional information.

C. Taxes for which a late return was filed within two years of the bankruptcy filing.

D. Taxes for which the debtor filed a fraudulent return or willfully attempted to evade or defeat the tax.

Note:

What constitutes a willful attempt to evade or defeat taxes under 11 USC § 523(a)(1)(C) is not always clear.

Reminder:

BAPCPA made certain exceptions to discharge applicable in Chapter 13 and corporate Chapter 11 cases filed on or after October 17, 2005.

Note:

These exceptions to discharge also apply to hardship Chapter 13 cases.

5. **Willful Evasion.** To judge actions as constituting willful evasion, the Service must consider the following strictures:

- A. A preponderance of the evidence is the standard to prove willful evasion.
- B. Failure to file and pay taxes is usually not enough to demonstrate willful evasion. But a debtor's voluntary, conscious, and intentional failure to file returns for an extended period of time, and a failure to pay taxes when the debtor had the ability to do so, may qualify as willful evasion under 11 USC. § 523(a)(1)(C).
- C. Some courts require the Service to prove some affirmative misconduct, such as concealed or fraudulently transferred assets.

Caution:

Insolvency must obtain written approval from Counsel before returning cases to the collection stream because taxes were not discharged on the grounds of willful evasion.

5.9.2.10.1.1 (08-11-2014)**Exempt or Excluded Property**

1. **Exemptions and Exclusions.** Pursuant to 11 USC § 522(b), an individual debtor may choose to exempt certain property from the bankruptcy estate. Except as provided by state law, the debtor can select either the state exemptions or the federal exemptions listed in 11 USC § 522(d). Some of the debtor's property is excluded from the bankruptcy estate under 11 USC § 541. Certain retirement savings accounts or pension plans are excluded from the bankruptcy estate under 11 USC § 541(c)(2) if they contain enforceable anti-alienation provisions. IRM 5.9.17 provides extensive information on exempt, abandoned, and excluded property.
2. **Cases Filed in the 9th Circuit.** If the debtor filed bankruptcy in the 9th Circuit and listed excluded property as exempt on bankruptcy *Schedule C - Property Claimed as Exempt*, refer the case to Area Counsel for guidance on how to proceed in the case. Courts in the 9th Circuit include:
 - Montana
 - Idaho
 - Washington
 - Oregon
 - California
 - Nevada
 - Arizona
 - Hawaii
 - Alaska
 - Northern Mariana Islands
 - Guam

In the 9th Circuit, claiming excluded property as exempt may impair the Service's ability to collect dischargeable taxes from the excluded property when there was no valid NFTL filed prior to the petition date. No action is required when the Service does not intend to pursue collection of the dischargeable liabilities from excluded property after the bankruptcy discharge. (See IRM 5.9.17.4, *Exempt, Abandoned or Excluded Property (EAEP)*, and related subsections for information on exempt and excluded property).

3. **Valid NFTL Survives Discharge.** If the Service has properly filed a pre-petition NFTL, and the NFTL is still valid (e.g., refiled correctly, if applicable), the NFTL survives the bankruptcy discharge (11 USC § 522(c)(2)(B)). Thus, the Service may collect discharged taxes from property that is exempt from the estate if a valid NFTL was filed pre-petition.

Caution:

The Service must follow established collection procedures while ensuring the provisions of the Bankruptcy Code are not violated.

4. **Statutory Lien.** The Service's statutory lien survives the bankruptcy when there are abandoned or excluded assets to which the lien attaches. A NFTL is not required to pursue collection from the abandoned or excluded assets after the bankruptcy discharge. See IRM 5.9.17.4.2(1) for additional information.

5.9.2.10.1.2 (08-11-2014)**A Valid Tax Return**

1. **For Discharge Purposes.** 11 USC § 523(a) was amended by BAPCPA to clarify that a tax return prepared by the IRS under IRC § 6020(a) or a "written stipulation to a judgment or a final order entered by a non-bankruptcy tribunal" is a "return" for the purpose of discharge, but a return prepared under IRC § 6020(b) is not a return for the purpose of discharge.
2. **Revenue Ruling 74-203.** Before September 13, 2005, the Service treated a signed Form 870 or Form 4549, consenting to a substitute for return (SFR) assessment and subsequent collection, as a return prepared under IRC § 6020(a). (See Rev. Rul. 74-203.) Thus, situations in which these documents were signed are not subject to the SFR discharge exception under 11 USC 523(a)(1)(B)(i), although the other exceptions could apply.
3. **Revenue Ruling 2005-59.** Neither Form 870 nor Form 4549 signed on or after September 13, 2005, constitutes a return for purposes of IRC § 6020(a) unless accompanied by some other document that is signed under penalties of perjury and purporting to be a return. (See Rev. Rul. 2005-59.) If the documents do not comply with Rev. Rul. 2005-59, then the discharge exception under 11 USC 523(a)(1)(B)(i) applies. Because it is not signed under penalties of perjury, an agreed substitute for return, where only a Form 4549 is signed by the taxpayer, is also not a valid return. A SFR with a TC 599 cc 89 is an agreed assessment, but it is not a return pursuant to 6020(a) because it is not signed under penalties of perjury and does not purport to be a return.

Note:

The Service will not contest the dischargeability of a tax debt in bankruptcy on the basis that no return was filed if the taxpayer submitted a signed Form 870 before the revocation of Revenue Rule 74-203 on September 12, 2005. This position applies equally to Form 1902, *Report of Individual Income Tax Audit Changes* (obsoleted 1988) and Form 4549, *Income Tax Examination Changes*.

4. **Identifying Unagreed Substitutes for Return.** True SFRs can be difficult to identify. A tax module with an annotation "Substitute for Return" is not necessarily non-dischargeable, nor is it necessarily a true SFR. A true unagreed SFR that is non-dischargeable has a TC 150 of \$0.00, a TC 290 or a TC 300 with a debit dollar amount, a DLN blocking code of 54X or 64X, and a TC 599 cc 88 or no TC 599 present. (See IRM 5.9.17.7.1, *Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared*, for additional information.)

5. **Chief Counsel Notice cc-2010-016.** On September 2, 2010, the Office of Chief Counsel issued Chief Counsel Notice cc-2010-016, *Litigating Position Regarding the Dischargeability in Bankruptcy of Tax Liabilities Reported on Late Filed Returns and Returns Filed After Assessment*, to set forth the Service's position regarding substitutes for return. The Chief Counsel Notice states that if the debtor files a Form 1040 after the Service made an assessment, then it is only a return for bankruptcy purposes to the extent it reported new, previously unassessed liabilities. If the debtor files a return after the assessment of a substitute for return under IRC § 6020(b), only the additional income and tax on the return filed after the SFR is subject to discharge. Caseworkers must refer to IRM 5.9.17.7.1, *Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared*, IRM Exhibit 5.9.17-6 and IRM Exhibit 5.9.17-7, when determining dischargeability and the Service has assessed a substitute for return under IRC § 6020(b). The position of the Service has been supported by all courts, except courts in the 8th Circuit. Courts in the 8th Circuit include North Dakota, Nebraska, Iowa, Missouri, Minnesota and Arkansas. See IRM 5.9.17.7.1(3), for processing cases filed in the 8th Circuit.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 3. Debtors' Delinquent Accounts

5.9.3 Debtors' Delinquent Accounts

- 5.9.3.1 [Overview](#)
- 5.9.3.2 [Insolvency's Responsibilities and Authority](#)
- 5.9.3.3 [Automated Insolvency System \(AIS\)](#)
- 5.9.3.4 [Taxpayer/Debtor Contacts](#)
- 5.9.3.5 [Duties of the Debtor](#)
- 5.9.3.6 [Automatic Stay](#)
- 5.9.3.7 [Referrals to Insolvency on Bankruptcy Related Issues](#)
- 5.9.3.8 [Collection Due Process \(CDP\) Cases](#)
- 5.9.3.9 [Taxpayer Advocate Service \(TAS\)](#)
- 5.9.3.10 [Revenue Officers and Insolvency](#)
- 5.9.3.11 [Trust Fund Recovery Penalty](#)
- 5.9.3.12 [Courtesy Investigations for Reasons Other Than a TFRP Investigation](#)
- 5.9.3.13 [Summons and Bankruptcy](#)

Manual Transmittal

August 11, 2014

Purpose

(1) This transmits a revised IRM 5.9.3, *Bankruptcy and Other Insolvencies, Debtors' Delinquent Accounts*.

Material Changes

(1) IRM 5.9.3 has been updated to provide clarification and expansion of existing material. The following table details changes in this IRM revision:

IRM	Change
5.9.3.1	The purpose and audience of this IRM section are discussed.
5.9.3.3(3)	Document all oral or written contacts made in the case in the Automated Insolvency System (AIS) history.
5.9.3.4(3)	Debtor's residing overseas cannot contact the Centralized Insolvency Operation (CIO) at the toll free number. Secure the telephone number of the debtor, complete Form 4442, <i>Inquiry Referral</i> , and fax the referral to CIO. Advise the debtor that CIO will contact them at the number they provided.
5.9.3.5(1)(b)	Clarifies that the Service files Form 6338-A to request payment of post-petition taxes in Chapter 11 cases.
5.9.3.6(9)	In most Chapter 13 cases, levy payments received post-petition from pre-petition levies are returned to the debtor.
5.9.3.6(10)(c)	Insolvency must consult Counsel if a notice of determination is received in a Collection Due Process (CDP) case while the stay is in place.
5.9.3.6(10)(i)	Conducting, continuing, and completing a TFRP investigation is not prohibited by the automatic stay.
5.9.3.8(3)	CDP lien notices may be rescinded when Notices of Federal Tax Lien (NFTLs) are filed in violation of the automatic stay.
5.9.3.8.1	A new subsection has been added to show the steps taken when an Insolvency caseworker receives a CDP and Equivalent Hearing request from a debtor.
5.9.3.8.2	A new subsection has been added to provide guidance on processing requests for adjustments from Appeals on Tax Court Cases.
5.9.3.10(3)2	Form 3210 should accompany payments mailed by Revenue Officers (ROs) to the CIO.
5.9.3.10(3)5	The link to the interim guidance search page is provided.
5.9.3.11(10)	The deadline for any Other Investigation (OI) requesting a Trust Fund Recovery Penalty (TFRP) investigation should be 90 days.
5.9.3.11(12)	OIs for TFRP investigations may be rejected if there is not at least 6 months left on the Assessment Statute Expiration Date (ASED).
5.9.3.11(13)	The cross references for withholding assessment of TFRPs or withholding collection on assessed TFRPs in Chapter 11 cases are provided.
5.9.3.11(20)	Caseworkers add a "TFRP" case classification to AIS when there are unassessed TFRPs above the assertion criteria.
5.9.3.11.1	Caseworker follow guidance in IRM 5.19.14.1.6, <i>Trust Fund Calculation</i> , when calculating trust fund tax.
5.9.3.11.2	A new subsection has been added to discuss ICS Other Investigations (OIs) to request a TFRP investigation.
5.9.3.11.3	<i>The TFRP Assessment Decision</i> , has been moved from 5.9.3.10.1 to 5.9.3.11.3.
5.9.3.12	<i>Courtesy Investigations</i> , has been renamed <i>Courtesy Investigations for Reasons Other Than a TFRP Investigation</i> . OIs for TFRP investigations are discussed in <i>IRM 5.9.3.11</i>
5.9.3.13.1(2)	There is no longer a requirement to periodically send a list of third-party contacts to the taxpayer.
5.9.3.13.1(8)	Form 12175 should only be sent to the Third-party Contact Coordinator.
Exhibit 5.9.3-1	Exhibit 5.9.3-1 has been removed from this section.

(2) Editorial changes were made throughout this section to add clarity and to update or correct citations.

Effect on Other Documents

This material supersedes IRM 5.9.3 dated December 28, 2010.

Audience

All Operating Divisions.

Effective Date

(08-11-2014)

Rocco A. Steco, Acting Director,
Collection Policy

5.9.3.1 (08-11-2014)

Overview

1. **Purpose.** IRM 5.9.3, *Debtors' Delinquent Accounts*, is the section within IRM 5.9, *Bankruptcy and Other Insolvencies*, that discusses general processes and procedures utilized when a debtor has delinquent account(s) and files bankruptcy or another type of insolvency proceeding. This section does not contain actions specific to the type of insolvency proceeding. See the following sections for specific guidance based on the type of proceeding filed by the debtor:
 - IRM 5.9.6, *Processing Chapter 7 Bankruptcy Cases*
 - IRM 5.9.7, *Processing Chapter 9 and Chapter 15 Bankruptcy Cases*
 - IRM 5.9.8, *Processing Chapter 11 Bankruptcy Cases*
 - IRM 5.9.9, *Processing Chapter 12 Bankruptcy Cases*
 - IRM 5.9.10, *Processing Chapter 13 Bankruptcy Cases*
 - IRM 5.9.20, *Non-Bankruptcy Insolvencies*
2. **Audience.** Caseworkers in Field Insolvency (FI) and the Centralized Insolvency Operation (CIO) are the primary users of IRM 5.9.3, *Debtors' Delinquent Accounts*. Advisors in Advisory, revenue officers, and other SBSE employees may refer to the section. Employees in functions other than SBSE may refer to the section when they find that the taxpayer they are working with has filed an insolvency proceeding.

5.9.3.2 (08-11-2014)

Insolvency's Responsibilities and Authority

1. **Responsibilities.** FI and the CIO implement bankruptcy procedural guidelines, control and monitor bankruptcy cases for the IRS, and take appropriate case actions on all of the bankruptcy cases assigned to Insolvency. FI also works receiverships, Securities Investor Protection Act proceedings, and assignments for the benefit of creditors. (See IRM 5.9.20, *Non-Bankruptcy Insolvencies*.)
2. **Authority.** Insolvency personnel have delegated authority to:
 - Prepare and file proofs of claim (IRM 1.2.52.4, *Delegation Order 25-3 (formerly DO-51, Rev. 9)*)
 - Refer bankruptcy case actions to the Department of Justice through local Area Counsel or directly to the US Attorney's Office (IRM 1.2.52.10, *Delegation Order 25-9 (Rev. 1) (formerly DO-25-9 and DO-249)*)
 - Resolve bankruptcy issues administratively (IRM 1.2.52.11, *Delegation Order 25-10 (formerly DO-254)*)
 - Sign Notices of Federal Tax Lien (NFTL) (IRM 1.2.44.5, *Delegation Order 5-4 (Rev. 3)*)
 - Sign Letter 1153, *10-Day Notification Letter, 100% Penalty Proposed Against Filer for Corporation*, (IRM 1.20.40.21, *Delegation Order 1-23 (formerly DO-193, Rev. 6)*)
3. **Contacts.** Insolvency personnel deal directly with Associate Area Counsel (SB/SE), Department of Justice, Assistant US Attorneys, Bankruptcy Court employees, trustees, debtors and their attorneys, and IRS employees in other functions throughout the Service.
4. **Advice and Guidance.** Insolvency personnel are trained in specific areas of bankruptcy law that deal with tax administration and debtor protection. When confronted with bankruptcy issues beyond the scope of their knowledge and expertise, they are to seek guidance from Counsel.
5. **Directions from Insolvency.** Insolvency employees provide directions on bankruptcies to other IRS functions. When Service personnel contact Insolvency regarding a bankruptcy-related issue, they should comply with the advice and guidance given by Insolvency. If additional assistance is required, Insolvency employees will contact Counsel on behalf of other IRS employees. (See IRM 5.9.1.4, *The Role of Insolvency*.)

5.9.3.3 (08-11-2014)

Automated Insolvency System (AIS)

1. **Insolvency's Database System.** Insolvency's automated control system on cases filed under the Bankruptcy Code is the Automated Insolvency System (AIS). AIS is a standardized control and processing application used nationwide for processing bankruptcy and receivership cases.
2. **Functions and Capabilities.** AIS files link together to store and display data, produce documents and generate reports. The software employed in the AIS application has the capability to retrieve, add, or modify data needed to manage a bankruptcy inventory.

Example:

AIS posts vouchers for payments and generates data-specific reports, as needed. The system also creates a variety of forms, including proofs of claim, letters, and reports.

3. **Requirements for Automated Case Processing.** Load all bankruptcy cases involving the IRS on AIS. At minimum, take the following actions for automated bankruptcy case processing:
 - Load "Taxpayer Screen" information.
 - Record all case actions in the AIS case history, even if the action occurred *prior* to the case being loaded on AIS.
 - Document all oral or written contact with the debtor, attorney for the debtor, trustee, and other functions within IRS in the AIS history.
 - Complete all proof of claim (POC) processing activity.
 - Document information relating to liens, including refiling of NFTLs, and NFTLs filed in violation of the automatic stay.
 - Accurately and promptly load the "Confirmed Plan Monitoring (CPM)" screen on AIS for cases with confirmed plans.
 - Apply payments through the AIS system.
 - Update applicable screens when new information comes to Insolvency, including bar date, confirmation date, plan provisions, and modifications of plans.
 - Input specific data to the AIS case history, including information relating to unfiled returns, non-compliance issues, disputes, negotiations, litigation, monitoring results, and data on case closures.

Note:

The AIS case history must be updated to reflect all actions taken because AIS is an official record of case activity for legal purposes.

4. **Additional AIS Information.** Various AIS processes are referenced in this IRM chapter. System enhancements periodically refine and improve AIS capabilities. Insolvency employees must stay up-to-date on any changes by reading the *AIS Message of the Day* posted on the AIS Home Page.

**5.9.3.4 (08-11-2014)
Taxpayer/Debtor Contacts**

1. **Obtaining Pertinent Information.** When the Service is advised through oral or written contact that a taxpayer has filed for bankruptcy, or issues remain from a prior bankruptcy, pertinent information should be collected to help Insolvency research the issue. Suggested information to gather from the taxpayer include the following:
- A. Current status of the taxpayer's bankruptcy (i.e., opened or closed),
 - B. Date the petition was filed,
 - C. Court location where the bankruptcy was filed,
 - D. Chapter under which the bankruptcy was filed,
 - E. Case (docket) number,
 - F. Taxpayer identification numbers (TINs),
 - G. Method of closure (dismissal or discharge) and the closure date (or general time frame), if the case is closed, and
 - H. Any other pertinent information.

Note:

If a taxpayer responds to a notice of deficiency by sending the Service a copy of a bankruptcy petition, the receiving office must fax a copy of the petition to the CIO. CIO tax examiners will open the case on the AIS database and ensure the bankruptcy freeze is input on the Integrated Data Retrieval System (IDRS).

2. **Prompt Referral to Insolvency.** IRS employees (e.g., revenue officers, Examination employees, personnel from Campuses, etc.), who have contact with taxpayers in bankruptcy and are aware of debtor concerns or complaints, should *promptly* contact the CIO (same day notification, when possible). Referral information should be faxed to Insolvency using Form 4442, *Inquiry Referral*. Telephonic notification may also be used. All actions must be promptly documented by Service employees.

Note:

CIO phone numbers and fax numbers for internal IRS communications are found on SERP.

3. **Actions to Assist Insolvency.** The following table explains actions Service employees should take when a bankruptcy issue exists. These actions will help Insolvency process the bankruptcy case if a new filing has occurred or perform necessary research if issues stem from a current or prior bankruptcy.

IF...	THEN...
The taxpayer is in notice status,	<ul style="list-style-type: none"> A. Gather basic bankruptcy information and provide by facsimile or telephone to the CIO. Form 4442 , <i>Inquiry Referral</i>, should be used to fax the information to the CIO; B. Do not request the filing of a NFTL unless Insolvency so directs; C. Input an IDRS history item on ENMOD: "4442 TO INSOLVENCY" and D. Input IDRS cc STAUP to the next notice status for 06 cycles to allow Insolvency time to respond.
The taxpayer is in Status 72,	Complete Form 4442 , <i>Inquiry Referral</i> , and fax it to the CIO. Advise the taxpayer that Insolvency will be in contact, if necessary, to resolve a problem. Provide the taxpayer with the toll free Insolvency phone number for the CIO (1-800-973-0424). If the debtor is residing overseas and cannot contact the CIO at the toll free telephone number, secure a contact phone number for the taxpayer. Prepare and fax Form 4442 to the CIO. Advise the taxpayer that Insolvency will be in contact with them.
The taxpayer cannot provide sufficient bankruptcy information and the account is not in status 72,	Schedule a follow-up call to the taxpayer and note it in the case history. Allow the taxpayer time to secure the information, if necessary. Enter response/results in the case history.
The taxpayer has been discharged from bankruptcy,	Ask the date the discharge was issued, obtain court location, chapter number, and entity information. Check for a TC 521 and closing code on TXMOD indicating release of the bankruptcy freeze code. Note: Ask if the bankruptcy case was closed through discharge or dismissal. If a case was dismissed, aside from the CSED extension, it is as if the bankruptcy had not occurred.

**5.9.3.5 (08-11-2014)
Duties of the Debtor**

1. **BAPCPA Requirements.** The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) has added mandatory actions for debtors who file bankruptcies on or after October 17, 2005. If debtors fail to meet these obligations, their cases may be dismissed or converted.

- A. Debtors are now required to file all tax returns becoming due after the date of the petition. If the debtor fails to file such a return, or properly obtain an extension, the Service may request the bankruptcy case be converted or dismissed (11 USC § 521(j)). If the debtor does not file the return or obtain an extension within 90 days of the request, the court must convert or dismiss the case. The onus to request conversion or dismissal is on the Service.
- B. Chapter 11 debtors must file and pay post-petition taxes timely or face conversion or dismissal of their cases or, alternatively, appointment of a Chapter 11 trustee (11 USC § 1112(b)). The timely filing and payment of post-petition taxes is an express duty of the trustee or debtor in possession in small business cases (11 USC § 1116).

Note:

Post-petition taxes should be paid in the ordinary course of business without the necessity of the Service filing a request for payment. (See IRM 5.9.8.14.2(3) and 11 USC § 503(b)(1)(D).) However, it is the Service's practice to file Form 6338-A, *Request for Payment of Internal Revenue Taxes*, in a Chapter 11 case should the court impose a bar date for administrative expense claims. See IRM 5.9.17.12.2(6), *Debt of the Bankruptcy Estate in the Individual Chapter 11 Case*, for additional information.

- C. Chapter 13 debtors are required to file returns with the Service (if required under tax law) no later than the day before the scheduled 341 meeting of creditors for the taxable periods ending during the four-year period ending on the petition date, if they have not yet done so (11 USC § 1308(a)). Filing returns is a requirement for Chapter 13 plan confirmation; a debtor whose plan cannot be confirmed faces conversion or dismissal (11 USC §§ 1325 and 1307(c)).

Example:

A debtor filed a Chapter 13 bankruptcy petition on May 23, 2014. The debtor is required to have the 2010, 2011, 2012, and 2013 tax returns filed no later than the day before the 341 meeting of creditors.

- D. Not later than seven days before the 341 meeting of creditors, debtors must provide the trustee with a copy of their federal income tax returns (or transcripts, if locally allowed) for the most recent year ending immediately before the petition date (11 USC § 521(e)(2)). The debtor must also provide a copy of that return or transcript to any creditor who timely requests it. If the debtor fails to provide the return to the trustee or a requesting creditor, the court must dismiss the case unless the debtor demonstrates the failure to so comply is due to circumstances beyond the debtor's control.
- E. Upon request of the court, trustee, or party in interest, Chapter 7, 11, and 13 individual debtors must file with the court copies of returns (or transcripts, if locally allowed) for years ending during the bankruptcy at the same time they file the returns with the Service (11 USC § 521(f)). This provision also applies to any past due returns that were subsequently filed during the bankruptcy case for the three years before the bankruptcy, and to any amendments to returns that had to be filed with the court under this provision. Section 521(f) is enforced through a BAPCPA provision not in the Bankruptcy Code, but applicable, nonetheless. BAPCPA § 1228 provides a Chapter 7 discharge will not be granted unless requested tax documents have been provided to the court. It also provides the court shall not confirm a Chapter 11 or 13 plan unless requested tax documents have been filed with the court.

5.9.3.6 (08-11-2014)

Automatic Stay

1. **Automatic Stay.** The filing of a bankruptcy petition under any chapter acts as an injunction or legal prohibition, of further action against the estate, debtor, or property of the debtor. The injunction is called the automatic stay. For cases filed prior to October 17, 2005, the automatic stay took effect immediately upon the filing of a bankruptcy petition with the court (11 USC § 362). Although the majority of debtors will continue to receive the protection of the automatic stay, BAPCPA made a significant change in the imposition of the automatic stay on certain bankruptcies filed by individuals.
2. **Individual Serial Filers and BAPCPA.** To discourage serial filings by individuals, BAPCPA includes provisions affecting the imposition or duration of the automatic stay for certain debtors who file bankruptcy and had a prior bankruptcy dismissed within the previous 12 months. (See IRM 5.9.5.7, *Serial Filers*, for additional information.)
3. **Duration of the Stay.** The stay against property of the estate continues until the property is no longer property of the estate. With the exception of serial individual filings discussed in IRM 5.9.5.7, the stay of any other act continues until the *earliest* of the date the case is dismissed or closed by the court or until a discharge is granted or denied (11 USC § 362). The automatic stay never goes into effect at all (including the stay with respect to estate property) in certain multiple serial filer cases.

Note:

For cases filed on or after October 17, 2005, the automatic stay also may not go into effect in a case involving serial filings by a small business debtor (11 USC § 362(n)).

4. **Factors Affecting IRS Actions.** The complexity of bankruptcy laws and differing court interpretations obscure what actions are or are not permitted while the stay is in effect. Variables that can impact IRS procedures include, but are not limited to, the following:

- Bankruptcy chapter and court location
- Name(s) under which the bankruptcy was filed
- Entities
- Type of tax(es)
- Tax periods
- Local bankruptcy rules
- Standing orders
- Prior bankruptcies
- Court decisions

IRM 5.9.2.10, *The Effect of Bankruptcy on Collection*, and other parts of this IRM provide more information about actions that can or cannot be taken by the Service during a bankruptcy proceeding.

5. **Protection of Taxpayer Rights.** Taxpayer rights protected by the Bankruptcy Code must be honored. IRS procedures dictate that all IRS employees exercise due diligence to ensure the automatic stay is not violated by taking prohibited actions after a taxpayer has filed bankruptcy (11 USC § 362). The Service must also prevent violations of the discharge injunction under 11 USC § 524.

- A. The Service, at large, is charged with preventing violations from occurring and initiating corrective actions within *two workdays* of becoming aware that a stay violation has occurred. When a Service employee is unclear if a particular IRS action has resulted in a stay violation, whether the case is under FI or CIO control, the employee should immediately call the CIO at the phone number provided on SERP.
- B. CIO must resolve stay violations on cases assigned to CIO units. FI is responsible for correcting stay violations for cases in FI inventory. When CIO is notified of cases under the control of FI, the CIO will alert the appropriate FI group by email, fax, or phone.
- C. FI will notify CIO by fax or phone calls when FI identifies stay violations in cases assigned to the CIO. FI will perform necessary actions to correct stay violations on cases assigned to FI inventory. If FI is notified of an outstanding levy, FI will immediately release the levy, input a bankruptcy freeze on IDRS, if needed, and advise the CIO to open a case on AIS explaining the actions taken so they can be documented on AIS, even if the case will ultimately be assigned to the CIO. (See IRM 5.9.3.13.1, *Third Party Contacts*, and IRM 5.9.5.8, *Levies and Bankruptcy*.)

D. Most automatic stay violations can be resolved via timely notification to the CIO, depending on the status of the account at that point of the bankruptcy filing.

6. **Damages and Attorney Fees.** The IRS may be required to pay damages and attorney fees (but not punitive damages) when prohibited actions take place after the IRS has been notified of a bankruptcy filing. Damages can be awarded the debtor even though the IRS employee who took the prohibited action was unaware of the bankruptcy filing. (See IRM 1.4.51.2.7.1, *Payment of Damages*.)

7. **Automatic Stay Prohibitions.** Most collection activity taken after a bankruptcy filing violates the automatic stay although BAPCPA has increased the scope of allowable collection actions for cases filed on or after October 17, 2005. The automatic stay prohibits many actions and may include the following:

- A. Starting or continuing judicial or administrative collection proceedings for pre-petition debts, such as making seizures (Form 668-B) or serving levies (Form 668-A or Form 668-W).

Note:

Although Collection Due Process (CDP) hearings may not violate the stay, the Service has decided to suspend such actions while the stay is in effect so the bankruptcy case may resolve the issues raised in the CDP proceeding. (See IRM 8.7.6.2, *Collection Due Process Cases*.)

Note:

11 USC § 362(a)(8) has been amended to allow Tax Court proceedings for individuals for post-petition tax liabilities if the bankruptcies commenced on or after October 17, 2005.

- B. Verbally requesting payment for tax periods ending before the bankruptcy petition date;
- C. Sending notices requesting payment or sending notices of intent to levy regarding pre-petition periods;

Note:

A notice and demand for payment in connection with a new assessment, assuming the assessment itself is allowable under the Bankruptcy Code, is not prohibited by the stay. Further collection notices demanding payment violate the automatic stay.

- D. Starting a lawsuit or serving or enforcing a summons to collect liabilities;
- E. Making a setoff of any debt (tax or otherwise) owed by the debtor that arose before the commencement of the case against any claim made against the debtor that arose before the commencement of the case;

Note:

For cases filed on or after October 17, 2005, BAPCPA permits pre-petition income tax refunds to be offset to pre-petition income tax liabilities and permits setoffs of debtor refunds to pay domestic support obligations.

- F. Attempting to recover a claim from the debtor that arose before the commencement of the case, including trying to enforce a judgment;
- G. Attempting to recover a claim for pre-petition debts from community property, even if the claim is against a non-debtor spouse;
- H. Creating, perfecting, or enforcing a lien on pre-petition periods (NFTL refiles are allowed); or
- I. Retaining pre-petition refunds indefinitely without requesting the automatic stay be lifted – other than temporary retention of refunds prior to Chapter 11 or Chapter 13 confirmation, or longer with written Counsel recommendation. But, see "Note" in item (e) above regarding setoff exceptions in cases filed on or after October 17, 2005.

8. **Impact of the Stay on ASEDs.** In most cases, the stay of assessment and suspension of the assessment statute expiration date (ASED) do not apply for *agreed* cases. On *unagreed* audit deficiencies, the ASED is determined from the date a statutory notice is issued until the TC 521 date. Examination employees are responsible for the input of the transaction codes effective for suspension. (See IRM 5.9.4.2, *ASED/CSED*; IRM 5.9.4.2.1, *BRA 94 and BAPCPA's Effect on Assessments*; and IRM 5.9.4.3, *Examination and Insolvency*.)

Note:

Insolvency will input TC 521s, reversing the freeze code, when appropriate to do so.

9. **Pre-petition Levy Proceeds.** If proceeds of a pre-petition levy are received by the IRS *after* a bankruptcy petition is filed, they are property of the bankruptcy estate. In a Chapter 13 case, 11 USC § 1306(b) provides that the debtor remains in possession of all property of the bankruptcy estate unless otherwise provided in the confirmed plan or confirmation order. In most instances, post-petition levy payments are returned to the Chapter 13 debtor. Insolvency must be contacted for advice on handling levy proceeds. Insolvency may initiate an action to turn the funds over to the trustee or make a referral to Counsel to take legal action for adequate protection when the IRS has such a right. (See IRM 5.9.3.7, *Referrals to Insolvency on Bankruptcy Related Issues*, and IRM 5.9.5.8, *Levies and Bankruptcy*.)

10. **Certain Activities Allowed.** The automatic stay does not prohibit the following activities:

- A. An audit to determine tax liability;
- B. Issuance of a notice of tax deficiency;
- C. Issuance of a final Notice of Determination granting or denying relief from joint and several liability (innocent spouse relief discussed further in IRM 5.9.4.17, *Innocent Spouse Claims and Bankruptcy*);

Note:

A notice of determination in a CDP proceeding may not violate the stay. Insolvency must consult Counsel if a notice of determination is issued in a CDP proceeding while the stay is in effect.

- D. Making of an assessment for most taxes and issuance of one informational notice;

Caution:

Debtors receive one notice of assessment of a pre-petition tax return balance due. Subsequent notices may not be issued. If they are, Insolvency must be contacted immediately.

- E. Securing a tax return;
- F. Accepting payments made with tax returns (TC 610) for pre-petition years;
- G. Refiling a valid pre-petition NFTL;
- H. Beginning or continuing an action or proceeding by a governmental unit to enforce police or regulatory power;
- I. Conducting, continuing, and completing a TFRP investigation;
- J. Opening or continuing a criminal action or proceeding against the debtor;
- K. For bankruptcies commencing on or after October 17, 2005, the filing of a Tax Court petition by an individual concerning a post-petition tax liability and subsequent Tax Court proceedings for those post-petition tax periods;
- L. For bankruptcies commencing on or after October 17, 2005, setoff of pre-petition income tax refunds to pre-petition income tax liabilities; or
- M. For bankruptcies commencing on or after October 17, 2005, offsets for domestic support obligations.

5.9.3.6.1 (08-11-2014)

Violations of the Automatic Stay

1. **Expeditious Corrective Actions.** Actions in violation of the automatic stay must be corrected within a specific time frame established by the Service and outlined in paragraph (2) below. Corrective actions may include the release of pre-petition continuous wage levies or expedited issuance of refunds after the Service has illegally offset overpayments to dischargeable tax periods.

2. **Service-Wide Time Frame.** The Service must initiate corrective actions *within two workdays* of the Service's knowledge of an actual or potential violation of the Bankruptcy Code. When notified of a possible stay violation, Service personnel should immediately telephone the CIO or fax Form 4442 , *Inquiry Referral*, with necessary information to the CIO. CIO phone and fax numbers are found on SERP.
3. **Documentation.** All information entered in the AIS case history must be as accurate and concise as possible. Case histories may become evidence in court if litigation develops. IRM 5.9.5.4, *AIS Documentation*, provides guidance on required AIS history documentation.

5.9.3.6.1.1 (08-11-2014) Community Property

1. **Background.** Community property is a form of marital property rights recognized in nine states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin, as well as Puerto Rico. In California, community property laws also apply to registered domestic partners. Spouses in Alaska may elect to have statutory rules apply to some or all of their property. All property acquired during marriage is presumed to be community property. Generally, property acquired as a gift, as an inheritance, or before marriage is considered separate property. However, the specific rules concerning what constitutes community or separate property are governed by state law and vary among jurisdictions. (See IRM 5.9.18.5.8, *Community Property*, and IRM 25.18, *Community Property*, for additional information.)
2. **Community Property and the Bankruptcy Estate.** All community property, as of the commencement of the case, under the sole, equal, or joint management of the debtor spouse, becomes a part of the bankruptcy estate, *including the interest of the non-debtor spouse* (11 USC § 541(a)(2)(A)). Community property also becomes property of the estate to the extent it is liable for an allowed claim against the debtor (11 USC § 541(a)(2)(B)).
3. **The Automatic Stay and Community Property.** Because the non-debtor spouse's interest in community property also becomes a part of the estate, the automatic stay bars attempts to collect the non-debtor spouse's separate tax liabilities from community property.

Example:

Wages earned by the non-debtor spouse are presumed to be community property and will most likely be included in the bankruptcy estate.

4. **Counsel Advice.** Case specific questions about community property being considered part of the estate should be directed to Counsel through Insolvency.

5.9.3.7 (08-11-2014)

Referrals to Insolvency on Bankruptcy Related Issues

1. **Enforcement Action - Potential or Actual.** Insolvency receives contacts regarding distraint actions taken against the debtor that remain outstanding and unresolved. Debtors may be aware they are facing imminent enforcement action or such action may be pending, and they want to advise the Service of their bankruptcy filing. When an IRS employee outside of Insolvency learns of an enforcement action (e.g., outstanding levy or an open seizure action) and confirms the taxpayer has filed a bankruptcy, the employee must immediately notify the CIO by faxing Form 4442, *Inquiry Referral*, or by phoning the CIO. Phone and fax numbers are found on SERP.
2. **Information Required.** Service employees are expected to advise Insolvency of pertinent information concerning distraint action(s), including the following:
 - Details about the enforcement action.
 - The name, address, telephone and facsimile numbers of any levy source(s).
 - Receipt of any levy payment(s) after the petition date.
 - Knowledge of a possible illegal refund offset learned from the debtor or research from IDRS.
 - Status of a seizure: Is it still open? Are expenses being incurred? And, if so, how much?
 - Additional bankruptcy information as instructed in *IRM 5.9.3.4, Taxpayer/Debtor Contacts*.

Caution:

If a seizure action is to be kept open (with Counsel's written concurrence), Insolvency should be aware of escalating expenses of a seized asset and the amount the Service can expect to receive if the asset goes to sale. For example, the sale of a vehicle will not be justified if high storage costs will result in minimal or no net equity.

3. **Insolvency Actions.** Insolvency may direct reversal of a collection action. However, in some cases, seeking relief from the stay, moving for dismissal, or requesting an adequate protection order from the court may be appropriate. Counsel's involvement, through Insolvency, is required on these matters.
4. **Discharged Periods.** Balances discharged by the bankruptcy proceeding may be erroneously sent back into the collection system. When the Service receives notification of a problem concerning discharged liabilities, the Service must begin actions *within two business days* of notification to correct the situation. If appropriate, after research has been completed, Insolvency will initiate an expedited request for adjustment actions to be taken on the discharged liabilities.

5.9.3.8 (08-11-2014)

Collection Due Process (CDP) Cases

1. **Internal Revenue Code Requirements and Collection Due Process (CDP).** IRC § 6320 requires the Service to notify a taxpayer when an NFTL has been filed and give the taxpayer the right to a post-filing CDP hearing. IRC § 6330 requires the Service to give a taxpayer pre-levy notice of the right to a CDP hearing.
2. **CDP Hearings.** The responsibility for CDP hearings lies with the Office of Appeals. Collection Due Process issues are not often encountered after a bankruptcy is filed; however, questions and issues may still arise while a case is assigned to Insolvency. The debtor must be provided assistance and given information if an issue surfaces concerning CDP procedures.

Caution:

Actions taken toward collection from exempt, abandoned or excluded property (EAEP) must adhere to all CDP requirements.

3. **The Automatic Stay and the CDP Process.** When a taxpayer files a bankruptcy petition, the automatic stay prohibits a range of collection activities (11 USC § 362(a)). While the automatic stay is in effect, a Notice of Federal Tax Lien (NFTL) for pre-petition taxes should not be filed. Similarly, no levies should be proposed or made for pre-petition taxes. If a NFTL is filed in violation of the automatic stay, Insolvency must withdraw the NFTL and the CDP lien notice may be rescinded. (See IRM 5.12.9.6.6 , *Rescission of CDP Rights for Withdrawals*, IRM 5.9.5.9.1 , *Erroneous NFTL Filing*, and IRM 5.9.5.9.1.1 , *Rescinding NFTL CDP Rights*.) If a CDP levy notice is sent while the automatic stay is in effect, it is void and does not grant the right to a hearing and any levies made in violation of the stay must be released. Insolvency should consult Counsel, as needed.
4. **Bankruptcy's Effect on CDP Hearings.** Generally, the Service will postpone or suspend CDP lien and levy hearings while the automatic stay is in effect.

Exception:

After confirmation of a Chapter 11 or 13 plan, where the debtor has resolved all issues raised in his or her CDP hearing request through the confirmed Chapter 11 or 13 plan and has not withdrawn the request for a CDP hearing, Appeals may issue a notice of determination before the completion of the plan. Appeals will contact Insolvency for plan information prior to issuing such a determination. Insolvency should consult Counsel, as needed. (See IRM 8.7.6, *Appeals Bankruptcy Cases* and IRM 8.7.6.2.6, *Concluding the CDP/EH Process Before the Automatic Stay Has Lifted*, for additional information.)

5. **Joint CDP and Non-Debtor Spouse.** There may be instances when both spouses request a CDP hearing and only one spouse filed a Chapter 11 or Chapter 13 bankruptcy petition. In order to resolve the non-debtor's part of the joint CDP, Appeals may contact the CIO to request mirroring of the joint tax period when the bankruptcy plan is confirmed. CIO will input the mirroring transaction codes, monitor for the MFT 31 modules to be created on IDRS, and input the TC 522 with the appropriate bankruptcy closing code to the non-debtor's MFT 31 module to reverse the bankruptcy freeze and to reflect that the bankruptcy freeze was not applicable for this spouse. (See IRM 5.9.4.3.2, *MFT 31 Mirroring Requested by Appeals and Other Organizations*, for additional information.)
6. **Court Review of CDP Determinations and Bankruptcy.** The commencement or continuation of a Tax Court proceeding is prohibited while the automatic stay is in effect (11 USC § 362(a)(8)). However, for bankruptcy petitions filed on or after October 17, 2005, by individual debtors, the automatic stay against commencement or continuation of Tax Court proceedings does not extend to post-petition taxes. Insolvency should be contacted when case-specific questions arise.
7. **CDP Resources.** Additional information, guidance, and assistance on the Collection Due Process can be obtained from the following resources:
 - IRM 5.1.9, *Collection Appeal Rights*
 - IRC §§ 6320 and 6330

5.9.3.8.1 (08-11-2014)

Collection Due Process (CDP) and Equivalent Hearing

1. **Insolvency Processing of CDP and Equivalent Hearing Requests.** Insolvency caseworkers may receive a CDP and Equivalent Hearing Request from a debtor in response to actions taken to collect from exempt, abandoned or excluded property (EAEP). Insolvency caseworkers may also receive a CDP request in response to a NFTL filed by FI. (See IRM 5.9.17.5.7, *NFTL Filing Determinations after Dismissal*, for additional information.) Follow the procedures in the table below upon receipt of a CDP and Equivalent Hearing Request.

STEP	ACTION
1	<p>Request input of the appropriate TC 971 action code (AC) to the respective modules in the CDP request:</p> <ul style="list-style-type: none"> • TC 971 AC 275 when the hearing type is CDP-Levy, CDP-Lien or CDP-Both • TC 971 AC 630 in addition to TC 971 AC 275 when the hearing type is CDP-Levy or CDP-Both • TC 971 AC 278 when the hearing type is EH-Levy, EH-Lien or EH-Both <p>Note:</p> <p>The TC 971 may be input manually to IDRS or requested by submitting Form 4844, <i>Request for Terminal Action</i>, via secure email to *SBSE CCPINSLV.</p> <p>Review the hearing request and determine if contact with the taxpayer is appropriate. Refer to IRM 5.1.9.3.3, <i>Processing CDP and EH Requests</i>.</p>
2	Complete Form 14461, <i>Transmittal of CDP/Equivalent Request Hearing</i> .
3	Complete Form 3210, <i>Document Transmittal</i> , to transfer the CDP request to Appeals.
4	Secure managerial approval on Form 3210.
5	<p>Send the Form 3210, Form 14461 and any supporting documentation to the appropriate Appeals office at https://organization.ds.irsnet.gov/sites/APPEALS-PQCS/TPPCOL/WI%20LB%20SBSE/Forms/AllItems.aspx</p> <p>Note:</p> <p>See file listed as "Case Routing by State and Zip - for new cases coming to Appeals" .</p> <p>Supporting documentation includes the following:</p> <ul style="list-style-type: none"> • Form 12153, Request for Collection Due Process or Equivalent Hearing, or other written request received from the taxpayer. • The post-marked envelope containing the written request, if available. • When the request is due to the filing of a NFTL, include a copy of Letter 3172, <i>Notice of Federal Tax Lien Filing and your Rights to a Hearing Under IRC 6320</i>. <p>Note:</p> <p>A copy of the Letter 3172 can be secured on ALS when not provided by the taxpayer.</p> <ul style="list-style-type: none"> • If available, when the CDP request is due to a Notice of Intent to Levy, include a copy of the: <ol style="list-style-type: none"> a) Letter 1058, <i>Final Notice Reply Within 30 Days</i>, b) Letter 4066, <i>Notice of Intent to Levy CDP Rights</i>, or c) Letter 4554, <i>Excluded Property - Final Notice with CDP Rights</i>. • Any other supporting documentation relative to the request. <p>Refer to IRM 5.1.9.3.3.2, <i>Sending Hearing Requests to Appeals</i>.</p>
6	Document all actions taken in the AIS case history.
7	Schedule a 45-day follow-up on the AIS Letter Screen for return of the acknowledged Form 3210 from Appeals.
8	If the acknowledgement copy of the Form 3210 is not received from Appeals within 30-calendar days, contact Appeals at the telephone number found on the link in Step 5, above.
9	<p>Once the CDP hearing is held, a decision is made and the time allowed for the taxpayer to petition the Tax Court expires (if Tax Court rights are applicable), Appeals will return the file to Insolvency with a copy of the Appeals determination letter, etc.</p> <p>Refer to IRM 5.1.9.3.12, <i>After the Appeals Determination is Final</i>.</p>

5.9.3.8.2 (08-11-2014)

Requests for Adjustments from Appeals on Tax Court Cases

1. **Introduction.** Appeals may contact Insolvency in Tax Court CDP cases in which the resolution of the case involves an abatement or other adjustment to the debtor's account based on a bankruptcy issue. For example, an adjustment may be needed on the account due to dischargeability, rather than a recomputation of the debtor's tax liability.
2. **Mixed Adjustments.** In the event a case involves both a tax recomputation and an adjustment based on a bankruptcy issue, Appeals should complete the adjustment(s) based on the tax recomputation before contacting Insolvency to request any adjustments based on the bankruptcy issue.

- C. **Contact Points.** ROs may use a local contact listing established between Insolvency and RO groups for Chapter 9, 11, and 12 cases. For cases under Chapter 7 or Chapter 13 protection, ROs should call the CIO to provide information on bankruptcy filings or other bankruptcy-related casework. CIO phone and fax numbers can be found on SERP.

Reminder:

To avoid violations of the automatic stay, ROs and Insolvency caseworkers must make immediate contact with each others' offices whenever it is learned a taxpayer, who is assigned to an RO group, has filed for bankruptcy protection.

- D. **Discharge/Dismissal Issues.** ROs should contact CIO to resolve issues with discharge or dismissal situations. A taxpayer may be confused or uncertain about the disposition of the bankruptcy case (whether a dismissal or a discharge took place, and if tax accounts were discharged). The CIO will assist the RO with routine Chapter 7 and 13 issues and discuss appropriate actions. For questions centering on complex Chapter 7 and 13 issues or other bankruptcy chapters, the revenue officer will be referred to the proper FI office.

Note:

When a case is dismissed, a discharge is not granted, and normal collection actions can proceed as if the bankruptcy never occurred.

- E. **IRMs.** ROs must adhere to IRMs, including IRM 5.9, *Bankruptcy and Other Insolvencies*, for guidance on bankruptcy issues. IRMs are available on the IRS intranet. Insolvency interim guidance can be found on the interim guidance search page at <http://irm.web.irs.gov/imd/ig/search.asp>.
- F. **Documentation.** AIS case history documentation is the official record of activity on an account. The accurate and complete reporting of events is important throughout the pendency of a bankruptcy case. Should litigation ensue, the case history becomes the primary record of the bankruptcy case.

4. **Insolvency Requests for RO Files.** When a taxpayer in a revenue officer's inventory files bankruptcy, the Insolvency caseworker may request that the paper file be sent to the local FI office for review. Insolvency may be verifying schedules of expenses, looking for evidence of fraud, or checking for assets. The Insolvency caseworker must return the paper file to the Field Collection group *within 21 calendar days of receipt* so it can be placed in the RO closed case files. Any documents needed by Insolvency beyond the 21 day time frame should be photocopied by the Insolvency caseworker.

5.9.3.11 (08-11-2014)

Trust Fund Recovery Penalty

1. **Withheld and Collected Taxes.** Trust fund taxes are taxes required to be withheld or collected by a third party (for example, an employer) and paid over to the government (IRC § 7501(a)). The Trust Fund Recovery Penalty (TFRP) allows the Service to assess against responsible parties when trust fund taxes are not paid over to the government (IRC § 6672). IRM 5.9.8.4.2(18), *Aspects of the Initial Case Review in the Chapter 11 Case, TFRP Issues*, contains a list of parties that may be assessed a TFRP.
 - A. The party assessed the TFRP had the duty, authority, and status to direct collection (*responsibility*), and made a decision not to pay over and account for the tax (*willfulness*).
 - B. The penalty facilitates the collection of trust fund taxes and enhances voluntary compliance.
 - C. Most TFRP assessments relate to employment taxes due from businesses.
2. **Urgency.** Timely identification of trust fund taxes in bankruptcy is critical. In bankruptcies, the Service is often working against short deadlines for confirmations and bar dates. If Insolvency fails to file a timely proof of claim for trust fund taxes, the Service may not be paid.
3. **Forms Reporting Trust Fund Taxes.** Forms 941, 942, 943, 944, (*Withholding from Wages and Federal Insurance Contributions Act*) and CT-1 (per the Railroad Retirement Tax Act) report trust fund taxes. *Subtitle D* of the IRC identifies miscellaneous excise taxes considered trust fund taxes and reported on Form 720. (See Chapter 25 of Subtitle C, Sec. 3505(b), *Liability of Third Parties Paying Wages*.)

Note:

Although Form 941 is the return most often investigated for TFRP liability, Forms 942, 943, 944, 945, CT-1, and 720 may warrant a TFRP investigation.

4. **Treated as a Tax.** The TFRP is assessed and collected in the same manner as a tax (IRC § 6671(a)).
5. **One Time Collection.** Withheld income and employment taxes or collected excise taxes are collected only once, whether from the business and/or from one or more of its responsible parties.
6. **Pre-petition Trust Fund Quarters.** Any TFRP accruing on tax periods ending before the bankruptcy petition is filed constitutes a *pre-petition* tax liability, even if the TFRP assessment was not made before the bankruptcy was filed.
7. **Preparation of Claim.** The government's proof of claim should include the full amount of any trust fund tax pending (e.g., include all applicable Form 941 tax quarters). If an accurate amount is not known at the time the proof of claim is prepared, Insolvency can file an unassessed (estimated) claim and an amendment can be prepared, when possible. IRM 5.9.3.11.1, *Calculating Trust Fund*, and IRM 5.19.14.1.6, *Trust Fund Calculation*, explain the calculations needed to estimate a TFRP for employment taxes should the debtor be an individual who is responsible for ensuring business trust fund taxes were paid and who willfully failed to do so.

Note:

BAPCPA excepts TFRP liabilities from discharge in all individual bankruptcy cases filed on or after October 17, 2005, even if the Service does not file a claim for those liabilities.

8. **ASED Protection.** The assessment statute expiration date (ASED) must be protected. *Returns should be secured as soon as possible and the TFRP investigation begun immediately upon learning a bankruptcy has been filed.* IDRS research should be conducted and files should be reviewed (such as the debtor's petition, schedules and statement of financial affairs) to determine the names, titles, addresses and social security numbers of potentially responsible parties.

Note:

Returns filed fraudulently or prepared by the Service under IRC § 6020(b) have no ASED.

Note:

The assessment period is initially based on the return reporting the trust fund taxes being collected. For example, if the period for assessment of an employer is open because of fraud on a Form 941, the period for assessing the responsible party is open, as well. However, a consent to extend the period filed by the employer (i.e., a Form SS-10, *Consent to Extend the Time to Assess Employment Taxes*), will not extend the period for a responsible person as each party has a separate tax liability. The consent of the responsible person must be obtained on Form 2750, *Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty*.

9. **Information at 341 Meeting of Creditors.** All available administrative means should be used to complete the TFRP investigation. For example, a FI caseworker or a RO may attend the 341 meeting of creditors to interview a potentially responsible person, such as an officer of a company.

The *Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010*, reduced the amount of FICA taxes required to be withheld on behalf of the employee. As a result, the calculation of the trust fund portion on employment taxes for all quarters of calendar years 2011 and 2012 were impacted.

5.9.3.11.2 (08-11-2014)

ICS Other Investigations (OIs) to Request a TFRP Investigation

1. **ICS Other Investigations (OIs).** Whenever possible, OIs to request a TFRP investigation by a RO should be generated through the Integrated Collection System (ICS). This allows the RO group manager to manage inventory assignments within the group. The due date of the OI should be 90 days to allow the RO sufficient time to complete the TFRP investigation and issue the Letter 1153.
2. **Assigning OIs on ICS.** OIs created and assigned to RO groups should be assigned systemically to the group designation hold file, i.e., AOTO.nn00. After populating the OI, Insolvency should choose "system assign" rather than selecting "specific assign" *even if the case was assigned to a RO prior to the bankruptcy filing*.
3. **ICS History.** To assist the RO in completing the TFRP investigation, Insolvency must include any information in the ICS history that will assist the RO with the TFRP investigation. For example, include the following when known:
 - Responsible party information identified by a review of the SOFA. If possible, include the name and address of the responsible parties and the capacity they served in the business.
 - If the caseworker went to the 341 meeting of creditors, include any relevant information secured during the 341 meeting of creditors questioning that may assist the RO with the TFRP investigation. For example, if a bookkeeper left the business prior to the bankruptcy filing and there were allegations of misappropriation of funds, this may be pertinent in the TFRP investigation.
 - If the banking institution of the business is disclosed at the 341 meeting of creditors or in the bankruptcy schedules, provide the banking information in the ICS history. The RO may need to secure signature cards or other information from the bank.
 - To assist with ASER management, include "Upon receipt of this OI, please create an ATFR case, if one is not already established" in the ICS history.

5.9.3.11.3 (08-11-2014)

The TFRP Assessment Decision

1. **TFRP Determination by Insolvency.** When the TFRP information is received and the trust fund investigation completed, Insolvency will decide if the TFRP will be assessed during the bankruptcy of the business entity.
2. **Considerations.** To make the TFRP assessment determination, Insolvency caseworkers should consider all available information, including the following:
 - A. Potentially responsible individuals signed/not signed Form 2750, *Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty*;
 - B. Pyramiding of additional unpaid liabilities after the petition date;
 - C. Business entity continuing to operate at a loss;
 - D. Liquidation of assets (appears) insufficient to pay liability;
 - E. Excessive compensation being paid to officers, members or other responsible parties during the proceeding;
 - F. Inability to effectuate a plan;
 - G. Unreasonable delay in proposing a plan; and
 - H. Default occurring on plan (e.g., pattern of late plan payments, missing or sporadic plan payments, plan in arrears, etc.).
3. **Factors Determining Suspension of Collection.** Once Insolvency determines assessment of the TFRP is appropriate, collection may or may not be suspended against responsible parties. Pertinent factors to consider include the following:
 - A. A plan is (or has been) confirmed in the bankruptcy of the business entity.
 - B. The bankruptcy plan of the business entity appears feasible and includes payment of the trust fund liability.
 - C. An adequate protection agreement is in place requiring regular payments from the business entity in bankruptcy.
 - D. (If plan is confirmed), all payments are being made regularly, no arrearage exists, and the debtor is meeting all other plan provisions.

Note:

Absent statute considerations, assertion recommendations normally will be withheld in cases of approved and adhered to business installment agreements and bankruptcy payment plans. To the extent necessary, gather sufficient information to support a possible assessment in the event the agreement is defaulted. See IRM 1.2.14.1.3, *Policy Statement 5-14 (Formerly P-5-60)*, for additional information.

 - E. No problems with current tax compliance are evident (e.g., all tax returns are filed – business entity and personal).
4. **Coordinate With Insolvency.** Revenue officers must contact the controlling Insolvency office for local guidelines addressing NFTL filing determinations and conditions under which accounts are to be suspended, if applicable.

5.9.3.12 (08-11-2014)

Courtesy Investigations for Reasons Other Than a TFRP Investigation

1. **Protection of the Government's Interests.** Prompt completion of Insolvency-initiated courtesy investigations enables FI to file proofs of claim by the bar date, timely respond to objections and other motions before the court, and recommend appropriate legal action. When working these assignments, ROs and RO advisors are encouraged to:
 - A. Exercise caution to avoid violations of the automatic stay, the discharge injunction, or other provisions of the Bankruptcy Code as taxpayer rights must be protected, and IRS may be required to pay damages, if such acts occur;
 - B. Work closely with Insolvency to protect the government's interests; and
 - C. Take only the actions and obtain only the information specified by Insolvency. Should additional pertinent information develop during the course of the investigation, advise the controlling Insolvency office promptly to determine an appropriate plan of action.
2. **Exempt or Abandoned Property Investigations.** FI may initiate asset investigations requiring Field Collection actions relating to exempt property, if a previously-filed Notice of Federal Tax Lien *is valid*. FI may also initiate asset investigations requiring Field Collection actions relating to abandoned property due to the Service's statutory lien. Coordination with FI is necessary when legal questions and issues arise. (See IRM 5.9.17.4, *Exempt, Abandoned or Excluded Property (EAEP)*)

Note:

Insolvency has assumed responsibility for pursuing collection from retirement plans, so OIs to Field Collection for excluded property will not be issued.

3. **Field Collection Actions.** Required RO actions may include the following:

- Reviewing and analyzing Bankruptcy Court–filed information
- Valuation of the subject property
- Levy
- Seizure

4. **RO Report to Insolvency.** Revenue officers should furnish timely reports containing relevant facts to the FI group requesting the investigation, including, but not limited to the following:

- The date and manner (e.g., telephonic, personal contact) of any request made for payment of the tax or the filing of tax return(s)
- The nature of the debtor's response
- An estimate of the debtor's liability
- The basis for the estimate of any unfiled returns
- A report on apparent declines in value of the estate, if applicable, such as negative cash flow or reduced inventory levels
- Any information/data on a pending trust fund assessment
- Other areas of concern, including non-compliance of tax obligations

5. **Required Actions on Post-petition Accounts.** When seeking post-petition unfiled tax returns or payment of a post-petition balance due account, ROs should take the following actions:

- A. Request immediate filing of the returns giving a short, specific deadline.
- B. Request payment of post-petition amounts due, and, if appropriate, try to work out alternatives if the debtor is unable to full pay.
- C. Inform the debtor of actions the government may take if non-compliance continues (such as a motion for dismissal from bankruptcy or a conversion to a Chapter 7 bankruptcy).
- D. Seek guidance from Insolvency and/or Counsel (through Insolvency), if necessary.

Caution:

Enforcement actions may be taken only through the direction and guidance of Insolvency and Counsel.

**5.9.3.13 (08-11-2014)
Summons and Bankruptcy**

1. **Bankruptcy Code.** The Bankruptcy Code does not prohibit the gathering of tax information, unless it is an act to collect a pre-petition tax in violation of the automatic stay.

2. **Alternatives Preferred.** Although a summons may be served during bankruptcy, it is not a preferable course of action unless recommended by Counsel. The following actions should be attempted in lieu of issuing a summons:

- The first meeting of creditors may be attended in order to question potentially responsible parties (regarding potential TFRP assessment).
- Under Bankruptcy Rule 2004, court ordered production of records can be requested and examined for liability information.
- IRC § 6020(b) provisions may be used (note paragraph (5) below), and Substitutes for Return (SFRs) may also be prepared by the Service.
- Motions to compel may be filed.
- The proof of claim may list unassessed (estimated) liabilities for unfiled tax returns and/or a potential TFRP assessment.

Note:

The amount(s) listed should be as factual as possible, based on internal sources and/or from information contained in the debtor's bankruptcy filings.

3. **Production of Records.** Service of a summons is permitted when production of records is needed to prepare a personal or corporate tax return of a debtor-in-possession (DIP). It is also permitted when production of records is needed to prepare post-petition employment or excise tax returns of an officer of a DIP.

4. **Collection Summons Prohibition.** During the pendency of the automatic stay, service of a *collection* summons is not permitted.

Note:

A summons to determine a TFRP liability is not considered a collection summons and is allowable.

5. **IRC 6020(b) Returns.** Normally, delinquent employment tax returns are prepared under IRC § 6020(b). When a tax return is secured or prepared under these procedures by Field Collection, a copy must be expeditiously sent to Insolvency. If the RO knows the case is being handled by FI, copies of the returns may be sent to the local FI office. If the RO does not know which Insolvency office controls the account, the copies of the returns should be mailed to the CIO address to be forwarded appropriately. (See IRM 5.9.11.1, *Insolvency Mail*, IRM 5.9.11.2, *Field Insolvency Mail*, or http://serp.enterprise.irs.gov/databases/who-where.dr/inslvncy-bnkrcpty/national_insolvency_field.htm for additional information.) The return information is needed for proof of claim purposes.

**5.9.3.13.1 (08-11-2014)
Third-party Contacts**

1. **RRR 98.** To provide protection to the taxpayer regarding IRS's collection and examination activities, legislation was enacted that requires the Service to notify the taxpayer of certain contacts the IRS makes with third parties. (See IRC § 7602(c) and Treas. Reg. § 301.7602-2.)

2. **IRS Third-party Contact Requirements.** For certain third-party contacts made for the purpose of collecting or determining a tax liability, IRC § 7602(c) requires the IRS to:

- A. Provide *reasonable advance notice* to the taxpayer that third-party contacts may be made and
- B. Provide a list of third-party contacts to the taxpayer "upon request."

3. **A Third-Party Contact.** A third-party contact has been made when an IRS employee discloses his/her association with IRS and initiates contact with a person other than the taxpayer and asks questions about a specific taxpayer with respect to the determination or collection of that taxpayer's federal tax liability.

Caution:

Unless an adversary proceeding or contested matter exists, contacts made by Insolvency might be considered third-party contacts.

4. **Exceptions.** IRM 25.27.1.3.2, *Exceptions to IRC 7602(c) Notification Requirements* through IRM 25.27.13.7, *Jeopardy Situations*, list exceptions to the requirement for completing Form 12175, *Third Party Contact Report Form*. Contacts made during litigation, including bankruptcy proceedings, relating to a matter being litigated are not third-party contacts and do not require completion of Form 12175. Counsel should be contacted with questions regarding the litigation exception and bankruptcy.

Note:

Contacts made during a criminal investigation generally are not subject to IRC § 7602(c). A criminal investigation is initiated when an administrative referral based on a firm indication of fraud or other criminal conduct is made to Criminal Investigation (CI).

Caution:

Third-party contacts to develop cases for referral to CI are contacts under IRC § 7602(c) and must be reported.

5. **Third-party Summonses.** A summons issued for an examination (or collection) purpose to a third party with respect to an identified taxpayer is considered a third-party contact that must be preceded by advance notice to the taxpayer that third-party contacts may be made. IRM 5.17.6.6, *Third Party Summonses Subject to IRC § 7609*. If the third-party summons is subject to the notice requirement of IRC 7609(a), such as a summons served on a bank to determine whether a person may be liable for the TFRP, then a post contact record of that third-party contact is not required. Treas. Reg. 301.7602-2(e)(4) Example 4.
6. **Release of Levy.** A release of levy is considered a third-party contact and, unless approved by the debtor, must be recorded by Insolvency. IRM 5.9.5.8(6) covers third-party contacts and release of a levy.
7. **Attorneys and Trustees.** IRM 5.9.19.3, *CIO Telephone Procedures*, gives details on disclosure to attorneys of record and bankruptcy trustees.
8. **Form 12175 Requirements.** A third-party contact must be recorded the date the contact is made (or as soon as possible thereafter) on Form 12175, *Third Party Contact Report Form*. Multiple contacts with the same third party on different dates require a separate Form 12175 for each contact. When Form 12175 is completed (instructions are on the reverse of the form), it is forwarded to the Third-Party Contact Coordinator at the address found at <http://mysbse.web.irs.gov/Collection/toolsprocesses/3rdParty/contacts/default.aspx>. (See IRM 25.27.1.4, *Recording and Reporting TPCs*, for additional information.)

Note:

A copy of Form 12175 need not be retained at the local level. The form is retained by the input unit for a year. The form is then forwarded to the records center for retention for ten years.

9. **AIS Recordation of Contact.** In addition to completing Form 12175 to report third-party contacts, Insolvency caseworkers must document third-party contacts and resulting actions taken in the AIS history. The caseworker must include the name(s) and title(s) of the person(s) contacted, the date of contact, business entity information, if applicable, and the purpose of the contact.
10. **Assistance.** The local Third-Party Contact Coordinator or local Counsel is available should additional guidance be needed by FI. CIO should contact the Campus Third-Party Contact Coordinator or the Associate Area Counsel assigned to the CIO, if guidance is required.
11. **Taxpayer Authorization.** IRC § 7602(c) does not apply to any contacts the taxpayer has authorized. Form 12180, *Third Party Contact Authorization Form*, may be used to document the taxpayer's authorization. Although oral authorization is allowed, it is preferable to have Form 12180 completed and retained.

Note:

The taxpayer may not prevent an IRS employee from contacting a third party by refusing to provide prior authorization. IRM 25.27.1, *Third Party Contact Program*, provides additional information.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 4. Common Bankruptcy Issues

5.9.4 Common Bankruptcy Issues

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- 5.9.4.20 [Report of Foreign Bank and Financial Accounts \(FBARs\)](#)
- 5.9.4.21 [Criminal Restitution Assessments](#)
- Exhibit 5.9.4-1 [Inputting Follow-up Dates](#)
- Exhibit 5.9.4-2 [Prompt Determination and Refund Processing Chart](#)
- Exhibit 5.9.4-3 [Prompt Determination Request 505\(b\) Checklist](#)
- Exhibit 5.9.4-4 [Prompt Refund Request 505\(a\) Checklist](#)

Manual Transmittal

September 04, 2015

Purpose

(1) This transmits a revised IRM 5.9.4, *Bankruptcy and Other Insolvencies - Common Bankruptcy Issues*.

Material Changes

- (1) IRM 5.9.4.1(1) contains an overview. The following paragraphs within that subsection are renumbered.
- (2) IRM 5.9.4.2(6) instructs caseworkers to email mirroring requests to CIO, rather than transfer cases to CIO for mirroring.
- (3) IRM 5.9.4.2(7) was added to discuss additional considerations on the impact of the bankruptcy stay on the Assessment Statute Expiration Date (ASED) and Collection Statute Expiration Date (CSED).
- (4) IRM 5.9.4.3(2) has been updated to refer to the hold file as the suspense file, and removes mention that Insolvency periodically receives a transmittal of held cases.
- (5) IRM 5.9.4.3(8) provides additional instructions on history documentation and clarifies that the unagreed deficiency assessment procedures do not apply to employment taxes.
- (6) IRM 5.9.4.3.1(1) has been updated to explain how the Centralized Insolvency Operation (CIO) handles mirroring requests.
- (7) IRM 5.9.4.3.1(4) explains that CIO must be advised of ASEDS expiring in less than 12 weeks on any mirroring requests for cases pending examination.
- (8) IRM 5.9.4.3.2(3) provides CIO's secure email address and states that CIO must be advised of ASEDS expiring in less than 12 weeks on any mirroring requests received from Appeals, Offer In Compromise (OIC), Automated Under Reporter (AUR), or other organizations.
- (9) IRM 5.9.4.3.2(4) instructs caseworkers to email mirroring requests to CIO, rather than transfer cases to CIO. Step instructions are listed.
- (10) IRM 5.9.4.4(2) clarifies mutuality of debts.
- (11) IRM 5.9.4.4(10) has been updated with the correct toll-free phone number for CIO.
- (12) IRM 5.9.4.4.1 provides additional information on application of payments.
- (13) IRM 5.9.4.4.2(4) Caution clarifies that the discharge injunction does not apply to voluntary payments or payments received through the collection of exempt/abandoned/excluded property (EAEP).
- (14) IRM 5.9.4.4.2(5) clarifies guidance on when a post-petition voluntary payment may be accepted.
- (15) IRM 5.9.4.4.3.1(1) has additional information in a Note on offset bypass indicators (BPI).
- (16) IRM 5.9.4.4.3.1(2) clarifies when BPI 03 should be input.
- (17) IRM 5.9.4.4.3.1(3) clarifies when BPI 07 should be input.

- (18) IRM 5.9.4.4.3.1(4) corrects the definitions of BPIs 08 and 09.
- (19) IRM 5.9.4.4.3.2 was updated to replace references to the Financial Management Service (FMS) with the Bureau of Fiscal Service (BFS).
- (20) IRM 5.9.4.4.4 has been updated to incorporate CIO Alert 201102. (3) provides additional information regarding the selection of FPLP cases. (8) clarifies procedures for processing Form 4844, and when Form 4844 is necessary.
- (21) Subsection 5.9.4.4.5 was added to provide information on offsets involving an individual Shared Responsibility Payment (SRP) liability.
- (22) IRM 5.9.4.5.1(3) clarifies property sale considerations when there is a filed NFTL.
- (23) IRM 5.9.4.8- throughout; references to "Examination" have been replaced with "the appropriate function" , as requests may now also be routed to Tax-Exempt Government Entities Division (TEGE), Large Business & International (LB&I), Employment Tax, or Excise Tax. This section has been clarified.
- (24) IRM 5.9.4.8(3) directs caseworkers to follow processing/routing procedures in the new Prompt Determination and Refund Processing Chart in Exhibit 5.9.4-2.
- (25) IRM 5.9.4.8(5) clarifies responsibility for notifying local bankruptcy courts of Insolvency's mailing address. The mailing address for prompt determination requests has been updated.
- (26) IRM 5.9.4.8.1(2) has a Note regarding unsigned returns.
- (27) IRM 5.9.4.8.1(7) clarifies how to determine if a corporation's account is handled by LB&I.
- (28) IRM 5.9.4.9- throughout; references to "Examination" have been replaced with "the appropriate function" , as requests may now also be routed to TEGE, LB&I, Employment Tax or Excise Tax. This section has been clarified.
- (29) IRM 5.9.4.9(3) directs caseworkers to follow processing/routing procedures in the new Prompt Determination and Refund Processing Chart in Exhibit 5.9.4-2.
- (30) IRM 5.9.4.9(5) provides the updated mailing address for prompt refund requests.
- (31) IRM 5.9.4.9.1(2) has a Note regarding unsigned returns.
- (32) IRM 5.9.4.9.1(7) clarifies how to determine if a corporation's account is handled by LB&I.
- (33) IRM 5.9.4.10(6) and (7) correct terminology pertaining to OIC payments. A Note was added to explain what types of OIC payments may be received.
- (34) IRM 5.9.4.10.1 has additional content regarding documentation of pending Offer In Compromise (OIC) cases.
- (35) IRM 5.9.4.14 has been substantially revised and renumbered. Termination of the Special Assistant United States Attorney (SAUSA) program has been documented. Updated pattern referral forms are discussed. Procedures clarify what matters qualify for direct referral to the United States Attorney's Office (USAO) for representation, referral to Counsel for USAO representation, and referral to Counsel for Department of Justice (DOJ)-Tax Division representation. Links and procedures have been updated and clarified.
- (36) Subsection 5.9.4.18, Affordable Care Act, is new and was added to provide guidance on the Shared Responsibility Payment (SRP). This addition renumbers the subsequent subsections.
- (37) IRM 5.9.4.19(10) discusses installment agreement (IA) reinstatements when there is an SRP liability.
- (38) IRM 5.9.4.19(11) clarifies what IA terms should be documented in the Automated Insolvency System (AIS) history.
- (39) IRM 5.9.4.19.1 was added to provide procedures for post-petition IA requests, and to address cases where post-petition IAs were previously granted.
- (40) IRM 5.9.4.20 has been updated to reflect the retirement of the Currency Banking Retrieval System (CBRS). All references to CBRS have been deleted and replaced with the Financial Crimes Enforcement Network (FinCen) and the FinCen Query System (FCQ).
- (41) Subsection 5.9.4.21, Working Criminal Restitution Cases, has been added to provide guidance on criminal restitution assessments.
- (42) Exhibit 5.9.4-2, *Prompt Determination and Refund Processing Chart*, has been added.
- (43) Exhibit 5.9.4-3, *Prompt Determination Request Checklist*, has been added.
- (44) Exhibit 5.9.4-4, *Prompt Refund Request Checklist*, has been added.
- (45) Reviewed, added, and updated website addresses, legal references, and IRM references as necessary.

Effect on Other Documents

This material supersedes IRM 5.9.4, dated January 14, 2011. This revision incorporates content from Interim Guidance Memorandum (IGM) SBSE 05-0414-0030, *Referrals - Representing IRS in Bankruptcy Court*, issued April 9, 2014; IGM SBSE 05-1214-0083, *Processing the Individual Shared Responsibility Payment (SRP) in Bankruptcy Cases*, issued December 15, 2014; IGM SBSE 05-0315-0033, *Processing Installment Agreement Requests for Post-Petition Liabilities when a Taxpayer is in Bankruptcy*, issued March 23, 2015; and IGM SBSE-05-0115-0007, *Procedures for Processing Bankruptcy Cases with Restitution Assessments*, issued January 22, 2014,

Audience

All Operating Divisions.

Effective Date

(09-04-2015)

Kristen Bailey, Acting Director
Collection Policy

5.9.4.1 (09-04-2015)

Common Bankruptcy Issues

- Overview.** This IRM section contains guidance on various topics Insolvency caseworkers may encounter during the course of a bankruptcy case. While caseworkers in Field Insolvency (FI) and the Centralized Insolvency Operation (CIO) are the primary users of this section, employees in other functions may refer to this section.
- The Bankruptcy Estate.** The filing of the bankruptcy petition creates the bankruptcy estate. The estate consists of all of the debtor's interests in any property at the time the case is filed (11 USC § 541(a)(1)). It also encompasses the interest of the debtor and the non-debtor spouse in certain community property states. (See 11 USC § 541(a)(2) and IRM 5.9.3.6.1.1, *Community Property*; IRM 5.9.10.8.1, *Property of the Estate After Confirmation*; IRM 5.9.6.14, *Bankruptcy Estate Income Taxes – Separate Taxable Entity*; and IRM 5.9.8.13, *Internal Revenue Code § 1398 Issues*.)
- After-Acquired Property.** In a Chapter 12 or 13 bankruptcy, property acquired after the petition date but before the case is closed, dismissed, or converted to another chapter, including wages and community property, becomes property of the estate (11 USC § 1207 and 1306). In general, some property, especially wages or other income used to fund the plan, may continue to be property of the estate after confirmation. IRM 5.9.10.8.1, *Property of the Estate After Confirmation*, gives additional information

about the post-confirmation estate in a Chapter 13 bankruptcy.

4. **BAPCPA Individual Chapter 11.** As with Chapter 12 and 13 cases, property of the estate for individual Chapter 11 cases filed on or after October 17, 2005, includes wages and other property acquired post-petition but before the case is closed or converted (11 USC § 1115). This change has significant tax implications. Interim guidance on how to address the tax consequences of these changes is found in Notice 2006-83, *Individual Chapter 11 Debtors*. The changes are also discussed in further detail in:
 - IRM 4.27.1.4, *Bankruptcy Estate and Filing Requirements*
 - IRM 4.27.5.5, *Individual Chapter 11 Debtors Required Filings per § 1398 Post BAPCPA*
 - IRM 5.9.8.12.1, *Post-Petition Debts, Chapter 11 Individuals*
 - IRM 5.9.8.13, *Internal Revenue Code § 1308 Issues*
 - IRM 5.9.8.16.4.2, *Post Confirmation Tax Liabilities of the Individual Debtor (Post-BAPCPA)*
 - IRM 5.17.10.11, *Individuals in Chapter 11*
 - Pub 908, *Bankruptcy Tax Guide*
5. **Counsel Guidance.** Complex issues surround what constitutes the property of a bankruptcy estate. Counsel should be contacted for guidance when case-specific issues arise.
6. **Exempt, Excluded, and Abandoned Property.** Property may be exempted or excluded from the estate or abandoned by the trustee. IRM 5.9.17.4, *Exempt, Abandoned or Excluded Property (EAEP)*, provides a full discussion of these property issues as they affect possible post-petition collection.

5.9.4.2 (09-04-2015) ASED/CSED

1. **Automatic Statute Computations.** Master file computes appropriate statute extensions for assessment and collection in most instances when a Transaction Code (TC) 521 posts and reverses the bankruptcy freeze code.

Note:

The statutory period for assessment is not directly affected by bankruptcy for cases filed after October 22, 1994, the effective date of the Bankruptcy Reform Act (BRA), unless the Tax Court petition period is suspended by the automatic stay. (See IRM 5.9.4.2.1, *BRA 94 and BAPCPA's Effects on Assessments*.)

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2. **Assessment Statute Expiration Date (ASED) Suspension Time Frames.** For bankruptcy cases filed before the enactment of BRA 94, the running of the statutory period for assessment (ASED) is suspended during the period the assessment is prohibited (while the automatic stay is in effect) and for 60 days thereafter (IRC § 6503(h)(1)). To compute a new ASED, 60 days are added to the unexpired time (number of days) remaining on the original statute as of the petition date. Then that amount of time is added to the date of discharge or dismissal (or the date the stay was lifted) to establish the new ASED. (For ASEDs on Exam cases, Examination should be consulted.)
3. **Collection Statute Expiration Date (CSED) Suspension Time Frames.** The running of the statutory period for collection (CSED) is suspended for the period collection is prohibited by the reason of the bankruptcy case. Collection is so prohibited when:
 - The Automatic stay prohibits collections, or
 - In a Chapter 11 case, post confirmation during the period in which the confirmed plan provides for payment of the tax debt, and the plan is not in substantial default.

Computation of a new CSED is similar to an ASED computation. Six months are added to the unexpired time (number of days) remaining on the original statute as of the petition date and that total is added to the discharge or dismissal date (or the date the stay was lifted) to establish the new CSED. IRC § 6503(h)(2)

Note:

The IRS will never receive less than the original statute plus 60 days for an ASED extension, or the original statute plus six months for a CSED extension.

4. **CSED Recomputation – Manual Input of TC 550.** For non master file (NMF) accounts, a manual input of TC 550 is necessary. The input of a TC 550 must be timely (for example, when the court grants a discharge or dismisses a case). The presence of an unreversed TC 520 in the module will not prevent TC 550 from posting. If a TC 550 is input to a module with an un-reversed TC 520 with a bankruptcy closing code, automatic computation of the CSED when the TC 521 posts will not occur.
5. **CSED - Taxpayer Identification Number (TIN) Indicators.** The CSED for a tax module is displayed on IDRS. This information is used by Collection employees to determine the time remaining on a collection statute (i.e., if collection actions may be taken on a balance due account).
 - A. **Individual Tax Return.** If a debtor filed an income tax return in any status other than "married filing joint", the CSED is extended for the period the stay is in effect plus six months, regardless of the debtor's marital status or if the bankruptcy was a individual or joint filing.
 - B. **Joint Return - Spouses Filed Joint Bankruptcy.** If the tax module is for an IMF joint assessment and the husband and wife have filed a joint bankruptcy, the collection statute is extended against the husband and the wife.
 - C. **Joint Return - Both Spouses Filed Individual Bankruptcies.** If the spouses filed a joint return, but filed individual bankruptcies, the CSED is extended individually for each debtor with each spouse's extension being dependent upon the duration of the stay in his or her own bankruptcy case. In this situation the MFT 30 module usually must be mirrored to two MFT 31 modules, with taxpayers residing in community property states being possible exceptions.
 - D. **Joint Return - Only One Spouse in Bankruptcy.** If only one spouse files bankruptcy, and the joint (pre-petition) tax return was filed under the non-debtor spouse's Social Security Number (SSN), then Service personnel handling the account(s) must know to whose SSN the CSED extension and freeze code apply. CSED Indicator Codes make this identification possible. An Individual master file (IMF) CSED TIN indicator is input as part of the transaction data of the TC 520. MFT 31 mirroring is usually required when the bankruptcy is discharged or dismissed.
 - E. **CSED Indicator Codes.** The TC 520, closing code, and CSED TIN indicator, can identify which taxpayer spouse is in bankruptcy and to whom the CSED extension applies. The CSED TIN indicator is input by the Insolvency Interface Program (IIP) during initial processing. The indicator codes can also be input manually (i.e., as part of the manual TC 550 extensions in bankruptcy). The applicable IMF CSED TIN indicator codes are:
 - P — the CSED applies to the Primary TIN;
 - S — the CSED applies to the Secondary TIN; and
 - B — the CSED applies to Both TINs.
6. **CSED Protection - MFT 31 for Non-Debtor Spouse.** To protect the collection statute, Insolvency must be aware of CSED problems that may develop on the non-debtor spouse account. (See IRM 5.9.3.6.1.1, *Community Property*, and IRM 5.9.17.6, *Joint Account and Non-Debtor Spouse*.) When considering collection from a non-debtor spouse, MFT 31 mirroring prior to case closure may be appropriate; for example, if a CSED is imminent or when both spouses have filed individual bankruptcy petitions but joint income tax returns. IRM 5.9.17.21.4, *Mirroring Process*, provides procedures for the MFT 31 mirroring process. Protection of the CSED on a non-debtor spouse is unnecessary if:
 - A. Plan payments are sufficient to satisfy the claim and pay the total outstanding liability to a level below the tolerance amount for an MFT 31 transfer.

B. The liability will be dischargeable against the debtor spouse and outstanding liabilities against the non-debtor spouse do not exceed the tolerance amounts set forth in IRM 5.9.17.22, *Mirrored and Non-master File Modules*.

Caution:

In community property states, Counsel's advice should be sought before taking collection action against a non-debtor spouse.

When a caseworker determines that it is necessary to mirror an account to protect the CSED of the non-debtor spouse, the CIO should be contacted to complete MFT 31 mirroring, following the steps in IRM 5.9.4.3.2 (4), *Insolvency's Required Actions*. All actions regarding mirroring of the account, or the determination that mirroring is necessary, should be documented per IRM 5.9.5.4(2), *History Documentation*.

7. **Additional Considerations.** The automatic stay will impact the ASED and CSED in various ways in different bankruptcy chapters, especially in Chapter 11 cases, where CSED expiration rules differ for individuals and non-individuals. See IRM 5.9.2.10(2), *The Effect of Bankruptcy on Collection, Impact on Collection*; IRM 5.9.3.6, *Automatic Stay*; IRM 5.9.5.6, *Bankruptcy "Freeze" Code (TC 520)*; IRM 5.9.5.7, *Serial Filers*; and IRM 5.9.17.18, *ASED/CSED Considerations*.

8. **Other Investigation (OI) Potential.** If a case is assigned to an RO at the time that a bankruptcy petition is filed, an OI may be initiated to ensure continuity of case actions. OIs may be useful in Chapter 7 cases (for example, investigating exempt, excluded, and abandoned property, as well as lien priorities).

5.9.4.2.1 (01-14-2011)

BRA 94 and BAPCPA's Effect on Assessments

1. **BRA 94.** The Bankruptcy Reform Act of 1994 (BRA 94) brought about significant changes affecting the IRS, including:

A. **Sovereign Immunity.** BRA 94 waived the government's sovereign immunity against judgments in connection with enumerated provisions (preferences, violations of stay, etc.). However, sovereign immunity remains in effect on the awarding of punitive damages, and attorney fees are capped.

B. **Assessments Allowed.** Before BRA 94, the Bankruptcy Code prohibited assessment of a tax liability unless the court granted relief from the automatic stay. After October 22, 1994, in most cases, the automatic stay for assessment of any tax, including original tax returns, adjustments, Trust Fund Recovery Penalty (TFRP), and *agreed* audit deficiencies, *agreed* SFR deficiencies, and *agreed* AUR deficiencies no longer applied (11 USC § 362(b)(9)).

Note:

Deficiencies in which the statutory period for petitioning the tax court has expired *prior* to the bankruptcy petition can also be assessed even though the assessment may post to IDRS after the petition date.

2. **Impact on ASEDs.** BRA 94 has had an impact on ASED computations.

A. **Most Taxes Can Now Be Assessed.** For debtors who filed bankruptcy on or after October 22, 1994, the automatic stay does not prohibit the IRS from assessing any tax where the Service would not be required to issue the taxpayer a statutory notice of deficiency. These include 1) the taxpayer's self-assessments arising from filed returns; 2) *agreed* audit, AUR, or SFR deficiencies; 3) Trust Fund Recovery Penalty (TFRP) assessments; and 4) audit, AUR, or SFR deficiencies where the statutory period for petitioning the Tax Court has expired prior to the filing of bankruptcy.

B. **Unagreed Pre-Petition Audit Deficiencies.** For debtors who filed bankruptcy on or after October 22, 1994, 11 USC § 362(a)(8) and IRC § 6213(f) stay the debtor from filing a Tax Court petition for the period of the automatic stay plus 60 days thereafter. Accordingly, for debtors with an outstanding notice of deficiency, the ASED is suspended as a result of the bankruptcy petition.

3. **Computation of the ASED in Bankruptcy Situations.** Due to IRC § 362(a)(8) and IRC § 6213(f), bankruptcy suspends the statute of limitations on assessment in cases where a statutory notice of deficiency has been issued and the stay prohibits the commencement or continuation of a Tax Court proceeding involving that tax liability. Rev. Rul. 2003-80, 2003-29 IRB 80 provides published guidance explaining the effects of bankruptcy on the limitations period for assessment.

4. **BAPCPA.** For cases filed on or after October 17, 2005, BAPCPA limits the stay on Tax Court proceedings regarding an individual debtor's tax liability only with respect to a taxable period ending before the order for relief (11 USC § 362(a)(8)). Therefore, the indirect ASED stay, with respect to deficiency liabilities resulting from IRC § 6213(a), will no longer apply with respect to an individual debtor's post-petition liabilities.

Note:

The stay applies to both pre-petition and post-petition corporate liabilities, so long as it is a liability the bankruptcy court may determine.

5. **Consent to Extend ASED.** The Service may obtain a valid consent to extend the statute of limitations on assessment from entities in bankruptcy. A TC 560, input by Examination, indicates an extension of the ASED.

5.9.4.3 (09-04-2015)

Examination and Insolvency

1. **Examination Contacts to Insolvency.** If a debtor is in bankruptcy and an examination is open on a pre-petition period, an Examination employee will:

A. Contact the responsible Field Insolvency caseworker or CIO liaison; but

B. Continue with established examination bankruptcy procedures; and

C. Advise Insolvency of any proposed Exam-initiated deficiencies or adjustments that might result in a refund or a credit to the taxpayer. This should be done no less than 30 days before the bar date by sending Insolvency a memorandum, or a locally developed form (along with a copy of the transmittal letter to the Examination report), or a copy of the Revenue Agent Report (RAR).

Note:

Insolvency will not perform a periodic follow-up with Examination. Responsibility to notify Insolvency rests entirely with Exam.

2. **Exam's Suspense File.** Examination maintains a suspense file of cases for which a statutory notice has been issued, and assessment is stayed because a Tax Court petition cannot be filed under 11 USC § 362(a)(8). The Examination Bankruptcy Coordinator will coordinate with Insolvency for any questions/issues that arise.

A. **Time Frame for Insolvency to Advise Exam.** Within *five workdays* of contact from Exam, Insolvency will advise Examination which assessments (if any) can be made. Insolvency's response will show the date the stay was lifted, if applicable.

B. **Determining the -L Freeze.** Insolvency must run IIP Process D to detect the -L freeze, which indicates accounts selected for an audit and which may require interoffice coordination.

C. Access to AIS (read only) and Public Access to Court Electronic Records (PACER) can be granted to the examination function.

3. **Insolvency Referrals to Exam.** When Insolvency receives tax returns from debtors, and evidence exists that information provided by the debtor understates income or overstates deductions meeting the dollar criterion in IRM 4.27.3.2.1.1(7), a referral can be made to the Examination Technical function. Procedures for preparing and forwarding referrals to Exam are provided in IRM 4.27.3.2.1.1, *Returns Eligible for Review*.

4. **Abusive Tax Avoidance Transactions (ATAT).** During the initial case review process, Insolvency caseworkers must determine if a TC 420 (-L freeze) is present with ATAT project codes. CIO cases will be reassigned to the designated Field Insolvency caseworker if an ATAT code is identified. The Field Insolvency caseworker must review the following to identify inconsistencies:

- Bankruptcy schedules
- Statements of Financial Affairs
- Tax returns
- Financial statements

The Field Insolvency caseworker must contact the Exam ATAT Coordinator to determine if further investigation is needed. In cooperation with the Fraud Technical Advisor, Area Counsel, and Exam and Collection ATAT Coordinators, Insolvency will decide if a bankruptcy fraud referral should be pursued.

5. **Employee Plans.** Insolvency will advise the Employee Plan (EP) function of the TEGE division when a large dollar or significant case Chapter 11 bankruptcy is filed, so EP can research any impact the bankruptcy might have on the EP program. (See IRM 5.9.8.4.2(11), *Notice to TEGE.*)

6. **Insolvency Follow-Up/Monitoring.** Because confirmations take place quickly in some bankruptcies (notably in Chapter 13), monitoring methods must be established by Field Insolvency for cases involving examination issues. (See *Exhibit 5.9.4-1, Inputting Follow-Up Dates.*) If a proof of claim needs to be filed, and research indicates one or more tax periods are being examined, and the assigned Exam function has not contacted the Insolvency group, Insolvency should contact that Exam unit to gather current information on the status of the audit.

7. **Reminders - Assessment of Taxes.** The Service may, notwithstanding the automatic stay:

- Assess an agreed tax deficiency (26 USC § 6213(d)).
- Assess a tax shown on a return filed by the taxpayer (26 USC § 6201(a)(1)).
- Assess taxes which are not subject to the deficiency procedures (e.g., the Trust Fund Recovery Penalty, whether the taxpayer agrees or not).

Note:

Unless the period for petitioning the Tax Court is suspended, the automatic stay no longer provides an extension of the ASED; therefore, the Service must take timely action to protect the statute.

- Assess an otherwise assessable tax deficiency on an individual debtor's post-petition period for bankruptcies filed on or after October 17, 2005 (11 USC § 362(a)(8)).

8. **Unagreed Deficiency Assessments.** Post-petition assessments of unagreed deficiencies on pre-petition periods for which the statutory response time to file a Tax Court petition has not expired are violations of IRC § 6213. Such assessments would not be valid because the debtor cannot petition the Tax Court while the automatic stay is in effect, and the time to file the petition is therefore tolled by the bankruptcy. They must be reversed within two days of identification.

A. **Insolvency Procedures.** When an Insolvency caseworker determines that such an assessment has posted, the caseworker must contact the Exam or AUR bankruptcy coordinator by phone or secure email to request a reversal of the TC 300/290 assessment. Exam or AUR will input the reversal upon Insolvency notification to meet the two business day requirement. If contact with the bankruptcy coordinator cannot be made to ensure the reversal will be initiated within two business days, the Insolvency caseworker must input the reversal online, or send an expedited request to Centralized Case Processing (CCP) to have the assessment reversed. If the reversal of the assessment is input by Insolvency or CCP, the Insolvency caseworker must advise the applicable bankruptcy coordinator, by phone or secure email, of the reversal as soon as possible so the assessment file can be suspended until closure of the bankruptcy. To facilitate reassessment of the deficiency after the case is closed by the bankruptcy court, the caseworker must document all information regarding the assessment and reversal, and enter the "Re-Assess" classification on AIS.

B. **Insolvency Contact With AUR.** AUR may contact Insolvency caseworkers to request mirroring of accounts, or to advise of assessment determinations. Any requests or information from AUR must be documented in the AIS case history.

C. **Orders Vacating Dismissal.** An order vacating dismissal may or may not reimpose the automatic stay. Therefore, Insolvency must work with Exam and AUR in situations where there is a pre-petition module with an unagreed examination deficiency and there is an order vacating dismissal in the case. See IRM 5.9.3.6, *Automatic Stay*; IRM 5.9.17.5.6, *Orders Vacating Dismissal (Reinstatements)*; and IRM 5.9.5.7, *Serial Filers*, for more information.

Note:

These statutory notice of deficiency procedures *do not apply to employment taxes.*

9. **Documentation.** Insolvency must accurately document all contacts with Examination functions in the AIS history at the time of contact. IRM 5.9.5.4, *AIS Documentation*, provides guidance on required AIS documentation.

5.9.4.3.1 (09-04-2015)

Examination and MFT 31 Mirrors

1. **Mirroring Procedures.** Procedures are in place for creating MFT 31 mirror modules when Exam must make an assessment on a non-debtor spouse while a bankruptcy is pending. Requests should be sent via secure email to *CIO Issues. CIO will accept mirroring requests on cases assigned to Field Insolvency. In this situation, CIO will document the case history with the name, phone number, and organization of the requesting employee, and send an email to the FI employee assigned the case, advising them of the request.

Note:

Chapter 7 cases are not usually mirrored due to the short time they are in bankruptcy (with exceptions for cases with imminent ASEDs). If a mirroring request is received for a Chapter 7 case, CIO will advise the requestor that mirroring will not be performed, and provide the approximate month and year that the bankruptcy is expected to conclude.

2. **Petitions to Tax Court.** When one spouse is in bankruptcy during an examination of a joint pre-petition tax year, and the IRS issues a statutory notice of deficiency, the time for filing the debtor's Tax Court petition is suspended until the automatic stay terminates. The assessment statute is suspended until after the debtor's period for filing a Tax Court petition concludes. However, the time to file a Tax Court petition and the assessment statute for the deficiency is not extended on the spouse who did not file bankruptcy. If the non-debtor spouse does not timely file a Tax Court petition, the deficiency against the non-debtor spouse must be assessed to protect the ASED.

3. **Exam's Request for Mirroring.** If Examination determines the deficiency assessment must be made on the non-debtor spouse because of the assessment statute, the Exam function will contact the CIO. Because Exam does not have the ability to mirror assessments, Centralized Insolvency will mirror the module so the assessment can be made.

4. **Exam's Required Actions.** Exam will:

- A. Contact Insolvency with their determination that the non-debtor spouse must be assessed the deficiency;

Note:

If there are less than 12 weeks remaining on the statute, it must be noted in the mirroring request.

- B. Input the TC 421 to reverse the MFT 30 –L freeze so mirroring of the MFT 30 module can be done;
- C. Monitor for the TC 421 to post on the MFT 30 module and contact Insolvency; and
- D. Monitor for the creation of the MFT 31 mirrored modules and re-input the TC 420 on the MFT 30 module.

5. Insolvency's Required Actions. Insolvency will:

- A. Maintain the bankruptcy freeze (-V or -W for closing code 81). The mirroring can be accomplished without the reversal of the bankruptcy freeze and will remain unreversed to ensure the automatic stay is not violated;
- B. Input the required transaction codes to mirror the module (see IRM 5.9.17.21.1, *MFT 31 Mirror Modules*); and
- C. Input TC 521 on the MFT 30 module after the TC 420 is re-input to ensure the module remains on the system. (See IRM 5.9.13.9(2), *Examination Adjustments*.)
- D. Input TC 522 on the non debtor spouse's MFT 31.

Caution:

Only Insolvency can reverse the bankruptcy freeze code on the modules when necessary.

5.9.4.3.2 (09-04-2015)

MFT 31 Mirroring Requested by Appeals and Other Organizations

- 1. **Mirroring Procedures.** In certain situations, Insolvency may receive a request from Appeals, OIC, AUR, or another organization to complete MFT 31 mirroring on a non-debtor spouse while a bankruptcy is pending.
- 2. **Collection Due Process (CDP) Cases.** When a husband and wife jointly request a CDP hearing and only one of the spouses has filed a petition with the bankruptcy court, the CDP hearing as to the debtor spouse should be suspended. Based on certain circumstances, Appeals may decide to move forward with the CDP hearing with respect to the non-debtor spouse. If the non-debtor spouse has a joint liability with the debtor, MFT 31 mirroring is needed to reflect the separate activity on each spouse's account, i.e., non-debtor spouse's CDP hearing and the debtor's bankruptcy proceeding. Mirroring the account on IDRS accommodates Appeals' decision to conduct the non-debtor spouse's hearing without waiting for the resolution of the debtor's bankruptcy.

Note:

A CDP hearing for the non-debtor spouse should generally be postponed during bankruptcy cases in community property states because in most cases the levy sources will be community assets that are property of the estate.

- 3. **Mirroring Requests.** Appeals may contact Insolvency to request MFT 31 Mirroring of a joint tax period when an individual's Chapter 11 or Chapter 13 bankruptcy plan has been confirmed. The request should be sent via secure email to *CIO Issues. If the ASER is expiring in less than 12 weeks, it *must* be noted in the request. The request for mirroring of the account must be documented in the AIS history.
- 4. **Insolvency's Required Actions.** When the bankruptcy caseworker becomes aware that a Chapter 11 or Chapter 13 plan has been confirmed, and a request for MFT 31 mirroring has been noted in the AIS history, the Field Insolvency employee should contact the CIO to mirror the joint tax period(s), taking the following actions:
 - A. Send a secure email requesting up-front mirroring to the *CIO Issues mailbox, providing the debtor's name, docket number, court jurisdiction, and the specific modules to be mirrored. CIO will respond to the email to verify receipt, and will perform mirroring as described in IRM 5.9.17.21.1, *MFT 31 Mirror Modules*.
 - B. Input the "Man Mirror" classification on the AIS Classification Screen.
 - C. As part of case follow-up, monitor for the completion of the mirroring. When it is completed, update the CPM to change the MFT(s) from 30 to 31 to ensure the appropriate posting of future payments. See IRM 5.9.13.9(2), *Post-petition Mirroring and Claims*, for additional information.
 - D. Document the AIS history with all actions taken.

5.9.4.4 (09-04-2015)

Credits, Refunds, and Offsets

- 1. **Authority of Right to Offset.** The IRS has a right to offset credits owed to a taxpayer against debts the taxpayer owes to the Service. The IRS has both a common law right to offset and a statutory right to offset that is codified at IRC § 6402(a) and IRC § 6411(b). The Bankruptcy Code preserves the Service's non-bankruptcy rights to setoff in 11 USC § 553.
- 2. **Mutuality of Debts.** Although 11 USC § 553 expressly preserves the right to setoff only when both the credit and the debt occur pre-petition, the Bankruptcy Code does not prohibit the Service's non-bankruptcy right to setoff. Thus, setoff may also be available when the credit or the debt occurs post-petition *as long as the debts are mutual*; meaning when the debt and the credit both belong to the taxpayer, regardless of tax type. (See IRM 5.9.4.4.2, *Post-Petition Payments and Credits*.) Although the Service has a right to setoff mutual debts, for bankruptcies filed before October 17, 2005, the automatic stay prohibits the actual making of the setoff until the stay is lifted. BAPCPA created an exception to the stay for offsets of pre-petition income tax refunds against pre-petition income tax claims as explained in paragraph (3) below. Insolvency caseworkers should consult Area Counsel for advice for a specific jurisdiction on the applicability of the automatic stay for setoffs not covered by BAPCPA.
- 3. **BAPCPA Provision.** BAPCPA allows pre-petition income tax refunds to be offset against pre-petition income tax liabilities without a lift stay for bankruptcies filed on or after October 17, 2005. The exception does not apply if an action is pending to determine the amount or legality of a tax liability. (11 USC § 362(b)(26)) However, the IRS may hold any pre-petition income tax refund until the validity of the liability is resolved.
- 4. **Violations of the Automatic Stay.** After a bankruptcy is filed, accounts should be examined and research completed promptly to determine if credits are present that need to be resolved, if refunds should be retained or turned over to the debtor or trustee, and if any illegal offsets have occurred. This should be done during the initial review of accounts in Insolvency. (See IRM 5.9.13.4, *Case Reviews*.)
 - A. **Time Frame to Correct.** If a violation of the Bankruptcy Code has inadvertently occurred, corrective actions must be initiated within *two workdays*.
 - B. **Erroneous No Liability Case.** An offset may be discovered in an apparent "no liability" case where a tax refund was applied to full pay an existing balance due tax account after a bankruptcy petition was filed. If the bankruptcy freeze code was not input timely, the account could erroneously appear to be one of "no liability" when it is reviewed later in Insolvency. An offset action of this type may be a violation of the automatic stay.

Note:

Whenever such an offset is discovered, immediate steps to correct the violation must be taken by the Service, including expedited refund issuance and filing or amending a claim, if appropriate.

- 5. **Refunds Not Offset but Retained by the Service.** The Service may retain ("freeze" under controlling case law) refunds to protect its right of setoff. These refunds may be retained whether they arise pre-petition or post-petition. Service policy emphasizes making prompt decisions on how to treat refunds. Counsel advice may be needed when a refund will be frozen for a substantial length of time.

6. **Time Frame.** When Insolvency discovers refunds are being retained, the Insolvency caseworker will begin the refund credit resolution process within 20 calendar days. Refunds must not be held solely in anticipation of a future dismissal or discharge that will lift the stay and allow for the Service to offset a credit generated during the pendency of the bankruptcy.

7. **Refund Determination.** Insolvency must make a *refund determination* within 20 calendar days of identification of the credit, to:

- A. Issue the refund to the trustee or debtor, as required by local rules/agreement, order, plan or practice; or
- B. Make an expedited referral to Counsel (if necessary) to file a motion to lift the automatic stay to complete a refund offset; or
- C. Retain the refund to protect the Service's right of offset, but only with the concurrence of Counsel.

When reviewing the credit balance module, the presence of a -L freeze or a -R freeze indicates that the return is being reviewed by Exam. The Insolvency caseworker should contact Exam to determine if a manual refund should be requested or if the credit should remain on the account, pending completion of the examination of the tax return. If the refund is to be held, pending completion of the examination, the AIS history should be noted accordingly. The 5792 screen on AIS should be updated with "Hold" in the "Issue To" field on the Refund Screen on AIS. Exam is responsible for notifying Insolvency of any deficiencies or adjustments that result in a refund or credit. See IRM 5.9.4.3(1)(c), *Examination Contacts to Insolvency*. Contact with Compliance Services Collection Operations (CSCO) may be needed in situations where the refund hold shows a TC 570 with a Julian date of 999, or ASFR shows a TC 150 for .00 with document code 10 and a Julian date of 887.

8. **Guidelines for Refund Determination.** SBSE Counsel has issued tolerance criteria for referrals of issues to Associate Area Counsel offices. (See IRM 5.9.4.14.4 #, *Referral Tolerances*.) These criteria may be adjusted by local Counsel depending on staffing and case loads. If a referral for offset is not appropriate, general refund guidelines are set forth in IRM 5.9.4.4.1 (3), *Table - Credits, Refunds, Offsets*.

A. **Stay Lifted to Allow Refund Offset.** It is Service policy not to offset a refund unless the automatic stay has been lifted for periods protected by the automatic stay.

Reminder:

For bankruptcies filed on or after October 17, 2005, pre-petition income tax refunds can generally be offset to pre-petition income tax liabilities without requesting a lift of the automatic stay.

B. **Secured Status.** Generally, the refund entitles the Service to a secured status on the proof of claim – to the extent of the outstanding tax liabilities. Any refund excess will be refunded to the debtor or trustee, per local guidelines or Counsel advice.

C. **Clarify Claim Status.** Also, Insolvency must amend or withdraw a claim or issue a credit letter to the trustee, per local procedures, after the offset is completed to clarify the Service's claim for the court.

9. **Chapter 13.** After a Chapter 13 confirmation, the Centralized Insolvency Operation must make a prompt decision either to retain a refund, forward it to the debtor or the trustee, or, if the refund arose post-petition, offset it against other post-petition liabilities.

10. **Contacts to Insolvency.** If an IRS employee (outside of Insolvency), receives a written inquiry regarding a refund, credit, or offset issue on a debtor whose bankruptcy case is still active (i.e., un-reversed TC 520 with a bankruptcy closing code), the employee must promptly contact the CIO liaison for resolution. If the inquiry is received by phone, after disclosure verification, the caller can be directed to call the CIO toll free at 1-800-973-0424. (See the "exception" below.) Insolvency actions will depend upon the bankruptcy chapter, the petition date, when the credit became available, and standing orders or local rules covering a specific bankruptcy court. If appropriate, the CIO liaison will direct the initiating employee or the debtor to a Field Insolvency caseworker to handle the issue.

Exception:

If IDRS shows the refund in question is being systemically refunded to the taxpayer (TC 846 is present), the non-Insolvency IRS employee can provide that information to the correspondent or caller, after disclosure verification, along with the date the refund can be expected to be mailed or electronically transferred to the taxpayer's financial account. When an unreversed TC 846 is present, the CIO need not be contacted.

11. **Refund Considerations/Problems:** Insolvency must consider issues surrounding potential refunds for accounts under bankruptcy protections such as the following :

- Improper TOP offset potential exists
- Offset for domestic support obligations allowed under BAPCPA 2005 for cases filed on or after October 17, 2005
- Inability to generate a systemic refund (the manual refund issuance process takes longer)
- Court order or plan dictating how refund disposition is to be handled
- Potential or actual violation of the automatic stay
- Potential for duplicate refunds
- Change of venue (i.e., case relocated to another court after bankruptcy petition filed)
- Mailing address problems
- Mandated redirection of the refund to an entity other than the debtor
- Debtor and non-debtor spousal issues on a joint return/joint refund situation

12. **Preparation of Manual Refunds.** The *Manual Refund* screen on AIS shows IDRS overpayment information on cases in AIS and has options to generate the Form 5792, *Request for IDRS Generated Refund*, to be completed by the Field Insolvency caseworker or the CIO caseworker. Form 3210, *Document Transmittal*, can also be generated from AIS to transmit Forms 5792 for processing. IRM 5.9.16.4, *Manual Refunds*, details steps to be taken by both Field Insolvency and the CIO in processing refund requests.

5.9.4.4.1 (09-04-2015)

Addressing Credits, Refunds, and Offsets

1. **Pre-Petition Credits.** A pre-petition credit is a credit available on a tax module when the taxable period ends *prior* to the petition date. Although the pre-petition credit may be available and is valid as a credit to the debtor's account (e.g., tax refund), transferring the funds to effect a setoff may be a violation of the automatic stay (unless allowed by local standing orders or local rules).

Note:

BAPCPA generally allows pre-petition income tax refunds to be offset to pre-petition income tax liabilities for cases filed on or after October 17, 2005.

2. **Payment Application.** Undesignated payments should be applied in the best interest of the government. This generally requires application to the oldest assessed tax, oldest assessed penalty, and then oldest assessed interest.

3. **TABLE — Credits, Refunds, Offsets (Post-BAPCPA).** Unless any standing orders, local rules, or agreements allow for different treatment, pre-petition credits and refunds may be resolved using the following table for cases filed on or after October 17, 2005:

IF the bankruptcy is filed on or after October 17, 2005 and...	THEN...
the credit is a pre-petition income tax refund and the debtor owes a pre-petition income tax liability,	the Service can offset the credit to a pre-petition liability if such a liability exists. Any remaining credit must be refunded to the debtor or trustee, per local guidelines.
the pre-petition credit is not an income tax refund or if the pre-petition liability is not for income tax,	the setoff cannot be completed without court approval while the stay is in effect, unless there is a standing order or local rule that allows the setoff. If the setoff is allowed, 1) The credit must first be applied to dischargeable tax, penalty, and interest due as of the date of petition. 2) Second, the credit must be applied to any non-dischargeable tax, penalty, or interest due. 3) Finally, any balance must be refunded to the trustee or the debtor, per local guidelines. Note: If the Service seeks relief from the stay to allow setoff, the court denies the relief and orders turnover of the refund, and the Service does not appeal, the refund should be paid to the debtor or trustee as appropriate.
a Chapter 7 trustee requests turnover of a pre-petition income tax refund credit for the estate,	after applying any credits against any pre-petition liability, any balance of the refund is refunded to the trustee. Note: See IRM 5.9.6.2.3, <i>Chapter 7 Tax Refunds to Trustees</i> , for procedures for turnover of refunds to Chapter 7 trustees.
a proof of claim is required, a pre-petition income tax refund is available,	Insolvency may apply the refund to the liability according to the offset scheme described above so the proof of claim, when filed, will reflect the remaining outstanding liability after the refund has been offset. If there is no outstanding liability remaining, the claim should be amended to \$00 or withdrawn (as required by any local rules or standing orders). Absent any local rules or orders, any excess funds that are available after the refund has been offset should be refunded to the taxpayer.
Chapter 12 and Chapter 13 plans have been confirmed or the credit is not an income tax refund,	local guidelines and the tolerance set in <i>IRM 5.9.4.14.4 #</i> should be followed to seek a refund offset. (See <i>IRM 5.9.4.4 (7), Refund Determination</i>). If the lifting of the stay is not requested and the plan is not in default, Insolvency will generally request a prompt refund be issued. If the refund is to be retained, Counsel must concur. Exception: In some jurisdictions standing orders or local rules permit a setoff.
no tax debt is currently showing on IDRS, but an offset has occurred in violation of the automatic stay,	<i>IRM 5.9.4.4 (4), Violations of the Automatic Stay</i> , provides guidance. <i>IRM 5.9.4.4 (4)(b), Erroneous No Liability Case</i> , deserves special attention. Corrective actions must be initiated within two business days of discovery of such an offset. If appropriate, an expedited manual refund should be requested to go to the trustee or debtor. The Insolvency case worker or CIO unit initiating the refund request must ensure the case is monitored to guard against issuance of duplicate refunds. Note: For additional information, see <i>IRM 5.9.4.4.3, Offsets to Other Agencies</i> , and <i>IRM 5.9.4.4.4, Federal Payment Levy Program (FPLP)</i> .

4. **TABLE - Credits, Refunds, Offsets (Pre- BAPCPA).** Unless any standing orders, local rules or agreements allow for different treatment, pre-petition credits and refunds may be resolved using the following table for cases filed prior to October 17, 2005.

IF the bankruptcy is filed prior to October 17, 2005...	THEN...
a Chapter 7 trustee requests turnover of a pre-petition income tax refund credit for the estate, and no standing orders or local rules are in place allowing offset, and a pre-petition liability exists,	a referral for a lift of stay must be considered to offset the liability based on <i>IRM 5.9.4.14.4 #</i> criteria. Any balance of the refund is sent to the trustee.
a Chapter 7 trustee requests turnover of a pre-petition income tax refund credit for the estate, and the court allows the offset to a pre-petition liability,	after applying the credit against the pre-petition liability, any balance of the refund is sent to the trustee.
a Chapter 7 trustee requests turnover of a pre-petition income tax refund credit for the estate, and the court does not allow the offset or no pre-petition liability exists, and there is a final court order requiring turnover of the refund,	a manual refund must be prepared to issue the refund credit to go to the trustee. Note: See IRM 5.9.6.2.3, <i>Chapter 7 Tax Refunds to Trustees</i> , for procedures for turnover of refunds to Chapter 7 trustees.
a proof of claim is required, and a pre-petition income tax refund is available,	the proof of claim should reflect that the liabilities are secured to the extent of the credit. (See <i>IRM 5.9.4.4 (7), Refund Determination</i> .) Absent any local rules or orders, any excess funds that are available after the refund application should be refunded to the taxpayer. If there are any local rules or orders in the court administering the debtor's bankruptcy case, the caseworker must dispose of the refund per the local rules or orders. Reminder: Prior to a Chapter 11 or 13 confirmation, a refund may be retained to preserve the IRS's future setoff rights; but, the Service cannot make a setoff while the stay is in effect without permission of the court. Notice of retention of a refund should be given on a promptly filed claim or amendment.
Chapter 12 and Chapter 13 plans have been confirmed or the credit is not an income tax refund,	local guidelines and the tolerance set in <i>IRM 5.9.4.14.4 #</i> should be followed to seek a refund offset. (See <i>IRM 5.9.4.4 (7), Refund Determination</i>). If the lifting of the stay is not requested and the plan is not in default, Insolvency will generally request a prompt refund be issued. If the refund is to be retained, Counsel must concur. Exception: In some jurisdictions standing orders or local rules permit a setoff.
no tax debt is currently showing on IDRS, but an offset has occurred in violation of the automatic stay,	<i>IRM 5.9.4.4(4), Violations of the Automatic Stay</i> , provides guidance. <i>IRM 5.9.4.4 (4)(b), Erroneous No Liability Case</i> , deserves special attention. Corrective actions must be initiated within two business days of discovery of such an offset. If appropriate, an expedited manual refund should be requested to go to the trustee or debtor. The Insolvency case worker or CIO unit initiating the refund request must ensure the case is monitored to guard against issuance of duplicate refunds. Note: For additional information, see <i>IRM 5.9.4.4.3, Offsets to Other Agencies</i> , and <i>IRM 5.9.4.4.4, Federal Payment Levy Program (FPLP)</i> .

5. **Language for Claiming Setoff Amounts.** IRM 5.9.13.21(3), *Language for Insertion on Claim*, provides wording to include on the proof of claim when the Service is claiming a right of setoff.

5.9.4.4.2 (09-04-2015)

Post-Petition Payments and Credits

1. **Post-Petition Credits and Post-Petition Debts.** Generally, post-petition credits (e.g., tax refunds) owed to the taxpayer can be offset directly against post-petition tax periods for taxes owed by the taxpayer as explained in IRM 5.9.4.4 above.

Note:

This also applies to a liability claimed on a Section 1305 claim, unless the plan explicitly provides otherwise.

2. **Post-Petition Credits and Pre-Petition Debts.** Since 11 USC § 553 does not create an independent right to setoff, but rather preserves the Service's non-bankruptcy rights, the Service holds that it can set off post-petition credits against pre-petition debts and vice versa as long as the debts are mutual (i.e., both the credit and the debt are owed to/by the taxpayer). *However, most courts have held the Service does not have a right to set off post-petition credits against pre-petition liabilities.*

Caution:

Insolvency should consult Counsel to determine the action to be taken, especially in Chapter 13 cases. Some standing orders and local rules/agreements allow these offsets while the taxpayer is in bankruptcy.

3. **Non-Mutual Debts - Chapters 7 and 11 Individuals.** In a Chapter 7 or 11 individual case, the bankruptcy estate generally is a separate taxable entity. A credit owed to a debtor in these chapters cannot be set off against a tax owed by the estate due to the lack of mutuality.
4. **Chapter 7 Discharge/Payments/Offsets.** If payments are received from taxpayers for taxes that have been discharged under Chapter 7, or refunds have been offset to dischargeable periods, corrective actions must be initiated within *two workdays* of the date the Service becomes aware of the violation of the Bankruptcy Code. (See IRM 5.9.6.5, *Automatic Stay*, and IRM 5.9.17.8, *Discharge Injunction*.) Paragraph (5) below discusses an exception to this general rule.

Caution:

The Service is prohibited by the discharge injunction imposed by 11 USC § 524 from applying payments to taxes that have been discharged. Sanctions can be imposed against the Service if this provision is disregarded. This does not apply to payments made voluntarily by the debtor.

5. **Voluntary Payments – Guidelines.** At times an individual debtor may make a *voluntary* post-petition payment. Acceptance of such payments does not violate the automatic stay as long as the payments are *truly* voluntary. Voluntary payments by an individual Chapter 7 debtor can be accepted if they are truly voluntary, and *are not made from property of the estate*. (See IRM 5.9.4.19(6), *Payments Received on a Pre-Existing Installment Agreement*.) If an *undesignated* voluntary payment is received, it is not property of the estate, and the debtor has both dischargeable and non-dischargeable liabilities, the payment should be applied to the non-dischargeable liabilities first.

6. **Table - Post-Petition Payments and Credits.** The table below provides additional information on post-petition payments and credits.

IF...	THEN...
the automatic stay is in effect, but standing orders or local rules/agreement allow the offset,	application of a credit to pre-petition tax period(s) can be made pursuant to such rules or orders. In Chapter 7, application should be made to <i>non-dischargeable</i> period(s) with any remaining balance being refunded to the debtor or trustee.
the automatic stay is in effect and no standing orders or local rules apply,	the credit can generally be applied to post-petition tax period(s) with any remaining balance being refunded to the debtor or trustee. Counsel may be consulted, if necessary.
the automatic stay is in effect, no post-petition liabilities exist, an offset to a pre-petition period might be deemed a violation of the stay, and the IRM criteria are met for referral to Counsel,	Field Insolvency should consider retaining the refund and sending a referral to lift the stay to allow an offset with any remaining balance being refunded to the debtor or trustee. Note: Referrals for offset are not made on Chapter 7 No Asset accounts.
the automatic stay is <i>not</i> in effect,	the credit should first be applied to non-dischargeable pre-petition tax, penalty, and interest, then to post-petition tax periods, and finally any excess must be refunded to the debtor.
the Chapter 7 trustee of an individual debtor requests the credit and no post-petition tax liability exists,	telephone contact should be made with the trustee to advise him/her that the credit is post-petition and not property of the estate. After <i>20 calendar days</i> without further explanation or complaint by the trustee, the credit can be refunded to the debtor.
the credit module begins pre-petition and ends post-petition, Example: Tax period 30/200112 has a credit of \$500 and debtor filed bankruptcy on 04/20/2001; the credit module of 30/200112 begins 1/1/2001 (pre-petition) and ends 12/31/2001 (post-petition)	in all cases except individual debtors in Chapter 7, the credit should be treated as a post-petition credit. Note: In Chapter 7 if the trustee of an individual debtor requests the refund, and the Service has determined it will not file a motion for lift of the stay or a motion has been filed and not granted, follow procedures outlined in IRM 5.9.6.2.3, <i>Chapter 7 Tax Refunds to Trustees</i> .

5.9.4.4.3 (09-04-2015)

Offsets to Other Agencies

1. **Offset Situations.** Certain federal and state agencies provide the IRS information about debts owed to them. By statute, the Service must offset any credits not needed for federal tax liabilities to these agencies, unless the taxpayer is in bankruptcy. However, if the creditor agency is aware of a credit due the debtor, the government can request a lift of stay to have the credit applied to the debt owed. But, because of current disclosure provisions, the IRS cannot advise a creditor agency of a pending credit refund to the debtor in an active bankruptcy.
2. **Treasury Offset Program (TOP) Offsets.** The Bureau of the Fiscal Service (BFS), formerly known as the Financial Management Service, holds the responsibility for administering tax refund offsets to outstanding child support or state and federal agency debts. These offsets are referred to as TOP offsets. A TOP offset is generated on the module as a TC 898 with an offset trace number (OTN), an offset amount, and a debtor-TIN field which is present if the offset is for a secondary spouse.
3. **Mechanics of TOP Offsets.** TOP offsets occur after the IRS has certified a refund to BFS for payment (TC 840/846 on account), but before BFS direct deposits or mails the refund check. A TOP offset reduces the amount of the IRS refund by the amount of the TC 898 offset. TOP offsets can occur against either or both SSNs on a Filing Status 02 (married taxpayers filing a joint return), so one or two TC 898s may be input for each TC 840/846 refund issued, one with and one without a debtor TIN.

Note:

IRM 21.4.6, *Refund Offset*, provides additional information on the program. Document 6209, *IRS Processing Codes and Information*, serves as a source for additional transactions and reason codes.

4. **Guidelines for Debtor Assistance.** The BFS database relies on timely notifications from governmental agencies to keep accounts information accurate, reflecting eligibility for offsets. When an offset to another federal/state agency does occur, the BFS database may not reflect current information from that agency, thereby resulting in violations of the automatic stay. If the debtor contacts Insolvency for help, Insolvency is required to take the appropriate steps listed in IRM 5.9.4.4.3.2, *Referral of Taxpayer to BFS*, to assist the debtor.

Note:

Often, the correct response from Insolvency is to refer the taxpayer directly to the agency (if known) who has the refund, or, if not, to BFS.

5.9.4.4.3.1 (09-04-2015) Offset Bypass Indicators

1. **Bankruptcy TOP Bypass Indicator.** All manual and systemic refunds are assigned a TOP Offset Bypass Indicator (BPI) which tells BFS if the refund is eligible for offset by TOP. For bankruptcies commencing on or after October 17, 2005, BAPCPA allows offsets for domestic support obligations which were not permissible prior to the implementation of this bankruptcy act. This change in law has necessitated a coding modification for processing manual refunds for modules under bankruptcy protection. Where before BAPCPA only BPI 03 was used for bankruptcy cases, now BPI 07 is also used, as well as sometimes BPI 08 or 09.

Note:

The indicator will only be present when there is a TC 520 present on IDRS due to an actual or potential liability, or a refund turnover order.

2. **BPI 03.** BPI 03 indicates that a refund is not eligible for TOP offset. In the case of systemic refunds, BPI 03 is generated automatically when a TC 520 (with closing codes 60-67, 81, or 83- 89) was entered prior to October 17, 2005. In the case of manually processed refunds, BPI 03 should be input in the following situations:
 - Income tax refunds where the TC 520 was entered on the case prior to October 17, 2005 but BPI 03 was not systemically input;
 - Levy payments received in violation of the automatic stay;
 - Installment agreement payments received after the petition date;
 - Trustee payments sent to the Service in error; or
 - Trustee overpayments on the Service's proof of claim.

Caution:

BPI 03 should *not* be used for income tax refunds where the TC 520 was entered *on or after* October 17, 2005.

3. **BPI 07.** BPI 07 indicates that a refund is eligible for TOP offset to domestic support obligations. Since BAPCPA allows offsets of income tax refunds to delinquent domestic support obligations on bankruptcies filed on or after October 17, 2005, when BPI 07 alerts BFS that the taxpayer is in bankruptcy, offsets to domestic support obligations will be permitted because they do not violate the automatic stay. Therefore, BPI 07 should be input on requests for income tax refunds to debtors or trustees for cases filed *on or after* October 17, 2005.

Note:

The Service has the right to offset a refund against taxes, if allowed, before BFS has an opportunity to claim part or all of the remaining refund for offset against domestic support obligations. BFS is responsible for forwarding any funds not offset to the debtor or trustee.

4. **BPI 08 and 09.** Bypass indicator 08 should be used when a secondary spouse has filed an injured spouse claim, thereby bypassing offsets to debts owed by the primary spouse. BPI 09 should be used when a primary spouse has filed an injured spouse claim, thereby bypassing offsets to debts owed by the secondary spouse. The Injured Spouse Unit will inform Insolvency when a bypass indicator should be placed on a Form 5792 being initiated by Insolvency. When the Injured Spouse Unit advises Insolvency of the need to change the BPI to 08 or 09, the caseworker must annotate the AIS history documenting the requirement to use the 08 or 09 indicator code.
5. **AIS-Generated Forms 5792.** The Form 5792 screen is accessed by selecting the "Manual Refund" tab on the AIS home screen for Case Files. This screen includes a drop down menu for the BPI code. "Petition before 10/17/05" for BPI 03 or "Petition after 10/17/05" for BPI 07 will be selected systemically depending upon the date of the bankruptcy petition. If the Injured Spouse Unit has advised Insolvency that the correct BPI should be 08 or 09 rather than BPI 03 or BPI 07, the Insolvency caseworker must select "Injured Spouse (Secondary)" for BPI 08 or "Injured Spouse (Primary)" for BPI 09, as appropriate. For information on issuing manual refunds, see IRM 5.9.16.4, *Manual Refunds*, and IRM Exhibit 5.9.16-1, *Instructions for Preparing Form 5792*.
6. **BPI Postings.** The BPI will be posted/displayed along with the TC 840/846 on all output screens such as TXMOD, IMFOL, BMFOL, and on IDRS transcripts. The BPI will also show with the pending transaction.
7. **Debt Indicators.** Debt indicators which may signal a refund offset are found on line 13 of command code INOLES. IRM Exhibit 2.3.47-8, *Command Code INOLE IMF Specific Screen*, explains the significance of each letter code used as a debt indicator. This information allows the caseworker to determine if a refund may potentially be offset rather than fully refunded to the debtor or trustee.

5.9.4.4.3.2 (09-04-2015) Referral of Taxpayer to BFS

1. **Appropriate Referral of Taxpayer.** Complaints involving TOP offsets require the agency receiving the refund to handle any subsequent illegal refund offset complaint, including the issuance of the refund. The Service should not be involved in the refund process.
2. **Agency for Taxpayer Contact.** If a taxpayer contacts Insolvency and requests help in retrieving a tax refund from a state or other federal agency, Insolvency is to refer the taxpayer immediately to "the offending agency" (i.e., the agency who received the refund) for the required assistance.

A. **Taxpayer to Contact Agency.** If the taxpayer knows the name of the agency, Insolvency should advise the taxpayer to contact that agency.

Note:

IDRS does not provide information on the specific agency.

B. **Telephone Assistance.** If the taxpayer does not know the name of the agency, Insolvency will tell the taxpayer to call the *Treasury Offset Program (TOP) Call Center* at (800)304-3107, through which the taxpayer can receive assistance on their offset issue.

C. **TOP Notice to Taxpayer.** When a taxpayer's refund is offset for child support or a federal agency debt, BFS issues a TOP offset notice to the taxpayer. The notice includes the name, address, and phone number of the agency and the telephone number of the TOP Call Center. It will be helpful for debtors to have this information on hand when they call the TOP Call Center.

3. **Complaint to Proper Agency.** The majority of complaints involving TOP offsets require the agency receiving the offset to make the refund, and the IRS is generally not involved. Any resulting legal dispute is between the debtor and that agency, not the IRS.

Reminder:

Offsets for domestic support obligations are allowed for cases filed on or after October 17, 2005 (11 USC § 362(b)(2)(F)). Insolvency should advise a debtor of this new provision of the Bankruptcy Code before directing the debtor to call the TOP Call Center.

5.9.4.4.3.3 (01-14-2011) IRS's Offset to Taxes

1. **When IRS Has Violated the Stay.** When the Service has made an illegal offset (applying a debtor's refund against a tax debt) in violation of the automatic stay, the IRS is considered the offending agency. The responsibility for correcting the violation rests with Insolvency.

2. **No Liability Error.** On a preliminary case review, the debtor may appear to owe no federal taxes. However, the "no tax" determination may be inaccurate if the IRS made an offset to full pay an IRS balance due account in violation of the automatic stay. When an illegal offset has occurred to a balance due account, a debt is still due the Service. The refund may have erroneously paid the account, partially or in full, due to the illegal offset. Therefore, the IDRS account balance (either showing zero or a minimal balance remaining) will not be accurate. The Service must initiate corrective actions within two work days of discovery of the illegal offset.
3. **Centralized Insolvency Operation Actions.** If an offset meets the criteria for referral to Counsel and the case resides in the CIO inventory, the CIO caseworker must transfer the affected case to Field Insolvency to consider referral actions. The reason for the transfer must be annotated in the AIS history. When the case has been reassigned to Field Insolvency, AIS sends an email via the Microsoft Exchange to the Field Insolvency caseworker on Outlook to notify him/her that the case has been reassigned. Employees must monitor their incoming emails for receipt of these cases that are awaiting their action.
4. **Field Insolvency Referrals.** The Field Insolvency caseworker, following the criteria set by Associate Area Counsel, must determine if the offset warrants referral for a lift stay, negotiations for adequate protection, or refund to the debtor or trustee.

IF...	THEN...
the case meets criteria for referral to Counsel,	the Field Insolvency caseworker makes the referral, documents the AIS referral and history screens, and sets a follow up date to review the case for Counsel action.
the case does not meet local criteria for referral to Counsel and the case belongs in the Field inventory (wasn't transferred from the CIO),	the caseworker updates the AIS history with the reason no referral has been made and prepares a manual refund to the debtor or trustee. The caseworker will prepare or amend a proof of claim as necessary.
the case does not meet local criteria for referral to Counsel and the case was transferred from the CIO for referral consideration and no proof of claim filings or amendments are required,	the caseworker updates the AIS history with the reason no referral has been made and transfers the case back to the CIO for preparation of a manual refund to the debtor or trustee.
the case does not meet local criteria for referral to Counsel and the case was transferred from the CIO for referral consideration and a proof of claim should be filed or amended,	the Field caseworker updates the AIS history with the reason no referral has been made and prepares a manual refund to the debtor or trustee. The caseworker will prepare or amend a proof of claim as necessary before transferring the case back to the CIO.
Counsel does not file a motion for a lift of stay or the motion is denied by the Court and the case was transferred to the Field by the CIO,	the Field caseworker updates the AIS history with the lift of stay information and transfers the case back to the CIO for preparation of a manual refund to the debtor or trustee.
Counsel does not file a motion for a lift of stay or the motion is denied by the Court and the case belongs in the Field's inventory (was not transferred from the CIO),	the Field caseworker updates the AIS history with the lift of stay information and prepares a manual refund to the debtor or trustee.

5.9.4.4.4 (09-04-2015)

Federal Payment Levy Program (FPLP)

1. **Collection of Federal Payments Due to Taxpayer.** The Federal Payment Levy Program (FPLP) is an automated levy program the IRS has implemented with the Department of the Treasury, Bureau of Fiscal Service (BFS). Outside of bankruptcy, the FPLP collects funds due to the taxpayer from federal payments (e.g., federal contracts, federal pensions, and Social Security payments). It applies these funds towards federal taxes the taxpayer owes. (See IRM 5.11.7, *Automated Levy Programs*.)

Note:

This program is exempt from third party contact notice.

2. **Authorization.** The law passed under the Taxpayer Relief Act of 1997 (Public Law 105-34) § 1024 authorizes the IRS to levy up to fifteen percent of specified payments continuously (IRC § 6331(h)). The FPLP was developed to implement this law.

Note:

The American Jobs Creation Act of 2004 increased the amount that can be seized for payments due to a vendor of goods or services sold or leased to the federal government to 100 percent.

3. **Bankruptcy Prohibition.** During regular collection activity of the Service (non-bankruptcy), the FPLP allows systemic continuous levies on certain federal disbursements using a paperless process. However, the Service is prohibited from using this levy program against persons in bankruptcy unless the automatic stay has been lifted. *IRM 5.9.4.4.4 (8)* below outlines Insolvency actions regarding this program as it impacts accounts in bankruptcy.
4. **Selection of Cases.** Cases which were in status 22, 23, 24, 26 or 53 *prior to* bankruptcy status 72, may be selected for potential levy issuance through the FPLP. Status 53 is restricted to modules with a TC 530 and a closing code of 3, 6, 9, 10, 12, 13 or 69.
5. **FPLP Indicators.** Modules selected for the FPLP remain in their original master file status codes. (NMF is not included.) Command codes TXMOD, ENMOD, IMFOL and BMFOL can be used for research.

A. MF (I/BMFOL) displays the indicator FMS LEVY>1 on the entity screens if at least one module has been selected in the FPLP.

B. IDRS (ENMOD and TXMOD) displays the indicator FMS>1 on the entity (ENMOD) screens if at least one module has been selected in the FPLP.

C. Each tax module (TXMOD, IMFOLT/BMFOLT) also displays the following:

- FMS LEVY/CD>1: Currently *not* included in the FPLP; however, at one time the module was included for FPLP
- FMS LEVY/CD>3: Currently included in FPLP (TC 971 AC 060); this indicator requires further action by Insolvency. See *IRM 5.9.4.4.4 (8)* below.
- FMS LEVY/CD> (other alpha/numeric code): Current or pending block from FPLP

6. **Action Codes.** Tax liabilities sent to BFS for levy under the FPLP can be identified by 97X action codes (AC) listed below:

- TC 971 AC 060 — module selected for FPLP
- TC 972 AC 060 — reversal of module selected for FPLP (computer generated only)
- TC 971 AC 061 — block or release of module from FPLP

Note:

When a module is "blocked", a Federal Payment Levy cannot occur.

- TC 972 AC 061 — reversal of block on module
- TC 971 AC 062 — module matched or levied under FPLP with identifying DLN
- TC 971 AC 662 — *Levied under FPLP* may also denote that a FPLP levy was issued on an account.

7. **Selected/Match/Levy Indicators.** If a module is *selected* for the FPLP, a TC 971 AC 060 posts. Once BFS matches a federal disbursement with a delinquent module, a TC 971 AC 062 posts. *TC 971 AC 062 also indicates a levy has been issued.*

Note:

Cases assigned to CI with transaction codes 910, 916, and 918 are subject to FPLP levies.

8. Insolvency Actions. The actions an Insolvency caseworker must take to recognize and resolve FPLP cases are listed here.

A. When an Insolvency caseworker identifies a tax module that has been selected for the FPLP (the tax module displays a TC 971 AC 060), a TC 520 must be input timely. The input of the TC 520 should reverse the module in time to prevent a levy action (TC 972 AC 060), since these are cases sent to BFS but not yet matched.

Reminder:

When Insolvency becomes aware of a match/levy made in violation of the automatic stay, corrective actions must be initiated by the Service *within two workdays* after discovery.

B. These cases are identified during a normal review of cases in Insolvency.

C. Insolvency must notify the FPLP Coordinator expeditiously when the following transactions are present on a module:

- TC 971 AC 062 **and** TC 971 AC 662; or
- TC 971 AC 062 **and** TC 971 AC 762; or
- TC 971 AC 662 **and** DPC 18 or 19; or
- TC 971 AC 762 **and** DPC 18 or 19.

D. To determine which FPLP Coordinator should be contacted, determine the IDRS status prior to status 72, and the state in which the taxpayer resides. Using that information, access the SERP tool at <http://serp.enterprise.irs.gov/databases/who-where.dr/fplp.dr/fplp.htm>.

E. Insolvency employees must use Form 4844 and indicate "*FPLP LEVY RELEASE*" so the Coordinator can have the module(s) removed from the FPLP. This will facilitate a prompt release of a levy if necessary.

Note:

A FPLP levy release can only be released electronically by a FPLP Coordinator.

F. Form 4844 must be signed by an official in Insolvency who has delegation authority to approve levy releases. The form must be signed either by hand or electronically; a typed name in the signature line is not sufficient.

G. The request for an FPLP levy release may be faxed, hand-carried, or sent by secure email to the FPLP coordinator. Unless email is not available for a protracted period of time, all requests for an FPLP levy release originating at the CIO must be sent by secure email. Emailed levy release requests should be sent with a request for a "read receipt" to satisfy the receipt verification requirement in item (8) below.

H. Insolvency must verify that the FPLP Coordinator received Forms 4844 on all cases and document it in the AIS history.

I. Copies of Forms 4844 and any attachments must be retained in Insolvency until the levy release has been confirmed.

J. If a levy payment is received by the Service as a result of a FPLP levy action while the automatic stay is in effect, Insolvency must request a manual refund, following procedures for returning or refunding levy proceeds.

Note:

BFS is the levy source for all levies issued through the FPLP - *not the federal payment agencies*.

5.9.4.4.5 (09-04-2015)

Offsets, Payments, and the Individual Shared Responsibility Payment (SRP)

1. **Offsetting Refunds to SRP Assessments.** In certain instances, the Service may apply federal tax refunds or voluntary payments to the individual SRP balance due before sending anything to the trustee or debtor, if applicable. The Service may not apply payments made in response to a levy on the taxpayer's property to an SRP assessment. In addition, the Service will not apply to an SRP assessment payments from a levy on third-party property to which a lien for the collection of the SRP assessment attaches. Follow the guidance below, and remember to check local rules prior to offsetting.

2. **Pre-Petition Offsets.** Although the Bankruptcy Code allows offset of pre-petition income tax refunds to pre-petition income tax liabilities, this does not apply to individual SRP liabilities. Individual SRP liabilities are not included in the exception to the automatic stay under 11 USC § 362(b)(26), which refers only to income tax liabilities. Therefore, offsets are *not* permitted between pre-petition individual SRP modules, nor are they permitted between pre-petition MFT 30 and individual SRP modules, without a lifting of the stay.

3. **Post-Petition Offsets.** Offsets between post-petition MFT 30 or individual SRP modules are generally permitted, as they are not prohibited by the Bankruptcy Code. No lifting of the stay is required.

4. **Lien or Levy Payments.** When applying a payment to an SRP assessment, check the Designated Payment Code (DPC) of the payment.

A. **Lien Payments.** While the lien arises normally on SRP assessments, the law prohibits filing of the NFTL. However, a taxpayer may request a lien payoff letter, which will properly include any SRP assessments under the heading "Other tax debt". DPCs indicating the payment derives from a filed NFTL payoff include:

- 07: NFTL pay-off
- 53: discharges
- 55: subordinations
- 56: withdrawals
- 57: judicial and non-judicial foreclosures
- 58: redemptions and releases of right of redemption

Note:

Payments made in these lien situations are permitted to be applied to SRP assessments.

B. **Levy Payments.** The Service cannot apply payments made in response to a levy on the taxpayer's property to an SRP assessment. In addition, the Service will not apply payments from a levy on third-party property to which a lien for the collection of SRP attaches, to an SRP assessment. The following are some common enforcement-related DPCs:

- 05: most common levy
- 06: seizure and sale
- 18: primary TIN FPLP
- 19: secondary TIN FPLP

For additional lien and levy designated payment codes, see Section 11 of Document 6209, *IRS Processing Codes and Information*, which may be viewed online at: <http://serp.enterprise.irs.gov/databases/irm.dr/current/6209.dr/6209ch11.10.htm>.

5.9.4.5 (01-01-2006)

Sale of Property

1. **Motion to Sell.** This subsection contains the procedures to follow when motions are received for the sale of property of the estate. Also see IRM 5.9.6.17, *Subordination of Federal Tax Liens*, and IRM 5.9.6.18, *Sale of Property by the Trustee*.

5.9.4.5.1 (09-04-2015)

Sale of Property Considerations

1. **Receipt of Notice.** A debtor may file a motion for court approval to sell property. A notice must be sent to creditors who have a right to object to the sale.
2. **Document Review.** Insolvency should provide quality customer service and protect the government's interests by a timely review of the schedules and proposed sale documents to ensure the sale is an arms-length transaction for fair value, and the proceeds of the sale are distributed in order of lien priorities.
3. **Lien on Property.** If the Service filed an NFTL prior to the bankruptcy petition, and the debtor seeks to sell personal property free of the tax lien, the debtor may be required to obtain consent for the sale from lienholders, including the IRS. In such cases, Insolvency should consider giving a conditional commitment to discharge under IRC § 6325(b)(2) where the IRS is entitled to receive its priority interest before issuing a discharge. Insolvency should refer the case to Counsel if it is determined conditional commitment to discharge may be warranted.

Note:

If the debtor seeks to sell real property free of the federal tax lien, Insolvency should contact Counsel to determine if IRC 6323(f)(4) affects that specific case.

4. **Sale Proceeds.** If the debtor sells exempt property, the proceeds of the sale will normally go to the debtor rather than into the estate. However, if the Service filed an NFTL prior to the petition date, and the debtor sells exempt personal property, the IRS is entitled to the sale proceeds.

Note:

If the debtor sells exempt real property, Insolvency must contact Counsel to determine if IRC 6323(f)(4) affects that specific case.

5. **Sale of Property with Partial Exemption.** Trustees or debtors may move to sell assets for which the debtor has claimed a partial exemption under 11 USC § 522. In those situations the trustee or the debtor will seek permission to pay a portion of the proceeds of the sale to the debtor as part of the motion to sell the property. If the Service has filed a valid pre-petition NFTL or if the Service has filed an allowable priority claim (11 USC § 522(c)(1) and (2)), the Service should object to the trustee's motion to sell and request the exempt amount (or the portion in which the Service may claim an interest) be distributed directly to the IRS instead of to the debtor. Assuming the referral criteria in IRM 5.9.4.14.4 # are met, these cases should be referred to Counsel for the filing of this objection.
6. **Certificate of Discharge.** The order approving the sale may provide the property be sold free and clear of liens, with liens to attach to the sale proceeds. Usually this order is sufficient to clear the title, but the IRS may be requested to provide a Certificate of Discharge of the property from the lien. The federal tax lien will then no longer attach to the specific piece of property being sold. The certificate can be provided unless a legitimate reason exists not to do so. Insolvency should request the following:
 - A. Statement of facts concerning the sale
 - B. Legal description of the property
 - C. Copy of the court order approving the sale
 - D. Any other pertinent information
7. **Lien Discharge.** After review a discharge may be provided in the same manner as in a non-bankruptcy situation. The discharge will be prepared by an Advisory employee assigned to handle Certificates of Discharge.
8. **Tax Consequences.** The tax impact of any sale should be evaluated. If the sale will result in a significant capital gains tax, this may be an administrative expense payable in a Chapter 11 case on the effective date of the confirmed plan. In individual Chapter 11 cases, this takes on additional importance because the bankruptcy estate is a separate, taxable entity. If the bankruptcy estate cannot pay the tax on the effective date, the case will likely convert to Chapter 7. *The argument can be made that without abandonment, the sale will significantly diminish the estate because of the capital gains tax.*

Note:

In such cases, consideration should be given to objecting to the sale without the property first being abandoned to the individual debtor prior to the sale.

5.9.4.5.2 (09-04-2015)

Escrow Payoff Requests during a Chapter 13 Proceeding

1. **Sale or Refinance of Real Property.** Provisions for the sale or refinancing of real property may or may not be incorporated into a debtor's confirmed Chapter 13 plan, and the property may or may not be property of the estate.
2. **Trustee Involvement.** In some jurisdictions, trustees instruct the IRS to issue a written communication, often a Form 10492, *Notice of Federal Taxes Due*, to the escrow company so the Service will be paid directly from the escrow funds. Other trustees make the demand to the escrow company directly so all funds flow through them for disbursement to the creditors. In either case, Insolvency must advise the trustee of the amount necessary to satisfy the Service's secured claim so a release of the lien can be filed or a certificate of discharge provided.
3. **Insufficient Proceeds.** If proceeds from a sale are insufficient to satisfy the lien, the lien generally should not be released. Instead, a certificate of discharge can be provided to discharge the specific property sold from the lien. Insolvency caseworkers should consult Counsel with questions about the propriety of releasing a lien or providing a certificate of discharge.
4. **Form 10492 Preparation.** To prepare an accurate Form 10492, the Insolvency caseworker must have copies of the IRS's claim and the Chapter 13 plan (including amendments or modifications) as well as the order confirming the plan. The preparation of Form 10492 varies depending upon the facts of a particular case, but most fall into one of the following scenarios:
 - A. The IRS has an allowed secured claim, and the Service's claim is oversecured. (See IRM 5.9.13.19.2(7), *Oversecured*. The confirmed plan makes no provision for payment of the secured claim with post-petition interest under 11 USC § 506(b). Form 10492 should include post-petition interest computed at the IRC rate against the total amount of the secured claim, less any post-petition plan payments received from the trustee and allocated to the secured claim.
 - B. The plan contains a provision for payment of the IRS's secured claim at a specific interest rate. Form 10492 should compute post-petition interest on the amount provided for in the plan at the interest rate set forth in the confirmed plan. For cases filed prior to October 17, 2005, command code COMPA should not be used to compute post-petition interest unless the plan specifies the IRC rate of interest will be used. For cases filed on or after October 17, 2005, COMPA is the correct command code to use. Post-petition payments from the trustee allocated to the secured claim must be deducted.
 - C. The plan provides for payment of the IRS's secured claim for less than is shown on the IRS's proof of claim. The Insolvency caseworker should consult with Counsel to determine if the Service is bound by the terms of the confirmed plan or if the Service may insist upon payment of the amount shown on its secured proof of claim.
 - D. The demand for lien payoff from the escrow agent or title company is made before the Chapter 13 plan has been confirmed. This may occur when a sale or refinance of real property is pending at the time the bankruptcy is filed. Insolvency should instruct the debtor to:
 - Refer to the Chapter 13 trustee or local rules for instructions;
 - Ask his/her attorney about filing a motion to sell the property free and clear of the tax lien with the IRS's lien to attach to the proceeds of the sale; or
 - Ask his/her attorney about filing a motion for relief from the stay to allow the IRS to issue Form 10492 to be paid prior to confirmation of the plan.

E. The debtor has accrued post-petition taxes, and an NFTL has been recorded for those post-petition liabilities. The Insolvency caseworker must review the plan and order for confirmation. If the subject property vested back to the debtor and the confirmation order permits the debtor to sell or refinance property without court approval, the IRS may be allowed to issue Form 10492 for the full amount of the post-petition liability including accruals. If the plan specifically provides the subject property will be sold or refinanced to fund the plan, the IRS may be prohibited from making an escrow demand for the post-petition taxes unless sufficient equity exists to pay all of the debtor's pre-petition claims and post-petition tax debts. Counsel should be consulted in those cases. Insolvency may consider issuance of a Certificate of Discharge or Subordination under IRC § 6325 for the NFTL related to the post-petition taxes.

Caution:

Insolvency should not file a § 1305 claim in these cases without first consulting Counsel.

5.9.4.6 (01-14-2011)

Preferences

1. **Definition.** 11 USC § 547 allows a bankruptcy trustee to avoid and recover certain pre-petition transfers to creditors that benefit some creditors at the expense of other creditors.
2. **Trustee Authority.** Generally the trustee or debtor-in-possession in Chapter 11 cases has the authority under the Bankruptcy Code to avoid preferences. The trustee can recover a preferential payment for the benefit of the estate.
3. **Preference Criteria.** To qualify as a preference, a tax payment must be:
 - A. Made on or within 90 days before the date of the bankruptcy filing;
 - B. Made while the debtor was insolvent;
 - C. An amount more than the IRS would have received in a Chapter 7 bankruptcy proceeding; and
 - D. A payment on account of an antecedent debt, in other words, a late payment of tax.

Note:

Qualifications for preferences for other types of creditors under 11 USC § 547 generally mirror those for tax payments delineated above.

4. **Ordinary Course of Business Exception.** Debts incurred and paid by the debtor in the ordinary course of business or financial affairs cannot be avoided as preferences.
5. **Trust Fund Payments.** Pre-petition voluntary payments of trust fund taxes cannot be avoided as preferential transfers, because they are not considered to be transfers of property of the debtor. Rather, the funds are held in trust for the United States.
6. **Adversary Proceedings.** A preference action must be brought as an adversary proceeding in the bankruptcy case. Such actions must be referred to Counsel.

5.9.4.7 (01-01-2006)

Bankruptcy Court Tax Determinations

1. **11 USC § 505(a).** As a general rule, 11 USC § 505(a) permits the bankruptcy court to determine the amount or the legality of any tax, addition to tax, or tax penalty. This applies to tax liabilities of the debtor or of the estate whether or not previously assessed, paid, or contested.
2. **Prior Court Ruling.** The bankruptcy court may not re-examine a tax liability ruled on by a court of competent jurisdiction before the filing of the bankruptcy petition.
3. **Criteria for Court Determination.** The bankruptcy court can determine the right of the estate to a tax refund if the taxing authority does not rule on the trustee's refund claim within 120 calendar days (11 USC § 505(a)(2)(B)).

Note:

The regular six-month determination period on a refund claim under IRC § 6532(a) is reduced to 120 days in an effort to close the bankruptcy estate as soon as possible.

5.9.4.8 (09-04-2015)

Prompt Determination Requests from Trustee

1. **Bankruptcy Court Authority.** The bankruptcy court has the authority to determine the amount of any administrative taxes due upon the completion of the IRS examination per 11 USC § 505(b).
2. **Prompt Determination Requests.** A trustee in a bankruptcy proceeding may ask the IRS to make a "prompt determination" of any unpaid liability of the estate for any tax incurred during the administration of the case. The trustee can request this by submitting a tax return and requesting a prompt determination of that return (11 USC § 505(b)(2)).
3. **Area of Responsibility.** CIO will review prompt determination requests for completeness, as specified in *IRM 5.9.4.8.1 (3)* below. Incomplete requests will be transferred to Field Insolvency for return to the requestor. Complete requests will be forwarded to the appropriate function via Form 3210. Caseworkers should consult the Prompt Determination and Refund Processing chart in *Exhibit 5.9.4-2* for proper routing procedures. If no signed Form 3210 acknowledgment is returned, Insolvency will contact the recipient to verify receipt.
4. **Critical Time Frames.** The government has 60 calendar days from the date the request is received in Insolvency to notify the trustee that the return has been selected for examination. The government has a total of 180 calendar days from the date of the request to complete the examination and to notify the trustee of any additional tax due. (A longer period may be granted with court permission.) Failure to notify the trustee within 60 days or to complete the examination within 180 days will discharge the estate, the trustee, the debtor, and any successor to the debtor from any liability for the tax. The discharge will occur upon payment of the tax shown on the return unless the return is fraudulent or contains a material misrepresentation.
5. **Court's Mailing Matrix - IRS Address.** Pursuant to 11 USC § 505(b)(1)(A), the clerk of each bankruptcy court is required to keep a list where government offices may designate an address for serving prompt determination requests. The CIO must ensure the local bankruptcy clerk lists the following national Insolvency address for serving prompt determination requests.
Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

5.9.4.8.1 (09-04-2015)

Processing Prompt Determination Requests

1. **Trustee Requests for a Tax Determination.** Rev. Proc. 2006-24 establishes the steps for trustees to submit returns for a prompt determination. Requests must be for a Chapter 7, 11, 12, or 13 bankruptcy case (Chapter 9 and 15 cases are not eligible). All requests by a trustee for a prompt tax determination of any unpaid tax liability of the estate under 11 USC § 505(b)(2) are to be submitted by a signed written request in duplicate. The request must be filed with Insolvency at the national Insolvency address.
2. **Copy of Return.** Filed with the request for prompt determination must be an exact copy of a valid return for the completed taxable period filed by the trustee or debtor-in-possession. To be valid, the return must be signed under penalties of perjury. If the section of the return form that requires it be signed under penalties of perjury is modified in any way, such as by striking out, deleting, or changing the language of that requirement, that return form will not qualify as a valid return.

Note:

Unsigned returns may be accepted if they are accompanied by a *signed* Form 8879, *IRS e-file Signature Authorization*.

3. **Elements of a Request.** Before forwarding the prompt determination request, Insolvency must review the request package to ensure it is acceptable for processing per Rev. Proc. 2006-24. A prompt determination request must include a signed written request submitted in duplicate with:

- A. A statement that the request is for prompt determination of a tax liability, specifying the type of return and the tax period for which the request is being filed;
- B. The name and location of the office where the original return was filed;
- C. The name of the debtor;
- D. The debtor's TIN;
- E. The type of bankruptcy estate;
- F. The bankruptcy case number; and
- G. The location of the bankruptcy court.

Note:

If any item of information listed above is missing from the request, the request will be determined to be incomplete.

4. **Incomplete Packages.** Insolvency must determine that the documents with mandatory information specified in Rev. Proc. 2006-24 are received and are complete. If documents required from the trustee or debtor-in-possession are missing or incomplete, the CIO will transfer the incomplete package to Field Insolvency via Form 3210 with the 505(b) checklist. See *Exhibit 5.9.4-3* to view the checklist. Field Insolvency will notify the trustee that the request is incomplete. All of the documents will be returned to the requestor, with an explanation identifying the missing papers or information, and a request that the package be resubmitted with the correct documentation to the Field Insolvency address specified in the correspondence returning the incomplete request. *New time frames start on the date a complete package is received by Insolvency.*

Note:

Insolvency must check the copy of the tax return submitted with the prompt determination request to ensure it contains a TIN in the proper space. If a TIN is lacking, the package must be returned to the submitter for correction.

5. **Verification and Transmittal.** Once a prompt determination request is determined to be complete, Insolvency must immediately transmit all documents to the appropriate function. The copy of the return should be prominently marked at the top: "*COPY ONLY – FURNISHED PER REV. PROC. 2006-24.*" Insolvency must verify the return sent to them is a copy. If an original return is received, Insolvency must duplicate it, furnish a copy (so marked) to the appropriate function, and immediately forward the original for normal processing to the designated Campus.
6. **Shipping Instructions.** After prompt determination request packages have been confirmed as complete, they are to be forwarded by overnight courier to the appropriate function. The most cost effective method of delivery should be used. Contact information and mailing addresses for the various functions' coordinators can be found on the Prompt Determination Contact List on the CIO shared drive.
7. **Large Business Requests.** To determine if a corporation's account is handled by the Large Business and International (LB&I) Division, Insolvency caseworkers must review the total assets listed on the Form 1065, 1120 or 1120S. If the total assets are greater than \$10 million, the request falls under the scope of LB&I.
8. **Time Frames.** Transmittal to the appropriate function must be done within *three workdays* of the date the copy of the return is received by Insolvency. The transmittal must be done within this time frame because *within 60 calendar days* from the date the request is received in Insolvency, that function must review the copy of the return and advise the requestor if the return is to be selected for examination.
9. **AIS Histories.** Some of the prompt determination requests are for cases not on AIS. Establishing a case on AIS for the sole purpose of monitoring a prompt determination request is not necessary. However, if a case has been established on AIS, the history documentation must annotate the receipt of a prompt determination request and subsequent actions taken.

**5.9.4.8.2 (01-01-2006)
Immediate Assessment**

1. **Tax Determination by Court.** Under 11 USC § 505(c) and IRC § 6871(b)(2), after the bankruptcy court determines a tax liability, the government may generally assess the tax against the estate, the debtor, or the successor of the debtor, notwithstanding applicable deficiency procedures. Once the tax is determined by the court, generally no bar to assessment exists. The ASER, if previously suspended in part by the bankruptcy case, may begin to run thereafter.

Note:

Immediate assessments can be made for deficiencies incurred by the debtor's estate pursuant to IRC § 6871(b)(1).

**5.9.4.9 (09-04-2015)
Prompt Refund Requests from Trustee**

1. **Revenue Procedure 2010-27.** The trustee or debtor-in-possession representing the bankruptcy estate of a debtor may request a prompt refund determination from the Service under 11 USC § 505(a). Rev. Proc. 2010-27 was issued on July 15, 2010 to update the procedures for requesting the tax refund. The revenue procedure clarifies that the procedure does not apply to applications for a tentative carryback or refund adjustment under IRC § 6411. The bankruptcy court may not determine any right of the bankruptcy estate to a tax refund before the earlier of:
- 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed.
 - A determination by such governmental unit of such refund.

This revenue procedure applies to all cases except Chapter 9, Municipal Debt Adjustment cases and Chapter 15, Ancillary and Cross-Border cases.

2. **Prompt Refund Requests.** A trustee or debtor-in-possession may request a tax refund from the Service if the credit or refund of an overpayment was not claimed on a return previously filed by the debtor. The trustee may do so by filing the appropriate amended return or form. **If:**
- A. A Form 1040 or 1040A was filed by an individual debtor, the trustee can request the credit or refund on a Form 1040X, Amended U.S. Individual Income Tax Return.
 - B. A Form 1120 has been filed by a corporate debtor, a claim for refund can be made by the trustee on Form 1120X, Amended U.S. Corporation Income Tax Return.
 - C. Any other form than Form 1040, 1040A or 1120 was filed by the debtor, a claim for credit or refund should be requested on the appropriate amended income tax return.

D. In the case of an overpayment other than income tax for which the debtor has filed a return, the claim for credit should be made on Form 843, *Claim for Refund and Request for Abatement*.

Note:

An exact copy of the return (or returns) that is the subject of the claim should also be submitted, together with a statement of the name and location of the office where the return was filed.

E. With regard to an overpayment of taxes of the bankruptcy estate incurred during the administration of the bankruptcy case, a properly executed tax return shall, at the election of the trustee, constitute a claim for credit or refund of the overpayment.

3. **Area of Responsibility.** CIO will review prompt refund requests for completeness, as specified in *IRM 5.9.4.9.1* below. Incomplete requests will be transferred to Field Insolvency for return to the requestor. Complete requests will be forwarded to the appropriate function via Form 3210. Caseworkers should consult the Prompt Determination and Refund Processing chart in *Exhibit 5.9.4-2* for proper routing procedures. If no signed Form 3210 acknowledgment is returned, Insolvency will contact the recipient to verify receipt.
4. **Critical Time Frames.** The Service will complete the examination and notify the trustee of the decision rendered within 120 days from the date of the filing of the appropriate amended return, Form 843, or original return filed by the trustee on an expedited basis.
5. **IRS Address.** The forms or returns described in Rev. Proc. 2010-27 must be mailed to:
Internal Revenue Service
Centralized Insolvency Operation
P. O. Box 7346
Philadelphia, PA 19101-7346
The return or form must be marked "Request for Prompt Refund" and be accompanied by a written statement explaining that the request is being submitted pursuant to Section 505(a) of the Bankruptcy Code.

**5.9.4.9.1 (09-04-2015)
Processing Prompt Refund Requests**

1. **Trustee Requests for a Prompt Refund.** Rev. Proc. 2010-27 establishes the steps for trustees to submit a request for a tax refund from the Service. All requests by a trustee or debtor-in-possession for a refund under 11 USC § 505(a)(2)(B) must be filed with Insolvency at the address shown in *IRM 5.9.4.9 (5)*.
2. **Copy of Return.** If the request for a prompt refund is made using Form 843, and the debtor previously filed a tax return, an exact copy of the return (or returns) that is subject of the claim for refund should also be submitted with the request. To be valid, the return must be signed under penalties of perjury. If the section of the return form that requires it be signed under penalties of perjury is modified in any way, such as by striking out, deleting, or changing the language of that requirement, the return form will not qualify as a valid return.

Note:

Unsigned returns may be accepted if they are accompanied by a *signed* Form 8879, *IRS e-file Signature Authorization*.

3. **Elements of a Request.** Before forwarding the prompt refund request, Insolvency must review the request package to ensure it is acceptable for processing per Rev. Proc. 2010-27. The return or form must be marked "Request for Prompt Refund." The request must:
 - A. Specify the name and location of the office where the original return was filed, if the debtor has filed a return and the trustee has submitted a Form 843.
 - B. Contain a statement referencing Bankruptcy Code § 505(a) and/or Rev. Proc. 2010-27.
 - C. Be for a Chapter 7, 11, 12, or 13 bankruptcy case (Chapter 9 and 15 cases are not eligible).
 - D. Include a copy of the return(s) that is the subject of the claim for refund, if the debtor has filed a return and the trustee has submitted a Form 843.

Note:

If any item of information listed above is missing from the request, the request will be determined to be incomplete.

4. **Incomplete Packages.** Insolvency must determine that the documents with mandatory information specified in Rev. Proc. 2010-27 are received and are complete. If documents required from the trustee or debtor-in-possession are missing or incomplete, the CIO will transfer the incomplete package to Field Insolvency via Form 3210 with the 505(a) checklist. See *Exhibit 5.9.4-4* to view the checklist. Field Insolvency will notify the requestor that the request is incomplete. All of the documents will be returned to the requestor, with an explanation identifying the missing papers or information, and a request that the package be resubmitted with the correct documentation. *New time frames start on the date a complete package is received by Insolvency.*
5. **Verification and Transmittal.** The CIO is responsible for the immediate transmittal of all documents in a complete prompt refund request to the appropriate function. The copy of the return should be prominently marked at the top: "COPY ONLY - FURNISHED PER REV. PROC. 2010-27". The CIO must verify that any return sent to them is a copy. If an original return is received, it must be duplicated and a copy furnished (so marked) to the appropriate function. The original return should be forwarded for normal processing to the designated Campus.
6. **Shipping Instructions.** After prompt refund request packages have been confirmed as complete, they are to be forwarded by overnight courier to the appropriate function. The most cost effective method of delivery should be used. Contact information and mailing addresses for the various functions' coordinators can be found on the Prompt Determination Contact List on the CIO shared drive.
7. **Large Business Requests.** To determine if a corporation's account is handled by LB&I, Insolvency caseworkers must review the total assets listed on the Form 1065, 1120 or 1120S. If the total assets are greater than \$10 million, the request falls under the scope of LB&I.
8. **Time Frames.** Transmittal to the appropriate function must be done within *three workdays* of the date the complete package is received by Insolvency. The transmittal must be done within this time frame because *within 120 calendar days* from the date the request is received in the CIO, that function must review the copy of the return, make a refund determination, and advise the requestor of their determination.
9. **AIS Histories.** Some of the prompt refund requests are for cases not on AIS. Establishing a case on AIS for the sole purpose of monitoring a prompt refund request is not necessary.
 - A. If the case is *not* on AIS, the caseworker should review IDRS to determine if there are any balances due or unfiled returns. If there are balances due and/or unfiled returns, information needed to open a case should be secured from PACER. The case should be added to AIS following the instructions in *IRM 5.9.12.3(2), Adding New Cases Manually*.
 - B. If the case *is* on AIS, or has been added from the refund request, the AIS history should address receipt of the request and the actions taken. If the request is for a complete package, the history should state, "Request for Prompt Refund received MM-DD-YYYY. Package complete. Forwarded to [function]." If the request is incomplete, the history should state, "Request for Prompt Refund received MM-DD-YYYY. Package incomplete [listing incorrect or missing items]. Forwarded to Field Insolvency for trustee contact."

Upon receipt, Field Insolvency must document receipt of the package, information included in the response to the requestor, and the date the response was sent to the requestor.

5.9.4.10 (09-04-2015)

Offers in Compromise and Bankruptcy

1. **Introduction.** The Bankruptcy Code provides a means for balancing the interests of the taxpayer and the Service, as does the administrative offer in compromise (OIC). An administrative offer in compromise is one submitted in accordance with the guidelines and procedures set forth in Rev. Proc. 2003-71 and IRM 5.8, *Offer in Compromise*. Administrative and legal problems would be created if a tax liability were simultaneously the subject of a court-supervised bankruptcy case and the administrative offer in compromise process.
2. **Service Policy.** When a taxpayer has filed for bankruptcy protection, IRS's policy is not to consider administrative offers in compromise from a taxpayer in bankruptcy. Instead Insolvency considers payment proposals, usually in the form of plans filed by the debtor in the bankruptcy case, under guidelines set forth in IRM 5.9.8.14.2, *The Plan of Reorganization*; IRM 5.9.9.6, *Chapter 12 Plans*; and IRM 5.9.10.5, *The Chapter 13 Plan*, depending upon the type of bankruptcy case filed.
3. **Rule.** The rule to follow on OICs by the Service:
 - A. Administrative offers in compromise are returned to the debtor as "*not processable*" if the taxpayer is a debtor in a bankruptcy case for which a discharge has not yet been entered.
 - B. However, even though administrative offers in compromise are not considered when a taxpayer is in bankruptcy, in appropriate cases, the Service may work with the debtor within the bankruptcy case to achieve a result that is in the best interests of both the debtor and the Service. (See IRM 5.9.8.14.2(8), *Deficient Plans - Exceptions*, and IRM 5.9.10.5(4), *Deficient Plans - Exceptions*.)
4. **Specific Bankruptcy Chapters.** Listed below is the Service's policy for specific bankruptcy chapters which clarify the IRS's position on the processing and consideration of OICs in bankruptcy-related situations.
 - A. **Chapter 7.** Only after a discharge or a dismissal has taken place, can an administrative OIC be considered by the Service in a Chapter 7 proceeding. Because a Chapter 7 discharge is usually issued quickly, the taxpayer is not harmed by the delay. Furthermore, once the discharge is entered, the Service will be able to determine which taxes are discharged and will be able to make a determination of "Doubt as to Collectibility" under its administrative OIC procedures. (See IRM 5.8.10.2.3, *Acceptance of Offer in Compromise After Chapter 7 Bankruptcy*.)
 - B. **Chapter 11.** In Chapter 11 cases involving individual debtors, as in Chapter 13 cases, the Service will not consider any OICs prior to discharge. When the Chapter 11 debtor is not an individual, an administrative OIC can be *considered* in unusual circumstances after plan confirmation, but only with respect to tax liabilities which are the subject of a defaulted plan if the default cannot be cured or the plan modified. Such an administrative OIC is only appropriate if unanticipated changes in circumstances cause an inability to meet the terms of the plan. The decision for consideration of an OIC must be made on a case by case basis. The Service can decline to consider an administrative OIC after a Chapter 11 default if the particular facts of the case show an administrative OIC would be inappropriate.

Note:

Before the Service can consider processing an administrative OIC in a Chapter 11 bankruptcy case involving a non-individual, the Service must have made a determination that the debtor's plan has actually defaulted and cannot be cured, and the taxpayer has no other outstanding liabilities. Additionally, the bankruptcy court can no longer have jurisdiction over any tax liabilities which are the subject of the OIC submitted. The Service's decision to *consider* an administrative OIC submitted by a debtor does not indicate the Service has *accepted* the offer.

- C. **Chapter 12.** Administrative OICs in Chapter 12 generally will not be considered. However, in unusual instances, changed circumstances may justify consideration of an administrative OIC in defaulted Chapter 12 plan cases, just as in defaulted Chapter 11 plans, especially since Chapter 12 bankruptcies tend to involve struggling small businesses.
- D. **Chapter 13.** An administrative OIC will not be considered prior to discharge during the pendency of a Chapter 13 plan.

Note:

This policy does not result in harm to the debtor because the debtor is not precluded from resolving his or her tax liabilities in the context of the bankruptcy proceeding.

5. **Consideration of an Administrative OIC.** The Service's decision to *consider* an administrative OIC from debtors who have taken advantage of the relief offered under the Bankruptcy Code is limited to the situations described above. The Service's decision to *accept* an administrative offer in compromise falls within the discretion of the Service.
6. **Pre-Petition OIC Payments.** When a debtor has submitted an OIC with a payment pre-petition, and (s)he files bankruptcy while the OIC is pending, the IRS may generally retain the payment. A payment made within 90 days before the filing of a bankruptcy may qualify as a preferential transfer and be avoidable under 11 USC § 547(c). However, the trustee has the burden of proving this payment is a preference. The IRS may retain this OIC payment until the trustee persuades the Service the payment is a preference and not subject to the exceptions under 11 USC § 547(c). Some payments, namely those to pay off trust fund taxes, are not avoidable as preferences, because the debtor has no property interest in the funds.

Note:

The payments submitted with an OIC may be the application fee, amounts required by the Taxpayer Increase Prevention and Reconciliation Act (TIPRA), or as a deposit.

7. **Post-Petition OIC Payments.** When a debtor submits an OIC with a payment post-petition, the payment should be treated in the following manner according to the bankruptcy chapter under which the debtor has filed for bankruptcy protection:
 - A. **Chapter 7.** The Service can keep the payment submitted with the OIC, without violating the automatic stay, if the payment is made from post-petition earnings and is applied to non-dischargeable taxes. Post-petition earnings are not property of the estate, and the Service may retain down payments made with such earnings even if the OIC is deemed not processable. In this situation, Insolvency should document the AIS history screen with pertinent information relating to such payments, including any contacts made with the debtor on this matter, and confer with Counsel should legal advice be required.
 - B. **Chapter 11.** The Service cannot retain OIC payments submitted by a Chapter 11 debtor post-petition. In general, property of the estate in Chapter 11 may include property listed under 11 USC § 541 that is obtained post-petition. For Chapter 11 debtors who are individuals, property of the estate includes post-petition earnings. The Service may not retain OIC payments made with property of the estate.
 - C. **Chapter 12 and 13.** The Service cannot retain OIC payments submitted by a Chapter 12 or 13 debtor post-petition. In Chapter 12 and 13, property of the estate includes property under 11 USC § 541 that is acquired post-petition and earnings obtained post-petition. The Service may not retain OIC payments made with property of the estate.

Note:

The payments submitted with an OIC may be the application fee, amounts required by the Taxpayer Increase Prevention and Reconciliation Act (TIPRA), or as a deposit.

5.9.4.10.1 (09-04-2015)

Accepted but Not Completed Administrative OICs

1. **The Service's Claim and Incomplete Administrative OICs.** When a taxpayer with an *accepted but not completed* administrative OIC files for bankruptcy, the Service has a claim for the full amount of the underlying tax liability because the OIC has not yet been satisfied. Section 8 h) of Form 656, *Offer in Compromise*, provides the tax being compromised remains a tax liability until the taxpayer meets all the terms and conditions of the offer.

2. **Tax Claim.** If the taxpayer files for bankruptcy before the terms and conditions of an administrative OIC are completed, any claim the IRS files in a bankruptcy proceeding will be a tax claim. The Service's policy on treatment of an accepted administrative OIC for specific bankruptcy chapters when payments have not yet been completed is discussed below.
3. **Pending OIC Cases and Documentation.** The case classification "OIC PENDNG" must be entered on AIS to prevent case closure until the OIC is addressed. A summary history should also be entered on the AIS History Screen.
4. **Chapter 7 Asset Case.** The Service should file a proof of claim for the full amount of the unpaid tax liabilities.
 - A. In Chapter 7 cases no mechanism exists for the debtor to assume an executory contract, such as an OIC.
 - B. However, if once the bankruptcy case is concluded and the taxpayer promptly resumes payments under the offer, or the amount of the offer was paid in full as a result of distributions in the bankruptcy case, the Service should honor the offer of the post-petition debtor.

Note:

The five-year compliance provisions of the OIC still apply.

5. **Chapters 9, 11, 12.** Generally, the same guidelines are followed as for a Chapter 13 (below). Counsel can provide specific legal guidance.
6. **Chapter 13.** When a taxpayer with an accepted but not yet completed administrative offer in compromise files a Chapter 13 petition, the Service should file a protective claim for the full underlying tax liability to protect the Service's interests.
 - A. The proof of claim should cover the full amount of the unpaid underlying tax liability, because the Service is entitled to collect the full amount of the unpaid underlying tax liabilities if the OIC is breached (non-performance of contract).
 - B. However, the debtor can choose to assume the OIC as an executory contract in a Chapter 13 plan. This means the debtor agrees, as part of the Chapter 13 confirmation process, to honor the OIC and fulfill its terms during the bankruptcy case.
 - C. If the debtor assumes the OIC, the offer should not be treated as breached, and the plan should provide for the full amount due under the OIC. As noted above, *the proof of claim will list the full underlying tax liabilities.*

Note:

The bankruptcy plan should clearly state if the payments will be made outside the plan or through the bankruptcy trustee. An OIC assumed in the plan as an executory contract is an unusual plan provision and it must be addressed in the *****SUMMARY***** history prior to transfer to the CIO.

- D. If the payments are made outside the bankruptcy plan, the debtor will continue making payments directly to the Monitoring Offers in Compromise (MOIC) group.
- E. When the payments are made through the bankruptcy plan, the trustee will mail the payments to the CIO.
- F. To ensure that the payments received through the bankruptcy plan are applied correctly, the caseworker must contact MOIC for the terms of the accepted OIC. The CPM must be established according to the terms of the accepted OIC. Payments are generally applied to the oldest liability first, even if the oldest liability is an unsecured general liability. All periods must be classified as "unsecured priority" on the CPM screen so payments can be systemically downloaded. The classification on the proof of claim should not be changed to match the CPM screen.
- G. Once the debtor chooses to assume an OIC, the debtor has agreed to pay in full the remaining obligation under the OIC. Accordingly, the Service must honor the OIC by accepting its payment as satisfying the obligation.
- H. The MOIC group assigned the case prior to the bankruptcy filing will continue monitoring the debtor's compliance with the terms of the accepted OIC.
 - I. The debtor will have a choice (1) to assume the OIC in the plan or (2) to be liable for the underlying tax liability, whichever is in the debtor's best interest.
- J. The proof of claim should contain an annotation to reflect it is being filed as a "Protective Claim" in the event the debtor does not assume the OIC as an executory contract in the plan.
- K. If the debtor assumes an OIC in a Chapter 13 plan, but the case is subsequently converted to a Chapter 7, the Service may claim the full underlying tax liability as listed on the proof of claim.

Caution:

If the debtor does not assume the OIC or does not provide for payment of the unpaid underlying liability in the plan, the Service should object to the plan.

7. **Future Compliance Provisions.** In a case under any bankruptcy chapter, if the debtor has made all payments under the OIC but is still subject to the future provisions of the offer, a proof of claim should not be filed.
 - A. Chapter 13. If the debtor later fails to pay post-petition taxes and is still in a Chapter 13 bankruptcy, the Service can use the normal remedies available to it to collect liabilities that become payable during the bankruptcy plan. Generally, the Service files a claim under 11 USC §1305 for the liabilities or seeks conversion or dismissal of the bankruptcy case.
 - B. Chapters 11 and 12. In a Chapter 11 or a 12 bankruptcy, if the case is still pending, the Service can seek conversion or dismissal of the case for failing to pay post-petition taxes.

Note:

If a debtor whose bankruptcy commenced on or after October 17, 2005, fails to file returns due, the Service may request the court to convert or dismiss the case under 11 USC § 521(j).

- C. Chapter 7. In Chapter 7, the Service can terminate the defaulted OIC after the automatic stay is lifted and collect non-dischargeable liabilities administratively.

8. **Re-Input of Status 71.** If a post-petition taxpayer wishes to continue to make payments *after bankruptcy*, to comply with the terms of a previously accepted OIC, Insolvency should request status 71 (OIC status) be re-input on IDRS when closing the bankruptcy.
9. **Service Coordination.** Close coordination and cooperation among Insolvency, Field Collection, MOIC, and Counsel is integral to the prompt and efficient handling of administrative OICs in bankruptcy. IRM 5.8.10.2, *Bankruptcy*, provides additional information on administrative OICs. Monitoring of OICs is addressed further in IRM 5.19.7.3.10.5, *Bankruptcy Filed After Acceptance of an Offer*. Counsel should be consulted for assistance and legal advice on case-specific issues.
10. **Communication.** A contact list should be established between Field and Centralized Insolvency units and other IRS offices who work on bankruptcy-related cases, including OIC groups and Campuses, to facilitate communication among these units. The list should be updated periodically to remain an effective communications tool for employees who work administrative OICs and bankruptcies. SERP provides a list of OIC campus contact phone numbers under the "Who/Where" tab. This information can also be accessed at: http://serp.enterprise.irs.gov/databases/who-where.dr/coic_backend.htm.

1. **Bankruptcy Tax Crimes Program.** The IRS created the Bankruptcy Tax Crimes Program to pursue alleged bankruptcy fraud (and related tax offenses) commonly encountered by Collection employees. Both Field and Centralized Insolvency employees are charged with identifying cases of potential bankruptcy fraud, but Field Insolvency is responsible for preparing and submitting evidence for fraud referrals.
2. **Detection of Potential Bankruptcy Fraud.** During the pendency of a bankruptcy case, Insolvency caseworkers may obtain or develop information indicating a federal criminal offense may have been committed. The evidence may implicate the debtor, the trustee, a third party, or a representative in the proceeding.
3. **Third Party Contacts and Insolvency.** If a Field Insolvency caseworker submits a fraud referral to Criminal Investigation (CI), third party contact provisions under IRC § 7602(c) apply until the actual referral is made to CI.
4. **Development of Referral.** The information Insolvency gathers may indicate offenses over which the Service has jurisdiction under Title 26 Internal Revenue Code, for example, filing false tax returns, and Title 18 tax-related violations. Also, Insolvency caseworkers may discover "pure" Title 18 violations, over which the Service does not have responsibility.

Note:

Title 18 violations may include: Title 18 USC § 152, *Concealment of Assets, False Oaths and Claims, Bribery*, and Title 18 USC § 157, *Bankruptcy Fraud*.

5. **Bankruptcy Fraud Information.** Information relating to bankruptcy fraud procedures is found in Document 9762, *Desk Guide for Bankruptcy Tax Crime Referrals*.

5.9.4.11.1 (01-01-2006)

Fraud Referrals

1. **Insolvency Fraud Referrals.** Fraud referrals involving a bankruptcy case are to be routed to either:
 - A. Criminal Investigation, or
 - B. The Disclosure Office handling the jurisdictional area of the bankruptcy court where the case is filed.
2. **Criminal Investigation (CI) Referrals.** Fraud referrals for tax-related violations based on Title 26 and related statutes are routed to CI by the bankruptcy fraud technical advisor as outlined in paragraph (5) below.
 - A. If a potential referral relates to bankruptcy tax offenses (for example, income tax evasion in conjunction with concealment of assets from the bankruptcy trustee), the matter should continue to be developed for referral to CI.
 - B. Likewise, if a referral relates to a concealment of assets from the bankruptcy trustee and indications of a money laundering violation are present, it is handled by CI.
3. **Disclosure Referrals.** Fraud technical advisors (see paragraph (5) below) should direct referrals to the local Disclosure Office when *non-tax* criminal activity is suspected that does not meet CI referral criteria, including activities relating to "pure" bankruptcy fraud under 18 USC § 157 and *Concealment of Assets, False Oaths and Bribery* under 18 USC § 152.
4. **Disclosure's Responses to Fraud Referrals.** If the Disclosure Officer determines the referral from Insolvency merits further review, the information will be forwarded to the appropriate agency for additional investigation. Instructions on the nature of information needed in the non-tax referral to Disclosure can be found in IRM 11.3.28.7.1, *Disclosures of Return Information (Other than Taxpayer Return Information) Concerning Non-Tax Criminal Violations*.
5. **Working Fraud Referrals.** Field Insolvency caseworkers should process a bankruptcy fraud referral as follows.
 - A. The Insolvency caseworker originating a bankruptcy fraud referral forwards the referral to the fraud technical advisor.
 - B. If assistance is needed to prepare a quality referral, the fraud technical advisor can advise the employee.
 - C. If the fraud technical advisor needs guidance with the referral, (s)he may contact Counsel for assistance.
 - D. The fraud technical advisor routes the completed referral either to CI or the local Disclosure Office as appropriate.

5.9.4.11.2 (01-01-2006)

Fraud Technical Advisor

1. **Bankruptcy Fraud.** When evidence of bankruptcy fraud is found through processing at the Centralized Insolvency Operation, the case and corroborating documentation should be transferred to the Field Insolvency group handling that court's jurisdiction. When evidence of fraud is detected by Field Insolvency, the case remains with the Field caseworker. Field Insolvency should consult the Area fraud technical advisor for assistance in preparing a referral for any case of potential fraud identified by its office or any other office in the IRS.
2. **Fraud Coordinator Responsibilities.** The fraud technical advisor ensures referrals are complete prior to sending them forward. For assistance in perfecting the referral, the fraud technical advisor may contact Counsel. Once a fraud referral package has been completed, the fraud advisor transmits it to the appropriate office.
3. **Quality Referrals.** Each Field Insolvency office should have a list of criteria for the selection of cases for referral consistent with local procedures. Insolvency groups should work closely with Counsel to develop referrals with a high probability of acceptance for prosecution.

5.9.4.11.3 (01-01-2006)

Fraud Indicators

1. **Fraud Awareness.** Service employees, in both Insolvency and Field Collection, who have information concerning a debtor's assets must be able to identify major indicators of bankruptcy fraud.
2. **Bankruptcy Fraud Indicators.** Listed below are common indicators of bankruptcy fraud.
 - A. Absence of or evasiveness by knowledgeable officers for testimony purposes at the bankruptcy court's 341 meeting of creditors.
 - B. Concealment of assets.
 - C. Conduct contrary to industry practice.
 - D. Discrepancies between pre- and post-bankruptcy filing financial information provided to the IRS (e.g., to revenue officers).
 - E. Failure to keep usual business records.
 - F. Fire, theft, or loss prior to or after the bankruptcy.
 - G. Frequent amendments to schedules, statements of financial affairs, and/or monthly operating reports.
 - H. Frequent cash transactions.
 - I. Inability to contact principals at debtor's stated business location.

- J. Incomplete or missing books or records.
- K. Inconsistencies between recent financial statements, tax returns, and debtor's schedules and statement of financial affairs.
- L. Inflated salaries, bonuses, or cash withdrawals by officers, directors, shareholders, or other insiders.
- M. Payoff of loans to directors, officers, shareholders, relatives, or other insiders shortly before bankruptcy.
- N. Recent departure of officers, directors, or partners.
- O. Serial bankruptcy cases.
- P. Sudden depletion of inventory post-petition.
- Q. Transfer of property to insiders, shareholders, and/or relatives shortly before bankruptcy.
- R. Unanswered questions, or incomplete information on debtor's schedules and statement of financial affairs.
- S. Unusual depletion of assets shortly before the bankruptcy filing.
- T. Engaging in illegal activities.
- U. Indications that valuable assets belonging to the taxpayer are being acquired or held in the names of others.
- V. Making false, misleading, or inconsistent statements.
- W. Personal living standard and assets inconsistent with income.
- X. Self-serving statements with no documentary proof.
- Y. Submitting a false document or affidavit.
- Z. Trying to conceal a pertinent fact or record.

5.9.4.12 (01-01-2006)

Criminal Investigation (CI) Controls on Tax Accounts

1. **CI Controls.** In the course of a bankruptcy proceeding, a debtor may contact Insolvency requesting assistance from the Service (for example, asking about a delayed income tax refund). Insolvency, through case research or during a cursory review, may identify Criminal Investigation (CI) controls on the debtor's accounts (e.g., TC 914 or TC 916).
2. **Confidentiality.** No indication or confirmation of CI involvement can be given to a debtor or debtor's representative attempting to obtain more specific information on a tax account or tax issue even if the debtor or representative is being persistent. If a debtor or debtor's attorney asks if a criminal investigation is open on the debtor's case, the Insolvency caseworker must contact Counsel and CI immediately to determine the proper response. *Insolvency must take no actions that might jeopardize an ongoing criminal investigation.*
3. **Prompt CI Contact.** Insolvency must promptly contact CI at the Campus on all inquiries involving account(s) with CI controls. Campus CI can provide contact information for the CI Special Agent (SA) who requested the controls.
 - A. When CI controls are identified on accounts, even if the freeze is only on one of several tax modules, Insolvency must contact CI immediately to advise CI of the bankruptcy filing and Insolvency's plans to file a proof of claim (if applicable).
 - B. A meeting should be scheduled with the Special Agent in Charge (SAC), the Insolvency caseworker and manager, and SBSE and Criminal Tax Counsel to discuss coordinating the civil and criminal cases.
4. **Counsel Advice.** If Insolvency requires legal advice on any case in which CI advises withholding collection (such as not filing a proof of claim), prompt contact with Counsel should follow according to local management direction. If any issues arise between Insolvency and CI, Insolvency should seek Counsel's advice. (See IRM 5.9.13.16, *Criminal Investigation Involvement*.)

5.9.4.13 (01-01-2006)

Failure to Pay Tax Penalty and Failure to Pay Estimated Income Tax Penalty

1. **Provisions of IRC § 6658.** IRC § 6658 provides no addition to tax shall be made for failure to make timely payment of tax during the pendency of a bankruptcy case, except for taxes which arise from the failure to pay or deposit a tax withheld or collected from others and required to be paid over to the United States (for example, trust fund taxes).
 - A. In the case of a pre-petition tax for which a return becomes due during the proceeding (the due date of the return is after the petition date), no failure to pay penalty will be asserted during the pendency of the bankruptcy.
 - B. In the case of a tax for a pre-petition delinquent return which was recently filed, or if the pre-petition tax was assessed before the start of the proceeding, the penalty will be asserted up to the petition date.
 - C. In the case of an additional liability for a pre-petition tax year, the penalty will be asserted from the date of assessment to the petition date.
 - D. In all of the instances listed above, no penalty will be asserted while the bankruptcy case is active. The penalty is suspended from the petition date. The penalty resumes from the date the case is dismissed or closed on non-dischargeable liabilities.
2. **If Incurred by Trustee or DIP.** A failure to pay penalty will continue to accrue on tax incurred by the trustee or debtor-in-possession unless the failure occurred pursuant to an order of the court finding probable lack of funds in the estate to pay administrative expenses.
3. **IDRS.** In most cases, IDRS will properly restrict failure to pay penalties unless a manual restriction has been placed on the account with a TC 270 and TC 271. For 941 taxes, IDRS will also suppress FTP penalties for the entire module because it cannot differentiate just the withheld portion.
4. **IRC References.** The penalties described above are found in IRC § 6651 (failure to pay penalty), IRC § 6654, (estimated tax penalty - individual), and IRC § 6655 (estimated tax penalties - corporations).

5.9.4.14 (09-04-2015)

Referrals – Representing IRS in Bankruptcy Court

1. **Court Appearances.** Some cases require IRS representation in bankruptcy court, either to respond to actions or to initiate actions. Field Insolvency is responsible for all referrals, since any case requiring action by Counsel or the U.S. Attorney is considered a complex issue. (See IRM 5.9.1.4(3), *Complex Issues*.) CIO will transfer cases to the appropriate Field Insolvency office when a referral is needed. All such cases will be referred to one of the offices as listed in IRM 5.9.4.14.1 below.

2. **A Quality Referral.** A quality referral by Insolvency contains the specifics of why representation in court is necessary. All helpful information must be provided to the Service's legal representative. Such information and data must be attached to the referral to ensure the government's interests are protected. If complete data is not available at the time of the initial referral, the remainder should be sent as soon as possible for association with the referral.)
3. **Pattern Referrals.** To standardize referrals, Collection Policy, SBSE Division Counsel, and Specialty Collection, Insolvency have worked with Field Insolvency offices to produce pattern referral forms. These pattern referral forms should be used by Field Insolvency to refer cases to Area Counsel or the U.S. Attorney's Office (USAO). The following forms can be accessed from the Insolvency/Bankruptcy section of the MYSBSE website at: <http://mysbse.web.irs.gov/Collection/insolvency/jobaids/dl/default.aspx>.
 - Cash Collateral/Adequate Protection
 - Motion to Determine Dischargeability
 - Motion to Dismiss or Convert
 - Objection to Claim
 - Objection to Confirmation
 - Equity Analysis (worksheet that explains secured status calculations on proofs of claim; may be attached to referrals to Area Counsel and direct referrals to the USAO)

Note:

All referrals must provide the debtor's TIN(s) in full (not redacted).

4. **AIS Referral Screen.** All referrals must be entered on the AIS Referral Screen with a follow-up date seven days prior to any court established deadline. If the referral is not in response to a specific court action with a defined deadline, the follow-up date should be set 30 days from the date of referral. The Referral classification should also be added to the Classification Screen to prevent closure of a case with open litigation.
5. **Managerial Intervention.** If no response has been received from Area Counsel or the USAO by the referral follow-up date, the assigned caseworker must contact Area Counsel or the USAO to learn the progress of the referral. If the issue surrounding the referral has not been resolved, the caseworker must ask Area Counsel or the USAO for a date by when a response can be expected. If a response is not received by the date specified, the caseworker should elevate the referral to the group manager to contact Area Counsel or the USAO.
6. **Reassignment to CIO.** Field Insolvency must resolve all referral and follow-up actions prior to case reassignment to Centralized Insolvency. If there is an open referral or any type of litigation pending, the case may not be closed or transferred.
7. **History Documentation.** Caseworkers must document all actions taken regarding the referral in the AIS history. Employees should include the rationale behind any decisions made not to proceed with the filing of a motion when a referral was previously initiated.

5.9.4.14.1 (09-04-2015)

Direct Referrals

1. **Direct Referral Program.** The direct referral program allows for the referral of certain bankruptcy work directly from Insolvency to the United States Attorney's Office. Field Insolvency is responsible for making all referrals in bankruptcy court. Based on the matter, referrals may be made to:
 - The USAO, or
 - Area Counsel.

Note:

Delegation Order 25-9 Rev. 1 (05-27-2011) limits direct referral to bankruptcy cases. Other types of litigation, such as receiverships, FDIC cases, corporation dissolutions, etc., cannot be referred under the direct referral program.

2. **Role of the USAO.** The USAO is a division of the Department of Justice (DOJ). Local or Assistant United States Attorneys (AUSAs) will handle referrals made to the USAO. Depending on the type of matter involved, the representation may be handled by the US Attorney's Office, or by the Department of Justice Tax Division.
3. **Role of Area Counsel.** Any cases that require involvement of the DOJ-Tax Division must be referred to Area Counsel first. IRM 5.9.1.3.1, *Associate Area Counsel*, discusses the role of Associate Area Counsel.
4. **SAUSA Program.** Previously, certain Area Counsel attorneys were designated as Special Assistant United States Attorneys (SAUSAs). In districts participating in the SAUSA program, cases were referred to Area Counsel to be handled by SAUSAs, rather than directly to the USAO. Due to the Office of Chief Counsel's withdrawal from the SAUSA program, no new SAUSA cases were accepted after April 14, 2014. Any SAUSA cases remaining after December 31, 2014 were transferred to the appropriate division of DOJ.

Referrals of cases in districts where Area Counsel previously participated in the SAUSA program are now handled in the same manner as cases in non-SAUSA districts. The authority for directly referring matters to the USAOs for all districts is found in the delegation of authority published in Chief Counsel Notice 2011-006 and in Delegation Order 25-9 (Rev. 1).

5. **Authorizing Language.** All referrals to the USAO must be made by letter and contain the following authorizing language:

"You are hereby authorized under the provisions of IRC § 7401 to take whatever action you deem necessary to aid the Internal Revenue Service in collection of the above captioned debtor's outstanding federal tax liabilities. Specifically, we suggest and request that your office... "

"...move to dismiss or convert this case... "

or

"...object to confirmation of the debtor's proposed plan (or plan of reorganization)..."

or

"...defend the claims filed by the Internal Revenue Service against the debtor's objections..."

or

"...defend the claims filed by the Internal Revenue Service against the debtor's motion to determine the dischargeability of tax..."

6. **Direct Referral Authorization.** The authorization to commence direct referrals to the USAO for cases where the IRS's proof of claim is *less than \$1 million*, applies to the following matters:
 - A. Motions on behalf of the IRS and objections to plans based on the debtor's failure to file tax returns and responses to the debtors' objections to unassessed (estimated) claims filed by the IRS in cases where the debtor failed to file an income tax return.
 - B. Motions on behalf of the IRS and objections to plans based on debts in excess of the eligibility for Chapter 13 debtors.
 - C. Motions to dismiss or convert cases, except those involving organizations that claim an exemption from taxation under IRC § 501.

- D. Motions relating to the debtor's failure to make timely payments under a plan and/or accrual of post-confirmation liabilities.
- E. Responses to objections to IRS claims that are based on the debtors' claimed payment of tax or claims that the debtor filed a return.
- F. Responses to objections to IRS claims that are based on valuation of the property securing the claim.
- G. Responses to objections to IRS claims that are based on the fact that the claim has been superseded by a subsequent claim.
- H. Agreed cash collateral or adequate protection hearings, including stipulations or agreements for the use of cash collateral.
- I. Responses to debtor's motion to determine dischargeability of a tax debt, except where:
 - The denial of discharge would be premised on 11 USC § 523(a)(1)(C) (such as fraudulent returns or evasion of tax), or;
 - The determination concerns a tax for which the debtor filed a return or a document that purports to be a return, after the due date (including extension).

Note:

If a case presents a new issue never addressed by the courts (particularly involving BAPCPA), Insolvency must consult Area Counsel to determine whether the case is suitable for a direct referral.

7. **Business Reason.** Before referring a case directly to Area Counsel or the USAO, the caseworker must consider if the desired result of the referral is based on a business reason that will benefit the Service and possibly the debtor. If the contemplated direct referral serves no definable business purpose, the referral should not be made. A direct referral should never be made simply as a punitive action against a debtor.

Example:

If a debtor files all delinquent returns except one before the first meeting of creditors, but files that last return before the confirmation of the plan, there may be no business purpose to seek dismissal based on an untimely unfiled return. The Service's goal is to bring the debtor into filing compliance before confirmation of the plan. That way, an accurate claim may be filed and appropriate action can be taken at the confirmation hearing if the taxpayer has not yet complied with his filing obligations. Even though the debtor has not technically met the requirements of the Bankruptcy Code, the Service is able to meet its goal.

8. **"Mixed" Issues.** Many referral cases involve "mixed", or multiple, referral issues. For example, a referral is made because of unfiled returns, but the plan also has feasibility problems. These "mixed" issues cases may be considered direct referral cases, as long as *all* of the issues meet the direct referral criteria defined in *IRM 5.9.4.14.1 (6), Direct Referral Authorization*.
9. **All Other Referrals.** All other referrals not falling into the above categories should be referred to Area Counsel, considering tolerance criteria in *IRM 5.9.4.14.4 #, Referral Tolerances*. Caseworkers should use the pattern referral forms described in 5.9.4.14(3), if applicable. When in doubt about whether the direct referral criteria apply, caseworkers should consult Area Counsel.

5.9.4.14.2 (09-04-2015)

Referrals to Counsel (Non-Direct Referrals)

1. **Counsel Referrals to the USAO.** Matters which do not meet direct referral criteria but should be referred to Area Counsel for referral to the USAO include:
 - A. Issues that would meet direct referral criteria but the IRS' proof of claim is greater than \$1 million.
 - B. Motions and/or objections concerning the adequacy of the disclosure statement.
 - C. Objections to confirmation other than those identified as direct referrals, except those based on § 1129(d) (the principal purpose of the plan is tax avoidance).
 - D. Responses to objections to claims other than those identified as direct referrals, except those involving substantive tax issues, trust fund recovery penalties and evidentiary hearings on disputed matters, or important or novel issues.
 - E. Motions for relief from the automatic stay.
 - F. Motions to compel distribution and accounting.
 - G. Motions for segregation and/or deposit of post-petition trust fund taxes.
 - H. Motions for an order compelling production of records.
 - I. Responses to complaints or other pleadings to sell property.
 - J. Unagreed cash collateral proceedings.
 - K. Turnover hearings.
2. **Counsel Referrals to the Tax Division.** Matters which should be referred to Area Counsel for referral to the DOJ Tax Division include:
 - A. Objections to proofs of claim involving:
 - Substantive tax issues
 - Trust fund recovery penalties
 - Evidentiary hearings on disputed matters
 - B. Responses to discharge motions/complaints where denial of discharge is based on:
 - Fraud or an attempt to evade tax
 - A tax for which the debtor filed a return or purported return after the due date (including extension)
 - C. Any suit letter recommending that the government:
 - File an objection to confirmation under B.C. § 1129(d) on the ground that the principal purpose of the plan is tax avoidance
 - Join with other creditors to commence an involuntary bankruptcy case against an individual, partnership, or corporation
 - D. All matters not specifically identified, involving prominent individuals or corporations, or novel/important issues.

Caution:

Referrals to the Tax Division can only be initiated by Area Counsel. Field Insolvency cannot refer directly to the Tax Division.

5.9.4.14.3 (09-04-2015)

Significant Bankruptcy Case Referrals

1. **Significant Case Circumstances.** Insolvency must make expedited referrals on cases with significant case issues. These referrals will also be made to Area Counsel, and must be made regardless of chapter and whether or not IDRS shows balance due accounts.
2. **Referral Criteria.** Once such a referral is made, Area Counsel assumes responsibility for coordinating the various IRS functions to ensure timely processing. When one or more of the following circumstances are present in a case, it should be referred to Area Counsel. (See Chief Counsel Notice 2005-004 .)

- A. All cases for which a criminal tax prosecution is being considered or is pending.
- B. All cases involving taxpayers with assets of \$50 million or more. The referral must state if indications suggest, through audit or otherwise, more than nominal tax may be due. IDRS command BRTVU gives specific BMF return information. Line codes are edited from Forms 941, 943, 940, and 1120.
- C. All cases in which the outstanding assessed liability exceeds \$10 million.
- D. All cases for which the potential deficiency to the tax liability exceeds \$1 million (income, excise and other) and taking into account all open tax years.
- E. Cases raising difficult or significant post-confirmation tax issues in the disclosure statement, the Chapter 11 plan, or in related documents, such as the Liquidating Trust Agreement.
- F. All cases with potential tax liabilities for which significant publicity may be generated. The economic impact of the bankruptcy to the geographical area or the taxpayer's industry should be considered.
- G. All cases in which technical advice or ruling requests are pending, including requests for change of method of accounting, if the outcome of the request has a significant tax impact on the taxpayer or on the taxpayer's industry.
- H. All Coordinated Industry Cases (CIC) under examination.
 - I. All taxpayers for which an Industry Specialization Program issue is present.
- J. Presently or previously consolidated subsidiaries that file for bankruptcy for which the parent and/or sibling entities fall within the above criteria.
- K. Parent corporations filing for bankruptcy in which consolidated subsidiaries fall within the above criteria.
- L. Pre-packaged bankruptcies; a bankruptcy which includes a plan of reorganization the creditors negotiated and accepted prior to the filing of the bankruptcy petition.
- M. Cases which do not fall within the above criteria but for which referral may be deemed to be in the best interests of the government.

Note:

Insolvency must identify these cases as early as possible in the bankruptcy process so a timely referral is made to Area Counsel.

5.9.4.14.4

1.

Example:

"

2. " " "

3.

A.

B.

4.

A.

B.

5.

A.

B.

6.

A.

B.

7.

A.

"

B.

"

C.

"

D.

"

E. =====
=====

8. =====
=====

A. =====

B. =====

5.9.4.15 (09-04-2015) Unfiled Pre-Petition Returns

1. **Debtor Compliance.** 11 USC § 521(f) requires debtors to be in compliance with federal tax laws. Insolvency has implemented programming changes to aid the bankruptcy courts and trustees to identify non-compliant taxpayers who file for bankruptcy on or after October 17, 2005. IRM 5.9.13.18.2, *Addressing Unfiled Returns*, provides in-depth procedures for securing and processing delinquent tax returns from debtors.
2. **Valid Tax Return.** For what constitutes a valid tax return in bankruptcy proceedings, see IRM 5.9.2.10.1.2, *A Valid Tax Return*, and IRM 5.9.17.7.1, *Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared*.

5.9.4.16 (01-01-2006) Unfiled Post-Petition Returns

1. **Individuals.** No bankruptcy code provision specifically prescribes a requirement for individuals to file post-petition tax returns for bankruptcies filed prior to October 17, 2005. However, 11 USC § 521(j)(1) provides that if a debtor in a Chapter 7, 11, 12 or 13 bankruptcy case filed on or after October 17, 2005, fails to file tax returns that become due after the commencement of the case, the Service may request the court to convert or dismiss the case.
2. **Chapter 11.** Debtors in Chapter 11 bankruptcies filed on or after October 17, 2005, can face conversion to Chapter 7 or dismissal if they fail to file tax returns due after the date of the order for relief, or fail to pay taxes owed after the petition date in a timely manner (11 USC § 1112 (b)(4)(I)).
3. **Motions to Convert or Dismiss.** Since the courts or the trustees may be unaware of a debtor's noncompliance with tax laws, the government's interest may best be served by Field Insolvency referring the case to the USAO to request the filing of a motion to convert or dismiss bankruptcies commenced on or after October 17, 2005.

5.9.4.17 (01-01-2006) Innocent Spouse Claims and Bankruptcy

1. **Claims for Innocent Spouse Relief and Bankruptcy.** Innocent spouse claims are formally known as claims for "Relief from Joint and Several Liability on Joint Return" under IRC § 6015. For the remainder of this IRM, the more familiar term "innocent spouse claim" will be used. An innocent spouse claim for relief may be pending when a bankruptcy petition is filed or may be raised after a bankruptcy petition has been filed. Instances arise when the joint Master File Tax (MFT) 30 modules appear with a bankruptcy freeze, and one spouse files an innocent spouse claim. In some cases, especially where the spouse requesting innocent spouse relief is the debtor, a determination must be made whether the requesting spouse is entitled to relief under IRC § 6015 during the pendency of the bankruptcy case.

Note:

The automatic stay does not prohibit the Service from issuing a final notice of determination granting or denying (in full or in part) innocent spouse relief. However, if the Service issues a final notice of determination denying relief (in full or in part) while the automatic stay is in effect, the debtor is prohibited from petitioning the Tax Court while the automatic stay is in effect, and the period for petitioning the Tax Court is not tolled. The debtor must move to lift the automatic stay before petitioning the Tax Court. (See *Drake v. Commissioner*, 123 T.C. 320 (2004).)

2. **Protecting the Taxpayer's Rights.** The presence of a bankruptcy freeze does not nullify a taxpayer's rights under the Bankruptcy Code or the innocent spouse provisions in the IRC.

Caution:

The mirroring of joint MFT 30 modules to MFT 31 requires close coordination between Insolvency and the Cincinnati Centralized Innocent Spouse Operation (CCISO) to ensure taxpayers' rights are not violated.

3. **Offsets.** Consistent with the IRS's policy not to take collection action when an innocent spouse claim is pending, the Service generally will not make setoffs while an innocent spouse claim is pending. (See IRM 25.15.3.4.5(1), *Prohibited Collection Actions*.) However, in cases when both innocent spouse claims and bankruptcies are pending, specific bankruptcy procedures should be followed as an exception to this general policy. In such cases, the Service will claim secured status on its proof of claim based upon any setoff rights it may have.
4. **Mirroring of Joint MFT 30 modules.** If the Service determines either spouse is relieved (fully or partially) of the joint liability on the MFT 30 module (due to the granting of the innocent spouse claim), MFT 31 mirror modules must be created in order to adjust the tax modules for each spouse appropriately. See IRM 5.9.17.22, *Mirrored and Non-master File Modules*, for additional information.

Note:

NMF Exception. If a problem arises with the TIN (e.g., TIN invalid), then Examining Support will request transfer to non master file (NMF) and not to MFT 31.

5. **Debtor's Filing of Innocent Spouse Claim.** The innocent spouse determination may become final before the disposition of the bankruptcy case requiring the affected modules to be adjusted to reflect the determination. When MFT 30 modules require mirroring, all actions should be coordinated between functions to protect the debtors. CCISO will:
 - A. Contact Insolvency with their determination of the innocent spouse claim;
 - B. Maintain the bankruptcy freeze –V or –W for closing code 81;
 - C. Input the necessary actions to create the MFT 31 mirror modules;
 - D. Do the adjustment for the innocent spouse claim determination; and
 - E. Reverse their freeze on the MFT 30 and 31 modules.
6. **Proof of Claim Preparation.** A proof of claim (POC) is prepared and filed (if applicable) in the regular manner while an innocent spouse claim is pending, disregarding the future outcome of the claim. If the innocent spouse claim determination is for a debtor spouse and the debtor spouse meets the criteria for (full or partial) relief, the Service's proof of claim must be amended or withdrawn, as appropriate if a POC has been filed. Insolvency caseworkers must verify the MFT 30 and MFT 31 modules have been adjusted to reflect any relief granted by CCISO.
7. **Reversal of TC 520 to Allow Processing of Claims.** Only Insolvency will reverse the bankruptcy freeze codes when applicable and take the following actions:

IF...	THEN...

the debtor spouse filed the innocent spouse claim and is <i>granted full relief</i> after a proof of claim has already been filed,	when the spouse's module has been adjusted to zero by CCISO, Insolvency must withdraw the POC or file an amended claim for \$0 depending upon local practice and: • Input TC 521 with the petition date and closing code of the bankruptcy for the debtor spouse as long as debt indicators are not present • Input TC 522 for the non-debtor spouse
the debtor spouse filed the innocent spouse claim and is <i>granted partial relief</i> after a proof of claim has already been filed,	when partial adjustment by CCISO has posted on the bankrupt spouse, Insolvency will: • Amend the proof of claim or send a credit letter to the trustee based on local practice • Reverse the TC 520 when case can be closed • Input the TC 522 on the non-debtor spouse when there is no potential of violating the bankruptcy code regarding joint assets
the debtor spouse filed the innocent spouse claim and is <i>granted full relief</i> , and a proof of claim has not been filed,	when the debtor spouse's module has been adjusted to zero by CCISO, Insolvency must: • Input TC 521 with the petition date and closing code of the bankruptcy for the debtor spouse as long as debt indicators are not present • Input TC 522 for the non-debtor spouse
the debtor spouse filed the innocent spouse claim and is <i>granted partial relief</i> , and a proof of claim has not been filed,	when partial adjustment by CCISO has posted on the bankrupt spouse. Insolvency will: • Reverse the TC 520 when case can be closed • Input the TC 522 on the non-debtor spouse when there is no potential of violating the bankruptcy code regarding joint assets
the non-debtor spouse filed the innocent spouse claim and <i>full or partial relief</i> has been granted,	once the module is mirrored to MFT 31 for both spouses, Insolvency will: • Input TC 522 to the non-debtor spouse's MFT 31 after receiving notification CCISO has completed its actions. (This prevents the CSED from being extended for the non-debtor spouse.) • Ensure no potential violation of the automatic stay exists • Reverse the TC 520 on the bankrupt spouse's MFT 31 and MFT 30 when the bankruptcy case can be closed to prevent violation of the automatic stay

Note:

CCISO is responsible for reversing their L- freeze on the MFT 30 and both MFT 31 modules.

8. **Monitoring.** Coordination between functions is essential. CCISO should contact Insolvency when its actions have been completed.
9. **Complete Documentation.** CIO caseworkers must document the AIS history with all actions taken to complete the process on the MFT 30 and MFT 31 modules.
10. **Joint and Several Liability.** In January, 2005, a master file enhancement to mirror MFT 30 to MFT 31s for both spouses became effective. The MFT 30 module liability is cleared by the generation of TC 604. The liability is then mirrored to both spouses' MFT 31 modules and adjusted appropriately for the innocent spouse determination. Any remaining liabilities on the MFT 31 mirrored modules are linked systemically on master file. Payment made by one spouse is systemically credited to the other spouse's MFT 31 until one is satisfied. Prior to MFT 31 mirroring, innocent spouse claims(s) were processed via the split/transfer process and may have had a joint MFT 30 module where both taxpayers still owe jointly and severally for a portion of the surviving liability.

**5.9.4.18 (09-04-2015)
Affordable Care Act**

1. **Definition.** Under the Affordable Care Act (ACA), the Federal government, state governments, insurers, employers and individuals are given shared responsibility to reform and improve the availability, quality, and affordability of health insurance coverage in the United States.

**5.9.4.18.1 (09-04-2015)
Individual Shared Responsibility**

1. **Individual Shared Responsibility.** Beginning in 2014, the individual shared responsibility provision calls for each individual to:
 - Have qualifying health care coverage, known as minimum essential coverage (MEC), for each month,
 - Qualify for a coverage exemption, *or*
 - Make a Shared Responsibility Payment (SRP) when filing their Federal income tax return.
2. **Payment Amount.** The amount of any payment owed takes into account the number of months in a given year that an individual does not have MEC, or a coverage exemption.
3. **MFT 35.** MFT 35, Tax Class 2, File Source 1, is the IMF MFT code for the Individual Shared Responsibility Payment. Beginning in January of 2016, certain joint MFT 35 liabilities will be mirrored under MFT 65 on IDRS.
4. **Standalone Module.** A standalone SRP occurs when a balance due is created for an individual SRP liability and there is no other:
 - A. Balance due module with a different MFT in Status 22, 24, or 26, or
 - B. TDI module in status 03.

If an additional SRP balance due occurs in a subsequent year, and there are still no other modules with a different MFT, it is still considered a standalone SRP.
5. **Enforcement.** The individual SRP amount owed is not subject to penalties or the filing of a Notice of Federal Tax Lien, and the Service will not levy on any property of the taxpayer for failure to pay the SRP. However, interest will continue to accrue until the total SRP is paid. The Service may apply federal tax refunds or voluntary payments to an SRP liability until it is paid. The Service may *not* file NFTLs on, nor apply payments derived from a levy action to, an SRP assessment.
6. **Treatment in Bankruptcy.** The individual SRP liability will be treated as an excise tax under USC § 507 (a)(8)(E). See IRM 5.9.13.19.3, *Classifying Claims - Unsecured Priority*, for additional information.

**5.9.4.19 (09-04-2015)
Installment Agreements and Bankruptcy**

1. **Status 60.** IRC § 6159(a) allows the Service to enter into installment agreements to facilitate the payment of a tax. When the Service accepts an installment agreement from a taxpayer, IDRS status code 60 is entered on IDRS to reflect the agreement's validity.

Note:

Status Code 60 accounts established with Agreement Locator Number XX08 are considered continuous wage levies, not installment agreements. See IRM 5.9.12.5.1(8), *Stat 60 Notices*, for additional information.

2. **Form 900, Tax Collection Waiver.** Pursuant to IRC § 6502(a), as amended by the IRS Restructuring and Reform Act of 1998 (RRA 98), the Service can no longer obtain waivers of the statute of limitations (Form 900) for collection *except* in two situations: one being in conjunction with a valid installment agreement, and, the other being a release of levy.

3. **Bankruptcy Does Not Terminate a Valid Installment Agreement.** After an installment agreement becomes effective, the Internal Revenue Code limits the conditions terminating such an agreement; a *bankruptcy petition is not one of them.* (See IRC § 6159(b) and *Treas. Reg. § 301.6159-1(c) and (c)(2)(i).*) An installment agreement is considered to be *suspended* by a bankruptcy filing, not *terminated*.

Note:

A termination of an installment agreement while a taxpayer is in bankruptcy could be viewed as an act to collect the underlying tax liabilities, and hence, a violation of the bankruptcy automatic stay (11 USC § 362).

4. **Change to Status 72.** If a taxpayer files a bankruptcy petition after entering into an installment agreement, transaction code (TC) 520 bankruptcy freeze is input. This action causes the account status to change from 60 to 72.
5. **Termination of Installment Agreement – Appeal Rights.** If an installment agreement appears to be in default, before an installment agreement can be terminated:
- A. A notice and explanation of the reasons for termination must be given in writing to the taxpayer *30 days* in advance;
 - B. The Service must provide for an independent administrative review of the proposed termination (*Treas Reg. § 301.6159-1*; and IRM 5.14.11); and
 - C. The taxpayer has the right to appeal the termination of the installment agreement to the Office of Appeals should the Service still decide to terminate the installment agreement. (See IRC § 7122(d)(2) and IRM 5.14.11.7, *Appeals of Defaulted and Terminated Agreements.*)
6. **Payments on a Pre-Existing Installment Agreement.** Individual debtors sometimes make voluntary post-petition payments (either by check or automatic debits from bank accounts or wages) for liabilities pursuant to an installment agreement that was entered into before the bankruptcy.
- A. **Chapter 7 Individual.** Voluntary post-petition payment(s) made by an individual Chapter 7 debtor, either by check or automatic debits from bank accounts or wages for the above-stated purpose, can be accepted by the Service. Such payment(s) will be applied to *non-dischargeable* period(s). Acceptance of such payments is not considered to be a violation of the automatic stay as long as the payments are truly voluntary (i.e., no harassment or coercion by the IRS). (See IRM 5.9.4.4.2 (5), *Voluntary Payments – Guidelines.*)

Caution:

Payments cannot be from property of the estate. However, since installment payments are typically made from current income, which is not property of the estate in individual Chapter 7 cases, it can be presumed in most cases that the payments are not from property of the estate.

- B. **Chapter 13 and BAPCPA Individual Chapter 11 Cases.** Property of a Chapter 13 estate or of an individual Chapter 11 estate which commenced on or after October 17, 2005, generally includes all property acquired post-petition, including post-petition wages. Therefore payments should be made through the plan. So payments based on a pre-petition installment agreement *should not be accepted* from a debtor who has filed a Chapter 13 bankruptcy or who has filed an individual Chapter 11 bankruptcy on or after October 17, 2005.

Note:

Insolvency must ensure no future installment agreement payments will be received by contacting the debtor or representative and also the payment source (e.g., employer), as appropriate. The Chapter 13 trustee should be advised of the suspension of such an agreement if the debtors' schedules claim payments as a current expense. Applicable documentation must be added to the AIS history.

- C. If payments of this type are received in Chapters 11 (for cases filed prior to October 17, 2005) and 12, consultation with Counsel may be necessary.

7. **Re-input of Status 60.** At the end of a bankruptcy, the IDRS status code should be returned to its pre-bankruptcy status of "60" when criteria for reinstatement are met.
8. **Criteria for Reinstatement.** To be eligible for reinstatement of an installment agreement, the debtor must be in full compliance and must meet all criteria for reinstatement of the installment agreement (See IRM 5.14.11.5, *Considerations after Default or Termination, Including Reinstatement.*) Most types of installment agreements (e.g., direct debit, payroll deduction, credit card payments, or check or money order) can be reinstated without paying a reinstatement fee. Insolvency can only directly input or request input of installment agreements where the payments are remitted directly by the debtor through check or money order. For all other types of installment agreements, the debtor should call Accounts Management for reinstatement.
9. **The Mechanics of Reinstatement.** Using "IADIS" print-outs generated by IIP, Insolvency caseworkers must annotate terms of installment agreements in the AIS history and flag status 60 cases meeting reinstatement criteria at the *beginning* of the bankruptcy process. Documentation must include the type of agreement (direct debit, payroll deduction, etc.), the periods included in the agreement, the date of monthly payment, and the monthly payment amount. Step-by-step instructions for both CIO and FI are found in IRM Exhibit 5.9.17-2, *Regular Installment Agreement Reinstatements*; IRM Exhibit 5.9.17-3, *Reinstating Direct Debit or Payroll Deduction Agreements as a Regular Installment Agreement*; and IRM Exhibit 5.9.17-4, *Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret).*

- A. **Centralized Insolvency.** At the closure of a bankruptcy case with a previous IA where the debtor made direct payments and meets criteria for reinstatement, the caseworker should input the terms of the original installment agreement on IDRS using CC IAGRE. See the IRM exhibits referenced above for complete procedures.

- B. **Field Insolvency.** Caseworkers must enter the "IA Issues" classification on the AIS Classification Screen, and ensure that all other case actions have been completed. See IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing a Case*, for additional information. At that point, the case may then be transferred to CIO.

Note:

Continuous levy plans (Agreement Locator Number 08) are excluded from reinstatement.

10. **SRP Liabilities and Reinstatement.** Normally, when a taxpayer has incurred an additional liability that was not part of the original IA, the IA cannot be reinstated. However, an MFT 35 SRP (or its mirror) is not considered an additional liability for the purposes of IA reinstatements. Therefore, if a stand-alone SRP module is the only new liability for a taxpayer who is otherwise entitled to an IA reinstatement, the installment agreement *should* be reinstated. See IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing a Case*, for more information.
11. **Protection of the Taxpayer's Rights.** The Service protects taxpayers' rights while the debtor is under the protection of the bankruptcy court (11 USC § 362). Therefore, *an installment agreement should be regarded as suspended – not terminated – during the pendency of a bankruptcy proceeding.* Even if the debtor incurs additional liabilities or does not remain in compliance, an installment agreement should not be terminated while the automatic stay is in effect, because a termination could be viewed as a violation of the automatic stay.
12. **Documentation.** Proper documentation in the case history must reflect pertinent information relating to a valid installment agreement and the bankruptcy process. Documentation must include the type of agreement (direct debit, payroll deduction, etc.), the periods included in the agreement, the date of monthly payment, and the monthly payment amount. AIS histories may become a part of the bankruptcy court litigation process, so it is important that they are thorough. IRM 5.9.5.4, *AIS Documentation*, provides guidance on required AIS documentation.

5.9.4.19.1 (09-04-2015)

IA Requests For Post-Petition Liabilities Submitted During Bankruptcy

1. **Post-Petition IA Requests.** Taxpayers in bankruptcy may incur additional liabilities, post-petition, and request an installment agreement (IA) for these liabilities. IA requests received by Compliance Services Collection Operations (CSCO), Accounts Management (AM), or any other function should be forwarded to the Centralized Insolvency Operation (CIO).

2. **Non-Processable.** A request for an IA on post-petition liabilities made by a taxpayer in bankruptcy is considered non-processable. It should not be treated as "Pending" as it cannot be accepted, rejected, or withdrawn. Administrative appeal rights are not provided for a non-processable IA. A TC 971 AC 043 should *not* be input. Post-petition IA requests submitted by taxpayers who had a *pre-petition* IA are also considered non-processable. The taxpayer may not be granted a post-petition IA, nor are they eligible to have the pre-petition IA reinstated. In addition to issuing Letter 2272-C as explained below, follow the steps in IRM Exhibit 5.9.17-5, *Installment Agreement Cannot Be Reinstated*.

Note:

In a small number of cases, the debtor taxpayer may qualify for a guaranteed installment agreement under IRC § 6159(c). See IRM 5.14.5.3, *Guaranteed Installment Agreements*.

3. **Case Actions.** Upon receipt of Form 9465, *Installment Agreement Request*, or any other IA request for post-petition liabilities from a taxpayer in bankruptcy, CIO caseworkers should:

- A. Issue Letter 2272-C, *Installment Agreement Cannot Be Considered*, to the taxpayer.
 - Check Paragraph "E" and fill in "Form 9465 (or other request form)" in [20 18V], and put the date of the IA request in [21 13D]. Fill in "Process" in [22 21V]. When completed, the sentence will read, "Thank you for your Form 9465 dated Month, DD, Year, about the unpaid tax for the tax years shown above. We cannot process your request at this time." **Note:** For telephone requests, use Paragraph "G" rather than "E". Enter the date in [27 13D] and fill in "process" in [28 21V].
 - Check Paragraph "R" and fill in [38 385V] with "Your request for an installment agreement can't be processed because you are in bankruptcy."
 - *Do not include Paragraphs "I" or "J"*; these do not apply as there are no administrative appeal rights for a non-processable request.
 - Ensure Paragraph "o" is checked, so the taxpayer will know they may still make voluntary payments.
 - Check Paragraph "r" in the "How to Contact Us" section and fill in the toll-free number for CIO in [c8 23V].

Note:

The detailed instructions in this section regarding preparation of Letter 2272-C are correct as of the letter revision effective 01-05-2015. If subsequent revisions of Letter 2272-C occur, caseworkers should direct questions regarding its proper completion to their manager.

- B. If there is AMS history about receipt of an IA request, document the AMS history stating the IA request is non-processable due to bankruptcy, and that Letter 2272-C has been sent to the taxpayer.
- C. Input a TC 520 CC 84 on the post-petition modules on IDRS, using the bankruptcy petition date as the TC 520 date.
- D. Add all TC 520 CC 84s added to modules on IDRS to the AIS Freeze Screen, to allow systemic reversal of the TC 520 during case closure.
- E. If the aggregate unpaid balance of assessment (UBA) on all post-petition periods is \$2500 or more, CIO will determine if the liability was addressed when a LTS New Assessment transcript generated.
 - If the post-petition liability was addressed by FI when a LTS transcript generated, go to Step g).
 - If the post-petition liability was not previously addressed, CIO should reassign the case to FI. CIO and FI should follow the guidance in IRM 5.9.16.3.2(2), *New Assessment Reports*.
- F. If the post-petition module is in ST 22 on IDRS, check the ACS system.
 - If a levy was issued on the debtor's wages, release the levy and move the case to R4 (protected inventory).
 - If no levy was issued, move the case to R4.
- G. Document all actions taken in the AIS history.

5.9.4.19.1.1 (09-04-2015)

Previously Granted Post-Petition Installment Agreements

1. Previously, Chapter 13 taxpayers in certain jurisdictions may have been granted an IA for post-petition liabilities. This practice will not be continued, as there could be potential for a stay violation. For those cases where a post-petition IA has already been granted and the taxpayer had a pre-petition IA for liabilities not discharged by the bankruptcy, Letter 2975-C, *Notice of Intent to Levy - Intent to Terminate Your Installment Agreement*, must be sent to the taxpayer at case closure. See IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing A Case*, for instructions.

5.9.4.20 (09-04-2015)

Report of Foreign Bank and Financial Accounts (FBARs)

- 1. **Reporting Requirement.** Each US person who has a financial interest in, or signature or other authority over, one or more foreign financial accounts that has an aggregate value greater than \$10,000 at any time during a calendar year is required to report that financial interest in, or authority over, the foreign account on Schedule B of Form 1040, as well as on FinCEN Report 114, *Report of Foreign Bank and Financial Accounts*, on or before June 30 of the succeeding year. Each person who is required to report an interest in foreign financial accounts must also maintain adequate records of any accounts. Failure to maintain adequate records is an additional violation of Title 31.
- 2. **Not Willful Violations.** 31 USC § 5321(a)(5)(A) authorizes a civil monetary penalty for any person who violates (or causes any violation of) § 5314 in an amount not to exceed \$10,000 per violation. The penalty is waived for reasonable cause.
- 3. **Willful Violations.** 31 USC § 5321(a)(5)(C) authorizes a civil monetary penalty for any person who willfully violates (or willfully causes any violation of) § 5314 not to exceed the greater of:

- A. An amount equal to 50% of the balance in the account at the time of the violation; or
- B. \$100,000.

Note:

The penalty can be for each violation.

- 4. **Delegated Authority.** Even though the penalty imposed under 31 USC § 5321(a)(5) for failing to report these foreign financial interests (commonly called the FBAR penalty) is not a tax penalty, the IRS has been delegated authority to collect the penalty for the government. Delegation Order 25-13, effective April 11, 2012, authorizes bankruptcy specialists grade 9 and above to prepare and file proofs of claim for FBAR penalties and to take appropriate action to protect the government's interest in bankruptcy, state and federal receiverships, and other state and federal insolvency actions.
- 5. **Systemic Tracking.** FBARs are filed electronically with the Financial Crimes Enforcement Network (FinCEN), and information reported on FBARs is entered into a database known as the FinCEN Query System(FCQ). FBAR penalties are maintained on a database at the Enterprise Computing Center – Detroit (ECC-DET) and can only be checked by IRS personnel in Detroit. *FBAR cases are not loaded onto AIS or IDRS because FBAR cases are not tax cases.*
- 6. **Interagency Agreement.** The IRS has entered into an agreement with the Bureau of the Fiscal Service (BFS) to prepare proofs of claim in cases when a debtor with an FBAR penalty assessment has filed bankruptcy. When debtors report FBAR penalties as debts in their bankruptcy petition and schedules, clerks of bankruptcy courts send notices to BFS in Birmingham, Alabama. BFS forwards bankruptcy notices to the ECC-DET.
- 7. **ECC-DET Duties.** When the ECC-DET receives bankruptcy notices, it inputs the bankruptcy indicator on FCQ. All FBAR penalty cases are processed by and assigned to the Los Angeles Field Insolvency office. ECC-DET provides the following account information to the FBAR Penalty bankruptcy caseworker in the Los Angeles Insolvency office:

- Debtor name
- Debtor address
- Debtor SSN
- Balance(s) due for both the penalty and statutory additions
- Assessment date
- CSED

8. **CSED.** The government has a two-year period in which to file a civil action to recover an FBAR penalty, beginning on the later of the date the penalty was assessed or the date any judgment becomes final in any criminal action under 31 USC § 5322 in connection with the same transaction with respect to which the civil penalty was assessed. Currently, the IRS has no procedures for soliciting a waiver of this two-year statute of limitations. Filing a bankruptcy petition does not suspend the running of the collection statute expiration date. However, if the FBAR collection statute has not expired upon the date of filing of the bankruptcy petition, 11 USC § 108(c) extends the time to file an FBAR collection suit until the later of:

- A. The end of the two year collection period, or
- B. 30 days after notice of the termination or expiration of the stay under 11 USC §§ 362, 922, 1201, or 1301, as the case may be, with respect to the claim.

Note:

Insolvency must coordinate any FBAR CSED issues closely with Counsel, since the government may have only a short period of time in which to initiate a collection suit after the termination of the bankruptcy case.

9. **Insolvency's Duties.** Insolvency caseworkers must :

- Verify the bar date has not expired.
- Verify the FBAR CSED has not expired.
- Prepare and distribute the proof of claim (Form B10) for BFS.

10. **Creditor Name.** IRS Insolvency prepares manual FBAR proofs of claim listing the creditor as the BFS at the following address:

US Treasury
Bureau of the Fiscal Service
P.O. Box 830794
ATTN: Debit Services Branch
Birmingham, AL 35283-0794

Caution:

An FBAR penalty cannot be included on a claim naming the IRS as the creditor.

11. **Claim Calculations.** FBAR claims are always classified as unsecured general and include the FBAR penalty amount and interest. Insolvency may have to coordinate with BFS or the ECC-DET to determine the appropriate interest to report on a claim, because the interest rate on these penalties is subject to change. Also, a late payment penalty may be assessed under Title 31, and collection costs may be assessed.
12. **Claim Distribution.** The FBAR bankruptcy caseworker files the FBAR proof of claim with the bankruptcy court and must provide copies of the FBAR claim to the ECC-DET, the Insolvency Territory Manager, BFS, the debtor, and debtor's counsel. In addition, all FBAR cases must be referred to local Counsel along with a copy of the proof of claim.
13. **FBAR Plan Review.** Associate Area Counsel is responsible for reviewing bankruptcy plans as to the treatment of the unsecured general claim for the FBAR penalty. If the IRS is a creditor for unpaid federal taxes or statutory additions to taxes under the same docket number as the FBAR penalty, the assigned Field Insolvency caseworker will process the non-FBAR assessments following established procedures for the chapter under which the bankruptcy has been filed.
14. **Payments on FBAR Accounts.** FBAR payments received from the bankruptcy proceedings must be mailed for processing to BFS at the address given in paragraph (10) above.
15. **FBAR Case Monitoring.** The ECC-DET will:
 - A. Record payments if the bankruptcy indicator is on the account;
 - B. Process abatements;
 - C. Process full payment of the debt;
 - D. Reverse the bankruptcy indicator; and
 - E. Return the account to regular collection status if appropriate.
16. **Dischargeability of the FBAR Penalty.** The FBAR penalty is excepted from discharge in individual Chapter 7 and 11 cases under 11 USC § 523(a)(7). Counsel should be consulted if questions arise concerning the FBAR penalty and dischargeability.
17. For additional information on FBARs, see IRM 5.21.6, *Foreign Bank and Financial Account Report*.

5.9.4.21 (09-04-2015)

Criminal Restitution Assessments

1. **Background.** When a party is convicted of a criminal tax violation or tax-related offense, the court may order them to pay restitution. This requirement will be contained in a document signed by the judge, called a Judgment and Commitment (J&C) Order. In 2010, Congress amended IRC § 6201 to provide that the IRS shall assess and collect tax-related restitution in the same manner as if such amount were tax. This change in section 6201 applies to restitution in all J&C Orders *entered after August 16, 2010*.
2. **Individual Assessments.** Restitution assessments against individuals will be made on MFT 31 and can be identified by TC 971 AC 102. Restitution ordered in the case of an individual will be assessed with one of the following:
 - TC 290 with Reason Code (RC) 141 to 150
 - TC 300 with RC 141 to 150
 - TC 298 with RC 141 to 150

3. **Business Assessments.** Restitution assessments against business entities will be made on MFT 02, 06, 05, etc. TC 971 with action codes 180 through 189 will reflect the type of tax and tax periods for which the restitution is ordered.
4. **Mirror Assessments.** Restitution assessments will be a mirror assessment of (but not necessarily identical to) the tax liability assessed pursuant to a civil exam, creating two separate assessments. Although the restitution-based assessment and civil tax liability assessment are distinct, the IRS generally may not collect both in full for the same period because it would be double-collection. In these cases, any payments made to satisfy the restitution-based assessment must also be applied to the civil tax liability for the same tax periods.
5. **Insolvency Actions.** When a Revenue Officer (RO) or Advisory learns that a taxpayer against whom a restitution assessment has been made has filed bankruptcy, the RO or assigned Advisor will contact the CIO and inform them that the bankruptcy involves a restitution assessment. The CIO caseworker must then input the "CRIMREST" case classification on AIS, and note the AIS history with any information provided by the RO or Advisor. The case should then be transferred to Field Insolvency. These types of cases cannot be worked by CIO as they are deemed complex issues.

5.9.4.21.1 (09-04-2015)

Working Criminal Restitution Cases

1. **Proofs of Claim.** For bankruptcy purposes, a restitution assessment is classified in the same manner as the tax module to which it relates. The Automated Proof of Claim system (APOC) will recognize the assessment and classify it based on the tax module. See IRM 5.9.13.18.5, *Restitution Assessments*, for additional information on APOC processing and guidance on preparing manual proofs of claim.
2. **Treatment of Restitution Assessments in the Plan.** If the plan provides for the restitution assessment to be paid according to the payment schedule in the J&C Order, caseworkers should verify that the plan complies with the terms of the order with regard to the payment amount and schedule.
 - A. If the plan mirrors the provisions of the J&C Order, no objection should be raised to the plan unless some other reason for objection exists. Upon plan confirmation, the caseworker should notify the assigned Advisor that the restitution payments are being made to the IRS pursuant to a bankruptcy plan, and that Insolvency will monitor for payments. In Chapter 11 and 12 cases, the caseworker should detail in the history the amounts paid under the plan for restitution that are to be applied to the restitution assessment. In Chapter 13 cases, the caseworker should note the provisions for the restitution payments in the AIS history, pursuant to IRM 5.9.10.6, *Field Insolvency AIS Actions*.
 - B. If the plan does provide for the restitution assessment to be paid through the plan, but in lesser amounts or less frequently than required by the J&C Order, the case should be referred to Counsel to object to confirmation of the plan.
 - C. The taxpayer's plan may provide for restitution payments to be made to the office of the clerk of court outside the terms of the plan. Caseworkers should not object to the plan solely for this reason. The caseworker must remove the assessment amount from the Claim and Plan Screens, to ensure the trustee does not duplicate payments and that no plan payments are applied to the restitution assessment. After confirmation, the caseworker should notify Advisory that the taxpayer will continue to make payments to the office of the clerk of the court. The assigned Advisor will monitor that payment of the restitution is being made.
 - D. If the bankruptcy court confirms a plan in which the restitution payments do not mirror the J&C Order but are in accordance with the provisions of the Bankruptcy Code, the caseworker should notify the assigned Advisor that the plan does not comply with the provisions of the order and provide details of the confirmed plan.

Caution:

In all cases, caseworkers must be alert for plan language that provides for discharge of the restitution assessment. If the plan contains such language, the case should be immediately referred to Counsel for objection.

3. **Application of Payments.** Payments made pursuant to a plan for restitution must be applied to the restitution assessment. If it is necessary to determine how any payment(s) received in bankruptcy and designated for restitution should be applied, the Insolvency caseworker should contact Advisory for guidance.
 - A. The J&C order will usually contain a payment schedule specifying the manner in which the restitution amount must be paid, and will normally specify that restitution payments are to be made to the office of the clerk of the district court where the order was entered. The clerk of the court will disburse the payments to the victims. Insolvency caseworkers may obtain the restitution payment schedule contained in the J&C Order from the assigned Advisor.
 - B. If the court has confirmed a plan in which the restitution payments do not mirror the J&C Order but are in accordance with the provisions of the Bankruptcy Code, the caseworker should apply the payments in accordance with the provisions of the plan and the confirmation order. The AIS history should be documented with the details regarding the appropriate payment application.
 - C. In cases where the IRS is the victim, payments are mailed to the Kansas City Submission Processing Center (KCSPC), where payments are applied to the restitution assessment. The assigned Advisor will also monitor the payments, and report if the taxpayer fails to make any required payments.
4. **Default.** If the person ordered to make restitution payments fails to make the required payments, the court may revoke or modify a term of supervised release, or may resentence the individual. If the debtor defaults on a confirmed plan (through which the restitution is being paid) and the restitution assessment has not been fully paid, the caseworker should:
 - A. Immediately contact the assigned Advisor; and
 - B. Contact Area Counsel for guidance on whether a motion should be filed to dismiss the case. The caseworker should inform Counsel that there is an unpaid restitution assessment, and provide the contact information for the assigned Advisor.
5. **Dischargeability.** Restitution assessments are generally not subject to discharge. These assessments may also accrue penalty and interest, which may or may not be dischargeable. For additional information, refer to IRM 5.9.17.7.8, *Discharge and Restitution Assessments*.

Exhibit 5.9.4-1

Inputting Follow-up Dates

Some actions require caseworkers to review cases at a timed interval. The table below explains how to access and update AIS for a follow-up review.

STEP	ACTION
1	From the AIS Home Page, access the AIS Taxpayer Screen by selecting the "Case Files" button located on the left side of the home page. When the "Case Files" button is selected, it automatically defaults to the Taxpayer Screen.
2	Select "Letter" from the Case File Tabs.
3	On the "Letter Screen" input an appropriate follow-up date in the "Follow Up Date" field.
4	Explain the nature of the follow-up action in the "Comments" field.
5	Select the "Save" button on the navigation tool bar to add the information to the "Letter Screen."
6	Select "Exit" from the navigation tool bar to return to the AIS Home Page. To return to the Taxpayer Screen, select the "Taxpayer" tab at the top of the Letter Screen.

Exhibit 5.9.4-2

Prompt Determination and Refund Processing Chart

The following chart advises caseworkers on where to properly route requests received for prompt tax refund or prompt tax determination consideration.

Screen the following Prompt Tax Refund and Prompt Tax Determination requests using the 505(a) or 505(b) checklist:	
TAX RETURN OR ENTITY TYPE	IF COMPLETE, FORWARD TO:

720	SBSE Excise Tax PD Coordinator
843	SBSE Exam Area PD Coordinator
940 Series (940, 941, 942, 943, 944, or 945)	Research IDRS for BOD code. If: <ul style="list-style-type: none"> BOD is TEGE and there is a 990 filing requirement, send to TEGE/EO PD Coordinator It is any other BOD or there is no 990 filing requirement, send to SBSE Employment Tax PD Coordinator
990 Series	TEGE-EO PD Coordinator
1040X	SBSE Exam Area PD Coordinator
1041 or Amended 1041 (for Chapters 7 & 11, Form 1040 must also be attached to Form 1041)	SBSE Exam Area PD Coordinator
1120, 1120S, or 1120X Total assets under \$10 million (do not use the IDRS BOD)	SBSE Exam Area PD Coordinator
1120, 1120S, or 1120X Total assets over \$10 million (do not use the IDRS BOD)	Large Business & International (LB&I) PD Coordinator
8804 or 8805	Large Business & International (LB&I) PD Coordinator
1045	SBSE Exam Area PD Coordinator
1065 (total assets under \$10 million)	SBSE Exam Area PD Coordinator
1065 (total assets over \$10 million)	Large Business & International (LB&I) PD Coordinator
1096/1099 (standalone request)	Research IDRS for BOD code and if: <ul style="list-style-type: none"> BOD is TEGE, send to TEGE-EO PD Coordinator Any other BOD, send to SBSE Employment Tax PD Coordinator
4810	Campus where returns filed based on trustee information provided. If not listed in trustee letter, send to campus where returns processed based on debtor location.
5500	TEGE-EP PD Coordinator
8955-SSA	TEGE-EP PD Coordinator
Liquidating Trust (Any Tax Return)	SBSE Exam Area PD Coordinator
Litigating Trust (Any Tax Return)	SBSE Exam Area PD Coordinator
Receivership (Any Tax Return)	SBSE Exam Area PD Coordinator
Settlement Trust (Form 1120-SF)	SBSE Exam Area PD Coordinator
W-2/W-3 (standalone request)	Research IDRS for BOD code and if: <ul style="list-style-type: none"> BOD is TEGE, send to TEGE-EO PD Coordinator Any other BOD, send to SBSE Employment Tax PD Coordinator

Note:
Requests for determinations relating to Chapter 12 plans should be sent to SBSE Exam Area PD Coordinator.

**Exhibit 5.9.4-3
Prompt Determination Request 505(b) Checklist**

The following checklist is used by CIO to process prompt tax determination requests. See *IRM 5.9.4.8*.

505(b) Prompt Tax Liability Determination Checklist	
Name of Debtor:	TIN:
Review Criteria:	Y(es) or N(o)
1. Does the request include a complete copy of the return?	
2. Does the request contain a statement referencing Bankruptcy Code § 505(b), Revenue Procedure 2006-24 and/or "Request for Prompt Determination, signed by the trustee" ?	
3. Does the request include the name and location of the office where the original return was filed (unless electronically filed)?	
4. Does the request include the name of the debtor?	
5. Does the request include the EIN of the debtor, or SSN if individual?	
6. Does the request include the type of return and the tax period?	
7. Does the request include the type of bankruptcy estate (e.g., Chapter 7, 11, 12, or 13)?	
8. Does the request include the bankruptcy case number?	
9. Does the request include the bankruptcy court where the case is pending?	
Package complete and forwarded to: <input type="checkbox"/> SBSE Exam Area Prompt Determination (PD) Coordinator <input type="checkbox"/> SBSE Employment Tax PD Coordinator <input type="checkbox"/> SBSE Excise Tax PD Coordinator <input type="checkbox"/> LB&I PD Coordinator <input type="checkbox"/> TEGE Exempt Organizations (EO) PD Coordinator	
OR	
<input type="checkbox"/> Package incomplete and routed to Field Insolvency office for trustee contact.	
Name of Employee:	Date:
Ref - Rev. Proc. 2006-24 & <i>IRM 5.9.4.8</i>	

**Exhibit 5.9.4-4
Prompt Refund Request 505(a) Checklist**

The following checklist is used by CIO to process prompt refund requests. See *IRM 5.9.4.9*.

505(a) Prompt Refund Determination Checklist	
Name of Debtor:	TIN:

Review Criteria:	(Y)es, (N)o, or N/A (not applicable)
1. Does the request contain a statement referencing Bankruptcy Code § 505(a) and/or Revenue Procedure 2010-27?	
2. Does the request include the type of bankruptcy case (e.g., Chapter 7, 11, 12, or 13)?	
3. If Form 1040X, 1120X, amended 1041, or 843 was submitted, does the request include: • A complete copy of the return (which is the subject of the claim)? AND • The name and location of the office where the original return was filed (unless electronically filed)?	
Package complete and forwarded to: <input type="checkbox"/> SBSE Exam Area Prompt Determination (PD) Coordinator <input type="checkbox"/> SBSE Employment Tax PD Coordinator <input type="checkbox"/> SBSE Excise Tax PD Coordinator <input type="checkbox"/> LB&I PD Coordinator <input type="checkbox"/> TEGE Exempt Organizations (EO) PD Coordinator OR <input type="checkbox"/> Package incomplete and routed to Field Insolvency office for trustee contact	
<i>Name of Employee:</i>	<i>Date:</i>
Ref - Rev. Proc. 2010-27 & IRM 5.9.4.9	

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 5. Opening a Bankruptcy Case

5.9.5 Opening a Bankruptcy Case

- 5.9.5.1 [Introduction](#)
- 5.9.5.2 [Notification of Bankruptcy Filing](#)
- 5.9.5.3 [Asset/No Asset Cases](#)
- 5.9.5.4 [AIS Documentation](#)
- 5.9.5.5 [Initial Processing Actions](#)
- 5.9.5.6 [Bankruptcy "Freeze" Code \(TC 520\)](#)
- 5.9.5.7 [Serial Filers](#)
- 5.9.5.8 [Levies and Bankruptcy](#)
- 5.9.5.9 [Liens and Insolvency](#)
- 5.9.5.10 [Adjusting Bankruptcy Accounts](#)
- 5.9.5.11 [Transferring Cases](#)
- 5.9.5.12 [Identity Theft \(IDT\)](#)
- Exhibit 5.9.5-1 [Transfer Steps for Cases with No Open Plan Monitoring or Other Investigation \(OI\)](#)
- Exhibit 5.9.5-2 [Transfer Steps for Cases with Open Confirmed Plan Monitoring](#)
- Exhibit 5.9.5-3 [Allowable Elapsed Time Between Bankruptcy Filings and Discharges](#)
- Exhibit 5.9.5-4 [Common Processing Steps in Serial Filer Cases](#)
- Exhibit 5.9.5-5 [Processing the Serial Filer Case When the Stay Terminates After 30 Days](#)
- Exhibit 5.9.5-6 [Processing the Serial Filer Case When No Stay Goes into Effect](#)
- Exhibit 5.9.5-7 [Debtor States Identity Theft \(IDT\)](#)
- Exhibit 5.9.5-8 [IRS Identified Identity Theft \(IDT\)](#)
- Exhibit 5.9.5-9 [Trustee or Debtor's Attorney States Debtor is a Victim of Identity Theft \(IDT\)](#)

Manual Transmittal

September 26, 2014

Purpose

(1) This transmits a revised IRM 5.9.5, *Bankruptcy and Other Insolvencies, Opening a Bankruptcy Case*.

Material Changes

(1) IRM 5.9.5 has been updated to provide clarification and expansion of existing material. The following table details changes in this revision of this IRM section.

IRM	Change
5.9.5.1(2)	The audience of IRM 5.9.5 is discussed.
5.9.5.2(2)	Add the Transaction Code (TC) 520 to the AIS Freeze Screen when the TC 520 is input manually.
5.9.5.2(3)	FI Caseworkers use Form 14522 to request that the Centralized Insolvency Operation (CIO) add a case to the Automated Insolvency System (AIS).
5.9.5.2(4)	Discusses other requests for the CIO to add a case to AIS.
5.9.5.2.1(3)	When IRS is not noticed in an asset case, or not noticed in sufficient time to file a timely proof of claim, taxes are not discharged in the individual case.
5.9.5.2.2(1)(c)	Checks sent by Field Insolvency (FI) to the CIO should be accompanied by Form 3210.
5.9.5.4(1)	Do not use acronyms and abbreviations in the AIS history unless they are listed in Exhibit 5.9.1-2, <i>Acronyms and Abbreviations</i> .
5.9.5.4(2)	When an automated program enters a history in AIS, caseworkers do not have to repeat the content in their AIS history documentation.
5.9.5.4(2) Note	Documentation in a Chapter 13 or Chapter 7 Asset (7A) case may be limited when the case meets streamlined criteria.
5.9.5.4(5)	Clarifies when amended or modified plans may be entered by the court.
5.9.5.4(6)	Directs readers to the new subsections on case classifications and "Summary Histories" .
5.9.5.4.1	A new subsection has been added with a table of case classifications that alert caseworkers to actions needed in a case.
5.9.5.4.2	A new subsection has been added to discuss common "Summary Histories" that are used in all bankruptcy chapters.
5.9.5.4.3	A new subsection has been added to discuss unique "Summary Histories" in the Chapter 13 case.
5.9.5.4.4	A new subsection has been added to discuss unique "Summary Histories" used in the Chapter 7 case.
5.9.5.5(2)	The timeframe for initiating corrective actions on violations of the stay is clarified.
5.9.5.5(3)	Additional guidance is provided on identifying a continuous levy.
5.9.5.5(4)	Clarifies when collection action can be taken against the non-debtor spouse.
5.9.5.6(2)	In most instances, the TC 520 is input systemically by the Insolvency Interface Program (IIP).
5.9.5.6.1(6)(c)	A TC 520 cc 84 does not extend the CSED on IDRS.
5.9.5.6.1(9)	Caseworkers may need to input a Bankruptcy Litigation Location Code (BLLC) when changing the TC 520 closing code.
5.9.5.6.2(2)(c)	Clarifies when a TC 522 is used to reverse a TC 520 in a serial filer case.
5.9.5.7(1)	An order extending (or imposing) the stay in a serial filer case must be for all creditors or specifically list IRS for the stay to be in place as it regards IRS.
5.9.5.7(2)	The three parts of the automatic stay are clarified.
5.9.5.7(4)	Discusses stay termination after 30 days in the Chapter 7, 11, or 13 serial filer case.
5.9.5.7(5)	Discusses Chapter 7, 11, 12, or 13 serial filer cases where no stay arises.

5.9.5.7(7)	A new paragraph has been added to discuss case assignments when the debtor is a serial filer.
5.9.5.7.1	Systemic identification of serial filers is discussed.
5.9.5.7.1(4)	The impact of serial filing to the CSED, ASED, and tolling is discussed.
5.9.5.8(2) (a)	Payments received in violation of the stay must be returned expeditiously.
5.9.5.8(2) (d)	When a levy payment is received on the petition date, the payment is property of the estate.
5.9.5.8(5)	Discusses return of payments received in violation of the stay.
5.9.5.9.1(1)	A list is provided with the corrective actions required when a NFTL was filed in violation of the stay.
5.9.5.9.1(2)	A new paragraph has been added to discuss NFTL withdrawals and orders vacating dismissal.
5.9.5.9.1(3)	Insolvency is only required to mail Letter 4026 to the debtor when Insolvency manually withdraws the NFTL. Otherwise, the letter is mailed by Correspondence Production Services (CPS).
5.9.5.9.1(7)	Insolvency must request reversal of the TC 360 when requesting withdrawal of a NFTL.
5.9.5.9.1(8)	Insolvency must send Letter 4711-I when requesting withdrawal of a NFTL.
5.9.5.9.1.1	A new subsection has been added to discuss rescinding CDP rights when a NFTL is withdrawn because it was filed in violation of the stay.
5.9.5.9.2(1) (d)	Clarifies when a NFTL should or should not be refiled.
5.9.5.9.2(3)	Caseworkers schedule a follow-up to ensure NFTLs are refiled prior to expiration, when refile is required.
5.9.5.9.3	A new subsection has been added to discuss NFTL filing by Field Insolvency (FI) caseworkers.
5.9.5.10(1)	CIO does not input any on-line adjustments that are not associated with the discharge process.
5.9.5.10(2)	The physical mailing address for CIO has been updated. The email address to request adjustments for Insolvency has been added.
5.9.5.10(3)	Form 4159 has been added to the list of adjustment documents.
5.9.5.11(1)	Clarifies when cases are transferred from FI to CIO.
5.9.5.11(2)	Additional time frames have been added for FI to address a case after CIO has reassigned the case to FI.
5.9.5.12(1)	Discusses the Servicewide policy on identity theft (IDT).
5.9.5.12(8)	Caseworkers must open an "Iden Theft" case classification on AIS until the IDT issue in the case is resolved.
5.9.5.12.1	Provides guidance on the IDT substantiation/documentation required from the victim of IDT.
5.9.5.12.1.1	Discusses preparation and routing of IDT adjustment documents.
5.9.5.12.2	A new subsection has been added to discuss return preparer fraud or misconduct.
5.9.5.13	The subsection on referrals to Withholding Compliance (WHC) for issuance of lock-in letters has been removed. WHC will no longer accept referrals.
Exhibit 5.9.5-2	Instructions have been updated for the reassignment of a Chapter 13 case to the CIO prior to confirmation.
Exhibit 5.9.5-3	The exhibit has been revised to clarify when a debtor is eligible to receive a discharge in the current Chapter 7 or Chapter 13 bankruptcy case and they received a discharge in a prior bankruptcy case.
Exhibit 5.9.5-4	The exhibit has been updated to include common steps for processing serial filer cases.
Exhibit 5.9.5-5	A new exhibit has been added to provide additional processing instructions when the stay terminates on the 30th day in a serial filer case.
Exhibit 5.9.5-6	Additional processing instructions are added for the case of a serial filer where the stay does not go into place.
Exhibit 5.9.5-7	Steps are provided for processing a bankruptcy case when the debtor states they are a victim of identity theft.
Exhibit 5.9.5-8	Steps are provided for processing a bankruptcy case when the IRS identifies that the debtor is a victim of identity theft.
Exhibit 5.9.5-9	Steps are provided for processing a bankruptcy case when the bankruptcy trustee or debtor's attorney states that the debtor is a victim of identity theft.

(2) Editorial changes were made throughout this section to add clarity and to update or correct citations.

Effect on Other Documents

This material supersedes IRM 5.9.5, dated January 18, 2011. The revision incorporates the following interim guidance: SBSE 05-1213-0089, *Reissuance of Procedures for Processing Bankruptcy Cases when the IRS Receives No Notice or Late Notice*, dated December 6, 2013; SBSE 05-1213-0091, *Reissuance of Interim Guidance Procedures for Identity Theft (IDT) Transaction Codes and Processing in Bankruptcy Cases*, dated December 23, 2013; SBSE 05-0314-0016, *Bankruptcy and Notice of Federal Tax Lien (NFTL) Filing*, dated March 18, 2014; and SBSE 05-1213-0092, *Reissuance of Interim Guidance: Return Preparer Fraud or Misconduct*, dated December 19, 2013.

Audience

All Operating Divisions

Effective Date

(09-26-2014)

Rocco A. Steco, Acting Director,
Collection Policy

5.9.5.1 (09-26-2014)

Introduction

- Overview.** This section provides instructions for initial case processing in bankruptcy court cases at the Field Insolvency (FI) and Centralized Insolvency Operation (CIO) levels. Some procedures contained in this IRM section may be modified to coincide with a jurisdiction's local rules and court-issued standing orders.
- Audience.** This IRM section is used primarily by Insolvency caseworkers in FI and at the CIO. It may be referred to by other SB/SE employees; such as, Revenue Officers (ROs) and Advisors. However, employees in functions other than SB/SE may refer to the subsection when dealing with a taxpayer that has filed bankruptcy.

5.9.5.2 (09-26-2014)

Notification of Bankruptcy Filing

- Notification.** The Insolvency function may be informed of a new bankruptcy filing in the following ways:
 - Paper copies of petitions, notices, or other documents provided by the court, the debtor, or debtor's counsel;
 - Oral notification by the debtor or the debtor's attorney;

C. Notification from revenue officers or other Service personnel; or

D. Electronic notification from the bankruptcy court through the Electronic Noticing System (ENS) or by an email from the Bankruptcy Noticing Center (BNC).

2. **Centralized Insolvency Operation (CIO) Duties.** Generally, the CIO is charged with loading all new *bankruptcy* cases on the Automated Insolvency System (AIS). CIO is also charged with ensuring the bankruptcy freeze is input on the Integrated Data Retrieval System (IDRS) through the Insolvency Interface Program (IIP) or through the manual input of the TC 520. However, where a case is in jeopardy of an automatic stay violation and initial notification of the bankruptcy has been received by FI, the FI caseworker has an option of either loading the case on AIS him/herself or forwarding the petition information to the CIO to load the case on AIS.

Note:

If the Insolvency caseworker manually inputs the bankruptcy freeze to IDRS, the caseworker must add the TC 520 information to the Freeze Screen on AIS.

3. **FI Requests for CIO to Add a Case to AIS.** FI must complete and fax Form 14522, *New Case Request Checklist for Chapter 7, 11, 12 or 13*, to the CIO at (855) 235-6787 to request that the CIO add a case to AIS. A copy of the 341 notice, first page of the docket report, or other written notification of the filing must accompany the form. Unless an urgent situation exists, FI must wait three days before asking the CIO to add the case to AIS when IRS is listed as a creditor in the case per PACER. This will allow time for the notice to be transmitted via electronic means and eliminate the need for manual adding of the case. See Form 14522 for additional instructions.

4. **Other Requests for CIO to Add a Case to AIS.** The debtor, attorney for the debtor, or bankruptcy trustee may contact the CIO by phone to notify the IRS of the filing of a bankruptcy petition. Other IRS functions outside Insolvency may submit Form 4442, *Inquiry Referral*, to the CIO to notify Insolvency that a debtor has filed a bankruptcy petition. (See IRM 5.9.3.4, *Taxpayer/Debtor Contacts*.) In either instance, if the case is not on AIS, the CIO must add the case to AIS when pre-petition or post-petition liabilities exist, regardless of the bankruptcy chapter filed. It does not matter if the debtor included IRS on the creditor matrix or if IRS was scheduled in the bankruptcy. The automatic stay protects the taxpayer and IRS must ensure that there are no violations of the stay. (See IRM 5.9.3.6, *Automatic Stay*.)

5. **Notice of Specific Chapters.** Requirements to provide notice to the IRS depend on the bankruptcy chapter filed and local rules regarding refund distribution.

A. Chapters 7, 12, 13, and 15. The IRS receives notice when the Service is listed as a creditor on the debtor's bankruptcy schedules. Notice is also received when IRS has agreed the trustee has rights to a debtor's tax refunds as part of the bankruptcy estate.

B. Chapter 11. Notice to IRS is required on all cases. It does not matter if the Service is listed as a creditor in the case.

**5.9.5.2.1 (09-26-2014)
Notices Not Received**

1. **Lack of Notice.** If the Service is not receiving timely notice of bankruptcy filings, FI should determine the reason notices are not being received. The issue should be resolved by FI at the local level with the court or with debtors' attorneys. Counsel involvement may be required. If the problem lies with the court, in rare instances, the matter might justify elevation through proper channels to the National Office for contact with the Administrative Office of the United States Courts.

A. Field Insolvency (FI). If FI groups identify a problem with notices not being timely loaded onto AIS, they should contact the CIO to determine if the delay lies with the Service, with the courts or with the debtors' attorneys.

B. Centralized Insolvency Operation (CIO). If CIO units identify a noticing problem, the unit lead should contact the leads of the CIO units responsible for loading new cases on AIS. If the delay lies with the courts or debtors' attorneys and not with CIO processing, the lead should determine the jurisdictions involved and alert the appropriate FI group so remedies can be initiated at the local level.

2. **Unnoticed Chapter 7 No Asset Cases.** IRM 5.9.17.9(4), *Lack of Notice in Chapter 7 No Asset Cases*, explains proper actions to take when the Service is not noticed in a discharged Chapter 7 No Asset case where the debtor has dischargeable liabilities.

3. **No Notice or Late Notice in Asset Cases.** In the individual asset case, taxes are not discharged when the Service did not receive notice of the bankruptcy filing within sufficient time to file a timely proof of claim before the expiration of the bar date. Additionally, taxes are not discharged when the Service did not receive notice of the bankruptcy filing because the debtor failed to include IRS on the bankruptcy schedules and statements. The provision in Bankruptcy Code § 523(a)(3) does not apply if the Service otherwise had timely notice or actual knowledge of the bankruptcy filing. Based on the procedures used by the IRS to create and file a proof of claim, =====
===== The provision applies to individual Chapter 7 Asset cases, individual Chapter 11 and Chapter 12 cases, as well as Chapter 13 cases. See IRM 5.9.17.7.9, *Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case*, and IRM 5.9.13.7.1, *Late Filed Claims*, for additional information.

**5.9.5.2.2 (09-26-2014)
Mailing Matrix**

1. **Correct IRS Mailing Address.** Each bankruptcy court's mailing matrix must list the correct mailing address for the Internal Revenue Service.

A. One National Address for the Mailing Matrix. With few exceptions, correspondence from debtors or attorneys should be directed to the mailing address of the CIO for correspondence "without remittance." The mailing address is:
Post Office Box 7346
Philadelphia, PA 19101-7346

B. Trustee Checks. Trustees should mail all Chapter 13 and Chapter 7 checks to the CIO at Post Office Box 7317, Philadelphia, PA 19101-7317. Checks from Chapter 9, 11, or 12 trustees or debtors-in-possession should be sent to the FI group handling the account.

C. Checks Mailed from FI to CIO. Chapter 13 or 7 trustee checks received in FI offices should be shipped by overnight courier to the CIO street address accompanied by Form 3210. The Form 3210 must list each check separately by the check number and the trustee's last name.

The street address for the CIO is:

Mail Stop 5-Q30-133
2970 Market Street
Philadelphia, PA 19104-5016
Attention: Payment Team

D. Checks from Non-Debtor Spouses. Non-debtor spouses should be directed to send their remittances to the Campus assigned to their geographic location. When checks from non-debtor spouses are received at a FI office, the FI caseworker must complete Forms 3244, *Payment Posting Voucher*, and send them along with the remittances to the appropriate Campus Support group via overnight courier. The CIO will provide payment posting information to the Campus support function in accordance with local guidelines.

Note:

Form 3210, *Document Transmittal*, listing all payments separately by TIN must accompany remittances forwarded to the Campuses. The "Who/Where" tab on SERP provides Campus addresses for payment processing.

**5.9.5.3 (09-26-2014)
Asset/No Asset Cases**

1. **Asset Cases.** All cases filed under Chapters 9 and 11 are treated as asset cases by Insolvency. All Chapter 12 and 13 cases, *for which notification has been received*, are treated as asset cases.

2. **Asset/No Asset Determination.** In cases filed under Chapter 7, Insolvency must determine if the bankruptcy is an asset or a no asset case.

A. Many bankruptcy courts follow a policy that all Chapter 7 petitions are no asset unless the court issues a notice of possible dividends and sets a bar date.

B. Other bankruptcy courts issue an initial notice identifying a case as an asset or a no asset case.

5.9.5.3.1 (09-26-2014)

Chapter 7 and Chapter 11 Liquidating Partnerships

1. **No Discharge.** Discharges are not granted to partnerships in Chapter 7 cases or in partnerships that liquidate in Chapter 11 cases. So, initial case reviews and actions taken during the pendency of these bankruptcies may vary from treatment taken on other entities that file under these chapters.

2. **Types of Partners.** Partnerships are one of two types: general or limited. General partnerships are comprised of members who are all general partners. Limited partnerships are comprised of one or more general partners and one or more limited partners.

3. **General Partnerships.** General partners may be individuals, corporations, limited liability companies, or other partnerships. General partners are individually responsible for any federal tax liabilities or penalties related to federal taxes incurred by the partnership. Assets of general partners are not part of the bankruptcy estate. In most cases, collection can proceed against the assets of the general partner(s) without violating the automatic stay while the partnership itself is under bankruptcy protection. It is the position of the Service that the Service will not proceed with collection against the general partners during the pendency of the bankruptcy unless extenuating circumstances exist, such as a jeopardy situation or an imminent CSED. Area Counsel guidance should be sought before taking collection action against assets of the general partners while the partnership bankruptcy case is still open.

Note:

If the decision is made to pursue collection against general partners during the pendency of a partnership's Chapter 7 or liquidating Chapter 11 bankruptcy, the TC 520 closing code should be changed to 84. When the bankruptcy is closed by dismissal, discharge, or non-discharge, a TC 550 must be input on the account to extend the CSED manually.

4. **Limited Partners.** A limited partnership has at least one general partner and any number of limited partners. As mentioned above, general partners are responsible for federal tax liabilities and federal tax related penalties incurred by the partnership. Generally, limited partners are not responsible for tax liabilities and tax related penalties of the partnership. Thus, collection actions cannot be taken against assets of the limited partners for application to the tax obligations of the partnership, whether or not that partnership is in bankruptcy.

5. **Limited Partners' Exception.** A limited partner can still be liable to a third party for conduct that has injured that third party. Therefore, if the Service establishes a basis for assessing a TFRP against the limited partner, the Service may be able to collect from the limited partner through that assessed TFRP. The Insolvency caseworker must determine whether a limited partner is liable for the TFRP, keeping in mind the ASED for the TFRP is not suspended while the partnership is in bankruptcy. See IRM 5.7.4.8.2, *Trust Fund Taxpayer in Bankruptcy*.

Note:

Counsel must be included in any decision to pursue collection from a limited partner.

6. **Closing Actions.** IRM 5.9.17.10, *Closing Chapter 7 or Liquidating Chapter 11 Partnerships*, provides procedures for closing partnerships that filed Chapter 7 or Chapter 11 liquidating bankruptcies.

5.9.5.4 (09-26-2014)

AIS Documentation

1. **Case Histories.** AIS is the repository for documenting entity information and events and actions affecting case progression. Some documentation is entered systemically while other documentation is manually input. When input manually, all case related actions whether from internal or external systems, sources, and tools, such as the Integrated Data Retrieval System (IDRS), electronic court records, debtors, debtors' attorneys, the Department of Justice, or other, must be thoroughly, factually, and timely documented in the AIS history. The documentation must provide sufficient information to allow the reader an understanding of case actions past, present, and prospective. To ensure AIS histories are understandable to all readers, caseworkers must not use abbreviations or acronyms in the AIS history unless they are listed in IRM Exhibit 5.9.1-2, *Acronyms and Abbreviations*.

2. **History Documentation.** Case histories must include the information in the list below when it applies to the case under review and is appropriate for proper case handling. Caseworkers are not required to manually enter information in the AIS history which repeats content systemically entered in the AIS history by ENS, IIP, APOC, or any other automated program.

A. Compliance and cross-compliance data including filing requirements, balances due, unfiled returns, credit balances, FTDs, estimated payments, and cross reference TINs which may indicate liability;

B. Issues to be addressed during the 11 USC § 341 hearing or a statement that no 341 issues exist;

C. A summary of claim information (modules, tax due, penalty and interest, INTST to the petition date, classifications, estimated periods, etc.) each time a claim is filed or amended;

D. Type and terms of installment agreements suspended by the bankruptcy;

E. Summary of asset valuation when a claim is secured;

F. Actions taken to resolve docket flags and period flags on the Automated Proof of Claim (APOC) system;

G. Annotation of unfiled returns including tax periods, credit balance periods (and how the credit is to be addressed), and a plan of action for securing unfiled returns;

H. Previous bankruptcy filings that affect claim classification, limitation or non-imposition of the automatic stay, or dischargeability and actions taken to advise Area Counsel, if appropriate;

I. TFRP information including the names, SSNs, or TINs of responsible parties and applicable ASEDs;

J. Cash collateral issues addressed;

K. NFTL refile date, if appropriate;

L. Summary of adequate protection agreements and subsequent monitoring;

M. Fast track Chapter 11 issues, such as, inadequate disclosure statement or plan;

N. Plan terms and feasibility;

O. Amended plan terms;

- P. Chapter 11 post-petition taxes and filing of potential administrative claims;
- Q. Handling of Chapter 13 post-petition liabilities;
- R. Annotation the plan has been properly loaded on the AIS payment monitoring screen;
- S. Date of any follow-up actions not systemically entered by AIS;
- T. Summary of contact with other IRS functions in regard to a particular case;
- U. Correspondence sent and responses received;
- V. Conversations or meetings with the debtor, the debtor's representative, or third parties;
- W. Pertinent facts from bankruptcy schedules or statements of financial affairs, such as exempt assets that might be considered for collection post-discharge, if a valid NFTL is on file, or abandoned assets that might be considered for collection due to the statutory lien;
- X. Pertinent facts from IDRS, bankruptcy schedules, or statements of financial affairs that identify excluded assets that might be considered for collection post-discharge, such as, a 401K or ERISA qualified pension plans;
- Y. Stay violations and their resolutions;
- Z. Trustee refund turnover requests;
- AA. Issuance of manual refunds;
- AB. Current status of discharged, dismissed, or converted cases that may require processing by another unit or group prior to claim preparation;
- AC. Conversion information;
- AD. Nature and type of legal action referred to Counsel and/or the Assistant U.S. Attorney (AUSA);
- AE. Monitoring of plan payments in Chapter 11 and Chapter 12 cases;
- AF. Actions taken when a debtor defaults;
- AG. Actions taken at the time of confirmation;
- AH. Manual dismissal actions;
- AI. Manual discharge determinations;
- AJ. Non-debtor spouse issues; such as, mirroring of accounts and community property issues;
- AK. When a case is transferred to the CIO for early mirroring, the reason for the mirroring should be stated clearly in the history as well as the modules to be mirrored;
- AL. The date Pub 1 was issued to the debtor prior to taxpayer contact or a statement that Pub 1 was not required;
- AM. A statement that the proof of claim has been reviewed and that EPOC has been requested (or that the proof of claim has been mailed in locations that do not accept electronic proof of claim filing);

Example:

POC reviewed and EPOCd.

Example:

POC reviewed and mailed to the court.

AN. Resolution of ADS discharge determination reports, and

AO. Any special instructions to be considered by caseworkers when a case is transferred from one insolvency function to another, or from one caseworker to another.

Example:

Case transferred to CIO to monitor for confirmation of the plan.

Note:

When a Chapter 13 or 7A case meets the "streamlined" criteria established by the Director, Advisory & Insolvency (A&I), the Director may establish limited AIS history documentation requirements.

3. **Chapter 13 Plan Documentation.** The Director, A&I, may establish streamlined criteria for processing Chapter 13 cases. Caseworkers must add the correct case classification to the case on AIS so "streamlined" cases can be easily identified. Prior to August 4, 2014, caseworkers used "≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡" classifications to identify streamlined cases. On or after August 4, 2014, classifications "≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡" are used to identify streamlined cases. If the criteria for Chapter 13 streamlined cases is met, then FI caseworkers follow procedures for the plan review as required by the Director, AI. In all other cases, the Chapter 13 plan review must include the following information in the order below:

- Length of plan X monthly payment to trustee = \$ [total amount to be paid to all creditors]
- Amount or percentage to be paid on IRS's secured claim(s)
- Amount or percentage to be paid on IRS's unsecured priority claim(s)
- Percentage to be paid on IRS's unsecured general claim(s)
- Accrued interest rate to be paid on secured claims as well as unsecured priority and unsecured general claims (11 USC § 1325(a)(4))

Note:

See IRM 5.9.10.5.2.1, *Interest in the Post-BAPCPA Case*, for information regarding interest in the Chapter 13 case.

- Plan adequate: [yes or no]

- Remarks: [If the plan is not adequate, why it is not adequate and what actions have been taken to resolve the plan deficiency; if payments are to be applied in a manner other than the program for AIS automatic allocations, how they should be manually applied; if a secured claim is not provided for in the plan because of local court practices, how payment of the secured period will be addressed; etc.]

Example:

PLAN REVIEW: 60 months X \$360 = \$21,600 total to be paid to all creditors; IRS secured claim: 100%; IRS unsecured priority claim: 100%; IRS unsecured general claim: 1%; 5% interest on secured claim; 0% interest on priority claim; plan is adequate. Remarks: NA.

Example:

PLAN REVIEW: 60 months X \$360 = \$21,600 total to be paid to all creditors; IRS secured claim: not provided for; IRS unsecured priority claim: 100%; IRS unsecured general claim: 1%; no interest to be paid on secured or priority claim; plan is NOT adequate. Remarks: Plan inadequate because secured claim will not be paid through the bankruptcy. Contacted debtor's attorney who agreed to amend plan within 10 days to provide for secured claim. Set 14 day follow-up to check PACER for amended plan. If amended plan not filed, next action: referral to Counsel to object to plan.

If a plan is inadequate and the decision is made not to refer the case to Counsel, the reason for not referring the case to Counsel must be documented in the AIS history. A case may not be referred to Counsel because it does not meet the tolerance criteria in IRM 5.9.4.14.4, *Referral Tolerances*. Additionally, the Chapter 13 plan may not be referred to Counsel due to local practices or streamlined procedures.

4. **Chapters 11 and 12 Plan Documentation.** Chapter 11 and Chapter 12 plan reviews must be documented in the AIS history. The history in the Chapter 11 or Chapter 12 business case must state the nature of the debtor's business. This is extremely important when the nature of the debtor's business is seasonal and impacts the terms of the plan and debtor's ability to pay. In all Chapter 11 and Chapter 12 cases, the plan documentation must include the following information in the order below:

- Person responsible for making payments: trustee or debtor in possession
- When administrative expenses are to be paid
- Length of plan, frequency of payments, and when first payment is due (e.g., 30 days after confirmation)
- Dollar amount of periodic payments to IRS and the due date of payments
- Amount or percentage to be paid on IRS's secured claim(s)
- Amount or percentage to be paid on IRS's unsecured priority claim(s)
- Amount or percentage to be paid on IRS's unsecured general claim(s)
- Amounts to be paid under the plan for criminal restitution assessments and any special instructions for the application of such payments, when there is a criminal restitution assessment present in the case

Note:

Cases with a criminal restitution assessment are identified by a "CRIMREST" case classification.

- Accrued interest to be paid on secured claims, as well as unsecured priority and general unsecured claims, if applicable, under 11 USC §§ 1225(a)(4) and 1129(a)(9)(C) and (D)

Note:

Unless the plan provides otherwise, the interest rate is the IRC § 6621 rate in effect during the month in which the plan is confirmed. For large corporate underpayments, the interest rate under § 6621(c) is five percentage points higher than the normal interest rate. See IRM 5.9.8.14.2(3)(d), *Rate of Interest for Tax Claims*, for additional information.

- Default language
- Effect of plan confirmation on the Service's liens
- Plan adequate: [yes or no]
- Remarks: [If the plan is not adequate, why it is not adequate? What actions have been taken to resolve the plan deficiency? If payments are to be applied in a manner other than the systemic allocation program for AIS automatic allocations, how they should be manually applied; etc.]

Note:

For formatting purposes, examples of plan documentation appear in the paragraph above.

5. **Confirmed Plans.** When the treatment of the Service's claim is determined to be inadequate in a proposed plan and it is subsequently amended or modified to alter the treatment of the Service's claim, the terms of the amended or modified plan must be entered in the AIS history when entered by the court. The amendment or modification may be entered by the court in the confirmation order or in a post-confirmation modification order.

6. **Classifications and Summary Histories.** To alert caseworkers to conditions that may affect the final disposition of a Chapter 7 or Chapter 13 case, caseworkers in FI and the CIO will enter case classifications to alert the caseworker closing the case to read the "Summary History" before taking closing actions in the case. (See IRM 5.9.5.4.1, *Case Classifications*, below for additional information on case classifications.) The "Summary History" will also alert caseworkers to special actions needed during the pendency of the bankruptcy case. (See IRM 5.9.5.4.2, *Summary Histories*, through IRM 5.9.5.4.4, *Chapter 7 Summary Histories*, for additional information.)

Note:

Case classifications must also be added in a Chapter 11 or Chapter 12 case, when appropriate.

7. **Objective Documentation.** AIS documentation must include only facts. The history must not include derogatory statements about any party of interest in the bankruptcy case, any other employees, or any functions within the IRS.

**5.9.5.4.1 (09-26-2014)
Case Classifications**

1. **Case Classifications that Alert Caseworkers to Actions Needed in a Case.** There are several case classifications on AIS that alert caseworkers to actions that must be addressed during the closure of a bankruptcy case. The case classifications also alert caseworkers to situations that must be addressed during the pendency of the bankruptcy case. When appropriate, case classifications should be added to the case on AIS, regardless of the bankruptcy chapter.

Previously, AIS did not allow multiple case classifications. In older cases, the "PDSC ISSUE" case classification alerted caseworkers that multiple issues were present in a case that had to be addressed during case closure. Due to recent AIS enhancements, there may be multiple case classifications present in a case. In either situation, caseworkers working or closing a case must look for special guidance in the "Summary History" (IRM 5.9.5.4.2, *Summary Histories*, through IRM 5.9.5.4.4, *Chapter 7*

Summary Histories).

The chart below lists case classifications that identify issues that must be addressed during case closure or require special actions during the pendency of the bankruptcy case. Refer to IRM Exhibit 5.9.1-2, *Acronyms and Abbreviations*, for the acronyms used in this chart.

Classification	Prevents Case Closure	Identifies
≡≡≡≡≡≡≡≡≡≡≡≡	No	Chapter 7A streamlined case with liability ≡≡≡≡≡≡≡≡≡≡≡≡ .
7N - NQRS	No	7NA case worked by FI
≡≡≡≡≡≡≡≡≡≡≡≡	No	Chapter 13 streamlined case with liability ≡≡≡≡≡≡≡≡≡≡≡≡ .
≡≡≡≡≡≡≡	No	Chapter 13 streamlined case with liability ≡≡≡≡≡≡≡≡≡≡≡≡ .
ATAT	Yes	Cases that must be referred to the Collection ATAT Coordinator at closure.
CID FREEZE	Yes	Cases with an open CID freeze requiring coordination with CID at closure.
COURT CASE	Yes	Court cases where the payment of damages has been requested which must be resolved prior to closure.
CRIMREST	No	Cases with a criminal restitution assessment that impacts discharge in the case.
EXAM	No	Presence of an Examination issue that must be addressed at closure or coordinated with Examination.
EXEMPT	Yes	An EAEP investigation is in process or EAEP has been identified for collection after the bankruptcy discharge.
FULL PAID	Yes	Full paid cases that cannot be closed until dismissal, discharge, or other closure by the court.
IA or IA ISSUES	No	Cases with a prior installment agreement that must be addressed during case closure.
Iden Theft	Yes	There is an open identity theft issue in the case that must be resolved prior to case closure.
LIEN ADDR	No	All NFTL issues have been addressed in the case and there are no NFTL issues that require the case to remain open.
LLC	No	The debtor is a LLC and there is special guidance in the "Summary History" for closing the case.
NDS	No	There are non-debtor spouse issues that must be addressed during case closure.
NO EAEP	No	There is no EAEP to collect from at case closure. There is no need to reassign the case to FI for an EAEP investigation at closure. Proceed with closing actions.
NO WFTP	No	The willful failure to pay exception to discharge has been investigated and there is no willful failure to pay. Proceed with closing actions.
NONCLS	Yes	There are miscellaneous issues that require special closing action at closure and the issue(s) do not fall into the case classifications listed elsewhere in this chart.
NoNotice	Yes	The taxes are non-dischargeable because the Service received late notice or no notice in the case.
OIC PENDING	Yes	An OIC is pending in the case. Actions in the case must be coordinated with COIC or the OIC Specialist.
PDSC ISSUE	Yes	There are multiple issues in the case that must be addressed during case closure. Read the "Summary History" for additional guidance in the case.
POST ISSUE	No	Treatment of any § 1305 claims.
RE-ASSESS	Yes	Cases with an unagreed Examination or AUR deficiency that was assessed in violation of the stay that must be reassessed at case closure.
REFERRAL	Yes	The case cannot be closed because there is an open referral to Area Counsel or the AUSA.
SERIAL	No	The taxpayer is a serial filer and there are issues that impact the automatic stay, ASED, CSED, discharge limitations, or tolling in the case.
≡≡≡≡≡≡≡≡≡≡≡≡	No	The case meets Chapter 13 streamlined criteria and the liability is less than ≡≡≡ .
≡≡≡≡≡≡≡≡≡≡≡≡	No	The case meets Chapter 13 streamlined criteria and the liability is ≡≡≡≡≡≡≡≡≡ .
TFRP	Yes	There are TFRP issues that must be addressed before the case can be closed.
TTEE RFND	No	There is an open trustee turnover order in a Chapter 7 or Chapter 13 case. In a Chapter 7 case, this also indicates that the Chapter 7 case must remain open during the turnover period even if a discharge has been entered in the case.
URP/IRP	No	There are Underreporter issues that must be resolved at case closure that may require coordination with AUR.
WAIT 4 FD	Yes	The case must remain open for distribution due to a NFTL or other issue.
WILLFUL	Yes	An investigation has been completed and taxes are non-dischargeable due to the willful evasion exception to discharge.

5.9.5.4.2 (09-26-2014)
Summary Histories

1. **Summary Histories.** Cases are frequently reassigned during the pendency of the bankruptcy case. The reassignment may be from one FI caseworker to another FI caseworker. The reassignment may also be from the CIO to FI or from FI to the CIO. To alert caseworkers in either function to actions that may be required during case closure, or special circumstances in the case, caseworkers must enter a "Summary History " when issues are present that affect processing of the case. For easy identification in the AIS history, "*****SUMMARY*****" must be entered in all capital letters at the beginning of the "Summary History" . Issues that may affect final disposition in the case or processing of the case include but are not limited to:

- Potential fraud
- Liabilities not provided for in the debtor's plan
- Unusual plan provisions that affect discharge
- Reinstatement of an installment agreement (IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing a Case*, and IRM Exhibit 5.9.17-2, *Regular Installment Agreement Reinstatements*, through IRM Exhibit 5.9.17-5, *Installment Agreement Cannot Be Reinstated*)
- Refund turnover orders
- Pending Exam or Underreporter deficiency, or re-assessment of a TC 291 or TC 301
- A previous discharge that prevents a discharge of the current case because it was filed within the prohibited time period per BAPCPA (IRM Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*)
- Issues that impact the ASED, CSED, automatic stay, or tolling in the current case because the debtor is a serial filer
- There is a criminal restitution assessment in a case, and a "CRIMREST" case class is present, any special instructions regarding discharge or non-dischargeability of liabilities (IRM 5.9.17.7.8, *Discharge and Restitution Assessments*)
- IRS did not receive notice in an asset case or notice was not timely, and a "NoNotice" case classification is present in the case, instructions regarding dischargeability of the liability (IRM 5.9.17.7.9, *Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case*)

Example:

*****SUMMARY***** - LIABILITY ON 30-201212 NON-DISCHARGEABLE AS IRS NOT NOTICED IN SUFFICIENT TIME TO FILE A PROOF OF CLAIM IN THE CHAPTER 13 CASE. PRIOR INSTALLMENT AGREEMENT. NO ADDITIONAL LIABILITIES INCURRED. INSTRUCTIONS TO CIO - REINSTATE IA.

Note:

See additional examples of "Summary Histories" in IRM 5.9.17, *Bankruptcy and Other Insolvencies, Closing a Bankruptcy Case*.

5.9.5.4.3 (09-26-2014) Chapter 13 Summary Histories

1. **Summary Histories in Chapter 13 Cases.** Prior to the transfer of the case from FI to the CIO, the FI caseworker must enter a "Summary History" in the case. FI must also enter a "Summary History" in a case when the case must remain in FI because issues in IRM 5.9.1.4(3), *Complex Issues*, are present. The "Summary History" allows for the easy identification of issues that must be addressed during case closure. FI must enter *****SUMMARY***** in upper case letters when entering the "Summary History" on AIS. Sample minimum summaries are included in IRM 5.9.10.6(5), *History Summaries*. In addition to the items listed in IRM 5.9.10.6(5) and in IRM 5.9.5.4.2, *Summary Histories*, caseworkers must include:

- Issues that impact the ASED, CSED, automatic stay, or tolling because the debtor is a serial filer (*IRM 5.9.5.7, Serial Filers*), including instructions to input a TC 520 cc 6X using the confirmation date upon confirmation of the plan
- Instructions for the application of plan payments to criminal restitution assessments, or guidance regarding discharge, when there is a criminal restitution assessment present

Note:

Cases with a criminal restitution assessment are identified by a "CRIMREST" case classification.

- Instructions regarding the non-dischargeability of taxes when a determination has been made that the debtor willfully evaded the payment of the taxes and the "WILLFUL" case classification is present in a case

Note:

If there are no issues present in a case that is transferred from FI to the CIO, the "Summary History" should simply state, *****SUMMARY***** - Case transferred to CIO - No Issues."

2. **General Transfer Criteria.** FI will transfer a case to the CIO when all proofs of claim have been acknowledged, the CPM Screen on AIS has been loaded and verified, all follow-ups on the AIS Letter Screen have been closed, and there are no complex or non-complex issues that require the case to remain in FI. (*IRM 5.9.1.4, The Role of Insolvency*) If the case meets Chapter 13 streamlined criteria, the FI caseworker must ensure that a "≡≡≡≡≡≡" case classification is added to AIS prior to transfer. The CIO will monitor for confirmation of the plan and maintain the case in the CIO inventory until dismissal or discharge unless issues arise requiring transfer to FI prior to dismissal or discharge. Upon dismissal or discharge, the CIO will take closing actions on the dismissed or discharged case. If any of the issues listed in *IRM 5.9.5.4.2, Summary Histories*, or above are present, the issues must be included in the "Summary History" in the Chapter 13 case. Additional issues unique to the Chapter 13 case are addressed below.

Note:

See *IRM 5.9.5.7(7), Case Assignments*, for transfer criteria in serial filer cases. See *Exhibit 5.9.5-1, Transfer Steps for Cases with No Open Plan Monitoring or Other Investigation (OI)*, and *Exhibit 5.9.5-2, Transfer Steps for Cases with Open Confirmed Plan Monitoring*, for the steps required when transferring a case.

3. **Transfer of the Open Chapter 13 Case.** When a Chapter 13 case is transferred from FI to the CIO prior to confirmation, a "Summary History" must be entered in the case prior to the transfer. The issues listed above must be addressed. Additionally, if the case is 180-days old or older at transfer, the FI caseworker must check PACER to determine if the plan is still unconfirmed. The "Summary History" must state, *****SUMMARY***** - FI reviewed PACER, case not yet confirmed. Transferred to CIO to monitor for confirmation."

4. **Chapter 13 Streamlined Cases.** When a Chapter 13 case meets the "streamlined" criteria as determined by the Director, AI, the FI caseworker must enter a "≡≡≡≡≡≡" case classification to the case on AIS. The "Summary History" requirements in the Chapter 13 "streamlined" case are reduced. At minimum, the "Summary History" in the Chapter 13 "streamlined" case must include the following:

- Chapter 13 streamlined criteria
- Any violation of stay issues
- IDRS or APOC reviewed
- Proof of claim (POC) filed
- Lien issues
- Chapter 13 plan feasibility; such as, treatment of the secured, priority, or general claim of IRS or NA
- First Meeting of Creditors (FMC) date or NA
- Plan screen loaded and no issues or cite the issue

Example:

*****SUMMARY***** - case meets Chapter 13 streamlined criteria. No VOS issues in case. APOC reviewed and no flags to clear. POC filed on 03-13-2013. IRS secured. Earliest NFTL refile date is 08-17-2017. Plan is feasible and will pay the claims of the Service in full. FMC 04-01-2013 - no issues. CPM screen loaded and no issues.

5. **FI Transfer to CIO After Discharge.** FI will transfer a discharged case to the CIO for closure when the discharge is received while the case is assigned to FI and there are no issues that require the case to remain in FI. FI will ensure that "SUP DIS REQUEST - SI" or "CH7&HARDSHIPCH13 RI" is entered in the method of closure field on AIS. The method of closure is determined by the type of discharge the debtor received in the Chapter 13 case - a discharge upon completion of the plan or a hardship discharge. FI will also ensure that the date of discharge is entered on AIS. The case may also be transferred for closure when discharge was denied in the case. "DISCHARGE DENIED" is the method of closure used when discharge is denied. (See IRM 5.9.17.7.3, *Discharge Denied*, for additional information.) "No Notice" is entered as the method of closure in the case when the liability is non-dischargeable because the IRS was not noticed timely in the case. (See IRM 5.9.17.7.9, *Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case*.)

5.9.5.4.4 (09-26-2014) Chapter 7 Summary Histories

1. **Summary Histories in Chapter 7 Cases.** The CIO and FI share responsibilities in the processing of Chapter 7 cases. Generally, Chapter 7 No Asset (NA) business cases remain at the CIO during the entire pendency of the bankruptcy case. The CIO takes closing actions on the cases without the involvement of FI. As the Chapter 7 NA business case remains at the CIO during the pendency of the case, there are no "Summary History" requirements in the Chapter 7 NA business case.

Chapter 7NA cases of individual or joint debtors may transfer between the CIO and FI for investigations of exempt, abandoned, or excluded property. FI may also

*****SUMMARY***** - IRS received notice of the bankruptcy on 3-15-2012. The government bar date in the case was 3-1-2012. The notice was not received prior to the expiration of the bar date. Referred to Area Counsel to see if the Service could file a late claim in the case. The trustee filed a final report on 12-01-2012. Per Area Counsel, it is too late to file a claim in the case. The liabilities are non-dischargeable in the case because IRS was not timely noticed. CIO - do not discharge any liabilities.

4. **Chapter 7A Business Cases.** The Chapter 7A business case of a corporation or Limited Liability Company (LLC) is transferred from Field Insolvency (FI) to the CIO for closure. Prior to transfer, the FI caseworker must complete an initial case review and ensure that all proofs of claim have been filed and acknowledged. Additionally, the FI caseworker must ensure that there are no issues, such as an unassessed TFRP, that require the case to remain open. If the entity is a LLC, the FI caseworker must add a "LLC" case classification to AIS prior to transfer of the case so the CIO can easily identify the LLC. The FI caseworker must also add a "Summary History" that provides closing instructions for the CIO. See IRM 5.9.17.11, *Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)*, and IRM 5.9.17.11.1, *Chapter 7 Single Member Disregarded Entity LLCs*, for additional information. Both include sample "Summary Histories" that must be used based on the type of business entity.

**5.9.5.5 (09-26-2014)
Initial Processing Actions**

1. **Time Frames.** Initial processing of new cases must be completed within *five workdays* of receipt. To ensure completion of all needed case actions within the mandated time frame, the CIO must:
 - A. Load new cases on AIS within two business days of receipt (IRM 5.9.12.3, *Paper Petitions*, and IRM 5.9.12.7, *Electronic Noticing System*);
 - B. Run all IIP processes daily (IRM 5.9.12.5, *Insolvency Interface Program*);
 - C. Resolve cases on the Potentially Invalid TIN (PIT) report within two business days of generation by initiating the appropriate actions to resolve invalid TINs (IRM 5.9.12.5.2, *Potentially Invalid TIN List*);
 - D. Process cross-referenced taxpayer identification numbers (TINs) including asterisk (*) accounts within two business days of generation (Paragraph (3) below); and
 - E. Contact various Collection offices regarding IDRS status 22, 24, 26, 60, and 71 cases from the IIP Process D output within the time limits set in IRM 5.9.12.5.1, *IIP Status Reports*, so other IRS functions have current information on new bankruptcy filings.
2. **Prevention of Violations of the Automatic Stay.** Correction of collection actions that violate the automatic stay must be initiated expeditiously when the Service becomes aware of the violation to protect the debtor's rights and to shield the Service from a suit for damages. In the asset case, caseworkers must work APOC flags that identify a potential violation of the stay within five calendar days of APOC identifying the flagged condition. CIO initiates corrective actions on stay violations identified by IIP Status Reports within 2 business days of generation of the IIP report. (See IRM 5.9.14.2.7, *APOC Flag Condition Time Frame Requirements*, and IRM 5.9.12.5.1, *IIP Status Reports*, for additional information.)
3. **Continuous Levies.** Pre-petition continuous levies must be released immediately. Modules included in a continuous levy are frequently identified by Status 60 on IDRS. However, they are not a true installment agreement. Continuous levies are identified by Installment Agreement Locator Number (ALN) 0208. See IRM 5.11.5.6, *Continuous Levy*, and subsections for additional information.
4. **Initial Processing of Established MFT 31 Modules.** Instances will arise when a bankruptcy is filed, and the accounts have been mirrored prior to the filing of the bankruptcy. Initial case processing for MFT 31 is the same as MFT 30 processing. IIP will search for both spouse's MFT 31 modules using command code INOLES XREF and match the spouse's TIN with the MFT 31 modules.

IF...	THEN...
A new bankruptcy is filed, and the tax periods are MFT 31 mirror modules with balances due,	IIP inputs TC 520 on both spouses' MFT 31 module(s). If collection action can be taken on the non-debtor spouse, then a TC 522 can be input on the non-debtor spouse. Collection action can be taken on the non-debtor spouse in locations that are not subject to community property statutes. Collection action cannot be taken against joint assets of the non-debtor spouse in community property locations. (See IRM 5.9.3.6.1.1, <i>Community Property</i> , for additional information.)
An additional tax assessment is made on MFT 30 after the module has been mirrored and another event occurred such as bankruptcy,	IIP inputs TC 520 on the MFT 30 and MFT 31 mirror modules. Caution: The Insolvency caseworker must not input another TC 971 AC 100 because the MFT 30 and MFT 31s already have a TC 971 AC 10X posted which created the mirrored modules. If collection action can be taken on the non-debtor spouse, then the TC 522 can be input on the non-debtor spouse. Collection action can be taken on the non-debtor spouse in locations that are not subject to community property statutes. Collection action cannot be taken against joint assets of the non-debtor spouse in community property locations. (See IRM 5.9.3.6.1.1, <i>Community Property</i> , for additional information.) Note: Exam will make a joint additional assessment on the MFT 30 if the liability is joint. If the liability is deemed to belong to only spouse, Exam will assess the liability separately on the liable spouse's MFT 31.

**5.9.5.6 (09-26-2014)
Bankruptcy "Freeze" Code (TC 520)**

1. **"Freeze" Codes.** Transaction code (TC) 520, with an appropriate bankruptcy closing code (cc), must be input timely when a bankruptcy case is opened. The use of these codes enables the IRS to comply with the automatic stay provisions of the Bankruptcy Code by "freezing" the pre-petition tax modules so collection actions do not take place. They also allow the IRS to observe various standing court orders which allow assessments, offsets, or refunds to the debtor.
2. **Time Frame.** The bankruptcy freeze code must be input on all pre-petition balance due periods *within five workdays* from the date the Service first becomes aware of the bankruptcy filing. In most instances, the TC 520 is input systemically by the Insolvency Interface Program (IIP). (See IRM 5.9.12.5, *Insolvency Interface Program (IIP)*.)
3. **Transaction Code (TC) 520.** A TC 520, when used in conjunction with a bankruptcy closing code, will:
 - Post to any module whether or not that module is currently on master file (MF)
 - Generate a Daily Transaction Register (DTR) or Integrated Collection System (ICS) notification when the transaction posts to a module
 - Prompt the issuance of litigation transcripts when any subsequent transaction posts while the TC 520 is present
 - Change the module status to 72 for the module to which it was input *except* for cc 84 (a closing code often used in Chapter 7)
 - Prevent all subsequent notices on pre-petition tax periods after one informational notice
 - Suspend the collection statute expiration date (CSED) for the tax accounts on master file *except* when a TC 520 cc 84 is used

Note:

If cc 84 is on a module and the CSED warrants an extension, the CSED must be extended by manual input of a TC 550.

4. **Date of TC 520.** The TC 520 transaction date is usually input to show the same date as the filing of the bankruptcy petition.

Exception:

When the bankruptcy stay has terminated or never went into place, in the bankruptcy case of a "serial filer," the TC 520 date may be the bankruptcy petition date or the date the bankruptcy plan was confirmed. (See IRM 5.9.5.7, *Serial Filers*, for additional information.)

5. **Collection Statute Expiration Date (CSED).** The master file automatically computes the extended CSED for modules with a TC 520 transaction date later than July 1986 and a TC 521 transaction date later than January 1987. However, non-master file (NMF) accounts require a manual TC 550 input to extend the CSED.
6. **Factors Determining TC 520 Closing Codes.** The required TC 520 closing code input varies, depending on factors ranging from the chapter of bankruptcy filed to the presence of standing orders and local rules, or the results of bankruptcy research performed. The effect of TC 520 on assessments depends on the date of the bankruptcy filing.
7. **Reversing TC 520 and CSED.** In most cases, the CSED will be extended by master file when a TC 520 is reversed. However, if the pre-petition CSED on a TC 520 module has expired or if the CSED is within six months of expiring, a manual computation of the CSED (TC 550) is required prior to inputting the TC 521. (See IRM 5.9.17.18,ASED/CSED Considerations.)

**5.9.5.6.1 (09-26-2014)
Closing Codes**

1. **Effects of Various Closing Codes.** Bankruptcy closing codes used in conjunction with transaction code 520 (with the exception of cc 84) alert all functions of the Service to cease collection activity when a bankruptcy is filed. The TC 520 cc 84 is an indicator that Insolvency should be contacted for guidance prior to proceeding with any enforcement activity in the case. Bankruptcy closing codes determine what the freeze will allow or restrict.
2. **Compliance with Legal Requirements.** Standing court orders and local rules/agreements affect the processing of bankruptcy cases in some jurisdictions, including the manner in which refunds and offsets are handled. The implementation of BAPCPA affects the choice of closing codes for cases filed on or after October 17, 2005, as well. The selection by Insolvency of the appropriate TC 520 closing codes helps the Service comply with the legal requirements of each judicial district and the provisions of BAPCPA.
3. **Updated Closing Codes.** In January, 2002, in anticipation of passage of BAPCPA, eight new bankruptcy closing codes became available for use with transaction code 520. These closing codes add options for handling issues systemically. In particular, the new closing codes modify the -V freeze to allow for post-petition offsets of "mutual" pre-petition credits to pre-petition tax liabilities, as permitted in a post-BAPCPA case. The specific features of each of the updated closing codes are described in the table in paragraph (7), Table 2, below.
4. **Retirement of Some Existing Closing Codes.** With the addition of the newer closing codes, some of the older closing codes have been retired. IDRS no longer allows TC 520 inputs with closing codes 86, 87, 88, or 89. However, open cases with unreversed TC 520s with those closing codes will continue to be processed by master file in accordance with the specifications below. Both sets of closing codes (the old and the new), showing their effects and characteristics, are listed in Tables 1 and 2 respectively, below.

5. TABLE 1 - "8X SERIES" CLOSING CODES

CC	Assessment Permitted	Offsets Frozen	Refund Frozen
81	YES*	YES	YES
83	NO if TC date is before 10/22/94	YES	NO
	YES* if TC date on or after 10/22/94		
84	YES sends out standard notices and generates litigation transcripts, but does not suspend the balance due account for the module to which it is input Note: Closing code 84 will not create a dummy module.	NO	NO
85	NO if TC date before 10/22/94	YES	YES but only if balance due modules
	YES* if TC date on or after 10/22/94		NO if no indication of related balance due
86	YES*	NO	NO
87	YES*	NO	YES
88	NO if TC date before 10/22/94	YES	YES
	YES* if TC date on or after 10/22/94		
89	YES*	YES	NO
* prevents issuance of all balance due notices, except one informational notice			
Caution:			
Closing code (cc) 81 does not prevent notices on post-petition periods that do not have cc 81 on those periods.			

6. "8X SERIES" CLOSING CODES – Additional Information

- A. CC 81. Does not prevent assessments from posting to any module in the entity, and it does not affect the subsequent processing of modules that do not contain a TC 520 cc 81. It freezes the entity from all offsets and refunds. Shows alpha freeze of -W and IDRS status of 72.
- B. CC 83. Freezes the entity from all offsets. Refunds will not be frozen on pre-petition and post-petition modules. Shows alpha freeze of -V and IDRS status of 72.
- C. CC 84. Allows assessment, offset, refund, sends out standard notices and generates litigation transcripts, but does not suspend the balance due account for the module to which it is input. Shows alpha freeze of -W and IDRS status -no change. Does not extend the CSED on IDRS.
- D. CC 85. Does not prevent refunds if no balance due modules or balance due indicators are present in the entity. Otherwise, refunds and offsets are frozen. Shows alpha freeze of -V and IDRS status of 72.
- E. CC 86. Allows assessments of all returns and adjustments, but prevents issuance of all balance due notices, except for one "information" notice. Refunds and offsets are not frozen. Shows alpha freeze of -V and IDRS status of 72.
- F. CC 87. Allows all assessments but prevents the issuance of all balance due notices except one "information" notice. Systemic offsets are unaffected. Refunds are frozen. Shows alpha freeze of -V and IDRS status of 72.
- G. CC 88. Freezes the entity from all refunds and offsets. Shows alpha freeze of -V and IDRS status of 72.
- H. CC 89. Allows assessments, but prevents the issuance of all balance due notices except one "information" notice. Prevents offsets. Refunds will be issued to the taxpayer. Often used in Chapter 13. Shows alpha freeze of -V and IDRS status of 72.

Note:

The freeze indicators used for bankruptcy (alpha -V and -W freezes) affect notices, offsets, and refunds, depending on the closing code used.

7. TABLE 2 - 6X SERIES CLOSING CODES

CC	Post-petition BalDue Accts Go to Collection Status?	Offsets Prevented or Allowed	Refunds Frozen or Allowed
60	Yes	Prevents pre-petition to pre-petition offsets. Allows post-petition to post-petition offsets.	Freezes pre-petition refunds. Allows post-petition refunds.
61	No	Prevents pre-petition to pre-petition offsets. Allows post-petition to post-petition offsets.	Freezes pre-petition refunds. Allows post-petition refunds.
62	Yes	Prevents pre-petition to pre-petition offsets. Allows post-petition to post-petition offsets.	Freezes pre-petition refunds. Freezes post-petition refunds.
63	No	Prevents pre-petition to pre-petition offsets. Allows post-petition to post-petition offsets.	Freezes pre-petition refunds. Freezes post-petition refunds.
64	Yes	Allows pre-petition to pre-petition income tax offsets. Allows post-petition to post-petition offsets.	Does not freeze pre-petition refunds. Does not freeze post-petition refunds.
65	No	Allows pre-petition to pre-petition income tax offsets. Allows post-petition to post-petition offsets.	Does not freeze pre-petition refunds. Does not freeze post-petition refunds.
66	Yes	Allows pre-petition to pre-petition income tax offsets. Allows post-petition to post-petition offsets.	Freezes pre-petition refunds. Freezes post-petition refunds.
67	No	Allows pre-petition to pre-petition income tax offsets. Allows post-petition to post-petition offsets.	Freezes pre-petition refunds. Freezes post-petition refunds.

8. **Freeze Indicator.** All closing codes in the 6X series have the -V freeze indicator. Section 11 of Document 6209, *IRS Processing Codes and Information*, gives additional information on closing codes.

9. **Bankruptcy Litigation Location Code (BLLC).** During the pendency of a bankruptcy case, caseworkers may need to manually change a TC 520 closing code (cc) on IDRS. This may be necessary due to changes in local court rules, because the taxpayer is a serial filer, etc. When changing a TC 520 closing coded on IDRS, caseworkers must input a BLLC.

**5.9.5.6.2 (09-26-2014)
Reversing the Bankruptcy Indicator**

1. **TC 521.** A TC 521 reverses a TC 520 and releases the litigation freeze. All of the TC 520 closing codes operate independently of each other. For example, a TC 521 cc 81 will not reverse a TC 520 cc 83 or a cc 67. A TC 521 with 999 statistical indicator will reverse all open TC 520s in a module with cc 81, 83, or 85 through 89, and cc 60 through 67.

Note:

IIP interfaces with IDRS to release all bankruptcy TC 520 closing codes. However, TC 520 cc 84 must be in the AIS transaction code file before IIP will automatically release it. The *IIP User's Guide* provides additional information.

2. **TC 522.** A TC 522 can be used to reverse a TC 520 when:

- A. The TC 520 was input in error.
- B. A mirrored MFT 31 has been created for a non-debtor spouse and the TC 520 must be reversed to allow correct computation of the CSED or to prevent incorrect tolling in the event the non-debtor spouse files a bankruptcy.
- C. In a case filed post-BAPCPA, when the debtor is a serial filer and the automatic stay never went into effect because there was no motion and order extending the stay in the current case. The TC 520 must be reversed to allow collection and to ensure the correct computation of the CSED. (See *IRM 5.9.5.7, Serial Filers*, below.)
- D. A post-petition period has been protected by the stay due to the bankruptcy freeze and the plan was not modified to provide for payment of that period.

**5.9.5.7 (09-26-2014)
Serial Filers**

1. **BAPCPA Stay Limitations.** BAPCPA contains provisions specifically designed to discourage debtors from filing sequential bankruptcies. 11 USC § 362(c) limits or eliminates the imposition of the automatic stay in the current bankruptcy case of an individual or joint debtor when:

- There were one or more dismissals of prior bankruptcy case(s) that were pending within the year before the current case was filed,
- The dismissals were not for failure to pass the means test in a prior Chapter 7 bankruptcy case (11 USC § 702(b)), and
- There is no motion filed or hearing requested by any interested party in the current case for an extension (or imposition) of the automatic stay, or
- There is no order extending (or imposing) the stay in the current case that was entered pursuant to a hearing completed within 30 days of the bankruptcy petition date.

Caution:

If there is an order extending (or imposing) the stay in the current case, the order must be for *all creditors* to include IRS. If the order lists only specific creditors, the order must list IRS. Otherwise, the stay is not extended (or imposed) as it relates to IRS.

2. **Automatic Stay.** The automatic stay consists of three parts:

- **Stay of Acts Against the Debtor**— The stay prohibits certain acts against the debtor personally, such as, sending a final notice and intent to levy to the debtor requesting payment of a pre-petition tax liability.

Note:

IRC § 6213 prohibits assessment of an unagreed Examination or AUR deficiency during the time the automatic stay prohibits the taxpayer from filing a Tax Court petition. If there is no order extending the stay in the current bankruptcy case of a serial filer, the taxpayer is no longer prohibited from filing a Tax Court petition. Thus, assessment under IRC § 6213 is no longer prohibited.

- **Stay Against Property of the Debtor**— The stay prohibits any actions to create, perfect, or enforce a lien against the debtor's property, to the extent such lien secures a pre-petition liability.

Note:

Property of the debtor includes any property that has been exempted, abandoned, or excluded by/from the bankruptcy estate.

- Stay of Acts Against Property of the Estate— The stay prohibits any collection actions against property of the bankruptcy estate including any estate property in control of the court, property (wages or otherwise) used to fund a bankruptcy plan, or property used to earn the income used to fund a plan.

Example:

The debtor owns real property that he leases to generate rental income. The rental income produces income that is used to fund the bankruptcy plan. The real property is property of the estate.

3. **Stay Imposition or Extension.** Any party in interest can request an extension of the stay to apply to any or all creditors when a serial filer under 11 USC § 362(c)(3)(A) is facing the termination of the automatic stay 30 days after the petition date as outlined above. Likewise, any party in interest may request a stay be put into effect if no stay is due to be imposed under 11 USC § 362(c)(4)(A). A motion to extend the stay must be filed so that notice can be given and the hearing on the motion can be completed before the expiration of the 30 days. A motion to impose a stay must be made within 30 days after the petition date. In either situation, the party in interest must demonstrate the filing of the later case is in good faith. 11 USC § 362(c)(3)(C) gives examples of bankruptcy filings that are not considered to be in "good faith."

BAPCPA does not require the court to enter an order stating a stay with respect to the debtor and the debtor's property that is not property of the bankruptcy estate is terminated. Nor, does BAPCPA require the court to enter an order stating the stay does not arise in regard to either the debtor, debtor's property, or property of the estate.

4. **Stay Termination After 30 Days.** Under 11 USC § 362(c)(3)(A), if a debtor files an individual Chapter 7, 11, or 13 bankruptcy case (or if an involuntary case is commenced against the debtor) within 12 months of the previous dismissal of *one* individual prior bankruptcy case, the assumption is the case was not filed in good faith. The automatic stay will terminate 30 days after the petition date unless the dismissal was for failure to pass the means test in a Chapter 7 case and there is no order extending the stay in the current case. The stay continues against property of the estate until such property is no longer property of the estate. See *Exhibit 5.9.5-4, Common Processing Steps in Serial Filer Cases* and *Exhibit 5.9.5-5, Processing the Serial Filer Case When the Stay Terminates After 30 Days*. Chief Counsel Notice CC-2008-007 establishes the Service's position on 11 USC § 362(c)(3). The Service cannot take enforcement action against property of the estate until such property is no longer property of the estate, *even if there is no order extending the stay in the current case*. The Service may take enforcement actions against the debtor and the debtor's non-estate property (e.g., exempt, abandoned, or excluded property) after the 30 day period expires, and there is no order extending the stay. *This includes assessing an unagreed Examination or AUR deficiency* as the debtor can petition Tax Court because the automatic stay is no longer in place.

Caution:

Insolvency should coordinate this issue with Area Counsel closely when anticipating collection actions, such as a levy or seizure, to ensure that the property pursued is not under the protection of the bankruptcy court when there is no order extending the stay in the current case.

5. **No Stay Arises.** Under 11 USC § 362(c)(4)(A), if a debtor files an individual Chapter 7, 11, 12, or Chapter 13 bankruptcy (or if an involuntary case is commenced against the debtor) within one year of the previous dismissal of two or more individual bankruptcy cases, the assumption is that the case was not filed in good faith. The automatic stay does not go into effect unless the dismissals were for failure to pass the means test in a Chapter 7 case or the court enters an order allowing the stay to go into effect. Such order must be entered after a hearing held within 30 days of the filing of the petition. Otherwise, the automatic stay does not go into effect at all. This means there is no stay of collection actions as to the debtor, the debtor's property, or property of the estate. See *Exhibit 5.9.5-4, Common Processing Steps in Serial Filer Cases*, and *Exhibit 5.9.5-6, Processing the Serial Filer Case When No Stay Goes into Effect*.

6. **Stay for Small Businesses.** Under 11 USC § 362(n), the automatic stay will not apply in certain small business debtor cases, which are typically Chapter 11 cases where the debtor's noncontingent debts do not exceed \$2,490,925, and either an Unsecured Creditor's Committee has not been appointed or the court determines that such a committee has not taken an active role. (11 USC § 101(51C and D)) Generally, the stay will not apply where the small business debtor had a previous case that was dismissed, or the plan was confirmed, within two years of the present case. Insolvency should contact Counsel if this Bankruptcy Code section may apply.

7. **Case Assignments.** Due to the complexity of the serial filer case:

- The Chapter 7 Asset case of the individual or joint debtor must remain in FI until FI determines if the automatic stay has been extended (or imposed). Once this determination has been made, FI will transfer the case to the CIO if there are no other issues that require the case to remain in FI. However, if the stay in the case is not extended (or imposed), FI must first reverse the TC 520 cc 6X and input the TC 520 cc 84, as appropriate.
- The Chapter 13 case of the individual or joint debtor must remain in FI until a determination has been made whether or not the stay is extended (or imposed) in the case. If the stay is extended (or imposed), and there are no issues that require the case to remain in FI, the FI caseworker will transfer the unconfirmed case to the CIO to monitor for confirmation. If the stay is not extended (or imposed), the case must remain in FI until confirmation. At confirmation, FI will input the TC 520 cc 6X using the confirmation date and follow confirmation actions in IRM 5.9.10.6, *Field Insolvency AIS Actions*. If there are no issues that require the case to remain in FI, the FI caseworker will transfer the case to the CIO.

**5.9.5.7.1 (09-26-2014)
Systemic Identification in Serial Filer Cases**

1. **Identifying Potential Stay Issues.** IIP has been programmed to recognize and record previous bankruptcies for both stay issues and non-dischargeability issues. IIP systemically inputs a message on the AIS TIN table to advise Insolvency caseworkers of "Prior Bankruptcy Status". The messages used follow:

- "Prior to 10-17-2005" denotes a current (case) docket where the petition date was prior to 10-17-2005 (pre-BAPCPA).
- "Prior bankruptcy less than 12 months" denotes a current docket's petition date was on or after October 17, 2005, and a prior bankruptcy was found that was filed on or less than 365 days from the current docket's petition date.
- "Prior bankruptcy greater than 12 months" denotes a current docket's petition date was on or after October 17, 2005, and a prior bankruptcy was filed more than 365 days from the current docket's petition date.
- "Prior bankruptcy less & greater than 12 months" denotes a current docket's petition date was on or after October 17, 2005, and prior bankruptcies were filed less than 365 days and another prior bankruptcy was located that was filed more than 365 days from the current docket.
- "Multiple prior bankruptcies" denotes that a current docket's petition date was on or after 10-17-2005, and more than one prior bankruptcy was filed greater than 365 days from the current docket.
- "No prior bankruptcy" denotes no prior bankruptcies were located.
- "Exempt" denotes the case is exempt from being checked.

2. **Caseworker Actions.** The CIO is responsible for reviewing the Chapter 7 No Asset cases assigned to them, when the case requires manual case actions. FI is responsible for reviewing cases assigned to them upon initial case review. Upon initial case review, if the Prior Bankruptcy Status field on the AIS TIN screen is anything except "No prior bankruptcy", the caseworker must determine if the previous bankruptcy(cies) were dismissed for not filing in good faith or if dismissal was because of means testing. If the case was dismissed because the case was not filed in good faith, the caseworker must input a follow-up date of 45 days from the petition date to check the court's electronic records to determine the status of the automatic stay and follow the procedures in *Exhibit 5.9.5-4, Common Processing Steps in Serial Filer Cases*, through *Exhibit 5.9.5-6, Processing the Serial Filer Case When No Stay Goes into Effect*, when the case is assigned to FI.

Note:

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3. **CSED Extension.** IIP will input TC 520 on master file balance due modules for all new bankruptcies regardless of any previous bankruptcies. If the court did not impose a stay on collection actions, or if the stay terminated on the 30th day in the current case, the caseworker must manually reverse TC 520s and input appropriate TC 520s in the serial filer case, when necessary. This will result in IDRS correctly calculating the CSED in the case. IDRS TC 520 cc 84 will not suspend the CSED. It will alert Service employees to contact Insolvency before taking any collection action because there is a bankruptcy case on the taxpayer and the Service may be limited in the pursuit of collection actions. The TC 520 cc 6X closing codes all extend the CSED on IDRS. In either instance, the case will remain open on AIS until dismissal, discharge, or non-discharge.
4. **Impact of the Serial Filer on Statutes.** When the taxpayer is a serial filer and there is no order extending the stay, calculation of the Assessment Statute Expiration Date (ASED) and Collection Statute Expiration Date (CSED) may be impacted. Additionally, when the debtor is a serial filer, the calculation of tolling to determine proof of claim classification in a subsequent case may be impacted. The following chart explains the impact on statutes in the serial filer case.

STATUTE	STAY TERMINATED ON THE 30th DAY	STAY NOT IMPOSED
ASED	<p>The ASED is extended from the petition date to the 30th calendar day from the petition date plus 60 days when there is an unagreed Examination or AUR deficiency. The ASED will be tolled by the stay if a Statutory Notice of Deficiency (SNOD) was issued and the time to file a Tax Court petition has not expired.</p> <p>Notify AUR or Exam that they may resume their assessment procedures.</p> <p>Note:</p> <p>If AUR or Exam contacts CIO to ask if they can proceed in the serial filer case, CIO will provide them with the name and telephone number of the FI contact from SERP.</p>	<p>The ASED is not extended by the current bankruptcy.</p> <p>If there is an unagreed Examination or AUR deficiency, advise AUR or Exam that they may resume their assessment procedures.</p> <p>Note:</p> <p>If AUR or Exam contacts CIO to ask if they can proceed in the serial filer case, CIO will provide them with the name and telephone number of the FI contact from SERP.</p>
CSED	<p>The CSED is extended on pre-petition liabilities from the petition date to the 30th calendar day from the petition date plus 6 months.</p> <p>If a plan is confirmed and there is not 6 months between the day the stay terminated and the confirmation date, the number of days between the day the stay terminated and the confirmation date is added to the CSED instead of 6 months.</p> <p>If a plan is confirmed in the case, the CSED is extended from the confirmation date to the dismissal, discharge or denial of discharge date plus 6 additional months.</p> <p>Reminder:</p> <p>If TC 521/TC 522/TC 520(s) are input to IDRS correctly, IDRS will systemically calculate the extended CSED correctly.</p>	<p>The CSED is extended on pre-petition liabilities from the confirmation date to the dismissal, discharge, or discharge denied date plus 6 months.</p> <p>Reminder:</p> <p>If TC 521/TC 522/TC 520(s) are input to IDRS correctly, IDRS will systemically calculate the extended CSED correctly.</p>
Tolling	<p>For determining proof of claim classification in a subsequent bankruptcy, the tolling period due to the current bankruptcy case is from the petition date to the 30th calendar day from the petition date plus 90 days.</p> <p>If a plan is confirmed, and there is not 90 days between the date the stay terminated and the confirmation date, the number of days between the date the stay terminated and the confirmation date is added to the tolling period.</p> <p>Additionally, if a plan is confirmed, the tolling period is calculated from the confirmation date to the dismissal, discharge, or discharge denied date plus 90 days.</p>	<p>For determining proof of claim classification in a subsequent bankruptcy, the tolling period due to the current bankruptcy case is from confirmation date to the dismissal, discharge, or discharge denied date plus 90 days.</p>

5. **Discharge Limitations.** The Bankruptcy Code limits how often a debtor can be discharged from certain chapters in bankruptcy. (See Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*.) When the prior bankruptcy status determined by IIP, as explained in paragraph (1) above is anything except "No prior bankruptcy" in the Prior Bankruptcy Status field of the AIS TIN screen, caseworkers must review the prior bankruptcy(ies) to determine if the debtor is disqualified from discharge. If the employee determines the elapsed time between filings precludes a discharge upon case closure, (s)he must input a "SERIAL" case classification on the "Classification" field of the AIS Taxpayer Screen and document the history with the reason the debtor's liabilities cannot be discharged. Then, the caseworker should consult Counsel to determine if other actions are required, such as court notification, in that jurisdiction.
6. **Case Classification.** When the debtor is a serial filer and there are issues in the case that impact the automatic stay, ASED, or CSED, dischargeability or tolling in subsequent cases, caseworkers must add a "SERIAL" case classification to AIS so the case can be easily identified.

Note:

See IRM 5.9.5.7, *Serial Filers*; Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*; Exhibit 5.9.5-4, *Common Processing Steps in Serial Filer Cases*; Exhibit 5.9.5-5, *Processing the Serial Filer Case When the Stay Terminates After 30 Days*; and Exhibit 5.9.5-6, *Processing the Serial Filer Case When No Stay Goes into Effect*, for additional information.

**5.9.5.8 (09-26-2014)
Levies and Bankruptcy**

1. **Introduction.** A levy served pre-petition on a taxpayer who subsequently files for bankruptcy protection may lead to a hearing in bankruptcy court. Indeed, an IRS levy may provoke a bankruptcy filing. Both Insolvency and Counsel expend time and resources resolving levy disputes in and out of court. If the issuance of a levy on the assets of a taxpayer in bankruptcy is not properly resolved, the Service may be liable for damages if the IRS receives property in violation of the automatic stay.
2. **Levies and Insolvency.** Property, whether tangible or intangible, levied upon pre-petition but not transferred to the IRS pre-petition is property of the bankruptcy estate and becomes subject to turnover. The IRS may have a right to adequate protection before turnover. (See paragraph (3) below.)

A. **Levy Funds Not Received by Petition Date.** Accordingly, if an IRS levy on accounts receivable, bank accounts, wages, insurance proceeds, or other intangibles has not resulted in the receipt of funds by the IRS at the time the bankruptcy is filed, they are property of the bankruptcy estate. Insolvency must release the levy expeditiously upon identification unless adequate protection is a consideration.

Note:

See IRM 5.9.5.5(2) for additional information.

B. **Pre-petition Seizure.** Any tangible property seized pre-petition, but not sold pre-petition, is property of the bankruptcy estate subject to turnover.

C. **Levy Funds Received Pre-petition.** When the IRS has received a levy payment prior to the bankruptcy filing (pre-petition), ownership has transferred to the IRS and the payment is not property of the estate.

Note:

However, such a payment may be subject to recovery by the estate as a *preference*.

D. Levy Payments Received on the Petition Date. The transfer of levy funds occurs on the date a levy check is honored by the drawee bank and not the date of delivery to the IRS. If the taxpayer files bankruptcy before the check is honored, the funds are property of the bankruptcy estate. (*Pre-Bankruptcy Levies: Turnover, Adequate Protection, and the Automatic Stay; Barnhill v. Johnson*, 503 U.S. 393 (1992).) Since a check received by the IRS on the day a taxpayer files bankruptcy will not be honored until a later date, the funds are property of the bankruptcy estate.

Exception:

A bank check or cashier's check, issued but not received, prior to the petition date immediately transfers funds from the taxpayer/debtor's account.

3. **Right to Adequate Protection.** The courts generally recognize the Service's right to adequate protection when a levy is issued pre-petition. The levy provides the IRS with an interest in the levied-upon property. If the IRS is entitled to adequate protection, the IRS caseworker should immediately contact local Counsel to coordinate an adequate protection agreement, a request for adequate protection, or a request for relief from the automatic stay. Although adequate protection can be requested in other chapters, it is requested most often in Chapter 11 bankruptcies. IRM 5.9.8.5, *Adequate Protection*, and IRM 5.9.8.7, *Cash Collateral/Property Depreciation of the Estate*, provide additional information on adequate protection.
4. **Pre-petition Levy/Post-petition Levy Payment.** Payment(s) received after a bankruptcy has been filed (post-petition) based on a pre-petition levy should be returned to the bankruptcy estate, through the trustee or debtor-in-possession, unless the IRS seeks prompt relief from the automatic stay.
5. **Time Frame for Corrective Actions.** Corrective actions must be initiated expeditiously when the Service becomes aware of the payment. Return of the payment will be expedited to either the trustee or the debtor-in-possession per local guidelines using Form 5792, *Request for IDRS Generated Refund*. See IRM 5.9.5.5(2) for additional information.
6. **Third-Party Contact - Levy Release.** A release of a levy is considered a third-party contact. When Insolvency handles a release of levy, official recordation of the contact is required unless the taxpayer or taxpayer's representative gives permission for the caseworker to contact the levy source. Form 12175, *Third Party Contact Report Form*, or ICS electronic recordation is the source of the third-party contact list provided to the taxpayer/debtor. IRM 5.1.17.5, *Recording Third Party Contacts*, states multiple contacts with the same third party on different dates require the completion of a separate Form 12175 for each contact. (See IRM 5.9.3.13.1, *Third-Party Contacts*.)
7. **Documentation.** All actions taken on a levy matter while the debtor is under the protection of the Bankruptcy Code must be timely and accurately documented. Insolvency's documentation on a case may be used in bankruptcy court.

Note:

Although a new bankruptcy case filing may not be loaded on AIS at the time a levy issue is handled by Insolvency, all documentation on the matter should be transferred to the AIS history screen at the earliest possible date.

8. **Counsel Assistance.** Insolvency should contact Counsel for assistance on complex levy issues arising during the pendency of a bankruptcy. Levy concerns must be addressed under strict time frames to protect the debtor's rights. The Service may be held liable for damages if violations of the Bankruptcy Code occur.

**5.9.5.9 (09-26-2014)
Liens and Insolvency**

1. **Duration of a Lien.** Generally, a statutory federal tax lien exists so long as the period for collection remains open. Generally, the collection statute is 10 years from the date of the assessment. Certain actions, situations, or events, such as the automatic stay in bankruptcy, suspend the collection period. A Notice of Federal Tax Lien (NFTL) is generally effective for ten years after the date of assessment and expires 30 days after that time unless it is refiled. If a NFTL is not timely refiled, it will self-release and the statutory lien will be extinguished. While the collection period may be suspended, such as in the case of bankruptcy, no suspension exists with respect to the ten year effective period of filed NFTLs. Thus, it may be necessary in some instances to refile a NFTL to maintain the Service's lien priority. (See 5.9.5.9.2, *Refiling Notices of Federal Tax Lien (NFTLs)*, below.)
2. **Valid Pre-petition Federal Tax Lien.** Under IRC § 6321, a federal tax lien attaches to all property and rights to property of the taxpayer, whether real or personal. A NFTL filed prior to bankruptcy may allow the Service a secured status in bankruptcy.
3. **Effectiveness of the NFTL.** Exemptions provided by state law as set forth in 11 USC § 522 are ineffective against the execution and the creation of a NFTL filed prior to bankruptcy, and such a lien, is still valid against those assets after a discharge is granted.
4. **Secured Amount Cannot Exceed Equity.** Even with a valid NFTL on file prior to bankruptcy, the Service's secured amount listed on a proof of claim cannot exceed the equity in the debtor's assets, if known.
5. **AIS-ALS Interface.** AIS interfaces with the Automated Lien System (ALS) to generate copies of NFTLs. Additional NFTL research, if necessary, should be conducted according to local guidelines.
6. **Proof of Claim and NFTL Copies.** If the IRS has a secured proof of claim, a copy of the valid pre-petition NFTL should be included as an attachment to the Service's proof of claim. A copy of the NFTL is usually available on AIS. However, if the NFTL is not available on AIS, it will generally be available on ALS. (IRM 5.9.13.5(2), *Lien Attachment*, provides additional information on including a copy of the NFTL with the proof of claim.) Caseworkers should ensure state or local recording data has been added to the NFTL. If that information is missing, additional research may be required.

Caution:

Make sure NFTL copies provided to the bankruptcy court have redacted SSNs. Manually redact, if necessary. Whenever possible, an AIS generated NFTL, which systemically redacts the SSN, should be used.

**5.9.5.9.1 (09-26-2014)
NFTL Filing after Bankruptcy Filing**

1. **NFTL Filed in Violation of the Stay.** When FI or CIO identifies that a NFTL was filed in violation of the automatic stay, a withdrawal of the NFTL must be initiated expeditiously. See IRM 5.9.5.5(2) for additional information.

Example:

A NFTL was recorded one day after the bankruptcy petition date.

Corrective actions include:

- Securing managerial approval to withdraw the NFTL,
- Requesting issuance of Form 10916, *Withdrawal of Filed Notice of Federal Tax Lien*,

Caution:

A Certificate of Release must not be used to withdraw a NFTL.

- Issuing Letter 4026, *Notice of Lien Withdrawal*, to the taxpayer,

- Issuing Letter 4711-I, *Withdrawal Decision - Insolvency*, to the taxpayer,
- Reversing the NFTL filing fees (TC 360) on IDRS, and
- Rescission of CDP rights, when appropriate.

Note:

See IRM 5.12.9, *Withdrawal of Notice of Federal Tax Lien*, for additional guidance on NFTL withdrawals.

2. **NFTLs After Dismissal and Before an Order Vacating Dismissal.** A NFTL may be filed after dismissal of a bankruptcy case. The court may enter an order vacating the dismissal at a later date. In most instances, an order vacating dismissal does not reinstate the bankruptcy stay. Thus, the filing of the NFTL was not in violation of the stay when the NFTL was recorded after the dismissal. The NFTL should not be withdrawn. However, if the order vacating the dismissal contains language that reinstates the automatic stay, the stay is usually reinstated on the day the order vacating the dismissal is signed and entered on the court docket. Generally, a withdrawal should only be issued when the NFTL is recorded after an order is entered vacating dismissal *and the order specifically reinstates the automatic stay*. If the order reinstates the bankruptcy stay to the original petition date, refer the case to Counsel for advice. (See IRM 5.9.17.5.6, *Orders Vacating Dismissal (Reinstatements)*, for additional information.)
3. **Withdrawal of NFTL.** After the Insolvency manager has approved withdrawal of the NFTL, Insolvency will request that the Centralized Lien Operation (CLO) withdraw the NFTL. The withdrawal request can be input manually to ALS if the Insolvency caseworker has appropriate permissions on ALS. If not, the withdrawal can be requested by sending Form 13794-W, *Request for Withdrawal or Partial Withdrawal of Notice of Federal Tax Lien*, to CLO via secure email. (See IRM 5.12.9.6(4), *Approving the Withdrawal Request*, for additional information.)
4. **Processing Form 10916, Withdrawal of Filed Notice of Federal Tax Lien.** When Form 10916 is generated through ALS, the CLO prints and mails Part 1 of Form 10916 to the recording office. Correspondence Production Services (CPS) prints Part 2 of the Form 10916 and mails it, and Letter 4026, to the debtor at the most current address of the taxpayer known to ALS. Copies of the documents are not provided to Insolvency by CLO unless Insolvency requests a copy as they are available through ALS. (See IRM 5.12.9.6.3, *Distribution of the Withdrawal Certificate*.) If Insolvency manually prepares Form 10916, Insolvency is responsible for mailing the Letter 4026 and a copy of the Form 10916 to the debtor.
5. **Notice to NFTL Originator.** As a courtesy, if a revenue officer (RO) originated the NFTL, the Insolvency caseworker requesting the withdrawal should notify the RO of the NFTL withdrawal. Notification can be through secure email, phone or fax. If the NFTL was originated by ACS, Insolvency need not notify ACS of the withdrawal.
6. **Notice to Creditors.** If the debtor submits a *written* request for copies of the NFTL withdrawal notice to be forwarded to any creditor or credit reporting agency, the Service must comply promptly with the debtor's request. See IRM 5.12.9.6.4, *Notifying Third Parties of Withdrawal*, for guidance on processing the withdrawal request.
7. **NFTL Fees.** When a NFTL is withdrawn because it was filed in violation of the stay, the NFTL filing fee (TC 360) must be abated. The Insolvency office requesting the withdrawal must request abatement of the NFTL filing fee following their standard procedures for adjustments.
8. **Withdrawal Decision Letter.** The Insolvency office approving the withdrawal of the NFTL should send Letter 4711-I, *Withdrawal Decision - Insolvency*, to the debtor or POA when a NFTL is withdrawn. The letter advises the debtor that the NFTL is being withdrawn and that they will receive a separate copy of the withdrawal notice.

The L4711-I is also used to rescind the CDP hearing notice (*IRM 5.9.5.9.1.1, Rescinding NFTL CDP Rights*) or to deny a request for withdrawal of a NFTL when the taxpayer is in bankruptcy and the NFTL does not meet withdrawal criteria.

5.9.5.9.1.1 (09-26-2014)

Rescinding NFTL CDP Rights

1. **NFTL CDP Rights.** When a NFTL is filed (Form 668-Y), Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320*, informs the taxpayer of his/her CDP rights regarding the NFTL filing. The letter is sent to the taxpayer's last known address within five business days of the NFTL being filed with the recording office.
2. **Conditions for Rescinding a CDP Notice.** If a NFTL is being withdrawn because it was filed in violation of the bankruptcy automatic stay, the CDP notice may be rescinded when the following conditions are met:
 - A. Within the 30-day period for requesting a CDP hearing, the Service agrees to withdraw the NFTL;
 - B. The rescission is accomplished by notifying the taxpayer in writing before the expiration of the time period for requesting a hearing; and
 - C. The taxpayer has not requested a CDP hearing.
3. **Determining if the CDP Notice should be Rescinded.** Allowing for the filing and mailing processes, the deadline for the time period to request a hearing can generally be calculated as 45 days from the TC 582 date. If the withdrawal is being worked within that time frame, then a decision must be made on the rescission. Normally, Insolvency becomes aware of NFTL filing in violation of the stay rather quickly after it occurs.

Insolvency can determine if the withdrawal of the NFTL is within the time period for requesting a CDP hearing, and if a request for hearing has been submitted, by:

- Looking at the TC 971 AC 252 date on IDRS. If Insolvency agrees to withdraw the NFTL within 30 days of that date, it is within the period for requesting a CDP hearing.
- If the TC 971 AC 252 has not posted or if between 30-45 days have passed from the TC 971 AC 252 date, determine the exact deadline by looking at the Letter 3172 or ALS. If access to ALS or the letter is not available, contact the CLO and request a facsimile copy of Letter 3172.

Note:

The Letter 3172 deadline for requesting a hearing is extended if the taxpayer is in a combat zone, part of a contingency operation away from the taxpayer's permanent duty station, or recuperating during a qualified hospitalization, plus 180 days. Because the time period for requesting a hearing is extended, the time period for rescinding the IRC § 6320 notice is also extended. Check IDRS for any TC 500 that may impact the deadline date. (See IRM 5.1.7.9, *Accounts of Taxpayers Who Serve in a Combat Zone*

.)

- Checking IDRS to see if there is a TC 520 cc 76 present on any of the modules included on the NFTL. If there is a TC 520 cc 76 present, the taxpayer has submitted a request for a CDP hearing. If there is no TC 520 cc 76, then contact the employee function that requested the NFTL or check the case history to confirm the taxpayer has not requested a CDP hearing.
4. **Rescinding the CDP Rights.** If the taxpayer submitted a request for a CDP hearing, the appeal rights cannot be rescinded. If the taxpayer has not submitted a request for a CDP hearing, and the Service agreed to withdraw the NFTL within the 30-day period for the taxpayer to request a CDP hearing, the CDP rights should be rescinded. To rescind CDP rights, Insolvency should check the 2nd block on the Letter 4711-I, *Withdrawal Decision - Insolvency*, when issued.
 5. **Reversal of CDP Indicator on IDRS.** When the NFTL withdrawal is generated through ALS, a TC 583 is systemically input to the NFTL modules on IDRS. The withdrawal of the NFTL through ALS does *not* systemically reverse the CDP notice indicator (TC 971 AC 252) present on NFTL modules on IDRS. The Insolvency caseworker requesting the NFTL withdrawal must request reversal of the TC 971 AC 252 through input of a TC 972 AC 252 when the NFTL is withdrawn *and* CDP rights are rescinded. A TC 972 AC 252 is *not* required if CDP rights are not rescinded.

5.9.5.9.2 (09-26-2014)

Refiling Notices of Federal Tax Lien (NFTLs)

1. **Timely Refiling of NFTLs.** When the statutory period for collection has been extended or suspended in cases with older secured assessments, Insolvency caseworkers must make a determination if the Notice of Federal Tax Lien (NFTL) should be refiled.
 - A. A window of time exists for refiling NFTLs. That window begins nine years and 30 days after the date of the assessment and ends 10 years and 30 days after the date of assessment.
 - B. Refiling the NFTL maintains the statutory lien and continuity of priority established by the original filing when the IRS has a secured proof of claim.
 - C. If no possibility exists that a NFTL will expire prior to all activity related to a bankruptcy being completed (both during the bankruptcy and post-discharge), or if the Service has no NFTLs for pre-petition periods, NFTL refiling need not be considered.
 - D. Each assessment shown on the NFTL has its own refile window and these windows may overlap. If the total liability, including accruals, of the assessment(s) in the refile window is *de minimus*, (IRM Exhibit 5.9.1-1, *Glossary of Common Insolvency Terms*), the NFTL should not be refiled. If the total liability is not *de minimus*, the NFTL should be refiled for the assessments within the refile window.

Note:

Except during initial case review, NFTL refiles will not usually be requested in Chapter 13 cases.

2. **NFTL Refile Criteria.** Normally, refiling a NFTL by itself is not considered a violation of the automatic stay under 11 USC § 362 because a lien is not being created; rather the lien is being preserved. For cases where NFTL refile reviews should be made after the initial case review and during the pendency of the bankruptcy or immediately post-discharge, the following guidance must be followed:
 - A. **No Equity.** If the Service has not filed a secured claim, the NFTL should not be refiled unless Insolvency has determined the debtor has abandoned or excluded property that will be pursued for collection.
 - B. **Amount Remaining on a Secured Claim.** Except as provided in (d) below, if the secured claim has been paid in full, or the secured claim will be paid prior to the expiration of the NFTL, or the amount remaining unpaid is *de minimis*, the NFTL should not be refiled. If the secured claim will not be full paid prior to the expiration of the NFTL (excepting a *de minimis* remaining balance due), the NFTL should be refiled.
 - C. **Possible Distribution on Chapter 7 Cases.** If a secured claim is filed, and the distribution will most likely be after the NFTL expiration date, the NFTL must be refiled. If distribution will occur prior to the NFTL expiration date, the NFTL should not be refiled unless the conditions in (d) below apply.
 - D. **Dischargeable Periods.** If the Service is actively pursuing collection against exempt, abandoned or excluded property (EAEP) and collection may extend beyond the NFTL expiration date, the NFTL should be refiled. A follow-up date must be input on AIS to coincide with the lien NFTL window to ensure the NFTL is refiled prior to expiration.
- Note:**
- A NFTL should be refiled if there has been a referral to Counsel or the AUSA for the taxes underlying the lien, unless Counsel or the AUSA agrees otherwise.
3. **Insolvency NFTL Refile Reviews.** NFTL refile determinations must be made on all Chapter 7 Asset, Chapter 7 No Asset Large Dollar Cases, Chapter 11, 12, and 13 bankruptcies during initial case reviews. The following list outlines when additional NFTL refile reviews must be conducted. (See IRM 5.9.17.4.3, *Addressing Lien Issues.*)
 - A. **Chapter 7 Asset Distributions.** NFTL refile reviews must occur the earlier of the notification of the discharge by the court or the NFTL refile window. If a NFTL refile is needed at a future date to protect the Service's secured status, a follow-up date must be input on AIS to coincide with the refile window. The caseworker must ensure that the NFTL is refiled prior to expiration.
 - B. **Chapters 11 and 12 Cases.** NFTL refile reviews must be conducted during the refile window time frame. The caseworker must schedule a follow-up to ensure the NFTL is refiled prior to expiration.
 - C. **Exempt/Abandoned/or Excluded Property (EAEP).** NFTL refile reviews must be conducted during the initial case review by the FI caseworker when the case is being reviewed for collection potential from EAEP. If a NFTL refile is needed, a follow-up date must be input on AIS to coincide with the refile window to ensure the NFTL is refiled prior to expiration.
 4. **ALS Actions.** After Insolvency has determined a NFTL must be refiled, the NFTL refile request must be input on ALS by the operation (CIO or FI) that identifies the NFTL refile requirement. Unique circumstances may arise when a NFTL refile is in the best interest of the government and refiling is not covered by the information in paragraph (2) above. Caseworkers may refile NFTLs in those cases after receiving managerial approval.
 5. **Documentation.** When Insolvency caseworkers complete a NFTL refile review, they must document the AIS history with findings of that review and annotate all actions taken when refiling a NFTL. Such documentation may become important if issues later arise concerning the Service's secured claim, NFTL refiling issues and possible ensuing litigation.

5.9.5.9.3 (09-26-2014)

NFTL Filing by Insolvency

1. **NFTL Filing by Field Insolvency (FI).** FI will make NFTL filing determinations in specific cases when the UBA in the case is over \$10,000 and file NFTLs, when warranted. Per IRM 5.12.2.1(2), *Purpose*, a NFTL determination is the decision whether to file a NFTL, defer the filing of a NFTL or not to file a NFTL. FI caseworkers must apply the pre-filing considerations found in IRM 5.12.2.3, *Notice of Federal Tax Lien Determination (Pre-filing Consideration)*, when determining if a NFTL will be filed. Finally, the FI caseworker must ensure that determination and filing requirements for NFTLs found in IRM 5.12.2, *Notice of Lien Determinations*, are met. Specifically, a NFTL filing determination must be made in the following instances:
 - Dismissed cases with an UBA over \$10,000 (See IRM 5.9.17.5.7, *NFTL Filing Determinations after Dismissal*, for additional information).
 - Chapter 12 cases of individuals where there is a post-petition UBA over \$10,000 (See IRM 5.9.9.10.3(4), *Post-petition Liabilities in Chapter 12 — Individual Cases, Notice of Federal Tax Lien (NFTL)*).
 - Chapter 11 cases of entities other than individuals where there is a post-confirmation liability over \$10,000 (See IRM 5.9.8.16.4.1(3), *Post-Confirmation Tax Liabilities of the Non-individual Debtor or Individual Debtor (Pre-BAPCPA), Notice of Federal Tax Lien (NFTL)*).
 - When a single member disregarded LLC files bankruptcy, but the single member is not in bankruptcy, make a NFTL filing determination against the single member when the single member's UBA is over \$10,000. This requirement will generally apply to employment tax liabilities incurred for periods prior to January 1, 2009, and to excise tax liabilities incurred for periods prior to January 1, 2008, where the single member is liable for such tax liabilities of the LLC. (See IRM 5.9.17.11.1, *Single Member Disregarded Entity LLCs*, for additional information on single member disregarded entity LLCs).
2. **NFTL Filing Considerations.** In all NFTL filing situations, FI caseworkers should:
 - Determine that the situation meets the determination and filing requirements for NFTLs found in IRM 5.12.2, *Notice of Lien Determinations*. This includes making a reasonable effort to contact the taxpayer, if one has not already been made. Issuance of the statutory assessment notice and the balance due notices sent during the collection process will generally constitute a reasonable effort. Caseworkers may still wish to contact the debtor to request full payment and warn of the possible filing of a NFTL in an attempt to resolve the case without the need to file the NFTL.

- Verify that the automatic stay is not in effect for the periods included on the NFTL.
- Verify that the periods included on the NFTL are not otherwise included in a confirmed plan, and that the plan does not prohibit taking any collection actions for the periods included.
- Determine whether or not a sound business reason exists to justify filing a NFTL.
- Document the AIS history explaining the decision to file or to refrain from filing a NFTL, along with a description of all NFTL filing actions taken.

Note:

If the tax debts are in litigation, or have been referred to Counsel or the AUSA, consult Counsel or the AUSA prior to filing a NFTL.

5.9.5.10 (09-26-2014)

Adjusting Bankruptcy Accounts

1. **Centralized Insolvency Operations.** CIO caseworkers will input adjustments on-line for accounts in their inventory when abatements are needed during the discharge process. CIO management is responsible for ensuring requisite review procedures are in place for on-line adjustments made by their employees. An exception is the request to transfer a case to non-master file (NMF) or to make adjustments to accounts already on NMF. CIO caseworkers will submit the appropriate documents, Form 12810 or Form 1331-B for these type adjustments. CIO does not input adjustments to NMF. CIO does not make tax account adjustments for any returns received (including amended returns). The original or amended returns are forwarded to the appropriate function for processing. Additionally, CIO does not make any account adjustments for other functions that are not associated with the discharge process. Those adjustments are completed by the function responsible for the adjustment. CIO will contact the area involved to make the adjustment to their case before CIO works the bankruptcy discharge. Contacts are found on SERP for AM, Entity, Statutes, AUR, etc.

Example:

The debtor responded to an unagreed deficiency notice issued by AUR. The response will result in a tax increase. Upon receipt of the discharge, CIO will contact AUR to make the required adjustment. CIO will make the bankruptcy discharge adjustments after the AUR adjustments have been completed.

2. **Field Insolvency (FI).** With the exception of simple account adjustments, such as input of TC 52Xs, FI prepares adjustment requests and monitors the requests for posting on cases assigned to FI inventories. FI sends requests for adjustments on cases assigned to CIO to the CIO by fax, secure email, or overnight mail.

With the exception of trust fund recovery penalty (TRFP) adjustments, FI caseworkers send adjustment documents to Collection Centralized Case Processing (CCCP). When possible, FI must send adjustment documents to CCCP via secure email to *SBSE ccpinslv. If the adjustment documents cannot be sent via secure email, the documents may be mailed to:

IRS - Collection Centralized Case Processing
 Mail Stop 5-E04.114
 2970 Market St.
 Philadelphia, PA 19104

Note:

TRFP adjustments on assigned FI cases should be routed to the Advisory function per local guidelines.

3. **Adjustment Documents.** Adjustment forms and their uses are outlined in the table below.

Form	Purpose
3870, <i>Request for Adjustment</i>	All adjustments and abatements. If a TC 470 cc 90 is requested, item 29 must be completed.
4844, <i>Request for Terminal Action</i> or 3177, <i>Notice of Action for Entry on Master File</i> Note: These forms are interchangeable for master file adjustments. F3177 is used for NMF adjustments.	<ul style="list-style-type: none"> • TC 470 cc 90 if the adjustment will fully satisfy the tax period • TC 470 STAUP 89 for a non-master file period if adjustment fully satisfies the tax period • TC 59X cc XX for TDI closures • TC 971 AC 031 for full abatement due to bankruptcy • TC 971 AC 033 for partial abatement due to bankruptcy (must be accompanied with Form 3870) • TC 550 for NMF CSED extensions
2424, <i>Account Adjustment Voucher</i>	Required for credit transfers
12810, <i>Account Transfer Request Checklist</i>	Transfer to non-master file
2363, <i>Master File Entity Change</i>	To correct entity information
1331-B, <i>Notice of Adjustment</i>	Non-master file adjustments
4159, <i>Payment Tracer Request</i>	Used to trace payments when a payment cannot be located and the taxpayer has submitted a cancelled check or other evidence that the payment was made

5.9.5.11 (09-26-2014)

Transferring Cases

1. **Reassignment to CIO.** Cases will be transferred from FI to CIO when the following criteria is met:

- **Chapter 7 Asset Non-Individual Cases** — Generally, the Chapter 7 Asset case filed by a business that is not a partnership entity is transferred to the CIO once the initial case review has been completed, all proofs of claim have been acknowledged and there are no issues that require the case to remain in FI. (See IRM 5.9.17.1(5), *Chapter 7 Asset Closures*; IRM 5.9.17.11, *Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLC's)*; and IRM 5.9.17.11.1, *Chapter 7 Single Member Disregarded Entity LLCs*, for additional information.)
- **Chapter 7 Asset Individual Cases** — Like the Chapter 7 Asset case filed by a business, the Chapter 7 Asset case filed by an individual or joint debtor is generally transferred to the CIO once the initial case review has been completed, all proofs of claim have been acknowledged and there are no issues that require the case to remain in FI. However, if the debtor is an individual or joint debtor, and there was a prior bankruptcy(cies) dismissed within one year of the current bankruptcy petition date, FI must determine if the automatic stay has been extended or went into place in the current case prior to transfer. (See IRM 5.9.5.7(7), *Case Assignments*, for additional information.) For information regarding transfer of the Chapter 7 Asset individual case prior to dismissal or discharge, see IRM 5.9.17.9(6), *Transfer of the Individual or Joint Chapter 7A Case to the CIO Prior to Dismissal or Discharge*. See IRM 5.9.17.9(7), *Transfer of the Individual or Joint 7A Case to the CIO After Discharge*, for information regarding the transfer of the Chapter 7 Asset individual case after discharge.
- **Large Dollar Chapter 7 No Asset Individual Cases** — After FI completes an exempt, abandoned, or excluded property (EAEP) review, FI will transfer the case back to the CIO once the FI caseworker has determined that there is no fraud or willful evasion and that there is no collection potential from EAEP. If the taxes are excepted from discharge due to the willful evasion exception to discharge, the case can be transferred to CIO once the exception to discharge is noted in the AIS history. If there is collection potential from EAEP after the discharge, the case must remain in FI until discharge and FI has completed all collection actions on the EAEP. (See IRM 5.9.17.4, *Exempt, Abandoned or Excluded Property (EAEP)*, through IRM 5.9.17.4.4.1, *Thrift Savings Plan (TSP)*, for additional information.)

- **Chapter 13 Cases** — Chapter 13 cases are transferred from FI to CIO once the initial case review has been completed, all proofs of claim have been acknowledged, and there are no issues that require the case to remain in FI. If the debtor had a prior bankruptcy(cies) dismissed within one year of the current bankruptcy petition date, the case must remain in FI until FI determines if there is an order extending the stay in the case. If there is an order extending the stay, FI can transfer the case to the CIO after they have documented the AIS history with the determination that the stay has been extended and that no TC 520 reversals or new TC 520s are needed. If there is no order extending the stay, the case must remain in FI until the Chapter 13 plan is confirmed. At confirmation, FI will input necessary TC 520s and follow confirmation actions in IRM 5.9.10.6, *Field Insolvency AIS Actions*, before transferring the case to CIO. (See IRM 5.9.5.7, *Serial Filers*, through IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*, for additional information regarding serial filers.)
- **All Chapters** — There are two instances when CIO takes actions on a case for FI regardless of chapter, allowing the transfer of the case from FI to CIO:
 - a) *Manual MFT 31 mirroring or transfer to non-master file is required* — FI transfers the case to CIO for manual mirroring or non-master file creation. Once completed, CIO transfers the case back to FI for subsequent actions. (See IRM 5.9.17.21, *Adjustment Methods for Discharged Liabilities*, through IRM 5.9.17.21.6, *MFT 31 Splits*.)
 - b) *Prior installment agreements requiring certain actions at closure* — When FI addresses a prior IA at case closure and an IA letter must be issued, TC 590/595/971 input or an installment agreement reinstatement input to IDRS, FI transfers the case to CIO. CIO takes the necessary action. (See IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing a Case*, through IRM 5.9.17.23.1, *Installment Agreement Letters Used During Case Closure*, and IRM Exhibit 5.9.17-2, *Regular Installment Agreement Reinstatements*, through IRM Exhibit 5.9.17-5, *Installment Agreement Cannot Be Reinstated*, for additional information.)

Before transferring a case to CIO, the FI caseworker must ensure:

- Plan screens are properly loaded.
- Referral or OI screens are closed.
- Follow-up dates are removed.
- The court has acknowledged the receipt of our claims and acknowledgement dates have been input on AIS, if applicable.
- An AIS SUMMARY HISTORY has been added in the case. (See IRM 5.9.5.4.2, *Summary Histories*, through IRM 5.9.5.4.4, *Chapter 7 Summary Histories*.)
- A "Case Classification" has been added to AIS to alert CIO of actions that must be addressed during case closure or to alert CIO to situations that must be addressed during the pendency of the bankruptcy case. (See IRM 5.9.5.4.1, *Case Classifications*, for additional information.)

Note:

No paper files will be sent to CIO.

2. **Reassignment to Field Insolvency (FI)**. When a case is transferred to FI, the assigned caseworker generally will receive an electronic mail notification from AIS via *Microsoft Outlook* email. The caseworker must review the case within *five calendar days* of receipt from the CIO to determine the issue requiring action and the acceptable time frame to address the issue. Some issues may require immediate actions. Some reassignment issues may allow the caseworker to schedule a follow-up to take the initial action to resolve the case issue. Caseworkers should adhere to the time frames established in the following table:

If the case is reassigned to the field by the CIO to...	Then initial case action should be taken no later than...
<ul style="list-style-type: none"> • Address issues requiring telephone contact to taxpayers, representatives, or internal customers (for example, calls concerning complex issues not handled by CIO, injured spouse matters, TAS matters, or calls concerning post-petition liabilities); or, • Address cases assigned to the field by the CIO to work a Taxpayer Assistance Order (TAO) on a complex case issue; or, • Schedule attendance at a 341 for the CIO (particularly to question debtors about TIN validity); or, • Take action to establish entities on IDRS to allow the posting of payments that have been received and appear on the Campus Support error reports; or, • Take action to resolve overpayments or balance dues as a result of trustee or non-debtor payments; or, • Take appropriate action on LTS "After Petition" transcripts that cannot be resolved by the CIO; or, • Take action to resolve an open TDI that is preventing CIO from addressing a prior installment agreement during case closure. (See IRM 5.9.17.23(3), <i>IA Reinstatement When a TDI (Del Ret) is Present</i>, and IRM Exhibit 5.9.17-4, <i>Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)</i>.) 	<p>Five calendar days from receipt of the electronic notification from AIS via <i>Microsoft Outlook</i> email.</p>
<ul style="list-style-type: none"> • Take action to address credit offset issues that meet the criteria for a referral to Counsel; or, • Address "new assessment" cases that may require an amended proof of claim; or, • Resolve payment posting errors caused when the case has been dismissed and closed; or, • Resolve "other" payment posting errors that cannot be resolved by the CIO; or, • Address LTS "credit balance" and "other credit balance" reports; or • Conduct research on an account that CIO cannot mirror because the secondary spouse is deceased and CIO needs to know if a NMF account needs to be established (IRM 5.9.17.21.3), <i>Decedent Secondary Spouse</i>; or, • Take action on a DDR generated by the Automated Discharge System (ADS) for exempt, abandoned, or excluded property that has not been worked previously; or, that has unclear or incomplete history documentation that does not provide sufficient information for the CIO to work the DDR; or, • Address Chapter 7 No Asset cases with complex issues (other than cases reassigned per the large dollar 7 No Asset process). <p>Note:</p> <p>The acceptable time frames for FI to make collection determinations regarding collection from EAEP are found in IRM 5.9.17.4.3(5), <i>Time Frames</i>.</p>	<p>15 calendar days from receipt of the electronic notification from AIS via <i>Microsoft Outlook</i> email.</p>
<ul style="list-style-type: none"> • Address Chapter 13 post-petition assessments exceeding \$2,500; or, • Address a DDR on the dischargeability of a § 1305 claim; or, • Address the ADS DDR for willful failure to pay that has not been addressed in the AIS history. 	<p>30 calendar days from receipt of the electronic notification from AIS via <i>Microsoft Outlook</i> email.</p>

5.9.5.12 (09-26-2014) Identity Theft (IDT)

1. **Service-wide Policy.** As with any other taxpayer, a debtor in bankruptcy may be a victim of identity theft (IDT) or return preparer fraud or misconduct (RPM) that adversely affects the debtor's tax liability. The caseworker should determine if the debtor is a victim of IDT or RPM. *IRM 5.9.5.12.2, Return Preparer Fraud or Misconduct*, addresses return preparer fraud. Generally, when the taxpayer used a preparer in a previous year, or visited the preparer but decided to go elsewhere to have the return prepared, and did not authorize a return to be prepared for the year in question, this is not RPM. It is identity theft.

In addition to the guidance in this IRM, caseworkers must review the following IRM(s) when working a bankruptcy case and the debtor may be a victim of identity theft (IDT):

- IRM 10.5.3, *Privacy and Information Protection, Identity Protection Program*, for all Service employees,
 - IRM 5.1.28, *Field Collection Procedures, Identity Theft for Collection Employees*, for revenue officers and other caseworkers in SB/SE Collection when working cases involving IDT, and
 - IRM 21.9.2, *Specialized Accounts Management Programs, Individual Master File (IMF) Accounts Management Identity Theft*, for employees performing account/tax law work related to identity theft.
2. **Bankruptcy Functional Responsibilities.** Other operations within the Service have been advised to contact the CIO when they are advised of an identity theft issue on a case that is currently in bankruptcy. CIO caseworkers handle IDT issues for Chapter 7 No Asset cases assigned to their inventory. The CIO will direct all other identity theft issues to FI offices. The FI offices where the cases are assigned are responsible for proper resolution of the identity theft claims. If an IDT issue arises on a Chapter 13 or a Chapter 7 Asset case while the case is assigned to the CIO, the case will be reassigned to FI for resolution.
 3. **Insolvency Actions.** Insolvency may encounter unique situations when the taxpayer is in bankruptcy. Actions taken on the Insolvency case will depend on whether or not there is a balance due on the debtor's account or if the account in question had a refund or credit balance.

Generally, in working possible identity theft cases, caseworkers should:

- A. Ask for IDT substantiation, unless the debtor has already provided it.
- B. Make an identity theft determination when the debtor has submitted IDT substantiation to the Service, or the bankruptcy trustee or attorney identified the potential IDT and the debtor has not provided the substantiation, as requested.
- C. If IDT occurred, take whatever action is required by the case.

The Insolvency caseworker may encounter situations where the debtor states that he/she is a victim of IDT. See *Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)*, for the actions required of the Insolvency caseworker and step-by-step procedures for inputting the IDT transaction codes.

During the normal course of business, a Service employee may identify that a possible IDT has occurred and the case has not been resolved. See *Exhibit 5.9.5-8, IRS Identified Identity Theft (IDT)*, for the steps the Insolvency caseworker must follow, when the caseworker or another IRS employee identifies the ID theft.

Finally, the bankruptcy trustee or attorney for the debtor may contact an Insolvency caseworker when he/she suspects IDT has occurred. For example, the bankruptcy trustee may contact the caseworker upon receipt of a refund check in a refund turnover case (RTO) when the debtor previously provided information to the trustee that he/she had no income tax filing requirements. In most instances, the caseworker will attempt to secure the IDT substantiation from the debtor. The caseworker may not be able to secure IDT substantiation if:

- The debtor is deceased or
- The debtor is unwilling to provide the substantiation because he/she is receiving the benefit of the refund from the IDT return.

Caseworkers must follow the procedures in *Exhibit 5.9.5-9, Trustee or Debtor's Attorney States the Debtor is a Victim of Identity Theft (IDT)*, in these cases.

4. **Consultation with Counsel.** Before attempting to resolve an IDT issue, determine if the trustee or debtor's attorney filed an objection to the claim or a motion to determine tax liability. If the tax period involving the IDT issue is listed on the claim, or is being considered as part of the motion to determine tax liability, do not work the IDT issue without first coordinating with Counsel, as the IDT issue is already being raised in a court proceeding.
5. **Referral to Taxpayer Advocate Service (TAS).** In cases where the IDT issue is being litigated in the bankruptcy court, it is not appropriate to refer the case to TAS. TAS has no authority to intervene in the litigation. In all other cases, consider whether the taxpayer should be referred to TAS. If the IRS can provide relief or take steps towards providing relief within 24 hours, the case should not be referred to TAS unless the taxpayer requests TAS assistance and the case meets TAS criteria.

If you think referral to TAS is necessary, you must first determine the TAS criteria applicable to the case. See IRM 13.1.7.2, *Taxpayer Advocate Service (TAS) Case Criteria, TAS Case Criteria*. If the taxpayer is experiencing a financial hardship under TAS criteria 1 - 4 as a result of a tax-related IDT issue, prepare and submit Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*. (See IRM 13.1.7.2.1, *TAS Case Criteria 1—4, Economic Burden*.) If the taxpayer meets TAS criteria 5 - 7, generally you should refer the case to TAS pursuant to IRM 13.1.7.2.2, *TAS Case Criteria 5—7, Systemic Burden*. If the taxpayer requests to contact TAS directly, advise the taxpayer to call 1(877) 777-4778, toll-free, or go to <http://www.taxpayeradvocate.irs.gov/>.
6. **AIS History.** In all instances, the caseworker must document the AIS history with all actions taken in the IDT case. Additionally, caseworkers must open an "Iden Theft" case classification on AIS and the classification must remain open until the IDT issue is resolved.

5.9.5.12.1 (09-26-2014) Identity Theft Substantiation

1. **General Information.** Identity theft (IDT) substantiation/document requirements depend on whether the taxpayer is a victim of IMF or BMF identity theft. Documentation requested by Insolvency caseworkers is the same documentation requested by all IRS employees in possible IDT cases. If the case is assigned to FI, or the responsibility of FI, the debtor should be directed to submit the IDT documentation to the FI caseworker. If the case is a Chapter 7 No Asset case, and assigned to the CIO, the debtor should be directed to submit the IDT substantiation via fax to the CIO at (855) 235-6787. The debtor may also mail the IDT substantiation to the CIO via U.S. Mail to:
Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 7346
Philadelphia, PA 19101-7346
2. **IMF Identity Theft (IDT) Documentation.** Debtors or third parties, such as the bankruptcy attorney or bankruptcy trustee, will notify IRS when they believe the debtor may be a victim of IDT. In these instances, ask the debtor for authentication of identity as evidence of IDT.
 - A. **Authentication of Identity** - Secure a copy of a valid U.S. federal or state government issued form of identification to authenticate identity (i.e., driver's license, state identification card, Social Security Card, passport, etc.).

B. Evidence of Identity Theft - Secure either a copy of a police report or Form 14039, *Identity Theft Affidavit*.

For more information see the following:

- IRM 10.5.3.2.6, *Overview - Identity Theft Supporting Documentation*, and subsections
- IRM 5.1.28.6, *Standard IMF Tax Related Identity Theft Documentation Requirements*, and subsections

3. BMF Identity Theft (IDT) Documentation. Request supporting documentation from the debtor only when you cannot make an IDT determination based solely on internal research. Supporting documentation consists of the following three items: Evidence of IDT, Authentication of Identity, and Evidence of Business Operation.

A. Evidence of IDT - Secure a copy of a police report or a signed and notarized Form 14039-B, *Business Identity Theft Affidavit*.

B. Authentication of Identity - Secure a copy of a valid U.S. federal or state government form of identification (i.e., driver's license, state identification card, Social Security Card, or passport, etc.).

C. Evidence of Business Operation - Secure a copy of a utility bill, invoice, mortgage/rent receipt or other documentation.

Note:

If the claimant did not request an EIN or have knowledge of the EIN, evidence of business operations is not required.

For more information on BMF IDT supporting document, see:

- IRM 10.5.3.3.6, *Taxpayer Supporting Documentation - Form 14039-B*, and subsections
- IRM 5.1.28.15, *BMF Taxpayer Identity Theft Documentation*

4. Documentation Not Received When Required. If the debtor fails to provide the documentation when required, no abatement will be made. However, there are instances when the Service may treat the case as "IRS Identified Identity Theft." Local Counsel should be consulted if the debtor provides the requisite documentation, but it appears to be questionable. See the following for additional information:

- IRM 5.1.28.9, *Taxpayer is Not a Victim of Identity Theft*
- IRM 5.1.28.14.2, *Reversing Pending BMF Identity Theft Indicators*
- IRM 10.5.3.3.6.3 and IRM 10.5.3.2.7, *Reversing Pending Identity Theft Claims - TC 972 AC 522 NORPLY or NOIDT*

5.9.5.12.1.1 (09-26-2014)

Adjusting the Identity Theft Account

1. Form 3870 Preparation. Preparation and routing of Form 3870 for any account assigned to Insolvency requiring an adjustment due to IDT is the same for all cases. It does not matter if the taxpayer, a Service employee, or a third party, such as the bankruptcy trustee or attorney, identified the identity theft. Caseworkers should follow the procedures below for preparing and routing Form 3870.

A. Prepare Form 3870 and write "Identity Theft" in Item 11, *Reason for Adjustment*, in bold letters.

B. A nullity or fraudulent filing is a return that was not filed by the SSN owner. If the assessment is based on a fraudulent return, notate on the Form 3870 that it should be treated as a nullity. For more information on nullity returns, see IRM 4.19.24.1.3.6, *Preliminary Research on Fraudulent Filing (Nullity Returns)*.

Note:

Form 1040 returns with Schedule C income can only be treated as a nullity post-refund.

C. Include specific instructions on actions needed to correct the account. For example, state that TC 150 for \$XX is for the return filed by an identity thief. Note any other information that is needed to adjust the account correctly. For example, indicate if there are any estimated tax payments made by the victim-debtor that should remain on the account. Note when a refund generated by the IDT return is offset to another tax liability. These examples are not all inclusive.

D. If the taxpayer has been assessed a frivolous return penalty under IRC § 6702 based on the return filed under the taxpayer's SSN by an identity thief, notate on the Form 3870 to abate the frivolous return penalty. The penalty can be identified by MFT 55 with penalty reference code 543. The tax period must be the same as the identity theft return. The penalty must be abated by the Frivolous Return Program (FRP).

E. Indicate on Form 3870 if contact is needed when the adjustment is completed or when the adjustments cannot be completed as requested. This will allow the Insolvency caseworker to file an amended proof of claim at the earliest possible time in the bankruptcy case. The function working the adjustments will alert the caseworker when the adjustments have been completed or when the adjustments cannot be processed as requested. A confirmation of account corrections will be sent via email. If email confirmation cannot be completed due to an incorrect or missing email address, Form 3870 will be mailed back to the originator as confirmation.

F. Attach the following documentation to Form 3870 -

- Copy of IDT substantiation documentation provided by the taxpayer (evidence of IDT and authentication of identity). Maintain a second copy of the substantiation until all adjustments have posted to IDRS. Once the adjustments have posted to IDRS, destroy the second copy.
- NUMIDENT - Obtained by requesting MFTRA type U, if available.
- Original return, if secured from victim-taxpayer.

G. Do not attach IDRS prints.

H. Request input of TC 971 AC 501 or AC 506 on Form 3870. TC 971 action code will be input when the account is corrected.

I. Request input of TC 470 cc 90 if the adjustment(s) will result in complete satisfaction of the tax module.

J. Forward Form 3870 to the appropriate function for adjustment based on the type of assessment.

K. To expedite Form 3870, notate "Expedite" at the top of Form 3870 per IRM 4.19.24.1.2.1(3), *Field Referrals to DITA*.

L. Incomplete referrals will be rejected.

2. Routing of Form 3870. The routing of Form 3870 is based on the type of assessment that needs to be adjusted:

- **Audit Reconsideration** — Prepare Form 3870 and route based on IRM Exhibit 4.13.7-3, *Routing of Area Office Re-consideration Requests*, and IRM Exhibit 4.13.7-4, *Central Reconsideration Unit (CRU) Addresses*. This includes a return filed under the taxpayer's SSN by an identity thief and a subsequent audit assessment made by Examination.

- **AUR Reconsideration** — Prepare Form 3870 and route based on IRM Exhibit 4.13.7-6, *AUR Reconsideration Requests*. This includes a return filed under the taxpayers SSN by an identity thief and a subsequent AUR assessment.
- **SFR/ASFR (Brookhaven/Fresno)** — Prepare Form 3870 and route based on IRM 5.1.15.4.3, *Substitute for Return (SFR) and Automated Substitute for Return (ASFR) Reconsiderations*. For mailing addresses, see <http://mysbse.web.irs.gov/Collection/toolsprocesses/CaseRes/adj/send/Recon/JobAids/18018.aspx>.
- **Identity Theft Return** — This is a return filed under the taxpayer's SSN by an identity thief. Submit the Form 3870 to the SB/SE Designated Identity Theft Adjustment (DITA) team if there is no subsequent Audit or AUR assessment. The Form 3870 must be mailed, rather than sent electronically by fax or email, if an original return is attached to the Form 3870. DITA accepts Forms 3870 via fax or email when no original return is included in the adjustment package. Prior to forwarding the Form 3870 to DITA, prepare Form 9409, *IRS/SSA Wages Worksheet*, to correct taxpayer wage records. Form 9409 includes the Social Security mailing address for the form.

The contact information for DITA is:
 Internal Revenue Service
 DITA Mail Stop 4-G20.500
 2970 Market Street
 Philadelphia, PA 19104
 Fax # (855) 786-6575
 The Outlook mailbox for electronic submission is *SBSE CCS:DITA.

Note:

If the taxpayer has been assessed a frivolous return penalty on MFT 55 with penalty reference code 543, send a copy of the Form 3870 to the FRP at the following address:
 Ogden Compliance Services
 Attn: FRP, M/S 4450
 1973 N. Rulon White Blvd.
 Ogden, UT 84404

5.9.5.12.2 (09-26-2014)

Return Preparer Fraud or Misconduct

1. **Return Preparer Fraud or Misconduct (RPM)**. A taxpayer becomes a victim of RPM when a tax return preparer completes a return for the taxpayer and without the taxpayer's knowledge, makes changes to the return. The return changed without the taxpayer's knowledge may result in an improper refund to the preparer or to a third party. In some instances, the taxpayer may even receive a portion of the improper refund or the improper refund may be issued to the bankruptcy trustee because of a return turnover order. The taxpayer may not know that there is an issue until the IRS contacts them about the return well after the refunds have been issued. In this instance, the taxpayer is a victim of RPM regardless of whether the refund was issued to the taxpayer, the bankruptcy trustee, the preparer, or another third party.

Note:

The taxpayer is liable for repayment of any portion of the improper refund they received on the RPM return. If the taxpayer or trustee receives a portion of the refund, or all of the bad refund, they should be asked to return the refund to the Service.

Taxpayers who claim to be a victim of return preparer misconduct may submit a complaint and documentation to the IRS to request assistance.

2. **Example of Return Preparer Fraud or Misconduct**. An example of RPM is when the taxpayer visited and/or was in contact with a return preparer. The taxpayer authorized the preparer to file a return. The tax data on his or her return (exemptions, income, expenses, deductions, credits, etc.) was altered after the taxpayer signed the return. Or, the return otherwise includes items that the taxpayer did not authorize.
3. **Return Preparer Fraud or Misconduct Substantiation**. If a debtor or debtor representative states that the debtor is a victim of RPM, ask the debtor to submit the following substantiation within a reasonable amount of time:
 - A completed Form 14157-A, *Tax Return Preparer Fraud or Misconduct Affidavit*, signed under penalties of perjury and Form 14157, *Return Preparer Complaint*.
 - Tax return preparer information, including name, address, and taxpayer identification number (if known) of the return preparer.

Note:

The actual name of the preparer, not just the name of the tax preparation company, is required.

- A signed copy of the tax return provided to the taxpayer by the return preparer before the taxpayer left the preparer's office. If the taxpayer does not have a copy of the return provided by the preparer, a signed copy of the return as intended to be filed.
- A copy of the taxpayer's bank statement reflecting the refund amount received by direct deposit, if applicable.
- A copy of Form 8879, *IRS e-file Signature Authorization*.
- A copy of the paper check(s) reflecting the amount received by paper check, if applicable.
- Any other information available to the taxpayer from the return preparer, such as where the return was prepared (at a business, church, college, etc.), preparer's first and last name, address and phone number, preparer's taxpayer identification number (PTIN), or SSN, etc.

Note:

The Insolvency caseworker should research the PTIN of the preparer, ask for a business card, flyer, etc. to substantiate that the return was prepared by a return preparer. The taxpayer cannot claim RPM when the return was not prepared by a return preparer.

- Any other documentation the taxpayer has to support the claim.

4. **Determination**. When a taxpayer is in bankruptcy, the Insolvency caseworker must determine if RPM has occurred. If the taxpayer states that they are not required to file a return, or that the income on the return was not theirs, check IDRS cc IRPTR to verify the taxpayer's claim. Once the claim is verified, the Insolvency caseworker will complete Form 3870, *Request for Adjustment*, with specific instructions on actions needed to correct the taxpayer's account. Do not attach IDRS prints to Form 3870. Do attach Form 14157-A, and supporting request issuance of the appropriate refund to the taxpayer, based on the actual return, not the return prepared by the preparer.
5. **Forwarding Form 3870 for Processing**. If there is a balance due on the module due to an audit or AUR assessment, follow the procedures for AUR or Audit reconsideration. Send all other Forms 3870 by mail, fax, or electronic submission to the SB/SE Designated Identity Theft Adjustment Group (DITA) at the Philadelphia Campus:

Internal Revenue Service
 DITA Mail Stop 4-G20.500
 2970 Market St.

**Exhibit 5.9.5-1
 Transfer Steps for Cases with No Open Plan Monitoring or Other Investigation (OI)**

To transfer cases between FI and CIO, cases must be reassigned to the receiving employee. The transferring employee must take the following steps:

- A. From the AIS "Welcome Screen" select "Case Files."
- B. Select "Query" from the tool bar at the top of the "Taxpayer Screen."
- C. Type in the case number followed by the % in the "AIS Case Number" field and the court using the state abbreviation followed by the % symbol in the "Court" field and click on "Execute" on the top tool bar.
- D. Verify the retrieved case is for the correct debtor and proceed to step 5. If the incorrect case is shown, repeat Step 3.
- E. Click on "Assign (CAG)" in the "Employee" field on the "Taxpayer Screen."

Note:
 If the case is being reassigned to the CIO by a field caseworker, the case must be manually assigned to the SEID of the CIO manager of the group responsible for receipts from the specific field territory per the CIO AIS Inventory Assignment list. The manager's SEID must be placed in the "SEID" field on the "Taxpayer Screen." The case is then reassigned by clicking "Save" on the tool bar at the top of the "Taxpayer Screen."

- F. Click on "Save" on the navigation tool bar to save.
- G. Check the lower left section of the AIS screen for "Record Updated."

Note:
 For cases with open Plan Monitoring screens, additional steps must be taken. (See Exhibit 5.9.5-2, *Transfer Steps for Cases with Open Confirmed Plan Monitoring.*)

**Exhibit 5.9.5-2
 Transfer Steps for Cases with Open Confirmed Plan Monitoring**

Until July of 2013, Chapter 13 cases remained in FI until confirmation. Now, most Chapter 13 cases are transferred from FI to CIO once all proofs of claim are acknowledged and there are no issues present that require the case to remain in FI. The CIO monitors for confirmation of the Chapter 13 bankruptcy plan.

AIS will not allow the reassignment of a Chapter 13 case from FI to the CIO unless there is a "confirmation date" present on the AIS Taxpayer Screen and on the CPM Screen. To facilitate case transfer to the CIO, if the bankruptcy plan is confirmed *before* the transfer of the case from FI to CIO, the FI caseworker must enter the actual confirmation date on AIS. If the case is unconfirmed when the case is transferred from FI to CIO, the FI caseworker must enter 02/02/2222 as the confirmation date on AIS. Entry of the 02/02/2222 as the confirmation date will assist CIO in identifying cases that must be monitored for confirmation of the bankruptcy plan. When transferring a Chapter 13 case, the caseworker must:

- A. Complete steps 1 through 4 from Exhibit 5.9.5-1, *Transfer Steps for Cases with No Open Plan Monitoring or Other Investigation (OI)*, above.
- B. Click on the "CPM" folder under the navigation tool bar to access the confirmed plan screen.
- C. Add the actual confirmation date of the plan in the "Effective Date" field on the CPM Screen, if the plan has been confirmed. If the plan is unconfirmed, enter 02/02/2222 as the "Effective Date" on the CPM Screen.
- D. Input the SEID designation of the receiving employee.
- E. Click "Save" on the navigation tool bar to save.
- F. Check the lower left screen for "Record Saved."
- G. Click on the "Taxpayer" tab at the top of the screen to go back to the "Taxpayer Screen" on AIS.
- H. On the "Taxpayer Screen" enter the confirmation date in the "Confirmed" date field if the plan is confirmed. If the plan is unconfirmed, enter the confirmation date as 02/02/2222.
- I. While still on the "Taxpayer Screen," enter the SEID of the CIO manager of the group responsible for receipts from the specific FI territory per the CIO Assignment Tool on SERP.
- J. Select "Save" on the tool bar at the top of the "Taxpayer Screen" to save the confirmation date and the case reassignment.
- K. Check the lower left section of the AIS "Taxpayer Screen" to ensure the record has been updated. "Record Updated" will appear if the changes have been successful.
- L. Select "Exit" to exit the case.

**Exhibit 5.9.5-3
 Allowable Elapsed Time Between Bankruptcy Filings and Discharges**

When a debtor files a Chapter 7 or Chapter 13 bankruptcy petition, the debtor may not be eligible to receive a discharge in the current bankruptcy case if they received a discharge in a prior bankruptcy case. The petition date of each bankruptcy case and the chapter each case was filed under determine eligibility for discharge in the current case. Eligibility in the current case is also determined by when the current bankruptcy case was filed, pre-BAPCPA or after the enactment of BAPCPA on October 17, 2005.

The Bankruptcy Code does not prohibit a debtor from filing bankruptcy at shorter intervals. However, if the minimum time between petition dates is not met, and the debtor received a discharge in the prior bankruptcy case, the court will not grant a discharge in the current case.

Use the chart below to determine if the debtor is eligible for a discharge in the current Chapter 7 or Chapter 13 bankruptcy case when they received a discharge in a prior bankruptcy case. If the minimum time between the two petition dates has not elapsed, the debtor is not eligible to receive a discharge in the current bankruptcy case. Some circumstances may modify the time intervals. (See 11 USC §§ 727(a), 1328(f).)

The Debtor Currently Filed a Chapter	The Debtor Previously Filed Chapter(s)	The Petition Date in the Current Bankruptcy is Pre-BAPCPA (Before 10/17/2005)	The Petition Date in the Current Bankruptcy is Under BAPCPA (On or After 10/17/2005)
7	7 or 11	Six years must elapse between the two petition dates in order for the debtor to be eligible for a discharge in pre-BAPCPA cases.	Eight years must elapse between the two petition dates in order for the debtor to be eligible for a discharge in the current bankruptcy case filed under BAPCPA.

7	12 or 13	Six years must elapse between the two petition dates in order for the debtor to be eligible for a discharge in pre-BAPCPA cases.	<p>Six years must elapse between the two petition dates in order for the debtor to be eligible for a discharge in the current bankruptcy case filed under BAPCPA unless payment under the plan in the prior Chapter 12 or 13 case totalled at least:</p> <ul style="list-style-type: none"> • 100% of the allowed unsecured claims in such case; or, • 70% of such claims; and the plan was proposed by the debtor in good faith, and was the debtor's best effort. (See USBC § 727(a)(9) for additional information.)
13	13	Zero — In pre-BAPCPA cases, the debtor is eligible for a discharge in the current case regardless of when a previous Chapter 13 case was filed.	Two years must elapse between the two petition dates in order for the debtor to be eligible for a discharge in the current bankruptcy case filed under BAPCPA.
13	7, 11 or 12	Zero — In pre-BAPCPA cases, the debtor is eligible for a discharge in the current case regardless of when a previous Chapter 7, 11 or 12 case was filed.	Four years must elapse between the two petition dates in order for the debtor to be eligible for a discharge in the current bankruptcy case filed under BAPCPA.

**Exhibit 5.9.5-4
Common Processing Steps in Serial Filer Cases**

- A. CIO runs IIP daily which updates the AIS TIN screen with the codes for serial filers.
- B. The caseworker researches AIS to determine:

IF...	THEN...
The current bankruptcy is for a corporate filer,	No action or AIS history is warranted.
The current bankruptcy is for an individual filer and IIP has determined that there is no outstanding balance on IDRS	No action or AIS history is warranted.
The current bankruptcy is for an individual filer,	The caseworker locates the previous bankruptcy(ies) on AIS and determines if the case(s) was dismissed or discharged.
The previous case(s) was discharged,	<p>The caseworker updates the AIS history stating the debtor has received a previous discharge and the debtor is not eligible for another discharge on this case. See <i>Exhibit 5.9.5-3, Allowable Elapsed Time between Bankruptcy Filings and Discharges</i>, for additional information.</p> <p>When the debtor is not eligible to receive a discharge in the current case due to a previous discharge, the caseworker must add a "SERIAL" case classification to AIS.</p> <p>Note:</p> <p>The caseworker must attempt to verify through the court's electronic records if the previous case was truly discharged and not dismissed. (S)he must also check the court's electronic records on the current case to see if the docket shows the court is aware of the previous discharge. If the electronic records give no indication of knowledge of a previous discharge, the caseworker should prepare a referral to Counsel to alert the court of the previous discharge.</p> <p>If the case is assigned to the CIO, the caseworker should transfer the case to FI so the case can be referred to Counsel.</p>
Only one previous case was found and it was dismissed for means testing,	
Note: It may be necessary to check the court's electronic records to determine the cause of the dismissal if the reason for dismissal is not documented in the AIS history.	<p>If the case was dismissed for failure to pass the means test, the caseworker must ensure that the method of closure on AIS for the prior case is "DISMISSED FOR FMT-D2" and correct the method of closure on AIS, if not correct.</p> <p>The caseworker updates the AIS history with the information that the previous dismissal was due to means testing. Further action on the case is not warranted.</p>
Previous cases were found and were dismissed for abusive filing,	The caseworker must check the court's electronic records to determine: <ul style="list-style-type: none"> • If the presumption of abuse has been successfully challenged by a party in interest; and; • If the court has determined not to impose a stay.
Note: Previous cases that were dismissed for reasons other than the means test are presumed to be dismissed for abusive filing.	The caseworker must schedule a follow-up on AIS for 45 days from the petition date to see if there is an order extending the stay in the case. The caseworker must add a "SERIAL" case classification to AIS.
The caseworker works the 45 day follow-up and determines that the presumption of abuse has been successfully challenged by a party in interest, and the stay remains in effect, or there is an order extending the stay which includes IRS,	The caseworker updates the AIS history with the information that the stay remains in effect. Further action is not warranted. The caseworker must close the "SERIAL" case classification on AIS.
The caseworker works the 45 day follow-up. The caseworker checked PACER and found that there is no order extending the stay or that there is an order listing only specific creditors but not the IRS. The presumption of abuse stands. The stay has not been extended,	<p>The caseworker must follow procedures for the serial filer case with no stay extension.</p> <ul style="list-style-type: none"> • See <i>Exhibit 5.9.5-5, Processing the Serial Filer Case When the Stay Terminates After 30 Days</i>, for the procedures to follow when there was one prior bankruptcy dismissed within 365 days of the petition date in the current case. • See <i>Exhibit 5.9.5-6, Processing the Serial Filer Case When No Stay Goes into Effect</i>, for the procedures to follow when there was more than one prior bankruptcy dismissed within 365 days of the petition date in the current case. <p>Caution:</p> <p>Do not close the "SERIAL" case classification on AIS.</p>
The 45 day follow-up is worked and the caseworker cannot determine if the stay is in effect,	<p>The caseworker should refer the case to Counsel to request a court order confirming the status of the stay.</p> <p>Note:</p> <p>If the case is at the CIO, the case must be transferred to FI for a referral to Counsel.</p> <p>Caution:</p>

Do not close the "SERIAL" case classification on AIS unless there is an order confirming that the stay has been extended in the case.

Exhibit 5.9.5-5

Processing the Serial Filer Case When the Stay Terminates After 30 Days

The caseworker must follow the table below when processing a serial filer case, the presumption of abuse stands, and there was one prior dismissal within 365 days of the current bankruptcy case. When the appropriate bankruptcy freeze codes are input and reversed on IDRS as directed below, IDRS will systemically calculate the CSED correctly. Adding the TC 520 and TC 521 transactions to the AIS Freeze Screen will allow for systemic reversal of bankruptcy freezes on IDRS at case closure.

STEP	THE CURRENT CASE IS A CHAPTER 11 OR 13	THE CURRENT CASE IS A CHAPTER 7
1	Reverse the bankruptcy TC 520 cc 6X on IDRS using a TC 521 with the date that is the 30th calendar day from the petition date. Example: If the bankruptcy was filed on 3/1/2013, input a TC 521 using 3/31/2013 as the TC 521 date.	Reverse the bankruptcy TC 520 cc 6X on IDRS using a TC 521 with the date that is the 30th calendar day from the petition date. Example: If the bankruptcy was filed on 3/1/2013, input a TC 521 using 3/31/2013 as the TC 521 date.
2	Add the TC 521s manually input to IDRS to the Freeze Screen on AIS.	Add the TC 521s manually input to IDRS to the Freeze Screen on AIS.
3	Input a TC 520 cc 84 on each pre-petition module on IDRS using the petition date as the TC 520 date.	Input a TC 520 cc 84 on each pre-petition module on IDRS using the petition date as the TC 520 date.
4	Add the TC 520 cc 84 input manually to IDRS to the Freeze Screen on IDRS.	Add the TC 520 cc 84 input manually to IDRS to the Freeze Screen on IDRS.
5	For <i>assessment</i> purposes, the automatic stay that prohibited the debtor from petitioning Tax Court to challenge an unagreed deficiency terminated on the 30th day after the petition was filed in the current case. If there are any unagreed Examination or AUR deficiencies, the AIS history must be documented to state, "Automatic stay against the debtor terminated on MM-DD-YYYY. Exam/AUR can proceed with assessment procedures on the unagreed deficiency. Taxpayer can petition Tax Court."	For <i>assessment</i> purposes, the automatic stay that prohibited the debtor from petitioning Tax Court to challenge an unagreed deficiency terminated on the 30th day after the petition was filed in the current case. If there are any unagreed Examination or AUR deficiencies, the AIS history must be documented to state, "Automatic stay against the debtor terminated on MM-DD-YYYY. Exam/AUR can proceed with assessment procedures on the unagreed deficiency. Taxpayer can petition Tax Court."
6	Schedule a follow-up on AIS for confirmation of the bankruptcy plan.	Document all actions in the AIS history.
7	When the plan is confirmed, input a TC 520 cc 6X (based on the closing code used in your location) to IDRS using the confirmation date as the TC 520 date.	Proceed with routine case processing. Unless there are issues in the case that require the case to remain in FI, routine case processing will allow transfer of the case from FI to CIO.
8	Add the TC 520 cc 6X manually input to IDRS to the Freeze Screen on AIS.	
9	Document all actions in the AIS history.	
10	Proceed with routine case processing. In the Chapter 13 case, if there are no issues in the case that require the case to remain in FI, routine case processing will allow transfer of the case from FI to CIO upon completion of confirmation actions in the case. (See IRM 5.9.10.6, <i>Field Insolvency AIS Actions</i> , for confirmation actions.)	

Exhibit 5.9.5-6

Processing the Serial Filer Case When No Stay Goes into Effect

The caseworker must follow the table below when processing a serial filer case, the presumption of abuse stands, and there was more than one dismissal within 365 days of the current bankruptcy case. When the appropriate bankruptcy freeze codes are input and reversed on IDRS as directed below, IDRS will systemically calculate the CSED correctly. Adding the TC 520, TC 521 and TC 522 transactions to the AIS Freeze Screen will allow for systemic reversal of bankruptcy freezes on IDRS at case closure.

STEP	THE CURRENT CASE IS A CHAPTER 11, 12 OR 13	THE CURRENT CASE IS A CHAPTER 7
1	Reverse the bankruptcy TC 520 cc 6X on IDRS using a TC 522 cc 6X. No date is required to input a TC 522.	Reverse the bankruptcy TC 520 cc 6X on IDRS using a TC 522 cc 6X. No date is required to input a TC 522.
2	Add the TC 522s manually input to IDRS to the Freeze Screen on AIS.	Add the TC 522s manually input to IDRS to the Freeze Screen on AIS.
3	Input a TC 520 cc 84 on each pre-petition module on IDRS using the petition date as the TC 520 date.	Input a TC 520 cc 84 on each pre-petition module on IDRS using the petition date as the TC 520 date.
4	Add the TC 520 cc 84 input manually to IDRS to the Freeze Screen on IDRS.	Add the TC 520 cc 84 input manually to IDRS to the Freeze Screen on IDRS.
5	For <i>assessment</i> purposes, the automatic stay that prohibited the debtor from petitioning Tax Court to challenge an unagreed deficiency never went into place in the current case. If there are any unagreed Examination or AUR deficiencies, the AIS history must be documented to state, "Automatic stay against the debtor never went into place in the current case. Exam/AUR can proceed with assessment procedures on the unagreed deficiency. Taxpayer can petition Tax Court."	For <i>assessment</i> purposes, the automatic stay that prohibited the debtor from petitioning Tax Court to challenge an unagreed deficiency never went into place in the current case. If there are any unagreed Examination or AUR deficiencies, the AIS history must be documented to state, "Automatic stay against the debtor never went into place in the current case. Exam/AUR can proceed with assessment procedures on the unagreed deficiency. Taxpayer can petition Tax Court."
6	Schedule a follow-up on AIS for confirmation of the bankruptcy plan.	Document all actions in the AIS history.
7	When the plan is confirmed, input a TC 520 cc 6X (based on the closing code used in your location) to IDRS using the confirmation date as the TC 520 date.	Proceed with routine case processing. Unless there are issues in the case that require the case to remain in FI, routine case processing will allow transfer of the case from FI to CIO.
8	Add the TC 520 cc 6X manually input to IDRS to the Freeze Screen on AIS.	
9	Document all actions in the AIS history.	
10	Proceed with routine case processing. In the Chapter 13 case, if there are no issues in the case that require the case to remain in FI, routine case processing will allow transfer of the case from FI to CIO upon completion of confirmation actions in the case. (See IRM 5.9.10.6, <i>Field Insolvency AIS Actions</i> , for confirmation actions.)	

Exhibit 5.9.5-7

Debtor States Identity Theft (IDT)

Follow the steps in the table below when the debtor alleges that they are a victim of identity theft. For additional information, see IRM 10.5.3, *Identity Protection Program*, and IRM 5.1.28, *Identity Theft for Collection Employees*.

Step	TC 971 Action Code	Employee Actions	Notes
		The debtor in a bankruptcy case may state that s(he) did not earn income during a specific tax year or that a return in question was not filed by him/her. Determine if the debtor has previously submitted an IDT claim.	

1		<p>Review IDRS cc ENMOD and determine if the following conditions exist:</p> <ul style="list-style-type: none"> A. There is a posted/unreversed TC 971 AC 501/506 or TC 971 AC 522 Source Code INCOME, MULTFL, INCMUL, NOFR, or OTHER AND B. The posted transaction falls within the three year period described in IRM 10.5.3.2.6, AND C. The allegation relates to a previously reported incident as described in IRM 10.5.3.2.6. <p>If there was a previous claim within the three-year period described in IRM 10.5.3.2.6, do not mark the incident again.</p> <p>Note:</p> <p>DO NOT request IDT supporting documentation if it has already been submitted for an incident.</p> <p>If there was no previous claim, request input of the TC 971 AC 522 Source Code PNDCLM (see step 2) and request IDT supporting documentation (see Step 3).</p> <p>If the return filed by an ID thief resulted in issuance of a refund to the debtor, the bankruptcy estate, or trustee, ask the debtor or trustee to return the refund to IRS. See Step 8 for actions to take when the refund is not returned to IRS, or for posting the returned refund or replacement check.</p>	<p>To prevent systemic issuance of the refund on the potential IDT account:</p> <ul style="list-style-type: none"> • Input TC 520 cc 81 to the refund module on IDRS. • Write in the AIS history in all capital letters, POTENTIAL IDT CASE. DO NOT ISSUE REFUND ON 30-20XX12. • Add an "Iden Theft" case classification to the classification screen on AIS to alert users of the AIS system that there is an open IDT issue in the case.
2	TC 971 AC 522 Source Code PNDCLM	<p>When a debtor states that s(he) is a victim of identity theft and the account was not previously marked for identity theft:</p> <ul style="list-style-type: none"> • Request input of a TC 971 AC 522 with Source Code PNDCLM, if the account has not already been marked for identity theft. (See IRM 10.5.3.2.5, <i>Initial Allegation or Suspicion of Tax-Related Identity Theft - Identity Theft Indicators</i>, IRM 10.5.3.2.5.1, <i>Taxpayer Initiated Allegations of Identity Theft - Pending Claim Identity Theft TC 971 AC 522 PNDCLM</i>, and IRM 5.1.28.8.2, <i>Individual Taxpayer Alleges Identity Theft</i>.) <p>Caution:</p> <p>Prior to marking an account with TC 971 AC 522 PNDCLM or IRSID, research IDRS command code (cc) ENMOD or IMFOLE to ensure the account has not already been marked for the IDT incident. If the incident involved multiple years, the Secondary Date Field will be the earliest year involved in the identity theft incident. Do not input a second code for the same incident.</p> <ul style="list-style-type: none"> • If the IDT incident involved more than one tax year, enter a history item on ENMOD/IMFOLE using IDRS cc ACTON reflecting the additional tax years affected by identity theft. 	<p>Input of the TC 971 AC 522 Source Code PNDCLM:</p> <ul style="list-style-type: none"> • Caseworkers may input the TC 971 AC 522 Source Code PNDCLM directly to IDRS. For additional information, see IRM Exhibit 10.5.3-12, <i>IMF Only TC 971 AC 522 Tax-Related Identity Theft, Case Status (Initial Claim/Suspicion and Supporting Documents)</i>. • Caseworkers may request input of the TC 971 AC 522 PNDCLM by completing Form 4844, <i>Request for Terminal Action</i>, and submitting the form to the SB/SE Designated Identity Theft Adjustment (DITA) team. Contact information for DITA is included in IRM 5.9.5.12.1.1, <i>Adjusting the Identity Theft Account</i>. For additional information on completing the Form 4844, see IRM 5.1.28.8.5, <i>IMF Identity Theft Indicator Codes</i>, through IRM 5.1.28.8.5.5, <i>Remarks Block</i>, and IRM Exhibit 5.1.28-1, <i>IMF Form 4844 Example Input of TC 971 AC 522 Pending Claim</i>. <p>Note:</p> <p>Document all actions taken in the case in the AIS case history.</p>
3		<p>If a review of IDRS cc ENMOD/IMFOLE does not show that the debtor has previously submitted the IDT supporting documentation:</p> <ul style="list-style-type: none"> • Ask the debtor to submit the IDT substantiation to the CIO or FI caseworker within 30 days. • Set a follow-up on AIS for 45 days for receipt of the supporting documentation. • If the debtor has not filed a tax return for the tax year in question, has an income tax filing requirement, and the return due date has passed, ask the debtor to file their delinquent tax return with Insolvency by the 30 day deadline. • Document all actions and deadlines in the AIS case history. 	<p>See IRM 5.9.5.12.1, <i>Identity Theft Substantiation</i>, for additional information. Generally, substantiation includes:</p> <ul style="list-style-type: none"> A. Authentication of Identity - A copy of a valid U.S. federal or state government issued form of identification; such as, driver's license, state identification card, Social Security Card, passport, etc., B. Evidence of Identity Theft - A copy of a police report, Form 14039, <i>Identity Theft Affidavit</i>, or Form 14039-B, <i>Business Identity Theft Affidavit</i>, and C. Evidence of Business Operation (for business IDT cases ONLY) - A copy of a utility bill, invoice, mortgage/rent receipt or other documentation. <p>Note:</p> <p>For Source Codes used in BMF identity theft cases, see IRM 5.1.28.14, <i>BMF Identity Theft Code Input Procedures</i>.</p> <p>For additional information, see IRM 5.1.28.8.2, <i>Individual Taxpayer Alleges Identity Theft</i>, and IRM 10.5.3.2.6, <i>Overview - Identity Theft Supporting Documentation</i>.</p>

			<p>Note:</p> <p>To facilitate processing of the potential IDT case, the Insolvency caseworker must complete research to determine if s(he) agrees that the taxpayer is a victim of IDT while waiting for the debtor to submit the requested IDT substantiation. (See Step 6, below.)</p>
4	TC 972 AC 522 Source Code NOREPLY	<p>If the debtor stated s(he) is a victim of IDT and does not provide the required ID Theft substantiation by the established deadline:</p> <ul style="list-style-type: none"> • Contact the debtor and advise the debtor that the IRS is not going to work the IDT issue because IDT substantiation was not received by the established deadline. • If the debtor states that the documentation was previously submitted to the IRS and there is no information on IDRS to support the debtor's claim, ask him/her to submit a duplicate copy of the documentation by a mutually agreed upon date. Advise the debtor that the IRS will not work the IDT issue if the substantiation is not received by that date. • If the debtor does not indicate that the substantiation was previously submitted, reverse the IDT indicator on IDRS by requesting a TC 971 AC 522 with Source Code NOREPLY. <p>See IRM 10.5.3.2.7(2), <i>Taxpayer Does Not Respond to Requests for Supporting Documentation - NORPLY</i>, and IRM 5.1.28.8.6, <i>Identity Theft Code TC 971 AC 522 Reversal Procedures (TC 972 AC 522)</i>, for additional information.</p> <p>See <i>Exhibit 5.9.5-8, IRS Identified Identity Theft</i>, and <i>Exhibit 5.9.5-9, Trustee or Debtor's Attorney States Debtor is a Victim of Identity Theft</i>, for instructions in cases where the bankruptcy trustee stated that the debtor is a victim of IDT or the IRS identified that the debtor is a victim of IDT.</p>	<ul style="list-style-type: none"> • Caseworkers may request input of the TC 972 AC 522 Source Code NOREPLY directly to IDRS. (See IRM Exhibit 10.5.3-13, <i>TC 972 AC 522 - Reversal of TC 971 AC 522</i>, for additional information). • Caseworkers may also submit Form 4844, <i>Request for Terminal Action</i>, to DITA to request input of the TC 971 AC 522 Source Code NOREPLY. See <i>IRM 5.9.5.12.1.1, Adjusting the Identity Theft Account</i>, and IRM 5.1.28.8.5.5, <i>Remarks Block</i>, for additional information. • Continue with routine case processing using established bankruptcy procedures. • Notate all actions in the AIS history. • Close the "Iden Theft" case classification on AIS. <p>Do not proceed further in this chart.</p>
5	TC 971 AC 522 Source Code <ul style="list-style-type: none"> • Income • MULTFL • INCMUL • NOFR • OTHER 	<p>Request or input the TC AC 522 with the appropriate source code when complete and legible substantiation documentation is received from the debtor. See IRM 5.1.28.8.2, <i>Individual Taxpayer Alleges Identity Theft</i>, and IRM 10.5.3.2.6.2, <i>Complete and Legible Documents</i>, for additional information.</p>	<p>Caseworkers may input the TC 971 AC 522 with the required Source Code directly to IDRS or may request input by submitting Form 4844 to DITA.</p>
6		<p>The caseworker must conduct research to determine if (in his/her judgment), IDT occurred. For example, review:</p> <ul style="list-style-type: none"> • Accurint • IRPTR • PACER (petition, Statement of Financial Affairs, and Bankruptcy Schedules) • IDRS (INOLES, ENMOD, RTVUE, etc.) • If a paper return was filed, compare the signature on the tax return to the signature on the Form 14039, the Form 14039-B, the bankruptcy petition, etc. • To obtain a copy of the paper refund check, see http://mysbse.web.irs.gov/Collection/toolsprocesses/CollATAT/TechProc/1099OID/JobAids/27522.aspx. <p>For additional information, see Step 4 of the chart in IRM 5.1.28.8.2, <i>Individual Taxpayer Alleges Identity Theft</i>, IRM 5.1.28.7, <i>Making an Identity Theft Determination</i>, and IRM 10.5.3.2.5.3, <i>Identity Theft Case Building</i>.</p>	<p>Note:</p> <p>To facilitate processing of potential IDT cases, the caseworker must complete research to determine if s(he) agrees the debtor is a victim of IDT while s(he) is waiting for the debtor to submit the requested IDT substantiation.</p>
7	TC 972 AC 522 Source Code NOIDT	<p>If the taxpayer has provided ID Theft Substantiation or if substantiation is not required because it was previously submitted (see Step 1), and the caseworker has determined that in his/her judgment that IDT did not occur, the caseworker should:</p> <ul style="list-style-type: none"> • Contact the debtor. Advise the debtor that we have determined that identity theft did not occur and that we are closing the identity theft issue. • Request input of a TC 972 AC 522 Source Code NOIDT unless the debtor states they have additional information they would like for the case worker to consider. • If the debtor advises that they have additional information that they would like for IRS to consider, ask the debtor to submit the additional information to the caseworker by an established deadline. Advise the debtor that if the information is not received by the deadline, we are closing the IDT issue. • If the debtor was to submit additional information and did not submit the information by the established deadline, request input of a TC 972 AC 522 Source Code NOIDT. • Document all actions in the AIS history. • Close the "Iden Theft" case classification on AIS. 	<p>Caseworkers may input the TC 972 AC 522 with Source Code NOIDT directly to IDRS or may request input by submitting Form 4844 to DITA.</p> <p>Continue with routine case processing using established bankruptcy procedures.</p> <p>Do not proceed further in this chart.</p>

See IRM 5.1.28.8.6, *Identity Theft Code TC 971 AC 522 Reversal Procedures (TC 972 AC 522)*, IRM 5.1.28.9, *Taxpayer is Not a Victim of Identity Theft*, and IRM 10.5.3.2.7, *Reversing Pending Identity Theft Claims - TC 972 AC 522 NORPLY or NOIDT*, for additional information.

If the debtor's account had a balance due because of an IDT return, the caseworker will need to:

- Amend the proof of claim so that it reflects the debtor's correct liability as a result of the IDT investigation. The liability could be increased or decreased, depending upon the result of the investigation.
- If the amendment will increase the amount of tax the debtor must pay, consult with Area Counsel before proceeding.
- If an objection to claim or motion to determine tax liability is pending, consult with Area Counsel before amending the claim.
- Determine if the Service received any payments on the proof of claim for a liability resulting from IDT. If there are no outstanding tax liabilities, the bankruptcy payments applied to the thief's liability should be returned to the bankruptcy estate.
- If there are remaining liabilities, the caseworker should consult with Area Counsel to determine whether the payments should be applied to those liabilities, returned to the bankruptcy estate, or refunded to the debtor.
- Document all actions in the AIS history.

If the return prepared by an ID thief resulted in a **refund return**, and the refund was manually issued to the debtor or issued to the bankruptcy trustee due to a trustee refund turnover order (both are generally detected by the presence of a TC 840 on IDRS), the caseworker should ask the debtor or trustee to return the erroneous refund to the IRS.

- Upon receipt of the refund check, post the refund check using Form 3913, *Acknowledgement of Return Refund Check*. If the refund check was negotiated by the trustee or debtor, and a replacement check is received from the trustee or debtor, post the replacement check using Form 3244, *Payment Posting Voucher*.
- If the money is not returned to the Service, consider referring the case to Counsel to request lifting of the stay to pursue collection of the erroneous refund. The Service may recover the erroneous refund by:
 - a) An erroneous refund suit authorized by IRC § 6405, subject to the refund referral tolerance amount of $\$10,000$.
 - b) Common law right to offset (Category D erroneous refund) - within two years from the date that the refund was sent out. See IRM 5.1.8.7.1.1.2, *Unassessable Erroneous Refunds*.
- When the refund cannot be recovered, the debtor's account is corrected and no further action is taken.

If the refund on the IDT return offset to another tax debt owed to the Service by the debtor, request transfer of credit from that module back to the IDT module. Once the credit transfer posts to IDRS, prepare and

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Once the caseworker has determined that IDT has occurred, take actions specific to the bankruptcy case.

			<p>submit Form 3870 to DITA with instructions to remove the transactions from the IDT return from the debtor's account. There should be no balance due on the IDT victim's account after DITA properly adjusts the account.</p> <p>Any refunds offset through the Treasury Offset Program (TOP) will be recovered through the TOP reversal process so no other remedies need be pursued.</p> <p>Note:</p> <p>See IRM 5.1.28.12, <i>Erroneous Identity Theft Refund Issued to Victim</i>, for additional information.</p>
9	Request TC 971 AC 501	<p>If the taxpayer submitted the IDT substantiation, or the substantiation was not required, and the caseworker has determined that in his/her judgment IDT has occurred:</p> <ul style="list-style-type: none"> • Contact the debtor. Advise that we have determined that s(he) is a victim of IDT and will be adjusting his/her account accordingly. • Prepare Form 3870 to correct the debtor's account. • Write, "Input the TC 971 AC 501 once all adjustments have been input" on the Form 3870. • Route the Form 3870 to the appropriate function for input. • Document all actions in the AIS case history. • Schedule a follow-up on AIS to ensure that all adjustments were processed and the TC 971 AC 501 has been input to IDRS. <p>Note:</p> <p>If the address on ENMOD/IMFOLE for the debtor is incorrect, include instructions for an address change on the Form 3870.</p>	<p>See IRM 5.9.5.12.1.1, <i>Adjusting the Identity Theft Account</i>, for additional information on preparing and routing of the Form 3870.</p>
10		Close the "Iden Theft" case classification on AIS once all actions in the case involving IDT have been completed.	

Note:

Functions with on-line IDRS input capabilities should follow instructions for inputting the TC 971 and TC 972 in IRM 10.5.3, *Identity Protection Program*. Functions that do not have on-line input capabilities should follow instructions in IRM 5.1.28, *Field Collection Procedures, Identity Theft for Collection Employees*.

**Exhibit 5.9.5-8
IRS Identified Identity Theft (IDT)**

IRS may identify that the debtor is a victim of identity theft. Use the chart below when IRS identifies that the debtor is a victim of identity theft. For additional information, see IRM 5.1.28.8.3, *IRS Identified Identity Theft*, IRM 10.5.3.2.5.2, *IRS Initiated Suspicion of Identity Theft — TC 971 AC 522 IRSID*, and IRM Exhibit 10.5.3-10, *IMF Only TC 971 AC 506 — IRS-Determined Tax-Related Identity Theft Case Closure*.

Step	TC 971 Action Code	Employee Actions	Notes
1	TC 971 AC 522 Secondary Code IRSID	<p>If you determine that the debtor is a victim of IDT and the account has not already been marked for IDT:</p> <ul style="list-style-type: none"> • Input TC 971 AC 522 with Secondary Code IRSID, or • Request input of TC 971 AC 522 with Secondary Code IRSID using Form 4844. <p>Caution:</p> <p>Prior to marking an account with TC 971 AC 522 PNDCLM or IRSID, research ENMOD/IMFOLE to ensure the account has not already been marked for the same tax year/incident. If the coding already exists, do not input a second code for the same tax year/incident.</p> <ul style="list-style-type: none"> • If the IDT incident involved more than one tax year, enter a history item on ENMOD/IMFOLE using IDRS cc ACTON reflecting the additional tax years affected by IDT. • Add the case classification "Iden Theft" to the case classification screen on AIS to alert users of the AIS system that there is an open IDT issue in the case. • If the return filed by an ID thief resulted in issuance of a refund to the debtor, the bankruptcy estate, or trustee, ask the debtor or trustee to return the refund to the IRS. See Step 8 of <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i>, for actions to take when the refund is not returned to IRS or for posting the returned refund or replacement check. • Document all actions in the AIS case history. 	<p>The Secondary Date field will reflect the earliest tax year of the IDT incident. Use Form 4844 to request input of the TC 971 AC 522 with Source Code IRSID. Forward the Form 4844 to DITA for input.</p>
2		In all instances, the caseworker must conduct research to determine if (in his/her judgment), identity theft occurred. See Step 6 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> , for additional information.	
			<ul style="list-style-type: none"> • Reverse the TC 971 AC 522 with TC 972 AC 522 Source Code NOIDT. Use Form 4844 to request input. Forward the Form 4844 to DITA for input.

3	TC 972 AC 522 Source Code NOIDT	If the caseworker has determined that in his/her judgment IDT did not occur, the caseworker should request input of a TC 972 AC 522 Source Code NOIDT. See Step 7 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> , for additional information.	<ul style="list-style-type: none"> Continue with routine case processing using established bankruptcy procedures. Document all actions in the AIS history. Close the "Iden Theft" case classification on AIS. <p>Do not proceed further in the chart.</p>
4		Once the caseworker has determined that IDT has occurred, tax actions specific to the bankruptcy case.	See Step 8 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> , for additional information.
5	TC 971 AC 506	<ul style="list-style-type: none"> Prepare Form 3870 to correct taxpayer's account when the caseworker has determined that identity theft has occurred. Write "Input TC 971 AC 506 when all adjustments have been input" on the Form 3870. Contact the debtor. Advise the debtor that we have determined that s(he) is a victim of identity theft and will be adjusting their account accordingly. Schedule a follow-up on AIS to ensure that all adjustments were processed and that the TC 971 AC 506 has been input. Document all actions in the AIS case history <p>Note:</p> <p>If the address on ENMOD/IMFOLE for the taxpayer is incorrect, include instructions for an address change on the Form 3870.</p> <p>See IRM Exhibit 10.5.3-10, <i>IMF Only TC 971 AC 506 — IRS-Determined Tax-Related Identity Theft Case Closure</i>, for additional information.</p>	<p>See <i>IRM 5.9.5.12.1.1, Adjusting the Identity Theft Account</i>, for information on preparing and routing of the Form 3870.</p> <p>Note:</p> <p>Close the "Iden Theft" case classification on AIS once all the IDT issues have been resolved. See <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i>, for instructions on addressing modules with a refund due to a return prepared by an ID thief.</p>
6		Close the "Iden Theft" case classification on AIS once all actions in the case involving IDT have been completed.	

Note:

Functions with on-line IDRS input capabilities should follow instructions for inputting the TC 971 and TC 972 in IRM 10.5.3, *Identity Protection Program*. Functions that do not have on-line IDRS input capabilities should follow instructions in IRM 5.1.28, *Field Collection Procedures, Identity Theft for Collection Employees*.

**Exhibit 5.9.5-9
Trustee or Debtor's Attorney States Debtor is a Victim of Identity Theft (IDT)**

Insolvency may be contacted by a third-party, such as the debtor's attorney or the bankruptcy trustee. The third-party may state that the debtor is a victim of IDT. Follow the steps in the chart below for processing these cases.

Step	TC 971 Action Code	Employee Actions	Notes
1		<p>A person other than the debtor in the debtor's bankruptcy case, such as the debtor's attorney or bankruptcy trustee, contacts Insolvency. They suspect the debtor may be a victim of identity theft because:</p> <ul style="list-style-type: none"> The debtor previously gave the trustee an affidavit stating they did not file tax returns because s(he) had no taxable income. Yet, the trustee received a refund for a tax period covered in a refund turnover order. The debtor contacted the trustee or bankruptcy attorney about a letter s(he) received from the Service saying that their tax refund had offset to child support, a student loan, or some other debt. S(he) does not remember filing a tax return. The debtor told the trustee that s(he) is required to file tax returns. S(he) attempted to file his/her tax return electronically. The tax return was rejected because there was already a tax return filed for the tax year in question under his/her SSN. <p>Follow Step 1 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i>. Do not request IDT substantiation if the debtor has previously submitted the substantiation.</p>	Follow Step 1 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> .
2	TC 971 AC 522 Source Code PNDCLM	When a third-party, such as the bankruptcy attorney or bankruptcy trustee identifies that the debtor may have been a victim of IDT, and the account was not previously marked for IDT, follow Step 2 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> .	Follow Step 2 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> .
3		If a review of IDRS cc ENMOD/IMFOLE does not show that the debtor has previously submitted IDT supporting documentation, contact the debtor and ask the debtor to provide the IDT supporting documentation. Follow Step 3 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft</i> .	
4	TC 971 AC 522 Source Code IRSID	<p>If the ID Theft substantiation is not received by the established deadline, it may be because the debtor has received the benefit of the refund from the identity theft return.</p> <p>Treat the case as IRS identified Identity Theft.</p> <p>Request input of TC 971 AC 522 with Source Code IRSID using Form 4844.</p> <p>Caution:</p> <p>Prior to marking an account with TC 971 AC 522 PNDCLM or IRSID, research ENMOD/IMFOLE to ensure the account has not already been marked for the same tax year/incident. If the coding already exists, do not input a second code for the same tax year/incident.</p> <ul style="list-style-type: none"> If the incident involved multiple tax years, the TC 971 will only be input to the earliest year. If multiple years were involved, there should be a history item on ENMOD/IMFOLE reflecting the tax years involved. If the IDT incident involved multiple years, and you are requesting input of the TC 971 AC 522, enter a history item on IDRS cc ENMOD/IMFOLE using IDRS cc ACTON stating which modules were involved in the IDT incident. 	Document all actions taken in the AIS history.

5	TC 971 AC 522 with Source code <ul style="list-style-type: none"> • INCOME • MULTFL • INCMUL • NOFR • OTHER 	Follow Step 5 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> , when complete and legible substantiation is received from the debtor.	Follow Step 5 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> .
6		The caseworker must conduct research to determine if (in his/her judgment), IDT occurred. Follow Step 6 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> .	Follow Step 6 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> .
7	TC 972 AC 522 Source Code NOIDT	If the caseworker has determined that in his/her judgment identity theft did not occur, the caseworker should request input of a TC 972 AC 522 source code NOIDT. Follow Step 7 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> .	Follow Step 7 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> .
8		Once the caseworker has determined that IDT has occurred, take actions specific to the bankruptcy case. Follow Step 8 in <i>Exhibit 5.9.5-7, Debtor States Identity Theft (IDT)</i> .	
9	TC 971 AC 501	If the debtor submitted IDT substantiation or if ID Theft substantiation was not required because it was previously submitted, and you have determined identity theft occurred: <ul style="list-style-type: none"> • Prepare Form 3870 to correct the debtor's account. • Write "Input the TC 971 AC 501 once all adjustments have been input " on the Form 3870. • Contact the debtor. Advise the debtor that we have determined that s(he) is a victim of identity theft and will be adjusting his/her account accordingly. • Document all actions in the AIS case history. • Schedule a follow-up on AIS to ensure that all adjustments were processed and that the TC 971 AC 501 has been input to IDRS. <p>Note: If the address on ENMOD/IMFOLE for the taxpayer is incorrect, include instructions for an address change on the Form 3870.</p>	See <i>IRM 5.9.5.12.1.1, Adjusting the Identity Theft Account</i> , for information on preparing and routing of the Form 3870.
10	TC 971 AC 506	If the debtor did not submit IDT substantiation and you have determined that identity theft has occurred, and you are treating the account as IRS identified IDT: <ul style="list-style-type: none"> • Prepare Form 3870 to correct taxpayer's account. • Write "Input TC 971 AC 506 when all adjustments have been input" on the Form 3870. • Contact the debtor. Advise the debtor that we have determined that s(he) is a victim of identity theft and will be adjusting their account accordingly. • Document all actions in the AIS case history. • Schedule a follow-up on AIS to ensure that all adjustments were processed and the TC 971 AC 506 has been input to IDRS. <p>Note: If the address on ENMOD/IMFOLE for the taxpayer is incorrect, include instructions for an address change on the Form 3870.</p>	See <i>IRM 5.9.5.12.1.1, Adjusting the Identity Theft Account</i> , for additional information on preparing and routing of the Form 3870.
11		Close the "Iden Theft" case classification on AIS once all actions in the case involving IDT have been completed.	

Note:

Functions with on-line IDRS input capabilities should follow instructions for inputting the TC 971 and TC 972 in IRM 10.5.3, *Identity Protection Program*. Functions that do not have on-line IDRS input capabilities should follow instructions in IRM 5.1.28, *Field Collection Procedures, Identity Theft for Collection Employees*.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 6. Processing Chapter 7 Bankruptcy Cases

5.9.6 Processing Chapter 7 Bankruptcy Cases

- 5.9.6.1 [Overview](#)
- 5.9.6.2 [Introduction to Chapter 7 Bankruptcy](#)
- 5.9.6.3 [Eligible Entities](#)
- 5.9.6.4 [Referrals to Insolvency](#)
- 5.9.6.5 [Automatic Stay](#)
- 5.9.6.6 [Chapter 7 No Asset \(7NA\) Process](#)
- 5.9.6.7 [Chapter 7 Asset \(7A\) Process](#)
- 5.9.6.8 [Commodity Broker Bankruptcies](#)
- 5.9.6.9 [Opening a Chapter 7 Case](#)
- 5.9.6.10 [Chapter 7 Case Assignments](#)
- 5.9.6.11 [Initial Case Review by Field Insolvency \(FI\)](#)
- 5.9.6.12 [Proof of Claim - Asset Cases](#)
- 5.9.6.13 [Post-petition Liabilities — Individuals](#)
- 5.9.6.14 [Bankruptcy Estate Income Taxes – Separate Taxable Entity](#)
- 5.9.6.15 [Trust Fund Recovery Penalty](#)
- 5.9.6.16 [Conversion](#)
- 5.9.6.17 [Subordination of Tax Liens](#)
- 5.9.6.18 [Sale of Property by the Trustee](#)
- 5.9.6.19 [Distribution](#)
- Exhibit 5.9.6-1 [Processing Chapter 7 Trustee Turnover Requests when the Case is Not on AIS](#)
- Exhibit 5.9.6-2 [Processing Chapter 7 Turnover Requests when the Case is Closed on AIS](#)
- Exhibit 5.9.6-3 [Processing Chapter 7 Trustee Turnover Requests when the Case is Open on AIS](#)
- Exhibit 5.9.6-4 [Conversions and Turnover Requests](#)
- Exhibit 5.9.6-5 [Processing Withdrawals or Rescissions of Trustee Turnover Requests](#)
- Exhibit 5.9.6-6 [TC 520 Input Guide for Trustee Turnover Requests](#)
- Exhibit 5.9.6-7 [CIO Actions on Chapter 7 Asset \(7A\) Cases](#)

Manual Transmittal

March 06, 2015

Purpose

(1) This transmits revised IRM 5.9.6, *Bankruptcy and Other Insolvencies, Processing Chapter 7 Bankruptcy Cases*.

Material Changes

(1) The information in IRM 5.9.6, *Bankruptcy and Other Insolvencies, Processing Chapter 7 Bankruptcy Cases*, has been updated to provide clarification and expansion of existing material. Content in this IRM has been reorganized for clarity. The following table illustrates changes within this IRM revision.

IRM	Change
5.9.6.1	An overview has been added discussing the purpose and audience of this IRM section.
5.9.6.2(1)(a)	A debtor may be dismissed for failure to pass the "means test" when they have primarily consumer debts.
5.9.6.2(1)(d)	Additional content clarifies that a bankruptcy discharge does not extinguish attachment of the statutory lien nor invalidate a pre-petition Notice of Federal Tax Lien (NFTL).
5.9.6.2.2(2)	When creditors do not elect a trustee in the Chapter 7 case, the interim trustee becomes the permanent trustee.
5.9.6.2.2(3)	Notice of sale or lease of property of the estate is not required if the sale is in the ordinary course of business.
5.9.6.2.2(4)(a)	A correction has been made in the paragraph. The court must supply a statement to all creditors within seven, not five days.
5.9.6.2.3	Due to systemic enhancements on the Automated Insolvency System (AIS), caseworkers are no longer required run a MyEureka report to identify cases that are being mirrored and a turnover request is still in effect. Requirements to run the report have been removed from this IRM.
5.9.6.2.3(3)	This paragraph contains a new list of reminders for caseworkers processing trustee turnover requests.
5.9.6.2.3(5)	A dismissal extinguishes the right to a turnover of a refund to the trustee.
5.9.6.2.3(6)	A paragraph has been added with a list of actions needed when a dismissal is vacated and a trustee turnover request is reinstated.
5.9.6.2.3(7)	A valid refund turnover request is effective after the bankruptcy discharge unless the request is withdrawn or the case is closed at the court. Consider the Refund Statute Expiration Date (RSED) when requesting a refund or offset. Include TOP Bypass Indicator (BPI) 07 on the Form 5792 when the bankruptcy case was filed on or after October 17, 2005.
5.9.6.2.3(8)	The Automated Discharge System (ADS) systemically reverses any bankruptcy TC 520s and closes the case on the Automated Insolvency System (AIS).
5.9.6.3(1)	Limited Liability Companies (LLCs) have been included in the list of entities eligible to file Chapter 7.
5.9.6.4(1)	The fax number has been added for non-Insolvency employees to fax Form 4442, <i>Inquiry Referral</i> , to the Centralized Insolvency Operation (CIO).
5.9.6.5(2)	Clarifies that the debtor may be a serial filer when prior dismissals were not for failure to pass the means test.
5.9.6.5(4)	In a serial filer case, the creditors are bound by the terms of a confirmed plan and are prohibited from taking similar actions as with a stay against property of the estate.
5.9.6.5.1(1)	The Service cannot return uncashed checks to the debtor. This may require the Service to issue a manual refund to the debtor or to move a payment to a non-dischargeable period.
5.9.6.9	The section titled "Opening a Chapter 7 Case" has been moved from 5.9.6.7 to 5.9.6.9.
5.9.6.9(4)	A TC 520 cc 84 alerts other functions within IRS to the filing of the bankruptcy and to contact Insolvency before taking any collection action.

5.9.6.9(8)(a)	Taxes that were entitled to be paid as administrative expenses in a case prior to conversion to Chapter 7 are subordinated to Chapter 7 administrative expenses.
5.9.6.10(1)	Work on Chapter 7 cases is shared by Field Insolvency (FI) and CIO.
5.9.6.10(2)	Instructions have been added for processing 7NA cases filed by LLCs.
5.9.6.10(3)	A new paragraph has been added with instructions used by FI when working 7NA cases of LLCs.
5.9.6.10.1	A new subsection has been added to discuss Chapter 7 cases assigned to FI.
5.9.6.10.1(2)	Most Chapter 7 Asset (7A) cases are transferred from FI to CIO after the initial case review has been completed and all proofs of claim (POC) have been acknowledged.
5.9.6.10.1(5)	Caseworkers use case classifications to delay or prevent case closure.
5.9.6.10.2	Chapter 7 work assigned to CIO is discussed in this subsection.
5.9.6.10.3	A new subsection has been added to discuss large dollar cases that require an exempt, abandoned, or excluded property (EAEP) investigation and coordination between FI and CIO.
5.9.6.11	Content on initial case reviews previously in IRM 5.9.6.7 has been moved to IRM 5.9.6.11 and subsections.
5.9.6.11.1	Initial case reviews in large dollar 7 No Asset (7NA) cases are discussed.
5.9.6.11.1(3)	A referral to Counsel may be required if a debtor in the 9th Circuit schedules excluded property as exempt property on the bankruptcy schedules.
5.9.6.11.1(4)	A list has been added with the tools used by FI to complete an initial case review in large dollar 7NA cases.
5.9.6.11.2	Initial case reviews in Chapter 7A individual cases are discussed.
5.9.6.11.2(2)	Automated Proof of Claim (APOC) flags that identify potential stay violations should be worked within five calendar days of APOC identifying the flagged condition.
5.9.6.11.2(3)	The Director, Specialty Collection - Insolvency, may establish "streamlined" procedures in certain 7A individual cases.
5.9.6.11.2(3)(c)	Do not reinput the TC 520 on IDRS when discharge was revoked in a case. The stay terminated when the discharge was entered in the case.
5.9.6.11.2(3)(d)	FI caseworkers no longer have to contact the 7A trustee to determine when distribution can be expected in the 7A individual case.
5.9.6.11.2(4)	Most 7A individual cases are transferred from FI to CIO after completion of the initial case review and acknowledgement of all proofs of claim.
5.9.6.11.3	Initial case reviews in 7A business cases are discussed.
5.9.6.11.3(2)	The requirement to work APOC flags within five workdays of APOC identifying the flagged condition has been changed to at least five calendar days prior to the 341 meeting for all flags except those that identify potential stay violations.
5.9.6.11.3(3)	Additional research is required during the initial case review when a LLC files a 7A case.
5.9.6.11.3(4)	Most 7A business cases are transferred from FI to CIO for closure after the initial case review and completion of any required TFRP investigation.
5.9.6.12(1)	Generally, the notice for the filing of claims in 7A cases sets the date for creditors to file claims.
5.9.6.12(6)	The bar date in a 7A case is clarified.
5.9.6.12(7)	A new paragraph has been added to discuss expired bar dates in the 7A case.
5.9.6.13(2)	Debts of the bankruptcy estate in individual cases are claimable on Form 6338-A, <i>Request for Payment of Internal Revenue Taxes</i> .
5.9.6.13.1	A new subsection has been added to discuss post-petition liabilities in the business case.
5.9.6.14.1(4)	FI Territory Managers sign letters approving or denying a trustee's request for relief from filing a corporation income tax refund when the corporation is defunct. The request does not have to go to Exam.
5.9.6.17(1)	Subordination of a secured tax claim refers to the Service's NFTL, not the statutory lien.
5.9.6.17(2)	Content on the Service's administrative claim is not limited to cases filed before October 17, 2005. Prior content that indicated this paragraph is only applicable to cases filed prior to October 17, 2005 has been removed.
Exhibit 5.9.6-1	An exhibit has been added with the steps for processing a trustee turnover request when the case is not on AIS.
Exhibit 5.9.6-2	An exhibit has been added with the steps for processing a trustee turnover request when the case is closed on AIS.
Exhibit 5.9.6-3	An exhibit has been added with the steps for processing a trustee turnover request when the case is open on AIS.
Exhibit 5.9.6-4	An exhibit has been added to include steps for processing conversions and turnover requests.
Exhibit 5.9.6-5	An exhibit has been added to includes steps for processing withdrawals of trustee turnover requests.
Exhibit 5.9.6-6	An exhibit has been added to provide guidance in inputting the TC 520 cc 81 when processing a trustee turnover request.
Exhibit 5.9.6-7	An exhibit has been added to detail actions taken by the CIO on Chapter 7 Asset cases.

(2) Editorial changes were made throughout this section to add clarity and to update or correct citations.

Effect on Other Documents

This material supersedes IRM 5.9.6 dated January 14, 2011. This revision incorporates interim guidance SBSE 05-1213-0090, *Reissuance of Interim Guidance Procedures for Closing Chapter 7 Cases*, issued December 20, 2013. This revision also incorporates the agreement on the movement of Chapter 7 work between FI and CIO.

Audience

All Operating Divisions

Effective Date

(03-06-2015)

Kristen Bailey, Acting Director,
Collection Policy

5.9.6.1 (03-06-2015)

Overview

1. **Purpose.** IRM 5.9.6 is the section within IRM 5.9, *Bankruptcy and Other Insolvencies*, that discusses processes and procedures used by Insolvency when a taxpayer files a bankruptcy petition under Chapter 7 of the U.S. Bankruptcy Code. Upon filing of the bankruptcy petition, the "taxpayer" becomes a "debtor" in the bankruptcy case and to creditors; such as, IRS.

2. **Audience.** Caseworkers in Field Insolvency (FI) and the Centralized Insolvency Operation (CIO) are the primary users of IRM 5.9.6, *Processing Chapter 7 Bankruptcy Cases*. Advisors in Advisory, revenue officers, and other SBSE employees may refer to the section. Employees in functions other than SBSE may refer to the section when the taxpayer that they are working with becomes a debtor under Chapter 7 of the bankruptcy code.

5.9.6.2 (03-06-2015)

Introduction to Chapter 7 Bankruptcy

1. **Chapter 7 Liquidation.** Liquidation under Chapter 7 of the Bankruptcy Code has traditionally been the most common form of relief sought by debtors. Chapter 7 is used primarily by individuals to free themselves of debt simply and inexpensively. Businesses wanting to liquidate and terminate their enterprises also file Chapter 7.

- A. Chapter 7 provides relief to debtors regardless of the amount of the debts owed or whether a debtor is solvent or insolvent. However, when the debtor has primarily consumer debts, a case may be dismissed under the Chapter 7 "means test" depending on the debtor's level of income and the computations set forth in 11 USC § 707(b).
- B. Assets of the debtor are converted into cash for distribution among creditors. *Individual debtors* receive a discharge of all pre-petition debts other than certain debts which are non-dischargeable under the Bankruptcy Code. (An individual's right to a discharge through the filing of a Chapter 7 petition is not absolute.)
- C. Corporations, partnerships, and Limited Liability Companies (LLCs) do not receive a discharge under Chapter 7. However, few or no assets may be available for the collection of tax liabilities not paid by the bankruptcy estate.
- D. A bankruptcy discharge does not extinguish any attachment of the statutory federal tax lien. A bankruptcy discharge does not invalidate any NFTL filed prior to the petition date.

2. **Parties.** A Chapter 7 bankruptcy involves three major parties: the debtor, the trustee, and the creditors.

3. **Voluntary/Involuntary.** A case under Chapter 7 begins either by the filing of a *voluntary* petition by the debtor or by the filing of an *involuntary* petition by the creditors. (See IRM Exhibit 5.9.1-1, *Glossary of Common Insolvency Terms*.)

Note:

The Service's position is that the IRS will not initiate or join in a proceeding to request an involuntary bankruptcy for a taxpayer except in extraordinary circumstances. Then, Insolvency must request the action through a referral to local Counsel.

5.9.6.2.1 (03-06-2015)

Notice and Filings

- 1. **Notice to IRS.** Notice of a Chapter 7 bankruptcy filing must be given to the Service when the IRS is listed as a creditor in the debtor's schedules (Bankruptcy Rule 2002(f)).
- 2. **Documents Filed.** Bankruptcy Rule 1007 requires the Chapter 7 debtor to file supporting documents within a fixed time after filing the petition. Such filings include a mailing matrix, schedules, and a statement of financial affairs (SOFA).

5.9.6.2.2 (03-06-2015)

The Trustee

- 1. **Trustee's Role.** In general, a trustee administers a Chapter 7 liquidation. The trustee collects all of the debtor's assets, reduces the assets to cash, and distributes the funds to creditors in the priority set forth in 11 USC § 726. The Chapter 7 trustee is a private party who manages the bankruptcy estate on behalf of creditors. The trustee is accountable to the court for all actions taken on the case.
- 2. **Trustee's Selection.** An interim trustee is appointed by the United States Trustee's Office, an office of the United States Department of Justice. A Chapter 7 trustee can also be elected by creditors. If the creditors do not elect a trustee, then the interim trustee becomes the permanent trustee.
- 3. **Trustee Responsibilities.** The responsibility of collecting assets of the estate falls to the trustee. This may include converting property to cash, avoiding unperfected liens, and setting aside preferential, fraudulent, and/or unauthorized transfers. If the business of the debtor is authorized to continue operating under 11 USC § 721, the trustee may sell or lease property of the estate in the ordinary course of business. Notice and hearing of the sale or lease is not required if the sale is in the ordinary course of business. The trustee:
 - A. Examines claims of creditors and objects to those claims, when appropriate;
 - B. Is charged with investigating the finances of the debtor;
 - C. Files tax returns for the estate when required and pays taxes, if due;
 - D. May object to a debtor receiving a discharge if the debtor is uncooperative, found hiding assets, or is otherwise interfering with the effective administration of the case; and
 - E. Must file a final report with the court and the United States Trustee at the conclusion of the case (any creditor, including the IRS, may object to this report).
- 4. **Trustee Responsibilities under BAPCPA.** In addition to the duties listed in paragraph (3) above, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) has given trustees the following duties for Chapter 7 cases filed on or after October 17, 2005.

A. **Presumption of Abuse.** In the individual Chapter 7 bankruptcy case, the U.S. Trustee is required to review all materials filed by the debtor. No later than ten days after the first meeting of creditors, the U.S. Trustee must file a statement with the court stating whether a debtor's case is a presumption of abuse of Chapter 7 under the means test. Paragraph (b) below describes the means test. The court must supply a copy of that statement to all creditors within seven days. Within 30 days of the U.S. Trustee filing a statement that the presumption of abuse arises, (s)he must file a motion for conversion or dismissal or file a statement explaining why (s)he does not think filing such a motion is appropriate.

Note:

The signature of the debtor's attorney on bankruptcy cases filed on or after October 17, 2005, constitutes certification the filing is well founded in fact, is warranted by existing law, and is not an abuse of the bankruptcy process. The court may assess civil penalties against the attorney if the court finds the attorney was negligent in his/her investigation into the circumstances of the bankruptcy. (See Rule 9011, *Federal Rules of Bankruptcy Procedure*.)

B. **Means Testing.** The means test is applied in Chapter 7 cases filed by individuals who owe primarily consumer debts. The U.S. Trustee (or bankruptcy administrator, if any) determines whether the case is presumed to be an abuse of the Chapter 7 process. The standards for this means test are based in part on the IRS National and Local Expense Standards used in resolving delinquent tax accounts. If the debtor fails to meet the means test, the court or U.S. Trustee may move for conversion. In certain cases, any party in interest can move for dismissal or conversion. This IRM will not go into detail on the mechanics of the process. 11 USC § 707(b)(2) provides a comprehensive explanation of means testing.

5.9.6.2.3 (03-06-2015)

Chapter 7 Tax Refunds to Trustees

- 1. **Property of the Estate.** When the refund statute has not expired, the Chapter 7 debtor's pre-petition refund is property of the bankruptcy estate. However, the estate's right to refund is limited to the portion of the refund attributable to pre-petition events. As such, they are subject to turnover to the Chapter 7 trustee even though the debtor may be in full tax compliance.

Example:

If a debtor files a Chapter 7 petition on October 12, the amount of his refund attributable to January 1 through October 11 is property of the bankruptcy estate.

2. **Turnover Procedures.** The IRS and the Executive Office of the U.S. Trustees (EOUST) have agreed to the conditions for the turnover of a debtor's income tax refunds. The conditions are:

- A. The refund is considered wholly or partially property of the Chapter 7 bankruptcy estate.
- B. The trustee must request the turnover of refunds in writing for specific taxpayers. The trustee may use a form prepared by the IRS or may request the turnover on official letterhead.
- C. The U.S. Trustee's office will encourage trustees not to submit long rosters of their debtor inventories and to refrain from requesting small dollar refunds. However, the Service will not refuse to accept rosters or small dollar requests.
- D. Insolvency will honor trustee turnover request for the later of the following:
 - 1) 180 days from receipt of the turnover request or
 - 2) 180 days after the due date of a return (including extensions).If no return is received within these 180 day periods, the turnover request will not be honored.

Example:

A trustee submits a turnover request on February 12, 2014, for a 2013 tax year refund. The debtor has an approved extension to file their 2013 return no later than October 15, 2014. Insolvency will turnover any refund available up to and through April 13, 2015.

Example:

A trustee submits a turnover request on April 20, 2014, for a 2013 tax year refund. The debtor did not have an extension for filing their 2013 return. Insolvency will turnover any refund available up to and through October 17, 2014 (180 days after the request is made).

- E. Insolvency will not compute pre-petition and post-petition refund allocations. Insolvency will not compute amounts due the debtor as opposed to a non-debtor spouse on a jointly filed return. The trustee will complete these calculations. The trustee is responsible for refunding monies for post-petition allocations to the debtor and amounts due to non-debtor spouses, if applicable.
- F. Upon receipt of the turnover notice, Insolvency will input the appropriate bankruptcy freeze and closing code on related accounts to hold the refund. If no account is found on IDRS, the Insolvency caseworker will create a dummy module. The caseworker will input a TC 520 cc 81 to hold credits.

Note:

Establish dummy modules and input the TC 520 cc 81 on both SSNs in the joint bankruptcy case with no accounts present on IDRS. This will freeze both refunds if the spouses file separate tax returns for the refund period.

IRM 5.9.15.5, *Unassessed Liability/No Open Modules*, provides instructions for establishing dummy modules.

- G. Insolvency will not honor a refund turnover request received from the trustee after issuance of the refund to the debtor. Insolvency will not honor a refund turnover request for a pending refund that cannot be intercepted.

Note:

The turnover agreement procedures do not limit the Service's right of setoff. The turnover agreement procedures do not limit the right of setoff to domestic support agencies. Generally, when the debtor has a pre-petition income tax refund, the refund can be setoff to a pre-petition income tax liability without an order lifting the stay. Post-petition refunds may be setoff to post-petition debts without an order lifting the stay.

3. **Processing New Trustee Turnover Requests.** As most Chapter 7 cases are assigned to the CIO, the CIO is primarily responsible for processing new turnover requests. See the following exhibits for detailed guidance on processing turnover requests, including guidance on inputting the Transaction Code (TC) 520 cc 81:

- *Exhibit 5.9.6-1, Processing Chapter 7 Turnover Requests when the Case is Not on AIS*
- *Exhibit 5.9.6-2, Processing Chapter 7 Turnover Requests when the Case is Closed on AIS*
- *Exhibit 5.9.6-3, Processing Chapter 7 Turnover Requests when the Case is Open on AIS*
- *Exhibit 5.9.6-4, Conversions and Turnover Requests*
- *Exhibit 5.9.6-5, Processing Withdrawals or Rescissions of Trustee Turnover Requests*
- *Exhibit 5.9.6-6, TC 520 Input Guide for Trustee Turnover Requests*

When processing turnover requests, caseworkers are reminded that:

- Any permissible setoffs should be completed prior to preparing Form 5792, *Request for IDRS Generated Refund (IGR)*.
- After the turnover request has been processed, note your SEID and action taken on the document and place it in the review bin.
- Chapter 7 trustee turnover requests are kept in retention for one year since they are signed under penalty of perjury.
- When reviewing for filing status, if IDRS cc IMFOLI shows Filing Status (FS) 1 and "none" in the return posted field, the person filed as the spouse on a joint return (a TC 594 cc 84 will be present on the module on IDRS cc IMFOLT).
- The **TTEE RFND** case classification can be closed after all refunds requested for the debtor(s) have been issued.
- Turnover requests remain valid when the case is reassigned to another trustee and the case remains a Chapter 7.
- For each TC 520 cc 81 input to IDRS, add the TIN, period, and other applicable information to the AIS Freeze Screen.

4. **Invalid Turnover Requests.** Invalid turnover requests will not be honored. A request is invalid when:

- The request is incomplete and does not include necessary information. For example, the request does not include the case number or the tax period for which the refund is being requested, or
- The trustee is requesting a refund on a post-petition tax period (unless the post-petition turnover is due to a settlement between the Service and the Chapter 7 Trustee).

5. **Dismissals on Cases with Turnover Requests.** Dismissals extinguish the right to a turnover of a refund to the trustee. Proceed with closing actions on the case when a dismissal is received per guidance in IRM 5.9.17.5.5, *Closing Dismissed Cases*.

6. **Orders Vacating Dismissal/Reinstatements When a Trustee Turnover was Present Prior to Dismissal.** When the dismissal in a Chapter 7 case is vacated and the case is reinstated, a valid trustee turnover request that was present immediately before the dismissal was received is also reinstated. Take the following actions on AIS when a dismissed case is reinstated and there was a valid turnover request prior to the dismissal:

- Re-open the case by removing the closed date from the "On AIS" field on the Taxpayer Screen.
- Remove the dismissed and noticed dates from the closing area on the Taxpayer Screen.
- Re-open the **TTEE RFND** case classification.
- Re-input the TC 520 cc 81 to the respective module(s) on IDRS.
- Add each TC 520 input to IDRS to the Freeze Screen.
- Re-assign the case to the appropriate employee, if needed.
- Document the history to reflect all actions taken.

7. **Refund Turnover Requests on Discharged Cases.** After the debtor receives a discharge in the bankruptcy case, the automatic stay is no longer in effect. However, a valid turnover request is in effect until the case is closed at the court or the trustee withdraws or rescinds the turnover request. The TC 520 cc 81 must remain on the account during the turnover period. If the taxpayer files a pre-petition refund return after discharge, ensure the TC 520 cc 81 is posted to IDRS. Then, offset the refund against any existing debt owed to IRS by the taxpayer and manually refund the remaining credit to the trustee, if the trustee has requested a turnover of that refund. In either instance, a refund cannot be issued or credited for a return filed after the Refund Statute Expiration Date (RSED) has expired.

Note:

The Bureau of the Fiscal Service (BFS) will offset any appropriate amounts from the refund turnover through the Treasury Offset Program before the manual refund goes to the trustee. Include TOP Bypass Indicator (BPI) 07 on Form 5792, *Request for IDRS Generated Refund (IGR)*, for requests for manual refunds to debtors or trustees in cases filed on or after October 17, 2005. (See IRM 5.9.4.4.3, *Offsets to Other Agencies*, and related subsections for additional information.)

8. **Actions on Discharged Cases after the Turnover.** Caseworkers must take the following actions on cases where discharge actions have been completed and the trustee turnover request for all periods has been addressed. A turnover request from the trustee for a pre-petition refund does not affect the requirement that closing actions be initiated within 30 days of receipt of discharge or dismissal. Nor, does a turnover request from the trustee change the time frame for release of liens in IRM 5.9.17.17, *Release of Federal Tax Liens*, when a release is required.

These procedures must be followed when Chapter 7 cases are closed by CIO caseworkers and by FI caseworkers.

- A. Close the **TTEE RFND** case classification on the "Classification Screen" on AIS. There is no need to manually reverse TC 520s. When the **TTEE RFND** case classification is closed on AIS, ADS will reverse any TC 520s using the discharge date. ADS will input the closed "On AIS" date.
- B. Document the AIS history:
 - a) If the turnover request has expired, write "Closed **TTEE RFND** case classification. Turnover request expired on MM/DD/YYYY."
 - b) If the refund was systemically issued to the taxpayer, write "Closed **TTEE RFND** case classification. Refund systemically issued for YYYYMM on MM/DD/YYYY."
 - c) If the refund was offset to other liabilities, write "Closed **TTEE RFND** classification. YYYYMM refund offset to tax period YYYYMM."
 - d) If the return was filed with a balance due, write "Closed **TTEE RFND** classification. Return for YYYYMM filed with a balance due."

**5.9.6.3 (03-06-2015)
Eligible Entities**

1. **Petitioners.** Any person, with the exception of governmental units, railroads, insurance companies, banks, and other financial institutions, can file a Chapter 7 petition. Eligible entities include the following:

- Individuals
- Corporations
- Partnerships
- Limited Liability Companies (LLCs)

Reminder:

Only individuals may receive a discharge.

**5.9.6.4 (03-06-2015)
Referrals to Insolvency**

1. **Referrals to Insolvency.** Non-Insolvency IRS employees must send Form 4442, *Inquiry Referral*, to the CIO as soon as they learn a Chapter 7 bankruptcy case has been filed (same day notification, if possible). The Form 4442 may be faxed to the CIO at 1-855-235-6787 or mailed by overnight courier to the CIO at:

2970 Market St. (Mail Stop - Q30.133)
Philadelphia, PA 19104 - 5016

Mark the outside of the envelope containing written referrals with "expedite." The referral to Insolvency may also be phoned to the CIO. The CIO phone numbers for internal referrals can be found on the Servicewide Electronic Research Program (SERP). (See IRM 5.9.5.2, *Notification of Bankruptcy Filing*, for additional information.)

**5.9.6.5 (03-06-2015)
Automatic Stay**

1. **The Automatic Stay.** IRM 5.9.3.6, *Automatic Stay*, provides an overall explanation of the issues involved in the imposition of the automatic stay. The stay against property of a Chapter 7 estate continues until such property is no longer property of the estate (i.e., the property is being administered by the trustee). Unless the debtor is a serial filer, the stay in the case of an individual remains in effect until the earlier of:

- Dismissal,
- Discharge,
- Denial of Discharge, or
- Closure of the case by the court.

(See IRM 5.9.2.10, *The Effect of Bankruptcy on Collection*, for additional information.)

2. **Serial Filers and the Automatic Stay.** IRM 5.9.5.7, *Serial Filers*, discusses BAPCPA provisions regarding the automatic stay when an individual is a serial filer. A serial filer is an individual that has one or more prior bankruptcies dismissed within 365 days of the current bankruptcy case and dismissal was not for failure to pass the means test. The effect of prior dismissals on the stay in the debtor's current case depends on the number of prior dismissals the debtor received. The stay may terminate 30 days after

the current petition date when the debtor had one prior dismissal within 365 days of the current case. The stay may not go into effect at all when the debtor had two or more dismissals within 365 days of the current case.

The following IRM sections provide required caseworker actions regarding the automatic stay in "serial filer" cases:

- IRM 5.9.5.7, *Serial Filers*
 - IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*
 - IRM Exhibit 5.9.5-4, *Common Processing Steps in Serial Filer Cases*
 - IRM Exhibit 5.9.5-5, *Processing the Serial Filer Case When the Stay Terminates After 30 Days*
 - IRM Exhibit 5.9.5-6, *Processing the Serial Filer Case When No Stay Goes Into Effect*
3. **Limited Bankruptcy Time Frames.** In the majority of Chapter 7 individual cases, the time between the filing of the petition to discharge is usually 90 to 120 days. Thus, the automatic stay period in the individual bankruptcy case is short. Additionally, the extension of the Collection Statute Expiration Date (CSED) in the individual bankruptcy case is short. The CSED on non-dischargeable liabilities is extended for the time the stay is in place plus six months. Generally, the court grants a discharge:
- Shortly after the § 341 Meeting of Creditors has been held and
 - The time has expired for creditor to file complaints objecting to discharge.
4. **Preventing Stay Violations.** The Service must exercise due diligence to comply with the provisions of the Bankruptcy Code to avoid violating the automatic stay. In bankruptcies filed before October 17, 2005, accounts must remain in bankruptcy status (ST 72) on IDRS until lifting of the automatic stay. In bankruptcies filed on or after October 17, 2005, accounts must remain in bankruptcy status (ST 72) unless there is an order limiting or eliminating the automatic stay. Additionally, the stay in the case of a serial filer may terminate or not go into place at all when there is no order extending the stay in the current case. Upon the confirmation of a Chapter 11, 12, or 13 plan, the creditors are bound by the terms of the plan and prohibited from taking similar actions as with a stay against property of the estate.

Note:

Input of Transaction Code (TC) 520 with the appropriate closing code (cc) on IDRS places the module in bankruptcy status (ST 72) on IDRS.

5.9.6.5.1 (03-06-2015)

Debtor Payments on Dischargeable Taxes

1. **Payments Received for Dischargeable Tax.** IRS cannot keep a payment designated to dischargeable liabilities when the payment is received after the bankruptcy was filed and prior to a discharge being granted. Once the payment posts to the dischargeable period, it must either be refunded to the taxpayer or moved to a non-dischargeable period, if one exists. If a payment is received prior to the bankruptcy petition date, the payment may be retained after the bankruptcy petition date without violating the automatic stay. It does not matter if the payment received prior to the bankruptcy filing is designated to a dischargeable or non-dischargeable liability. Refer to (2) or (3) below to determine if additional action is warranted.

Note:

A debtor may voluntarily pay a discharged tax. (11 USC § 524(f)) Therefore, if a debtor knowingly and voluntarily pays a discharged tax after the discharge is granted, the Service may retain it.

2. **Payments Applied to Dischargeable Tax.** If a voluntary post-petition payment has posted to a dischargeable tax period and no non-dischargeable periods exist, the payment generally must be refunded. But, see 11 USC § 524(f). The Service must initiate the refund process within two business days of identification of receipt of the payment. To refund a payment, Insolvency must complete and expedite a Form 5792, *Request for IDRS Generated Refund (IGR)*, using established manual refund procedures. (See IRM 5.9.16.4, *Manual Refunds*.)

Note:

Unless evidence exists that the debtor knows (s)he is not obligated to pay the discharged liability (such as a letter from the debtor stating as much), Insolvency will assume the payment has been made in error and a refund will be issued. If an Insolvency caseworker is unsure if the refund should be sent to the trustee or to the debtor, guidance from Counsel should be sought.

3. **Payments to Non-dischargeable Periods.** If a voluntary post-petition payment has posted to a dischargeable tax period and a non-dischargeable period exists, the payment should be transferred from the dischargeable module to the non-dischargeable period.

Note:

Debtors who are aware that penalties and interest accrue on non-dischargeable liabilities may make voluntary payments to those debts outside the bankruptcy. By doing so, they lessen their tax burden after the close of the bankruptcy.

5.9.6.5.2 (03-06-2015)

Voluntary Payments on Non-Dischargeable Taxes

1. **Prior Installment Agreements.** IRM 5.9.4.18, *Installment Agreements and Bankruptcy*, and IRM 5.9.4.4.2, *Postpetition Payments and Credits*, explain how to address voluntary payments received during the pendency of a Chapter 7 bankruptcy.

5.9.6.6 (03-06-2015)

Chapter 7 No Asset (7NA) Process

1. **Chapter 7NA Process under BAPCPA.** The steps listed below are typical in a 7NA bankruptcy case filed on or after October 17, 2005. The order of occurrence may vary from court to court.
- A. The debtor attends credit counseling within the 180 days prior to the filing of the bankruptcy petition.
 - B. The petition is filed.
 - C. The debtor files Form 22A, Statement of Current Monthly Income and Means-Test Calculation, with the petition or within 14 days thereafter.
 - D. The debtor's attorney certifies the client's filing is not abusive (Bankruptcy Rule 9011).
 - E. The court provides written notice to creditors not later than ten days after the petition date, if a presumption of abuse arises in an individual's case.
 - F. The United States trustee files a statement with the court determining if the current case is presumed to be an abuse of the bankruptcy system.
 - G. A hearing is held on the motion to convert or dismiss based on abuse, if applicable.
 - H. The debtor provides the most recent tax return to the trustee no later than seven days before the 341 meeting of creditors.
 - I. The § 341 meeting of creditors is held.

- J. The trustee checks for assets.
- K. The trustee approves and files a report of no distribution.
- L. For individuals, the court enters a discharge or denial of discharge (normally within *90 to 120 days* after the filing of the petition).
- M. The court approves the no asset report and discharges the trustee of their duties.
- N. The case is closed.

5.9.6.7 (03-06-2015) Chapter 7 Asset (7A) Process

1. **Chapter 7A Process under BAPCPA.** The steps in a 7A bankruptcy typically are:
 - A. The debtor attends credit counseling within the 180 days prior to the filing of the bankruptcy petition.
 - B. The petition is filed.
 - C. The debtor files Form 22A, Statement of Current Monthly Income and Means-Test Calculation, with the petition or within 14 days thereafter.
 - D. The debtor's attorney certifies the client's filing is not abusive (Bankruptcy Rule 9011).
 - E. The court provides written notice to creditors not later than ten days after the petition date, if a presumption of abuse arises in an individual's case.
 - F. The trustee files a statement with the court determining if the current case is presumed to be an abuse of the bankruptcy system.
 - G. A hearing is held on the motion to convert or dismiss based on abuse, if applicable.
 - H. The debtor provides the most recent tax return to the trustee no later than seven days before the 341 meeting of creditors.
 - I. The § 341 meeting of creditors is held.
 - J. The trustee files an interim report of assets.
 - K. The trustee checks for any additional assets.
 - L. A proof of claim is filed.
 - M. The court enters discharge or denial of discharge (for individuals).
 - N. The trustee administers the case, including:
 - a) Liquidating all assets that create a benefit for the estate,
 - b) Objecting to questionable proofs of claim,
 - c) Determining the distribution of proceeds based on the priority of claims, and
 - d) Filing a final report.

5.9.6.8 (03-06-2015) Commodity Broker Bankruptcies

1. **Overview.** Commodity brokers are not eligible to file Chapter 9, 11, 12, or Chapter 13 bankruptcies, leaving Chapter 7 as their only option. A commodity broker is a licensed agent involved in the trading of commodities also known as commodity "futures" trading. (See Exhibit 5.9.1-1, *Glossary of Common Insolvency Terms*.) A broker may be an individual or a company. 11 USC §§ 761 through 767 provide requirements and procedures for commodity broker bankruptcies.
2. **Commodity Futures Trading Commission (CFTC).** The CFTC is an independent agency of the US government that oversees futures markets to:
 - Encourage competition and efficiency
 - Ensure their integrity
 - Protect against manipulation, abusive trading practices and fraud
 - Ensure the financial integrity of the clearing process
3. **CFTC and Bankruptcy.** A commodity broker must advise the CFTC within one business day of filing a bankruptcy. The role of CFTC is to regulate liquidating commodity brokers. The CFTC may:
 - Exempt the trustee from time limits imposed by the Commission
 - Extend time limits imposed on the trustee
 - Inspect trustee records
 - Become involved in account transfers

Note:

Although the CFTC has regulatory authority over an insolvent commodity broker, the Bankruptcy Code still applies.

4. **AIS Processing.** The CIO will do initial clerical processing of commodity broker bankruptcies as they would for any other Chapter 7 bankruptcy.
5. **Normal Chapter 7 Procedures.** Commodity broker bankruptcies are handled by the FI office that handles that court's jurisdiction.
 - A. TFRP investigations are conducted and assertions made, as in any other Chapter 7 bankruptcy.
 - B. Unfiled tax returns are addressed.
 - C. Claims are filed with the bankruptcy court.
 - D. Payments are posted through AIS according to Chapter 7 priorities.
 - E. Collection from exempt, abandoned, or excluded property (EAEP) is addressed in cases filed by individuals.
 - F. Discharges are processed following Chapter 7 guidance provided in IRM 5.9.17, *Closing a Bankruptcy Case*.

6. **Payment Preference.** Allowed claims for a "consumer debt" (IRM Exhibit 5.9.1-1, *Glossary of Common Insolvency Terms*) owed to customer creditors generally receive priority preference with respect to all other claims. The only exception is administrative expense claims under 11 USC § 503 that are attributable to the administration of customer property. The IRS is never a customer creditor. After distribution is made to customer creditors, distribution is made to the claims of other creditors in the same priority of distribution in the 7A case of debtors that are not a commodity broker (11 USC § 507).

7. **Counsel Guidance.** Issues surrounding commodity broker bankruptcies not covered by this IRM should be discussed with Counsel.

5.9.6.9 (03-06-2015)

Opening a Chapter 7 Case

1. **Asset/No Asset.** Upon receipt of a Chapter 7 case by CIO, each case is categorized as either an "asset" or a "no asset" case. Some bankruptcy courts simplify the asset/no asset determination considering all Chapter 7 petitions as "no asset" until the court issues a notice of possible dividends and sets a bar date. Other courts issue separate notices identifying the cases as either "asset" or "no asset."

Note:

The CIO must load all new cases on AIS and run IIP processes C and D *within five workdays* of receipt. (See IRM 5.9.12.5, *Insolvency Interface Program (IIP)*, for additional information.)

2. **No Asset Case.** The IRS and other creditors do not receive payments (or dividends) from the bankruptcy estate in a 7NA case. For IRS purposes, a no asset case is defined as any case:

- Where the trustee determines "no dividend" will be paid
- In which assets of the debtor are less than allowed exemptions and costs of administration
- Involving a partnership or corporation where the costs of administration exceed the value of the assets

Note:

Since tax liabilities on unfiled returns are not dischargeable in 7NA cases, and no proof of claim is filed, the Service will not expend resources on procuring unfiled returns through the bankruptcy process on those cases.

3. **Stay Research Required.** No asset cases filed prior to October 17, 2005, require limited or no follow-up. To prevent violations of the automatic stay on those cases, TC 520 with the applicable closing code is input when the IRS is listed as a creditor. Follow-up on specifically identified cases filed on or after October 17, 2005, is required to check for possible stay variations resulting from serial filings. Additional procedures for caseworkers addressing serial filers in all chapters, including Chapter 7 cases, are found in:

- IRM 5.9.5.7, *Serial Filers*
- IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*
- IRM Exhibit 5.9.5-4, *Common Processing Steps in Serial Filer Cases*
- IRM Exhibit 5.9.5-5, *Processing the Serial Filer Case When the Stay Terminates after 30 Days*
- IRM Exhibit 5.9.5-6, *Processing the Serial Filer Case When No Stay Goes Into Effect*

The Service does not file a proof of claim in a 7NA case. If assets are realized at a later date and the case becomes a 7A case, a claim will be filed when there are outstanding liabilities owed the Service.

4. **IDRS Closing Code (CC) 84 and Corporate Chapter 7 Cases.** IIP is programmed to input TC 520 cc 84 on all Chapter 7 cases with an 1120 filing requirement. This closing code cannot be changed. The TC 520 cc 84:

- A. Allows an assigned revenue officer to complete TFRP investigations and assessment determinations;
- B. Permits an assigned revenue officer to close the case as currently not collectible;
- C. Alerts ACS or Field Collection not to take collection actions without first contacting Insolvency;
- D. Does not suspend the CSED;
- E. Does not move the account to Status 72; and
- F. Does not prevent collection actions.

5. **ACS and CC 84.** An account assigned to ACS may display a TC 520 cc 84. The CIO must access ACS when the case is identified on the IIP "stat 22 notice" and ensure any outstanding levies are released and any NFTLs filed after the TC 520 date are withdrawn. After necessary actions are taken by the CIO, including determining if an OI is appropriate for a TFRP investigation, the case should be moved to the queue to delete it from ACS inventory. If ACS identifies a bankruptcy TC 520 cc 84 before Insolvency makes contact, ACS should put a 45 day hold on the account to allow sufficient time for the CIO to take necessary actions.

For assistance in determining if an OI is appropriate for a TFRP investigation, see the following:

- IRM 5.9.3.11, *Trust Fund Recovery Penalty*
- IRM 5.9.6.15, *Trust Fund Recovery Penalty*
- IRM 5.9.17.11(3), *Chapter 7 No Asset TFRP Issues*

6. **Consolidated Filings.** Under consolidated group regulations, each member of the group is severally liable for the income taxes of the group for each year it was a member. However, the Service makes only one assessment which is in the name of the parent of the group. The procedures in IRM 5.9.17.12.3, *Consolidated Chapter 11 Filings*, should be followed before a parent's Chapter 7 account is closed as currently not collectible so the group's liability can be collected from other members, if possible.

7. **Conversion of Corporate Chapter 11 to Chapter 7.** When corporate Chapter 11 cases convert to Chapter 7 proceedings, TFRP determinations may already be underway or completed. If a TFRP investigation has not been requested on the case, the actions in the IF/THEN chart in IRM 5.9.6.15 should be followed. Barring local practice to the contrary, the TC 520 freeze code used for the Chapter 11 bankruptcy may remain on the account when it is converted to Chapter 7.

8. **Conversion of Individual Chapter 11, 12, and 13 Cases to Chapter 7.** Two types of post-petition, pre-conversion taxes must be considered in a converted case of an individual. (See 11 USC § 348(d).)

- A. Taxes that were entitled to be paid as administrative expenses of the pre-conversion case remain administrative expenses in the Chapter 7 case but are subordinated to Chapter 7 administrative expenses. (Typically only Chapter 11 estates owe administrative expense taxes.) See 11 USC § 726(b) for additional information.

B. Taxes owed by the debtor for post-petition, pre-conversion periods are considered for all purposes as claims that arose on the day before the bankruptcy petition was filed; that is, they are considered pre-petition, priority tax claims that are non-dischargeable. Usually a debtor who is an individual incurs income tax liability for earnings for tax years ending during the time (s)he is in Chapter 11, 12, or 13 bankruptcy. Under 11 USC § 1115 and the separate taxable entity rule of IRC §1398, income taxes on earnings during a Chapter 11 case may be taxable to the estate and considered administrative expenses of the pre-conversion case.

**5.9.6.10 (03-06-2015)
Chapter 7 Case Assignments**

1. **General Information.** CIO and FI share work on Chapter 7 cases. CIO completes up-front clerical processing on all Chapter 7 cases. Then, 7A cases are systemically assigned to caseworkers in FI. FI completes the initial case review, files any required proofs of claim, and takes any other action required by FI. Most 7A cases are then transferred to CIO. Cases requiring action or follow-ups due to referrals to Counsel, TFRP actions, etc. must remain in FI inventory until the issues are resolved. CIO then monitors for discharge and/or takes any required closing actions. Other than 7NA cases that require an EAEP investigation by FI, most 7NA cases remain at the CIO where CIO takes all required actions on the case. However, if another issue arises in a 7NA case that requires FI action, the case is transferred from CIO to FI (IRM 5.9.1.4, *The Role of Insolvency*). The subsections below discuss in detail the Chapter 7 work handled by FI and by CIO.
2. **Limited Liability Companies (LLCs).** IRM 5.9.17.11, *Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)*, and IRM 5.9.17.11.1, *Chapter 7 Single Member Disregarded Entity LLCs*, discuss required actions for closing Chapter 7A cases filed by a LLC. Prior to transfer of a 7A case from FI to CIO, the FI caseworker will include detailed instructions in the AIS "Summary History" about actions needed when CIO is closing the case. Due to the complex nature of LLCs that file a 7NA case, transfer from CIO to FI for directions in closing the 7NA case may be necessary. If a LLC files a 7NA case, and there is no liability on IDRS, CIO should proceed with closing the case as "no liability." Required actions in the 7NA case of a LLC with a balance due depend on the income tax filing requirement on IDRS for the LLC. See the following guidance. If the LLC in a 7NA case has a liability on IDRS, and a Form 1120 filing requirement, CIO will:
 - Add a "LLC" case classification to AIS.
 - If the unpaid trust fund liability is ≡≡≡≡≡≡≡≡≡≡, follow guidance in IRM 5.9.17.11(3), *Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)*, *Chapter 7 No Asset TFRP Issues*. Input a TC 530 cc 07 to all outstanding modules after the TFRP has been addressed.
 - If the unpaid trust fund liability is ≡≡≡≡≡≡≡≡≡≡, input a TC 530 cc 07 to all outstanding modules.
 - Input a TC 521 with a two-cycle posting delay after the TC 530 cc 07 is input.
 - Close the case on AIS using "Other" as the method of closure.

If the LLC in a 7NA case has a liability on IDRS, there is no Form 1120 filing requirement, and there is no prior guidance in the AIS history from FI on closure of the case:

- CIO will add a "LLC" case classification to AIS.
- CIO will enter a history in AIS stating, "FI guidance is needed on how to proceed in closing the LLC."
- CIO will transfer the case to the appropriate FI caseworker using the Case Assignment Guide (CAG) tool for 7A cases.
- FI will determine responsibility for the liability and ensure assertion of the TFRP, if required.
- Once any required TFRP has been completed, FI will document the AIS "Summary History" with closing directions for CIO based on the guidance for 7A LLCs in IRM 5.9.17.11 and IRM 5.9.17.11.1.
- FI will reassign the case to CIO.
- CIO will take the closing actions directed by FI in the AIS "Summary History".

Note:

If the 7NA case was previously a 7A, 11, or 12 case, FI may have documented actions needed for closure of the case prior to conversion or upon conversion. These cases may not require a transfer from CIO to FI.

3. **Field Insolvency (FI) Actions on the 7NA Limited Liability Company (LLC).** Upon receipt of the 7NA case of a LLC from CIO, actions taken by FI depend upon the income tax filing requirement of the LLC.

- If there is no income tax filing requirement for the LLC on IDRS cc ENMOD/INOLE, the FI caseworker will treat the LLC as a single member LLC. Follow the guidance in IRM 5.9.17.11.1, *Chapter 7 Single Member Disregarded Entity LLCs*.
- If the income tax filing requirement for the LLC on IDRS cc ENMOD/INOLE is Form 1065, and the establishment date is on or after July 1, 2007, treat the LLC the same as a corporation. Follow the guidance in IRM 5.9.17.11, *Closing Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)*.

Note:

No proof of claim is required in the 7NA case. The TFRP must be considered when the unpaid trust fund is ≡≡≡≡≡≡≡≡.

- If the income tax filing requirement for the LLC on IDRS cc ENMOD/INOLE is Form 1065, and the establishment date is prior to July 1, 2007, follow the guidance in the following chart:

Step	Action
1.	Ensure that a TC 520 cc 84 (or 6X) is present on all balance due modules on IDRS.
2.	Add a "LLC" case classification to AIS, if not present.
	Review the entity on IDRS cc ENMOD/INOLE. Determine if there are two or more members listed on the entity.
3.	<ul style="list-style-type: none"> • If there are two or more members, treat the LLC case the same as the LLC with a Form 1065 filing requirement and an establishment date on or after July 1, 2007. These entities are treated like a corporation. Go no further in this chart. • If there is only one member listed on the entity, proceed to Step 4.
	For the entity to have a Form 1065 filing requirement, the LLC must have more than one member. The taxpayer may have included only the name of the general partner on the application for an EIN. Additional research is needed to determine if the LLC has more than one member. Research may include, but is not limited to, the following: <ul style="list-style-type: none"> • Have any modules ever been in Status 26 on IDRS? If so, check the history on ICS. The RO may have determined members and the correct income tax filing requirement. If there is information on ICS, proceed based on the determination made in the case by the RO. If there is no information on ICS, continue to the next bullet. • Review IDRS cc BMFOLI. Has the business ever filed Form 1065? If so, assume the filing requirement is correct on IDRS. Treat the entity the same as the LLC established on or after July 1, 2007. These entities are treated like a corporation. If a Form 1065 was never filed, continue to the next bullet.

<p>4.</p> <ul style="list-style-type: none"> Contact the member or the debtor's attorney by telephone. Ask if there are additional members. If so, ask for their names. Ask if the LLC made any elections regarding income taxation, such as Form 1065 or Form 1120. If the information cannot be obtained by telephone, continue below. If unable to question the debtor or representative, conduct electronic research to determine if the LLC has more than one member. For example, research on http://www.accurint.com may reveal the names of all members. Alternatively, many states have electronic websites with the information for all members or parties for licensed businesses. Finally, a review of the bankruptcy SOFA and schedules on PACER may disclose the names of members. If research reveals only one member, treat the member as a single member LLC and follow the guidance in IRM 5.9.17.11.1. If research results indicate the LLC had more than one member, assume the Form 1065 filing requirement on IDRS is correct. Treat the entity the same as the LLC established on or after July 1, 2007. The case is treated like a corporation. If attempts to contact the debtor or representative are unsuccessful and the number of members cannot be determined using electronic research, a physical records check may be necessary. Request an Other Investigation (OI) to Field Collection to request a records check. If the TFRP is above tolerance for a TFRP investigation and an investigation has not been completed, request a TFRP investigation <i>at the same time</i>. <p>Note:</p> <p>According to local practices, some FI offices may complete the records check and TFRP investigation within FI.</p>
<p>5.</p> <p>Once all field issues in the case have been resolved and any required TFRP investigations completed, update the "Summary History" with the closing actions required by CIO.</p> <p>Reminder:</p> <p>If a TC 530 cc 07 is needed in the case, the FI manager must document approval for input of the TC 530 cc 07 in the history.</p> <p>See IRM 5.9.17.11 and IRM 5.9.17.11.1 for "Summary History" requirements. <i>CIO will return the case to FI if there is no closing guidance included in the "Summary History".</i></p>
<p>6.</p> <p>Reassign the case to CIO.</p>

**5.9.6.10.1 (03-06-2015)
Field Insolvency (FI) Case Assignments**

- Assignments.** After the up-front clerical work on all Chapter 7 cases is performed by the CIO, 7A cases are assigned to FI. Chapter 7NA cases may also be reassigned to FI when certain conditions are present. Actions taken by FI depend on the whether the case is a 7NA or a 7A and the type of entity that filed bankruptcy.
- General Information - Chapter 7A Cases.** FI groups work all 7A cases by completing initial case reviews, perfecting automated proofs of claim, preparing manual proofs of claim when the claim cannot be completed through APOC, ensuring assessment of the TFRP, when required, and resolving complex issues. Generally, if there are no complex issues in the case that require the case to remain in FI (IRM 5.9.1.4(3), *Complex Issues*) or a non-complex issue that must remain in FI (IRM 5.9.1.4(4), *"Non-Complex" Cases to be Worked by FI*), cases are transferred from FI to CIO after the initial case review and acknowledgement of all claims. However, prior to transfer, FI must add a "Summary History" and enter any required case classifications to alert caseworkers to actions that may be required during case closure. (See IRM 5.9.5.4.1, *Case Classifications*, IRM 5.9.5.4.4, *Chapter 7 Summary Histories*, and IRM 5.9.17.1(5), *Chapter 7 Asset Closures*, for additional information.)
- Chapter 7A Individual Cases.** After the initial case review, acknowledgement of all proofs of claim and resolution of all complex issues, most individual cases are transferred by FI to the CIO. The CIO monitors for dismissal or discharge and takes appropriate closing actions on the case upon receipt of the dismissal or discharge. (See IRM 5.9.17.9(6), *Transfer of the Individual or Joint 7A Case to the CIO Prior to Dismissal or Discharge*, for additional information.) Case Dismissed or Discharged While Assigned to FI. If the case is not transferred from FI to the CIO prior to receipt of a dismissal, the FI caseworker must take appropriate closing actions on the dismissed case. (See IRM 5.9.17.5, *Closing Dismissed Cases*, for additional information.) If the case is not transferred from FI to the CIO prior to receipt of a discharge, FI caseworkers must follow IRM 5.9.17.9(7), *Transfer of the Individual or Joint 7A Case to the CIO After Discharge*. Generally, the case can be transferred from FI to CIO after FI has updated AIS with the appropriate method of closure and entered the appropriate "Summary History" and case classifications in the case.

Note:

If the case has "no liability" and must remain open to comply with a trustee turnover order, the case can be transferred to the CIO prior to the issuance of the discharge and input of the "R" on the taxpayer screen.

- Chapter 7A Business Cases.** When a business files a 7A petition, actions taken by FI depend upon the type of business that filed the petition. See the chart below for additional guidance.

If the Business Entity is a...	Then...
Partnership	Chapter 7A cases filed by partnerships remain in FI during the pendency of the bankruptcy case. The FI caseworker will: <ul style="list-style-type: none"> A. Complete an initial case review, B. Ensure all required proofs of claim are prepared and acknowledged, C. Monitor the case for closure by the court, D. Complete all closing actions required in the case (IRM 5.9.17.10, <i>Closing Chapter 7 or Liquidating Chapter 11 Partnerships</i>), and E. Document all actions taken during the pendency of the case and during closure in the AIS case history. (See IRM 5.9.5.4, <i>AIS Documentation</i>, for additional information.)
Corporation	The FI caseworker will: <ul style="list-style-type: none"> A. Complete an initial case review, B. Ensure all required proofs of claim are prepared and acknowledged, C. Ensure that the TFRP investigation has been completed and the TFRP assessed, if required (IRM 5.9.6.15, <i>Trust Fund Recovery Penalty</i>), D. Secure managerial approval for input of a TC 530 cc 07 (approval must be documented in the AIS history),

	<p>E. Enter a "Summary History" on AIS (IRM 5.9.5.4, <i>AIS Documentation</i>, and IRM 5.9.5.4.4, <i>Chapter 7 Summary Histories</i>), and</p> <p>F. Reassign the case to the CIO for closing actions. (See IRM 5.9.17.11, <i>Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)</i>, for additional information.)</p>
<p>LLC - Not a disregarded entity (income reported on Form 1065 or Form 1120)</p> <p>Note:</p> <p>This LLC entity is treated like a Chapter 7 corporation. There is no need for the case to remain open for distribution.</p>	<p>The FI caseworker will:</p> <ul style="list-style-type: none"> A. Complete an initial case review, B. Add a "LLC" case classification to AIS, if not present, C. Ensure all required proofs of claim are prepared and acknowledged, D. Ensure that the TFRP investigation has been completed and the TFRP assessed, if required (IRM 5.9.6.15, <i>Trust Fund Recovery Penalty</i>), E. Determine if there are issues that require the case to remain open and assigned to FI (IRM 5.9.17.11(2), <i>Chapter 7 Asset Corporations and Certain LLCs</i>), and F. Proceed with processing the case based on whether there are/are not issues requiring the case to remain open and assigned to FI. <p><u>If issues exist that require the case to remain open:</u></p> <ul style="list-style-type: none"> A. Do not request input of the TC 521, closure of the filing requirements, or input of the TC 530 cc 07, B. Document the AIS history with actions taken to resolve the issues, and C. Leave the case assigned to FI until the issues are resolved. D. Once all issues have been resolved that required the case to remain open, the case can be transferred to the CIO for closure. Follow the procedures below for the case with no issues. <p><u>If no issues exist that require the case to remain open:</u></p> <ul style="list-style-type: none"> A. Secure managerial approval for input of a TC 530 cc 07 (approval must be documented in the AIS history), B. Enter a "Summary History" on AIS (IRM 5.9.5.4, <i>AIS Documentation</i>, and IRM 5.9.5.4.4, <i>Chapter 7 Summary Histories</i>), and C. Reassign the case to the CIO for closing actions. (See IRM 5.9.17.11, <i>Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)</i>, for additional information.)
<p>LLC - Disregarded entity and:</p> <ul style="list-style-type: none"> • Income reported on the Form 1040 of the single member, • All liability is for excise tax periods beginning on or after 1/1/2008, and/or • All liability is for employment tax periods beginning on or after 1/1/2009 <p>Note:</p> <p>The LLC is the responsible party. The case of the LLC can be closed like a corporate case.</p>	<p>FI caseworkers will follow the guidelines for the "LLC - not a disregarded entity", above. (See IRM 5.9.17.11.1(3), <i>Chapter 7 Single Member Disregarded Entity LLCs, LLC Only Liable</i>, for additional information.)</p>
<p>LLC - Disregarded entity and:</p> <ul style="list-style-type: none"> • Income reported on the Form 1040 of the single member, • All liability is for excise tax periods beginning prior to 1/1/2008, and/or • All liability is for withholding taxes prior to 1/1/2009 <p>Note:</p> <p>Single member individual is the only responsible party. The LLC is not responsible.</p>	<p>The FI caseworker will complete an initial case review and follow the guidance in IRM 5.9.17.11.1(2), <i>Chapter 7 Single Member Disregarded Entity LLCs, Individual Single Member Only Liable</i>.</p>
<p>LLC - Disregarded entity and:</p> <ul style="list-style-type: none"> • Income is reported on the Form 1040 of the single member, • There are excise tax liabilities beginning before and after 1/1/2008, and/or • There are withholding tax liabilities beginning before and after 1/1/2009 <p>Note:</p>	<p>The FI caseworker will complete an initial case review and follow the guidance in IRM 5.9.17.11.1(4), <i>Chapter 7 Single Member Disregarded Entity LLCs, LLC and Individual Single Member Disregarded Entity Liable</i>.</p>

The single member is liable for withholding taxes for periods beginning prior to 1/1/2009 and excise taxes for periods beginning prior to 1/1/2008. The LLC is liable for withholding taxes for periods beginning on or after 1/1/2009 and excise taxes for periods beginning on or after 1/1/2008.

5. **Chapter 7NA Cases.** Certain "complex" or "non-complex" cases (IRM 5.9.1.4(4), "*Non-Complex Cases to Be Worked by FI*") are transferred from CIO to be worked by FI. Once the issues are resolved by FI, the cases are generally transferred back to the CIO after entry of any required case classifications and entry of a "Summary History" on AIS. CIO takes closing actions on the case.

Large dollar 7NA cases are also transferred from CIO to FI for a determination of collectibility from exempt, abandoned, or excluded property (EAEP) after the CIO has screened for possible EAEP assets. Certain other cases are transferred from CIO to FI for a determination if taxes are exempted from discharge due to fraud or willful evasion. Once FI determines if the taxes are exempted from discharge, or that there is no collection potential from EAEP, the cases are transferred back to the CIO. However, prior to reassignment to CIO, the FI caseworker enters any required case classifications and a "Summary History" on AIS. As discharges are entered rather quickly in a 7NA case, cases remain in FI to monitor for discharge after FI has determined that there is collection potential from EAEP. After discharge, FI takes appropriate action to collect from the EAEP. See the following IRM subsections for additional information on EAEP:

- IRM 5.9.17.4, *Exempt, Abandoned or Excluded Property (EAEP)*
- IRM 5.9.17.4.1, *Pre-discharge Review for Exempt, Abandoned or Excluded Property (EAEP) in Chapter 7 No Asset Cases*
- IRM 5.9.17.4.2, *Collection from Exempt, Abandoned or Excluded Property (EAEP)*
- IRM 5.9.17.4.3, *Addressing Lien Issues*
- IRM 5.9.17.4.4, *Insolvency Levy Procedures for Excluded Retirement Plans*
- IRM 5.9.17.4.4.1, *Thrift Savings Plan (TSP)*
- **Reminder:**

Prior to transfer of the case back to the CIO, the FI caseworker must include a "Summary History" to assist the CIO in closing the case. See IRM 5.9.5.4.2, *Summary Histories*, and IRM 5.9.5.4.4, *Chapter 7 Summary Histories*, for additional information.

If a FI caseworker wants a closure delayed on a 7NA or 7A case, (s)he must ensure that a case classification is open on AIS that prevents closure of the case. (See IRM 5.9.17.1(6), *Preventing Premature Closures*, and IRM 5.9.5.4.1, *Case Classifications*, for additional information).

6. **Complex Issues.** Cases identified to have complex issues such as, adversarial motions, trustee turnover splits, amending claims, etc., are transferred to FI for resolution when the case is assigned to the CIO. (See IRM 5.9.1.4(3), *Complex Issues*, for a complete list of issues.) Once the complex issues have been addressed and resolved, and all required case histories or classifications are entered on AIS, the FI caseworker generally transfers the case back to the appropriate CIO unit.

5.9.6.10.2 (03-06-2015)

Centralized Insolvency Operation (CIO) Case Assignments

1. **Assignments.** The CIO loads all Chapter 7 cases to AIS, runs IIP and works the subsequent reports, posts payments received outside of bankruptcy when those payments are received at the CIO address, and closes all Chapter 7 cases assigned to the CIO.
2. **Chapter 7NA Cases.** CIO works most 7NA business cases from receipt through closure. Unless there are "complex" issues in an individual 7NA case, or the case meets the criteria established by the Director, Specialty Collection - Insolvency, the CIO works the individual 7NA case from receipt until closure. Cases with complex issues as defined in IRM 5.9.1.4(3), *Complex Issues*, may be transferred to FI for resolution. Responsibilities for 7NA Large Dollar EAEP investigations are shared by CIO and FI. See IRM 5.9.6.10.3 below for additional information.
3. **Chapter 7A Cases.** As mentioned previously, most 7A cases are transferred from FI to CIO after the initial case review has been completed, all proofs of claim have been acknowledged, and there are no actions that require the case to remain in FI. CIO monitors the individual case for dismissal or discharge. Upon dismissal or discharge, CIO takes closing actions based on guidance in IRM 5.9.17.5.5, *Closing Dismissed Cases*, and IRM 5.9.17.9, *Chapter 7 Discharge Actions*. CIO takes closing actions on the 7A business cases transferred to them by FI following guidance in IRM 5.9.17.11, *Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)*, and IRM 5.9.17.11.1, *Chapter 7 Single Member Disregarded Entity LLCs*. Chapter 7A partnership cases are not transferred from FI to CIO for closure. See *Exhibit 5.9.6-7, CIO Actions on 7A Cases*, for additional information.

5.9.6.10.3 (03-06-2015)

Large Dollar 7NA Case Assignments

1. **Large Dollar 7NA Case Assignments.** Large dollar 7NA cases may be worked by CIO, FI, or both to investigate exempt, abandoned, or excluded property (EAEP). In most instances, investigations are completed "up-front" instead of when a discharge is received. By identifying these cases early in the Chapter 7 process, cases are generally reassigned to FI in sufficient time for attendance at the Section 341 meeting of creditors, if deemed necessary. See IRM 5.9.17.4, *Exempt, Abandoned or Excluded Property (EAEP)*, and subsections, as well as IRM 5.9.5.4.1, *Case Classifications*, IRM 5.9.5.4.2, *Summary Histories*, and IRM 5.9.5.4.4, *Chapter 7 Summary Histories*, for additional information.
2. **CIO Screening.** Each week, CIO generates a report to identify 7NA cases that may be considered for an EAEP investigation. CIO reviews each module to determine if liabilities are dischargeable using guidance in IRM 5.9.17.7, *Discharge and Exceptions to Discharge*, and subsections.
 - If there are no dischargeable liabilities, CIO notes the AIS history accordingly and inputs "No EAEP" and "No WFTP" case classifications on AIS. The case remains at CIO. No further investigation is required.
 - If there are dischargeable liabilities with an aggregate assessed dischargeable amount less than the amount established by the Director, Specialty Collection - Insolvency, the CIO notes the AIS history accordingly. CIO inputs the "No EAEP" and "No WFTP" case classifications on AIS. The case remains at CIO. No further investigation is required.
 - If there are aggregate assessed liabilities that exceed the amount determined by the Director, Specialty Collection - Insolvency, caseworkers at the CIO "screen" for EAEP assets. Screening actions depend on whether there is a Notice of Federal Tax Lien (NFTL) and the aggregate assessed amount of the dischargeable liability. CIO caseworkers review IDRS, bankruptcy schedules found on Public Access to Court Electronic Records (PACER), and other external websites to identify EAEP assets and the value of those assets. CIO also looks for abandoned or excluded assets that may be collectible due to the Service's statutory lien. CIO screening may include a review of the following:
 - a) IRPTRL (for retirement account information only)
 - b) Schedule A (if no is property listed on Schedule A, pull Accurint at <http://www.accurint.com/>)
 - c) Schedule B
 - d) Schedule C
 - e) Schedule D
 - f) Schedule I
 - g) Schedule J
 - h) Zillow at <http://www.zillow.com/>
 - i) TRDBV

Note:

If no schedules are available on PACER, the CIO reassigns the case to FI after entry of a history on AIS that states, "No schedules available, case reassigned to FI."

- If assets are located, the CIO documents those assets in the AIS history. If the account requires an investigation for the willful failure to pay (WFTP) exception to discharge, the CIO documents the requirement for a WFTP investigation in the AIS case history. In either instance, the CIO reassigns the case to FI. To reassign the cases, CIO uses the Chapter 7NA Large Dollar tool found on SERP at http://serp.enterprise.irs.gov/databases/who-where.dr/cio_assignment.dr/cio_assignment.htm.

3. **FI Investigation.** Upon receipt of the case from CIO, the FI caseworker determines if taxes are excepted from discharge due to WFTP, when required, and/or if there is collection potential from EAEP.

- If the FI caseworker determines that taxes are excepted from discharge due to WFTP or fraud, the FI caseworker documents the AIS "Summary History" accordingly, adds "WILLFUL" and "7N - NQRS" case classifications to AIS, and returns the case to CIO. The CIO will take closing actions upon dismissal or discharge. The liabilities are not discharged.
- If the FI caseworker determines that there is no WFTP exception to discharge and/or there is no collection potential from EAEP after discharge, the FI caseworker documents the AIS "Summary History" accordingly and reassigns the case back to CIO. Prior to transfer, "7N - NQRS", "No EAEP" and "No WFTP" (when required) case classifications are added to the case classification screen on AIS.
- The time between the filing of the bankruptcy petition and the discharge in a Chapter 7NA case is very short. If the FI caseworker determines that there is EAEP subject to collection after the discharge, the case remains in FI. The FI caseworker documents the AIS "Summary History" accordingly and adds "EXEMPT" and "7N - NQRS" case classifications to AIS. Upon discharge, FI takes action to collect from the EAEP.

4. **CIO Closure.** CIO takes closing action on the large dollar 7NA case upon discharge when the case is assigned to CIO. Actions depend upon the results of the EAEP investigation. If the case is reassigned from FI to CIO after an EAEP investigation, CIO will follow the guidance in the "Summary History". If there is no "Summary History" provided by FI, the CIO will return the case to FI for guidance.

5.9.6.11 (03-06-2015)**Initial Case Review by Field Insolvency (FI)**

1. **General Information.** Field Insolvency (FI) caseworkers conduct an initial case review in all Chapter 7 cases assigned to them. The acceptable time frame for completing the initial case review depends on the type of case and the type entity that filed the Chapter 7 petition. The actions required in the initial case review also depend on the type of case and the type of entity that filed the Chapter 7 petition. See the following subsections within this section for additional information.

5.9.6.11.1 (03-06-2015)**Initial Case Review of Large Dollar 7 No Asset (7NA) Reassignments by FI**

1. **Initial Case Review of Large Dollar 7NA Cases.** Individual large dollar 7NA cases are reassigned from the CIO to FI early in the case to determine if there is any collection potential from EAEP. The early investigation facilitates unnecessary transfers between the CIO and FI caseworkers during case closure. The early investigation also allows for the reassignment of the case to FI in sufficient time for the FI caseworker to attend the 341 meeting, if deemed necessary.

2. **Time Frame for Completion of the Initial Case Review in the Large Dollar 7NA Case.** When a case is assigned to FI prior to the § 341 Meeting of Creditors, an initial case review should be completed at least five calendar days prior to the scheduled 341 meeting date. This allows the caseworker ample time to plan on attending the 341 meeting to question the debtor when there are issues that need clarification. If the case is assigned to the caseworker less than five calendar days prior to the 341 date (or after the 341 date), the initial case review should be completed within 30 calendar days of the assignment unless the last day to object to discharge is imminent. In either case, the review should be at least 30 days prior to the last date to object to the discharge, should a referral to Area Counsel become necessary.

3. **Aspects of the Initial Case Review in the Large Dollar 7NA Case.** At minimum, the FI caseworker must determine the following when conducting the initial case review:

A. Are there any outstanding liabilities that are potentially dischargeable? If not, the case can be reassigned back to the CIO without proceeding further once the discharge determination is documented in the AIS history and any required case classifications are added to AIS.

Note:

Generally, the CIO has already determined that there are dischargeable liabilities during the "screening" process mentioned above. The large dollar 7NA case is not transferred from CIO to FI for an EAEP investigation if there are no dischargeable liabilities.

B. Is attendance at the 341 meeting to question the debtor warranted in the case?

C. What are the issues to be addressed at the 341 meeting of creditors?

D. Are there violations of the stay to be addressed?

E. If the debtor is a serial filer, is the automatic stay in the current case impacted by the filing of previous bankruptcy petitions?

F. Is there an NFTL present that requires refiling because the CSED has been extended? Remember, one NFTL can list (and so be the notice for) up to 15 statutory liens. The expiration for the individual "notice" (NFTL) for a statutory lien is listed in column "e" on the NFTL. So, check column "e" and schedule a follow-up in sufficient time to refile within the 12 month window ending with the refile-by date(s) in column "e" on the NFTL.

G. Is there exempt property subject to collection after the discharge due to the NFTL?

H. Is there any excluded property, such as an ERISA, that is subject to collection due to the statutory lien after the discharge?

I. Is there any abandoned property subject to collection after the discharge due to the statutory lien?

J. Did the debtor list excluded property erroneously as "exempt" property? If so, the debtor should be asked to remove the property from *Schedule B - Personal Property* in the bankruptcy schedules. A referral to Counsel may be required if the debtor does not amend the schedules and the case was filed in the 9th Circuit. (See IRM 5.9.2.10.1.1, *Exempt or Excluded Property*, for additional information.)

4. **FI Research.** There are many tools available to the FI caseworker to assist in completion of the initial case analysis. The facts and circumstances in the case determine the extent of the research conducted by the FI caseworker. Research should include a review and analysis of the debtor's bankruptcy petition available on PACER, including the SOFA and bankruptcy schedules. Circumstances in the case may also warrant:

A. A review and analysis of locator services, such as Accurint.

B. A review of any other available on-line courthouse records.

C. A review of the collection case history on ICS and contact with the RO.

D. A review of IDRS cc AMDISA and contact with the revenue agent or examiner.

E. A review of IRPTRL for possible mortgage interest paid or to identify monies deducted from wages as contributions to retirement funds.

F. A review of DMV records, if there are expensive or vehicles that are collector items.

5. **Case History Documentation and Case Classifications.** All aspects of the review must be documented in the AIS history. Prior to reassigning the case back to the CIO, all cases must have a "summary history" and any required case classifications added to AIS. See the following IRM subsections:

- IRM 5.9.5.4, *AIS Documentation*
- IRM 5.9.5.4.1, *Case Classifications*
- IRM 5.9.5.4.2, *Summary Histories*
- IRM 5.9.5.4.4, *Chapter 7 Summary Histories*

Note:

See IRM 5.9.17.4, *Closing a Bankruptcy Case, Exempt, Abandoned or Excluded Property (EAEP)*, and subsections, for additional guidance on closing procedures in EAEP cases.

5.9.6.11.2 (03-06-2015)

Initial Case Review of the 7A Individual Case by FI

1. **Initial Case Review of Individual 7A Cases.** When an individual debtor who files Chapter 7 bankruptcy has non-exempt assets, those assets can be available for satisfying the claims of creditors. Asset cases require complete processing and appropriate research must be conducted by Insolvency caseworkers.
2. **Time Frame for Completion of the Initial Case Review in the 7A Individual Case.** When a case is assigned to a FI caseworker prior to the 341, the caseworker must conduct an initial case review at least five calendar days prior to the scheduled 341 meeting date. If the case is assigned to the caseworker less than five calendar days prior to the 341 date (or after the 341 date), the initial case review should be completed within 30 calendar days of the assignment. Elements of this review may be required sooner, for example, to resolve stay violations or to respond to pending motions or defensive litigation. Most Automated Proof of Claim (APOC) flags should be worked at least five calendar days before the 341 meeting. However, APOC flags that identify a potential violation of the stay should be worked within five calendar days of APOC identifying the flagged condition. APOC flags that identify potential stay violations are the **Credits Posted after Petition Date** and **Lien Recorded Date Blank** flags. See 5.9.14.2.7, *APOC Flag Condition Time Frame Requirements*, for additional information.
3. **Aspects of the Initial Case Review in the 7A Individual Case.** Generally, the aspects in the initial case review in a 7A individual case mirror the aspects in the initial case review in the large dollar 7NA case (see IRM 5.9.6.11.1, above). However, the Director, Specialty Collection - Insolvency, may develop "streamlined" procedures in certain 7A individual cases. These aspects of the initial case review include but are not limited to:

- A. **Stay Review.** Cases filed on or after October 17, 2005, should be reviewed for dismissals of previous bankruptcies within one year of the current bankruptcy. For cases filed on or after October 17, 2005, the caseworker assigned to the 7A case must check for possible stay variations resulting from serial filings. IRM 5.9.5.7, *Serial Filers*, IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*, and IRM Exhibit 5.9.5-4, *Common Processing Steps in Serial Filer Cases*, through IRM Exhibit 5.9.5-6, *Processing the Serial Filer Case When No Stay Goes Into Effect*, provide procedures for working stay variations.
- B. **Discharge Limitations.** IRM 5.9.5.7.1(5), *Discharge Limitations*, and IRM Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*, provide instructions for reviewing accounts to determine if the debtor is eligible to receive a discharge in the current Chapter 7 bankruptcy case. Eligibility for discharge in the current Chapter 7 case depends on the petition date of each bankruptcy case and the type of bankruptcy previously filed by the debtor. If the debtor is ineligible to receive a discharge in the current bankruptcy case, the FI caseworker should consult Counsel to determine if other actions are required, such as court notification, in that specific jurisdiction.
- C. **Discharge Prior to Conversion.** When the case was previously a 7NA case, and a discharge was entered prior to conversion to a 7A case, the FI caseworker should determine if there were liabilities that were abated that must be manually added to the proof of claim. Liabilities must also be manually added to the proof of claim when the debtor's petition was filed as a Chapter 11, 12, or 13, and the case was discharged prior to conversion to a 7A case. See IRM 5.9.13.4(2), *Manual POC Review*, IRM 5.9.14.2.2(5), *Reopened Chapter 7 Cases*, and IRM 5.9.14.2.8(5)(f), *Discharged, Dismissed, or Closed Date on AIS Flag*, for additional instructions in working these cases. As payments may be received long after dischargeable liabilities have been abated, apply payments per IRM 5.9.15.2.5, *Applying Payment in Bankruptcy, Payments Received after AIS Discharge Closure*, and IRM 5.9.17.9(8), *Chapter 7 Discharge Actions Required at Discharge*.

When a discharge was entered in the case prior to conversion to a 7A case, PACER should be reviewed to see if the discharge was revoked in the case. If so, remove the discharge date from the "Taxpayer Screen". Update the AIS history with the date the discharge was revoked. A notice of discharge revocation acts in the same manner as a notice of dismissal. The stay terminated when the discharge was entered. The stay is not reimposed when the discharge is revoked. **Do not** reinput a TC 520 on the account on IDRS as the automatic stay has already been lifted.

Caution:

Unless the court entered an order revoking the discharge, *do not* remove the discharge date from the "Taxpayer Screen." The debtor has already received a discharge in the current case. The discharge date will not change.

- D. **PACER Review.** The debtor's bankruptcy schedules and SOFA should be reviewed on PACER. The review will assist the FI caseworker in determining if the IRS is a secured creditor in the case and in resolving any "secured period flags" on APOC (IRM 5.9.14.2.9(5)(j), *Period Flags, Period Flag Conditions and Resolutions, Secured Period Flag*). Additionally, the review will assist the FI caseworker in locating EAEP assets that may be available for the collection of dischargeable liabilities after the discharge. If excluded assets are erroneously listed on Schedule B - Personal Property, a referral to Counsel may be required if the schedules are not amended and the debtor is in the 9th Circuit.

Note:

If the case was converted to a 7A case, and the SOFA and schedules were previously reviewed and documented in the AIS history, a second review is not required *unless* the SOFA and schedules were amended

Caseworkers no longer have to review PACER to determine if the trustee has filed a report with the court stating when distribution is anticipated in the case. Nor, do caseworkers have to contact the 7A trustee by phone or Letter 984, *Request for Payment from Trustee*, to determine when distribution is anticipated in the case. During operational reviews, it was determined that these contacts were ineffective since the trustee may not make a distribution until several years after the case is filed.

Note:

See IRM 5.9.17.9(5), *Asset Discharge for Individual Debtor*, for additional information.

- E. **Unfiled Returns.** BAPCPA provides for conversion or dismissal in the case of unfiled returns. IRM 5.9.4.14, *Unfiled Prepetition Returns*, and IRM 5.9.13.18.2, *Addressing Unfiled Returns*, explain how the Service advises trustees of unfiled returns for 7A cases and all other cases for which a proof of claim is prepared.
- F. **NFTL Refile Determinations.** A NFTL refile review must be conducted during initial case review if a secured claim will be filed by the Service or the Service has identified EAEP that may be used to satisfy the debtor's liabilities after the discharge has been granted. See IRM 5.9.5.9.2, *Liens and Insolvency, Refiling Notices of Federal Tax Lien (NFTLs)*.
- G. **Additional Aspects of the Review.** Circumstances in the individual 7A case may warrant additional research and analysis by the FI caseworker. See IRM 5.9.6.11.1(4), *FI Research*, for additional information.

4. **Case History Documentation and Case Classifications.** Most 7A individual cases can be transferred from FI to CIO after the initial case review and acknowledgement of all proofs of claim. CIO takes closing actions upon dismissal or discharge. As such, all aspects of the initial case review must be documented in the AIS history. Additionally, a "Summary History" and any required case classifications must be entered on AIS by the FI caseworker prior to transfer of the case from FI to CIO. The "Summary History" and case classifications assist CIO in properly closing the case. See IRM 5.9.5.4, *AIS Documentation*, IRM 5.9.5.4.1, *Case Classifications*, IRM 5.9.5.4.2, *Summary Histories*, and IRM 5.9.5.4.4, *Chapter 7 Summary Histories*, for additional information.

5.9.6.11.3 (03-06-2015)

Initial Case Review of the 7A Business Case by FI

1. **Initial Case Review of 7A Business Cases.** The initial case review of the 7A business case is similar to the initial case review in the Chapter 11 bankruptcy case. The time frame for the review and aspects of the review are discussed in the paragraphs that follow.
2. **Time Frame for Completion of the Initial Case Review in the 7A Business Case.** When a 7A case is assigned to a FI caseworker prior to the 341, the initial case review should be completed at least five calendar days prior to the 341. If the case is received within five days of the 341, or after the 341, the initial case review must be completed at least 30 calendar days prior to the bar date for the Service to file a proof of claim. Certain elements of this review may be required sooner; for example, to resolve stay violations or to respond to pending motions or defensive litigation. Most Automated Proof of Claim (APOC) flags should be worked at least five calendar days before the 341 meeting. However, APOC flags that identify a potential violation of the stay should be worked within five calendar days of APOC identifying the flagged condition. APOC flags that identify potential stay violations are the **Credits Posted after Petition Date** and **Lien Recorded Date Blank** flags. See 5.9.14.2.7, *APOC Flag Condition Time Frame Requirements*, for additional information.
3. **Aspects of the Initial Case Review in the 7A Business Case.** With the exception of reviewing for adequate protection, the initial review for Chapter 11 BMF cases outlined in IRM 5.9.8.4.2, *Aspects of the Initial Case Review in the Chapter 11 Case*, should be followed for 7A business cases. Additionally, when the entity filing Chapter 7 is a Limited Liability Company (LLC), research may be required to determine if the LLC or single member "disregarded entity" is liable for the debt in the bankruptcy proceeding. The FI caseworker will need to review the SOFA and bankruptcy schedules on PACER, IDRS and CFOL, and other sources to determine responsibility. See IRM 5.1.21, *Collecting from Limited Liability Companies*, IRM 5.9.13.14, *Limited Liability Companies (LLC)*, and subsections, IRM 5.9.17.11, *Closing Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)*, and IRM 5.9.17.11.1, *Chapter 7 Single Member Disregarded Entity LLCs*, for additional information.
4. **Case History Documentation and Case Classifications.** Other than 7A cases of partnerships that file Chapter 7, most 7A business cases are transferred from FI to CIO for closure after the initial case review has been completed, all claims have been acknowledged, any required TFRP has been assessed, and there is no danger of violating the automatic stay. Other than certain 7A single member disregarded entity LLCs, there is no requirement to keep cases open for distribution. Aspects of the initial case review must be thoroughly documented in the AIS history. Before the FI caseworker transfers the 7A business case to CIO, the FI caseworker must enter a "Summary History" on AIS with directions on closing the case. Any case classifications applicable in the case must also be added to the AIS classifications screen. See IRM 5.9.5.4.1, *Case Classifications*, and IRM 5.9.5.4.4, *Chapter 7 Summary Histories*, for additional information.

5.9.6.12 (03-06-2015)

Proof of Claim - Asset Cases

1. **Notice Given if Dividends Likely.** The court may initially conclude no assets exist in a case but later determine a dividend payment is possible. At that time, the court will issue a notice for the filing of claims. Generally, the notice sets the date for creditors to file claims. A creditor, including the IRS, must file a proof of claim in a Chapter 7 Asset case to share in the distribution of the estate. The procedures for filing claims in Chapter 7 are set forth in Bankruptcy Rule 3001, *Proof of Claim*, and Bankruptcy Rule 3002, *Filing Proof of Claim or Interest*. Bankruptcy Rule 1019, *Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case*, discusses Chapter 11, 12, or 13 cases that are converted, or reconverted, to a Chapter 7 case.
2. **Unassessed Claim.** To protect the government's interests, the IRS can file an unassessed (estimated) claim when the exact amount of a debtor's liability is unknown (e.g., unfiled returns, TFRP under investigation, pending audit, etc.). However, the claim must have a factual basis. The government should be in a position to show the court the liability is reasonable. (See IRM 5.9.13.18.1, *Unassessed Claims*.)
3. **Monitoring.** If Insolvency files an unassessed claim based on a pending assessment, it must monitor the case for the receipt of more information from either the debtor or the IRS function proposing the assessment. After all pending actions are completed, Insolvency may amend or withdraw the claim, or file a \$0 claim if appropriate. (See IRM 5.9.13.18.1(12), *Liability Not Pursued*.)
4. **Claim Filed on Behalf of Creditor.** If a creditor (IRS) does not file a proof of claim, the debtor or the trustee may file a claim on behalf of the creditor. Usually, the Service files an amendment or correction to the debtor's or trustee's claim with the court to show accurate tax figures based on the IRS tax database.
5. **Objections to Claims.** The duty to object to any duplicative, overstated, previously paid, or otherwise questionable proof of claim falls to the trustee. Objections to a claim may also be made by other parties, including the debtor.
6. **Bar Date.** Under 11 USC § 502(b)(9) and Bankruptcy Rule 3002, the governmental bar date cannot be less than 180 days after the order for relief. If the debtor's petition was originally filed as a 7NA, and assets were subsequently realized, the bar date for the IRS will be the later of 180 days from the Chapter 7 petition date or the new date set by the court. See Bankruptcy Rules 3002(c)(1) and 3002(c)(5). However, if possible, the Service should file the proof of claim by no later than 180 days from the petition date. If the debtor originally filed a Chapter 11, 12, or 13 petition, and the case subsequently converted to a Chapter 7, the government has at least 180 days from the conversion date to file a proof of claim. Bankruptcy Rule 1019(2) provides that a new time period for filing a claim shall commence if a Chapter 11, 12, or 13 case is converted (but not reconverted) to Chapter 7.
7. **Expired Bar Dates.** When IRS is timely noticed in a case, caseworkers must file claims prior to the governmental bar date. If a caseworker becomes aware that the governmental bar date in a case has been missed, the person identifying the missed bar date must follow the procedures in IRM 5.9.13.7(10), *Bar Dates, Reporting Expired Bar Dates*. If the claim is not filed before expiration of the governmental bar date, the caseworker may file a late claim in the case. The IRS may still be able to participate in distribution in the 7A case as long as the claim is filed before certain actions of the trustee. 11 USC § 726(a) provides that a late-filed **priority claim** is entitled to share in a distribution with timely-filed priority claims, as long as the claim is filed before:

- A. The date that is ten days after the mailing to creditors of the summary of the trustee's final report; or
- B. The date on which the trustee commences final distribution.

If IRS was not notified in sufficient time to file a proof of claim prior to the governmental bar date, the liability in the individual 7A case may be excepted from discharge. Additional information on Chapter 7 bar dates and late filed claims can be found in:

- IRM 5.9.13.7, *Bar Dates*
- IRM 5.9.13.7.1, *Late Filed Claims*
- IRM 5.9.17.7.9, *Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case*
- IRM 5.17.8.13, *Proofs of Claim*

5.9.6.13 (03-06-2015)

Post-petition Liabilities — Individuals

1. **Rule for Individuals – Chapter 7 Post-petition Debts.** In a Chapter 7 proceeding, the individual debtor is considered to be a separate taxable entity from the estate. Taxes on the individual debtor's post-petition income is incurred by the individual debtor and reported on Form 1040, *U.S. Individual Income Tax Return*. A post-petition income tax liability incurred by an individual debtor in a Chapter 7 proceeding cannot be claimed in the bankruptcy case.
2. **Taxes Incurred by the Estate.** Taxes on income arising from assets which are property of the bankruptcy estate are incurred by the estate and reported on Form 1041, *U.S. Income Tax Return for Estates and Trusts*. Generally, these taxes are incurred when a Chapter 7 trustee liquidates assets of the bankruptcy estate. These taxes may also be incurred by the bankruptcy estates of individuals who file Chapter 11 and the case subsequently converts to Chapter 7. In either instance, the liability on the Form 1041 is an expense of the bankruptcy estate. The debt is claimable on Form 6338-A, *Request for Payment of Internal Revenue Taxes*, in the bankruptcy case. For additional information, see *IRM 5.9.6.14* and:
 - *IRM 5.9.8.11.1, Post-petition Debts - Chapter 11 Individuals*
 - *IRM 5.9.8.13, Internal Revenue Code Section 1398 Issues*
 - *IRM 5.9.8.16.4.2, Post-Confirmation Tax Liabilities of the Individual Debtor (Post-BAPCPA)*

5.9.6.13.1 (03-06-2015)

Post-petition Liabilities — Businesses

1. **Business Files Chapter 7.** When most businesses file Chapter 7, the business ceases to operate. 11 USC § 721 authorizes the Chapter 7 trustee to operate the business of the debtor for a limited period. Operation must be in the best interest of the estate and consistent with the orderly liquidation of the estate. If post-petition taxes are incurred in these rare cases, consult Counsel for guidance on how to proceed in the case.
2. **Business Files Chapter 11 and Converts to Chapter 7.** Most businesses file Chapter 11 bankruptcy to reorganize their business while they repay creditors under a plan of reorganization. They may also file Chapter 11 to liquidate their business as a "Debtor-in-Possession" instead of liquidating in Chapter 7 with a court appointed trustee. However, many Chapter 11 cases convert to Chapter 7 when the debtor cannot successfully reorganize. The Chapter 11 case may also convert to Chapter 7 when a "party in interest" files a motion for conversion with the bankruptcy court. In these instances, unpaid post-petition taxes are claimable on Form 6338-A, *Request for Payment of Internal Revenue Taxes*. Penalty and interest are calculated on the post-petition liabilities through the Chapter 7 conversion date. If a case converts from Chapter 11 to Chapter 7 after confirmation of the plan, and post-confirmation taxes are due, refer the case to Counsel for advice. See *IRM 5.9.13.11, Administrative Claims*, and *IRM 5.9.8.11, Post-petition/Pre-confirmation BMF Monitoring*, for additional information.

5.9.6.14 (03-06-2015)

Bankruptcy Estate Income Taxes – Separate Taxable Entity

1. **Individual Chapter 7 – IRC § 1398.** The bankruptcy estate in an individual Chapter 7 bankruptcy is a separate taxable entity required to file its own Form 1041, *U.S. Income Tax Return for Estates and Trusts*.
 - A. IRC § 1398 contains special provisions for an individual under Chapter 7.
 - B. Individual debtors have the right to terminate their tax year when the petition is filed.
 - C. The Chapter 7 trustee has a duty to file the estate's tax return.
 - D. The return filing requirements are generally the same as for individual Chapter 11 cases, as discussed in *IRM 5.9.8.13, Internal Revenue Code § 1398 Issues*.

5.9.6.14.1 (03-06-2015)

Bankruptcy Estate Income Taxes – No Separate Taxable Entity

1. **No Separate Taxable Entity.** In non-individual cases, no separate taxable entity is created. The trustee or debtor-in-possession (DIP) is responsible for filing any required returns.
2. **Relief from Filing Requirement.** A trustee or DIP can apply to be relieved of the return filing requirements in corporate cases when the corporation:
 - A. Has ceased business;
 - B. Has no assets to be liquidated by the trustee; and
 - C. Has no income for the taxable year.

The procedures are found in Revenue Procedure 84–59, which has not been updated to reflect the IRS's reorganization in 2000. These procedures are outlined below in paragraph (4) with supplemental guidance.

Note:

In addition to a bankruptcy trustee or DIP, these procedures may be used by a receiver or trustee of a corporation that is in receivership, dissolution, or in the hands of an assignee by order of a court, operation of law or otherwise. In particular, a trustee in a Securities Investor Protection Act (SIPA) proceeding may use these procedures to request exemption from return filing.

3. **Content of Exemption Request.** The bankruptcy trustee or DIP must submit a written request for exemption from return filing to the Service. The request should contain the following:
 - A. The name, address, and employer identification number of the corporation;
 - B. The facts, with supporting documents, if necessary, explaining why relief from the filing requirements is needed; and
 - C. The following statement signed by the bankruptcy trustee or DIP:
"I hereby request relief from filing federal income tax returns for tax year(s) ending [date(s)] for the above named corporation and declare under penalties of perjury that to the best of my knowledge and belief the information contained herein is correct."

Note:

Trustees (other than a bankruptcy trustee or DIP), receivers, and assignees requesting exemption from return filing must also include in their requests the notice of appointment to act, as required under Treas. Reg. § 301.6036-1(a).

4. **Procedures for Exemption Requests.** The trustee must make a written request to the Service giving the reasons to support a filing exemption. The request must be signed under penalties of perjury.
 - A. Requests must be submitted to the local Insolvency office handling the case.
 - B. Requests must be reviewed by a Grade 12 Insolvency caseworker, with assistance from Counsel, if needed.
 - C. The preliminary determination (either to approve or deny) made by the caseworker must be approved by an Insolvency group manager within 45 days from the received date of the request.

D. Upon managerial approval of the decision to deny or accept the request for exemption from filing, FI will draft an "ad hoc" letter to the trustee. At minimum, the letter must state if the exemption request is accepted or denied.

Example:

We have received your request for relief from filing federal income tax return(s) for tax year(s) ending MM-DD-YYYY. We approve/deny the request.

E. The FI manager will forward the letter and their recommendations to the Territory Manager (TM).

F. The TM will review the request and recommendations of the FI manager. If the TM agrees with the recommendations of the FI manager, the TM will sign the letter and return it to the FI manager. The FI group will mail the letter to the trustee. If the TM does not agree with the recommendations of the FI manager, the recommendation will be returned to the FI Manager. In either situation, all actions regarding the determination must be documented in the AIS history.

Note:

The determination to grant or deny the request must be made *within 90 days* of receipt of the request.

**5.9.6.15 (03-06-2015)
Trust Fund Recovery Penalty**

1. **Corporation and Responsible Officers in Bankruptcy.** Assessment of the Trust Fund Recovery Penalty (TFRP) under IRC § 6672 becomes an issue when a corporation, having unpaid trust fund liabilities, files a Chapter 7 petition. In addition, the potentially responsible persons of the corporation may have filed their own bankruptcy petitions.
2. **Objections Filed by Responsible Persons.** The responsible persons frequently object to the TFRP investigation the IRS conducts against them, claiming trust fund taxes will be paid through the corporate bankruptcy proceeding.
3. **Field Compliance Assignment.** If research on corporate 7A cases shows balance due accounts or return delinquency periods assigned to Field Collection, Insolvency should contact the revenue officer (RO) group to determine what information is available on the case.
4. **Investigations.** If an investigation of the TFRP is warranted, guidance in the IF/THEN chart below should be followed. See IRM 5.9.3.11, *Trust Fund Recovery Penalty*, and subsections for additional information.

IF...	THEN...
Local procedures provide for issuance of an OI to a RO group and the unpaid trust fund liability meets the tolerance for a TFRP investigation (IRM 5.9.3.11(11), <i>TFRP Investigation Criteria</i>),	An OI should be issued to the appropriate RO group to complete a TFRP investigation.
Local procedures provide for handling TFRP investigations within the Insolvency function and locally established tolerances are met,	The case should be reassigned to a FI caseworker with properly delegated authority to complete the TFRP investigation.

5. **TFRP Assessments Against Responsible Persons.** IRM 5.9.3.11(14), *Chapter 7*, provides that assessment of the TFRP against the responsible persons of a corporate Chapter 7 debtor will generally be recommended *unless* compelling evidence indicates the assets of the estate are sufficient to satisfy all of the liabilities of the debtor (which is rare). If the decision is made not to assess the TFRP, Insolvency must indicate the reasons for non-assertion in the case history. The decision to withhold the TFRP assessment should be reviewed with the manager in accordance with local procedures.

Caution:

Should the circumstances/factors change that prompted Insolvency to delay the TFRP assessment (e.g., a current review indicates non-compliance, plan deficiencies, etc.), reconsideration should be given to making the TFRP assessment. Also, if the Assessment Statute Expiration Date (ASED) will expire before the liability is paid in full, the assessment should be made before the ASED expires.

6. **Field Assignment of Accounts.** If a RO group wants an account to remain open to Field Collection, TC 520 with closing code (cc) 84 will not suspend a balance due account for the module on which it is input.

Caution:

Although cc 84 is available for circumstances that require extensive field work and involve little risk of a violation of the Bankruptcy Code, caution must still be employed. The Service can be liable for damages if a violation of the Bankruptcy Code occurs.

**5.9.6.16 (03-06-2015)
Conversion**

1. **Voluntary.** Chapter 7 debtors may *voluntarily* convert their cases to proceedings under Chapters 11, 12, or 13 at any time, as long as the Chapter 7 case was not originally converted from a Chapter 11, 12, or 13 proceeding.
2. **Involuntary.** *Involuntary* conversions to Chapter 11 sought by creditors or the trustee can also occur.
3. **Under BAPCPA.** For cases filed on or after October 17, 2005, the IRS may move to dismiss or, with the debtor's consent, convert a Chapter 7 bankruptcy filed by an individual to a Chapter 11 or Chapter 13 case where a presumption of abuse of the bankruptcy process arises because of the means test.

Note:

Presumption of abuse because of the means test is explained in 11 USC § 707(b)(2).

**5.9.6.17 (03-06-2015)
Subordination of Tax Liens**

1. **Subordination.** 11 USC § 724(b) provides for the distribution of the proceeds of property encumbered by a valid pre-petition tax lien where the Service has properly filed a NFTL prior to the bankruptcy. Specifically, it provides that holders of unsecured priority claims under 11 USC § 507(a)(1) through § 507(a)(7) are paid before the Service's secured tax claim is paid. This is referred to as a *subordination* of the tax lien (taking a lower position). (See IRM 5.9.6.19, *Distribution*, and IRM 5.9.4.5.1(6), *Certificate of Discharge*.)
2. **Administrative Expenses.** The Service's claim for administrative expenses that accrue during the bankruptcy proceeding is entitled to priority classification.. Accordingly, the Service's secured tax claim will be subordinated to the payment of the Service's administrative tax claim, if any.

Note:

On cases filed prior to October 17, 2005, in addition to the federal secured tax claim, state and local secured tax claims are also subordinated.

3. **BAPCPA Amendment.** BAPCPA has amended 11 USC § 724(b) for Chapter 11 cases filed on or after October 17, 2005, which are converted to 7A cases. In those cases, the tax lien will not be subordinated to administrative claims incurred in the prior Chapter 11 case except for the following:

- Wages

- Salaries
- Commissions

Further, before the trustee can subordinate a tax lien on personal or real property, the trustee must:

- Exhaust the unencumbered assets of the estate, and
- Recover from property securing an allowed secured claim the reasonable and necessary expenses of preserving or disposing of the property.

Note:

Tax liens arising in connection with ad valorem taxes on property are no longer subordinated with exceptions being claims for wages, salaries and commissions, or for contributions to an employee benefit plan.

**5.9.6.18 (03-06-2015)
Sale of Property by the Trustee**

- Lien Interest.** When the trustee disposes of the debtor's assets by selling property, and the IRS has a valid pre-petition NFTL on file, the Service's rights to distribution based on its lien interest in such property is unknown until all priority claims, including administrative expenses, are determined. Thus, Insolvency should not interfere with, or object to, any sale of property by the trustee without specific cause.

Note:

Chapter 7 trustees have in the past avoided the fixing of the Service's lien on motor vehicles by arguing they assume the status of purchaser under IRC § 6323. Under the provisions of BAPCPA, trustees cannot assume the status of a purchaser.

- Certificate of Discharge.** A need to issue a Certificate of Discharge may arise, if requested, to clear title concerns after the completion of a sale. If appropriate, a *no-value lien discharge* may be considered. (See IRM 5.9.4.5.1, *Sale of Property Considerations*.)
- Post-Discharge NFTLs.** NFTLs filed against the individual debtor after a discharge from bankruptcy is granted may interfere with the sale of estate property. Because the bankruptcy estate is a separate entity, such post-discharge NFTLs do not attach to estate property. Therefore, a *no-value lien discharge* may be provided.
- Tax Consequences.** The U.S. Trustee encourages trustees to evaluate the tax aspects of any sale and discourages them from administering any property with significant tax consequences.
- Objections to Sale.** Insolvency caseworkers should review sale motions with tax consequences in mind and object to sales when appropriate, as provided in IRM 5.9.4.5.1(8), *Tax Consequences*.

Note:

In rare instances, estate property may be abandoned after the debtor has received a discharge and before the court has closed the case. If the Service files a NFTL after the debtor receives a discharge, but before the abandonment of the property and court closure, the federal tax lien will attach to the property once it is abandoned (11 USC § 554(c)).

**5.9.6.19 (03-06-2015)
Distribution**

- Order of Distribution.** The order of distribution in a Chapter 7 case for estate property not subject to liens is established in 11 USC § 726 and is as follows:
 - 11 USC § 507 priority claims (includes administrative expenses, post-petition taxes incurred by the estate, including interest on these taxes, and priority tax claims) which are timely filed, or which are untimely filed but meet the filing time frames outlined in IRM 5.9.13.7, *Bar Dates*.
 - General unsecured claims which are timely filed, or filed late due to lack of notice.
 - Late claims (other than those in items (1) and (2)).
 - Non-pecuniary loss penalties (punitive in nature, for example, failure to pay penalty) and fines.
 - Post-petition interest.
 - The debtor receives the remainder of any distribution.
- Rights of a Private Secured Party.** The distribution does not affect the rights of a private secured party. If property in which a secured party has a lien is sold by the trustee, that creditor will be paid first from the sale proceeds after the expenses of the sale.
- Treatment of the Tax Lien of IRS.** The IRS, as a secured creditor, does not have the same rights as private secured creditors in a Chapter 7 case. This is because *the tax lien is subordinated to certain priority claims*, pursuant to 11 USC § 724. Other priority claims will be paid before the tax lien is paid. (See IRM 5.9.6.17, *Subordination of Federal Tax Lien*, and IRM 5.9.6.18, *Sale of Property by the Trustee*.) However, if the NFTL has priority over the interest of a private secured party, the NFTL may be paid before the secured party depending on calculation under 11 USC § 724.

**Exhibit 5.9.6-1
Processing Chapter 7 Trustee Turnover Requests when the Case is Not on AIS**

The following table outline procedures to be taken on tax periods subject to a Chapter 7 trustee's request for turnover of a refund where the bankruptcy case has not yet been discharged and the case *is not* on AIS. (For turnover requests on cases where the bankruptcy has been discharged before the debtor's refund has posted, see IRM 5.9.6.2.3(7), *Refund Turnover Requests for Discharged Cases*.) See IRM 5.9.6.2.3(4), *Invalid Turnover Requests*, for additional information on what constitutes an invalid turnover request. When the Chapter 7 case is not on AIS, review IDRS to determine the following:

If...	Then...
The turnover request is not valid; i.e., post-petition period, and no balance dues or unfiled returns,	<ul style="list-style-type: none"> • Do not add the case to AIS. • Issue a letter to the trustee to advise that the request is not valid.
The turnover request is not valid; i.e., the request is only for a post-petition period (no portion of the refund is pre-petition) or the turnover order/request does not include all the required information and a pre-petition balance due and/or unfiled return exists,	<ul style="list-style-type: none"> • Obtain case information from PACER and establish a case on AIS. • Issue a letter to the trustee to advise that the request is not valid. • Document the AIS history to state, "Received trustee turnover request on MM/DD/YYYY (the received date stamped on the turnover request) for tax year YYYYMM (example 201312). Chapter 7 request is not valid (period requested did not include any pre-petition portion of the tax year or request does not include the required information). Letter sent to trustee."

	<ul style="list-style-type: none"> Do not input TC 520 cc 81. Do not add a TTEE RFND case classification to the case on AIS. Allow the case to process systemically through AIS.
The turnover request is valid and the refund(s) have already been issued for the period(s) requested and there are no balances due or unfiled returns,	<ul style="list-style-type: none"> Do not add the case to AIS. Issue a letter to the trustee to advise the trustee that the requested refund(s) were issued prior to receipt of the turnover request.
One or more of the periods included on the refund request has been filed, a refund is due, the refund has not been issued, and the request is valid,	<ul style="list-style-type: none"> Obtain information from PACER and establish a case on AIS. Input a TC 520 cc 81 per the instructions in <i>Exhibit 5.9.6-6, TC 520 Input Guide for Trustee Turnover Requests</i>. Add the TC 520 input information to the AIS Freeze Screen for each TC 520 input to IDRS. Add a TTEE RFND case classification to the case on AIS. Prepare Form 5792, <i>Request for IDRS Generated Refund (IGR)</i>, to have the refund mailed to the trustee. If the refund is only requested on one module, input a 14 day follow-up on the AIS Letter Screen to monitor for refund issuance (TC 840 posting on IDRS). Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date from the date stamp on the request) for tax year YYYYMM (example 201312). Added TTEE RFND case classification on the classification screen. Credit available on module. Prepared Form 5792 for \$\$ for YYYYMM (period). Input 14 day follow-up on the Letter Screen." DO NOT ASSIGN CASE ON AIS.
One or more of the periods included on the refund turnover request has not been filed and the request is valid,	<ul style="list-style-type: none"> Obtain information from PACER and establish a case on AIS. Input a TC 520 cc 81 per the instructions in <i>Exhibit 5.9.6-6, TC 520 Input Guide for Trustee Turnover Requests</i>. Add the TC 520 input information to the AIS Freeze Screen for each TC 520 input to IDRS. Input a TTEE RFND case classification to the case on AIS. Input a 180 day follow-up on the AIS Letter Screen. Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date from the date stamp on the request) for tax year YYYYMM (example 201312). Input TC 520 cc 81 on XXX-XX-XXXX for tax period YYYYMM and added to Freeze Screen. Added TTEE RFND on the classification screen on AIS. Input a 180 day follow-up on the Letter Screen." DO NOT ASSIGN CASE ON AIS.
One or more of the periods included on the refund request has been filed, there is a balance due, and the request is valid,	<ul style="list-style-type: none"> Obtain information from PACER and establish case on AIS. Issue a letter to the trustee to advise no refund is available. Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date from the date stamp on the request) for tax year YYYYMM (example 201312). Return filed with a balance due. No refund available. Letter sent to Chapter 7 trustee." Take no further action. <i>Do not input TC 520 cc 81 or TTEE RFND case classification.</i> Allow the case to process systemically. <p>Note: If at least one period listed on the turnover request has not been filed, see the row above for actions to be taken.</p>

**Exhibit 5.9.6-2
Processing Chapter 7 Turnover Requests when the Case is Closed on AIS**

The table below provides guidance for processing trustee turnover requests when the case is closed on AIS. The case may be closed on AIS because it was closed as a "no liability case," because the case was dismissed, or because the case was discharged and closed. (See *IRM 5.9.6.2.3(7)* and (8) for additional guidance on discharged cases.) In all instances, access the TIN Screen on AIS to secure the TINs in the case. Review IDRS cc IMFOLI for each individual master file (IMF) TIN to determine if a return has been filed.

If...	Then...
The refund has already been issued for the period the trustee requested,	<ul style="list-style-type: none"> Document the AIS history to reflect receipt of the turnover request and the period(s) subject to turnover. Issue a letter to the trustee to advise that no refund is available. Document the AIS history with the information regarding the refund. For example, "Received trustee turnover request on (received date stamped on the turnover request) for tax year YYYYMM. Refund already issued to taxpayer for YYYYMM on MM/DD/YYYY. Letter sent to Chapter 7 trustee advising no refund is available." Do not add the TTEE RFND case classification to AIS.
	<ul style="list-style-type: none"> Issue a letter to the trustee to advise that no refund is available.

<p>A return was filed with a balance due for the period(s) requested on the turnover request,</p>	<ul style="list-style-type: none"> • If a case was closed due to discharge, document the AIS history and no further action is required. • If the case was closed as No Liability, determine if the liability is pre-petition or post-petition and take appropriate actions as directed below: Pre-petition: <ol style="list-style-type: none"> A. Re-open the case on AIS. B. Input a TC 520 (use the appropriate closing code based on court jurisdiction) to the module(s) on IDRS. C. Add the TC 520s that were input on IDRS to the Freeze Screen on AIS. D. Reassign the case to the appropriate employee, if needed. <p>Post-petition: No action needed.</p> <p>Then: Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date stamp on request) for tax year YYYYMM. Return filed with balance due. No refund available for period requested. Letter sent to Chapter 7 trustee." Also, include any other actions taken in the AIS history.</p>
<p>A return was filed with no refund due and no balance due,</p>	<ul style="list-style-type: none"> • Issue a letter to the trustee to advise that no refund is due. • Document the AIS history to reflect receipt of the turnover request and the period(s) subject to turnover. • Document the AIS history that no refund was issued for the period(s) requested because there was no refund due on the return. Document that there was also no balance due on the return. For example, "Trustee requested turnover of the YYYYMM refund. The YYYYMM return was filed with \$00 due. There is no balance due and no refund to issue. Letter sent to Chapter 7 trustee to advise no refund is due." • Do not add the TTEE RFND case classification to AIS.
<p>The return(s) has not been filed for the period(s) requested on the turnover request,</p>	<ul style="list-style-type: none"> • Reopen the case on AIS by removing the closing information from the "On AIS" field on the Taxpayer Screen. • Add a TTEE RFND case classification to AIS. • Re-assign the case to CIO, if not currently in CIO inventory and the case was closed as "NL" or "N" is present in the "Proof Req'd" field on the Taxpayer Screen. Allow the case to remain assigned to Field Insolvency (FI) if other conditions exist. • Determine the filing status of the debtor(s). • Input TC 520 cc 81 depending on the information found on IDRS per <i>Exhibit 5.9.6-6, TC 520 Input Guide for Trustee Turnover Requests</i>. • Add TC 520 for each TIN and period input to IDRS on the AIS Freeze Screen. • Add TTEE RFND case classification to AIS. • Input a 180 day follow up to the Letter Screen on AIS. • Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date from the date stamp on the turnover request) for tax year YYYYMM (note if specific year or for all post-petition refunds). Input TC 520 cc 81 on XXX-XX-XXXX (list all TINs where a TC 520 was input). Added TC 520s to the Freeze Screen and added TTEE RFND case classification. Input a 180 day follow-up on the Letter Screen."

**Exhibit 5.9.6-3
Processing Chapter 7 Trustee Turnover Requests when the Case is Open on AIS**

When a cases is open and assigned to Field Insolvency:

- Input a TC 520 cc 81 to respective modules on IDRS per *Exhibit 5.9.6-6, TC 520 Input Guide for Trustee Turnover Requests*.
- Add the information regarding the TC 520s input to IDRS to the AIS Freeze Screen.
- Add **TTEE RFND** case classification to the Classification Screen.
- Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (the received date stamped on the request) for tax year YYYYMM. Input TC 520 cc 81 on XXX-XX-XXXX (TIN) for XX-YYYYMM (MFT & period) and added **TTEE RFND** case classification to the Classification Screen."

When an open case is assigned to CIO, check IDRS cc IMFOLI for the period(s) on the trustee turnover request. Then, follow the guidance in the table below to process the turnover request:

If...	Then...
<p>The refund has already been issued for the period(s) the trustee requested,</p>	<ul style="list-style-type: none"> • Issue a letter to the trustee to advise that no refund is available. • Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date stamped on the request) for tax year YYYYMM. Refund already issued to TP. Letter sent to Chapter 7 trustee."
<p>Return(s) filed with balances due for period(s) requested or return(s) filed with no refund due and/or tax due,</p>	<ul style="list-style-type: none"> • Issue a letter to the trustee to advise the trustee that no refund is available. • If the return was filed with a balance due, document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date stamped on the request) for tax year YYYYMM. Return filed with balance due, no refund available for period requested. Letter sent to Chapter 7 trustee." • If the return was filed with a \$.00 balance due and no refund due, document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date stamped on the request) for tax year YYYYMM. Return was filed with no tax due and no refund due for the period requested. Letter sent to Chapter 7 trustee."
	<ul style="list-style-type: none"> • Prepare Form 5792 to redirect the refund to the trustee if there is a TC 520 cc present on IDRS with a closing code that will hold the refund. If no such TC 520 is present, do not prepare Form 5792 or input a TC 520 cc 81 (unless multiple tax years are requested to be redirected to the trustee), but follow procedures as if refund already issued.

Credit is available on the period requested,	<ul style="list-style-type: none"> • Add a TTEE RFND case classification to the Classification Screen. • If the refund is only requested on one period, input a 14 day follow-up on the AIS Letter Screen to monitor for refund issuance (TC 840 posting on IDRS). • Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date stamped on the request) for tax year YYYYMM (example 201312). Added TTEE RFND to Classification Screen. Credit available on module. Prepared Form 5792 for \$\$ for XX-YYYYMM (MFT & period). Input 14 day follow-up on the Letter Screen."
Return(s) not filed for year(s) requested	<ul style="list-style-type: none"> • See <i>Exhibit 5.9.6-6, TC 520 Input Guide for Trustee Turnover Requests</i> for instructions on input of the TC 520 cc 81. • Add each TC 520 cc 81 input to IDRS on the AIS Freeze Screen. • Add TTEE RFND case classification to the Classification Screen. • Input a 180 day follow-up on the AIS Letter Screen. • Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (received date stamped on the request) for tax year YYYYMM (example 201312). Input TC 520 cc 81 on (list each SSN where a TC 520 cc 81 was input) on tax period YYYYMM and added the TC 520s to the Freeze Screen. Added TTEE RFND classification to the Classification Screen. Input a 180 day follow-up on the Letter Screen."
The turnover request is not valid because it does not include all required information or because the request is for a post-petition period only (no portion of the return is pre-petition),	<ul style="list-style-type: none"> • Issue a letter to the trustee to advise that the refund request is not valid. • Document the AIS history, "Received trustee turnover request on MM/DD/YYYY (the received date stamped on the request) for tax year YYYYMM (example 201312). Chapter 7 request not valid (period requested did not include any pre-petition portion of the tax year or request does not include required information)."

Exhibit 5.9.6-4 Conversions and Turnover Requests

When a Chapter 7 case converts to a Chapter 11, Chapter 12, or Chapter 13 case, any Chapter 7 trustee turnover request in the case is no longer valid. When a Chapter 7 Asset case becomes a Chapter 7 No Asset case, or vice versa, the case is *still* a Chapter 7 case. Any trustee turnover request in the Chapter 7 case remains valid until it is withdrawn, rescinded, or expires. Follow the chart below when processing conversions from Chapter 7A or Chapter 7NA to another bankruptcy chapter.

Step	Action
1.	Ensure the trustee listed on AIS is the trustee for the current chapter. This may require a review of PACER. There may be no trustee if the case converts to a Chapter 11.
2.	Input the new bar date, if needed.
3.	Close the TTEE RFND case classification on the Classification Screen.
4.	Close the follow-up on the Letter Screen scheduled due to the trustee turnover request, if present.
5.	Generally, a TC 520 cc 81 is used when a trustee turnover request is present. Check IDRS to see if an unreversed TC 520 cc 60 - 67, 83, or 85 is present on the balance due modules. If there is no unreversed TC 520 cc 60 - 67, 83, or 85 present, check the Bankruptcy TC 520 Closing Codes tool on SERP to determine the appropriate TC 520 closing code for the new chapter type and court jurisdiction. The SERP tool can be found at http://serp.enterprise.irs.gov/databases/who-where.dr/tc520/tc520-closing-codes.htm . Input the appropriate TC 520 closing code for the new bankruptcy chapter on applicable modules on IDRS.
6.	Reverse the TC 520 cc 81 on IDRS using a TC 522 cc 81.
7.	Add any TC 520 and TC 522 transactions input on IDRS to the Freeze Screen on AIS.
8.	Reassign the Chapter 7 case to the appropriate FI caseworker using the CIO Case Assignment Tool on SERP. The case assignments in FI may differ for a Chapter 7A and Chapter 11, 12, or 13 case. The CIO Case Assignment Tool can be found at http://serp.enterprise.irs.gov/cgi-bin/AISCT_Search.cgi .

Follow the chart below when assets are realized in a Chapter 7 case or when the trustee determines there are no assets in a Chapter 7 case previously identified as a 7A case:

Step	Action
1.	Ensure the trustee listed on AIS is still the trustee for the Chapter 7 case (this may require a PACER review).
2.	If the trustee changed, update the trustee information on AIS.
3.	Input the new bar date, if needed.
4.	<ul style="list-style-type: none"> • Reassign the case to CIO if the case was a 7A and there are now no assets. Use the Centralized Insolvency Operation (CIO) Team Assignment tool found on SERP at http://serp.enterprise.irs.gov/databases/who-where.dr/cio_assignment.dr/ais_4_inventory.htm to reassign the case. • Reassign the case to Field Insolvency if there were no assets and now there are assets. Use the CIO Case Assignment Tool found on SERP at http://serp.enterprise.irs.gov/cgi-bin/ISCT_Search.cgi to reassign the case.

Exhibit 5.9.6-5 Processing Withdrawals or Rescissions of Trustee Turnover Requests

When a trustee withdraws or rescinds a turnover request, review IDRS to determine if refund issuance is pending. If so, schedule a follow-up to allow for processing of the refund to prevent a duplicate refund from being issued. If no refund is in process, the following actions should be taken:

If...	Then...
The case is assigned to Field Insolvency,	<ul style="list-style-type: none"> • Close the TTEE RFND case classification on the Case Classification Screen. • Close the follow-up (for the turnover only) on the Letter Screen, if present. • Reverse the TC 520 cc 81 on the modules on IDRS. • Input the TC 522 cc 81 information on the AIS Freeze Screen. • Document the AIS history to reflect receipt of the withdrawal request and with all actions taken.
The case is assigned to CIO and there is no	<ul style="list-style-type: none"> • Close the TTEE RFND case classification on the Classification Screen. • Close the follow-up (for turnover only) on the Letter Screen, if present. • Reverse TC 520 cc 81 (and any other bankruptcy closing codes with the same petition date) on modules on IDRS.

balance due or unfiled returns,	<ul style="list-style-type: none"> • Input all TC 522 information on the AIS Freeze Screen. • Document the AIS history to reflect receipt of the withdrawal request and actions taken. • Select "No Liability" as the method of closure in the Closure Method field. • Place the current date in the "On AIS" date field.
The case is assigned to CIO and there is a balance due and/or unfiled returns present,	<ul style="list-style-type: none"> • Close the TTEE RFND case classification on the Classification Screen. • Close the follow-up (for turnover only) from the Letter Screen, if present. • Normally, a TC 520 cc 81 is used when a trustee turnover request is present. If an unreversed TC 520 with a closing code of 60 - 67, 83, or 85 is not present on the balance due module(s), check the Bankruptcy TC 520 Closing Codes on SERP for the chapter type and court jurisdiction, and input the appropriate TC 520 to applicable modules on IDRS. The correct closing codes can be found at http://serp.enterprise.irs.gov/databases/who-where.dr/tc520/tc520-closing-codes.htm. • Input TC 522 cc 81 to reverse all unreversed TC 520 cc 81s. • Add all TC 520 and TC 522 data input to IDRS to the AIS Freeze Screen. • Input history to reflect all actions taken. • Ensure the case is assigned to the appropriate office (CIO or FI).

**Exhibit 5.9.6-6
TC 520 Input Guide for Trustee Turnover Requests**

The information in the chart below supplements instructions for loading a new case to AIS found in IRM 5.9.12.3, *Paper Petitions*, and inputting a TC 520 manually when processing trustee turnover requests.

Bankruptcy Petition Filed as...	Tax Returns filed as...	Actions needed...
Joint	Joint (FS 2)	<ul style="list-style-type: none"> • List both debtors on the AIS Taxpayer and TIN Screen. • Input TC 520 cc 81 with appropriate CSED indicator (B) on the last period for which a joint tax return was filed. • If IMFOLI shows jointly filed tax returns, and the spouses alternate as "primary" on the returns, input a TC 520 cc 81 on the latest tax period where each spouse filed as "primary" . • Ensure all TC 520 cc 81 data is added to the AIS Freeze Screen.
Joint	Separate (FS 1, FS 3, or FS 4)	<ul style="list-style-type: none"> • List both debtors on the AIS Taxpayer and TIN Screen. • Input the TC 520 cc 81 with the appropriate CSED indicator (P) on the last period filed by each debtor • Ensure all TC 520 cc 81 data is added to the AIS Freeze Screen.
Individual	Joint (FS 2)	<ul style="list-style-type: none"> • Add debtor information to the AIS Taxpayer and TIN Screen. • If <u>debtor is the primary taxpayer</u> on the jointly filed return, input the TC 520 cc 81 with CSED indicator (P) on the last jointly filed period. • If the <u>debtor is the secondary taxpayer</u> on the jointly filed return: <ul style="list-style-type: none"> A. Input TC 520 cc 81 with CSED indicator (S) on the last jointly filed period. B. Create a dummy module* for the debtor's TIN for the same period as the jointly filed return and input a TC 520 cc 81 with a CSED indicator (P). C. Add TIN of the primary number (non-debtor) on the jointly filed return to the TIN Screen reflecting they are non-debtor spouse (NDS), if not already present.
Individual	Separate (FS 1, FS 3, or FS 4)	<ul style="list-style-type: none"> • List debtor only on the AIS Taxpayer and TIN Screen. • Input TC 520 cc 81 with appropriate CSED indicator (P) on the last period filed by the debtor only.

*It is not necessary to create a dummy module if IDRS cc IMFOLI shows jointly filed tax returns where the spouses alternated as "primary" on the returns. In this instance, you should input a TC 520 cc 81 on the latest tax periods where each of the spouses filed as "primary."

Note:

To secure the TIN of a debtor's spouse, access IDRS cc INOLES and look under XREF/TRANS INFO. If multiple TINs are present, use the TIN with the most current cycle date.

Note:

During dead cycles, use IDRS cc MFREQD to create a dummy module for the period the trustee requests the refund for since you cannot input a TC 520 cc 81 on the last period filed. If a refund turnover is requested for multiple years, create the dummy module on the earliest year requested by the trustee.

**Exhibit 5.9.6-7
CIO Actions on Chapter 7 Asset (7A) Cases**

Most 7A cases are transferred from FI to the CIO after the initial case review has been completed, all proofs of claim have been prepared and acknowledged, and there are no issues that require the case to remain in FI. Actions taken by the CIO after reassignment depend upon the type of case and the type entity that filed bankruptcy. The following chart details actions that will be taken by the CIO.

IF...	THEN...

IMF and dismissal received	<ul style="list-style-type: none"> • Check for "SUMMARY HISTORY (SH)" entry and follow instructions provided, if SH present. • Review "Classification Screen" for any open case classifications. • Input the appropriate method of closure on AIS, "REGULAR DISMISSAL - D1" or "DISMISSED FOR FMT - D2" . • Document the AIS history to reflect actions taken. <p>Note:</p> <p>See IRM 5.9.17.5.5, <i>Closing Dismissed Cases</i>, for additional information.</p>
IMF and discharge received	<ul style="list-style-type: none"> • Check for "SUMMARY HISTORY (SH)" entry and follow instructions provided, if SH present. • Review "Classification Screen" for any open case classifications. • If an order was entered by the court denying discharge, enter "DISCHARGE DENIED" as the method of closure on AIS and follow the procedures in IRM 5.9.17.7.3, <i>Discharge Denied</i>. • If there is a "NoNotice" case classification on AIS, enter "No Notice" as the method of closure on AIS and follow the guidance in IRM 5.9.17.9(7), <i>CIO Procedures</i>. • In other cases where the debtor received a discharge in the Chapter 7A case, enter "CH7&HARDSHIPCH13 RI" as the method of closure on AIS. Follow the procedures in IRM 5.9.17.9, <i>Chapter 7 Discharge Actions</i>. <p>Note:</p> <p>CIO should address any Discharge Determination Reports (DDRs) generated in accordance with normal procedures.</p>
Corporate Entity	<p>Follow the closing actions in IRM 5.9.17.11, <i>Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)</i>, which includes the following:</p> <ul style="list-style-type: none"> • Check for "SUMMARY HISTORY (SH)" entry and follow instructions provided, if SH present. • Review "Classification Screen" for any open case classifications. • Ensure managerial approval is documented for any request for input of a TC 530 cc 07. If not present, reassign to FI stating managerial approval is needed for input of the TC 530 cc 07. • Take actions requested in the AIS history. • Document history to reflect actions taken. • Close the case on AIS using "Other Closing Action" as the method of closure. <p>Note:</p> <p>Use a two cycle posting delay for input of the TC 521 to allow time for the TC 530 cc 07 to post to IDRS.</p>
Partnership Entity	<p>Chapter 7 partnership entities are only worked by FI. (See IRM 5.9.17.10, <i>Closing Chapter 7 or Liquidating Chapter 11 Partnerships</i>, for additional information.)</p> <ul style="list-style-type: none"> • Reassign the case to FI. • Enter "All actions on partnership accounts must be performed by FI" in the AIS case history.
Limited Liability Company (LLC)	<p>Closing actions in the case of a LLC depend on whether the LLC was a single member disregarded entity (IRM 5.9.17.11.1, <i>Chapter 7 Single Member Disregarded Entity LLCs</i>) or a LLC that reported income as a partnership or corporation (IRM 5.9.17.11, <i>Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)</i>).</p> <ul style="list-style-type: none"> • Review the "SUMMARY HISTORY" for actions needed at case closure. <p>Note:</p> <p>If there is no "SUMMARY HISTORY" providing guidance on how the case should be closed, reassign the case back to FI. Enter a history on AIS stating "Case returned to FI for entry of a SUMMARY HISTORY with guidance on closing the case as required in IRM 5.9.17.11 or IRM 5.9.17.11.1 (as appropriate)."</p> <ul style="list-style-type: none"> • Ensure managerial approval is documented for any request for input of a TC 530 cc 07. If not present, reassign the case to FI stating managerial approval is needed for input of the TC 530 cc 07. • Take actions requested. • Document the AIS history to reflect actions taken. • Close the case on AIS using "Other Closing Action" as the method of closure unless another method of closure is present. <p>Note:</p> <p>Actions should be taken per the guidance in the "SUMMARY HISTORY" . If both a TC 521 and a TC 530 cc 07 are requested, use a two cycle delay for input of the TC 521 to allow time for the TC 530 cc 07 to post to prevent the issuance of balance due notices.</p>



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 7. Processing Chapter 9 and Chapter 15 Bankruptcy Cases

5.9.7 Processing Chapter 9 and Chapter 15 Bankruptcy Cases

- 5.9.7.1 [Chapter 9 – Adjustment of Debts of a Municipality](#)
- 5.9.7.2 [Chapter 15 - Ancillary and Other Cross-Border Cases](#)
- 5.9.7.3 [Collecting Tax Debt in a Foreign Country When There is No U.S. Bankruptcy Proceeding](#)

Manual Transmittal

July 14, 2015

Purpose

(1) This transmits a revised IRM 5.9.7, Bankruptcy and Other Insolvencies, *Processing Chapter 9 and Chapter 15 Bankruptcy Cases*.

Material Changes

(1) Editorial changes were made and citations were verified throughout.

Effect on Other Documents

This material supersedes IRM 5.9.7, dated August 5, 2013.

Audience

All Operating Divisions.

Effective Date

(07-14-2015)

Kristen Bailey, Acting Director
Collection Policy

5.9.7.1 (07-14-2015) Chapter 9 – Adjustment of Debts of a Municipality

1. **Qualifications.** To be a debtor under Chapter 9, *Adjustment of a Debts of a Municipality*, an entity must:
 - Be a municipality;
 - Be authorized to be a debtor under state law;
 - Be insolvent;
 - Desire to effect a plan to adjust debts; and
 - Meet one of the alternative requirements of 11 USC § 109(c)(5) regarding creditors.
2. **Confirmation Binding.** Under 11 USC § 944, the provisions of a confirmed plan bind the debtor and any creditor, whether or not:
 - A. Proof of such creditor's claim is filed or deemed filed under 11 USC § 501;
 - B. Such claim is allowed under 11 USC § 502; or
 - C. Such creditor has accepted the plan.
3. **Discharge Considerations.** A Chapter 9 debtor receives a discharge when the plan is confirmed, the debtor deposits consideration to be distributed under the plan to a court-appointed disbursing agent and the court determines the validity of securities to be issued. There is no discharge as to debts excepted from discharge by the plan or order confirming the plan or owed to an entity that did not have notice or actual knowledge of the bankruptcy case before confirmation of the plan. See 11 USC § 944(b)-(c).

5.9.7.1.1 (10-15-2010) Centralized Insolvency Operations

1. **Loading the Case.** Centralized Insolvency Operation (CIO) loads Chapter 9 cases on the Automated Insolvency System (AIS). Any reports generated by the Insolvency Interface Program are to be forwarded to the Field Insolvency group assigned the case following expedited procedures. (See IRM 5.9.11.3.2, *Time Sensitive Mail*.)
2. **Misdirected Payments.** Chapter 9 payments received at the CIO must be applied to the non plan screen. The CIO Payment Posting Unit must advise the Field Insolvency office assigned the case of the payment receipt so the payment can be applied to the proper tax liability.

5.9.7.1.2 (01-01-2006) Field Insolvency

1. **Asset Proceeding.** All proceedings under Chapter 9 are to be treated as "asset" cases.

2. **Prompt Counsel Involvement.** When Field Insolvency is assigned a bankruptcy filing involving debts of a municipality, immediate contact must be made with Counsel for guidance. Chapter 9 is a complex bankruptcy proceeding.

Note:

Because of the rare occurrence of a Chapter 9 bankruptcy, IRM 5.9, *Bankruptcy and Other Insolvencies*, contains limited information on this chapter.

5.9.7.2 (07-14-2015)

Chapter 15 - Ancillary and Other Cross-Border Cases

1. **Purpose and Scope of Chapter 15.** Generally, Chapter 15 allows for the recognition in the United States of foreign insolvency proceedings, access to the domestic judicial proceedings by foreign representatives, and other specific relief upon recognition. Chapter 15 was added to the Bankruptcy Code in 2005 to incorporate the Model Law on Cross - Border Insolvency to provide mechanisms to address cross-border insolvency matters. Objectives of Chapter 15 include promoting cooperation between the United States' bankruptcy system and foreign authorities involved in cross-border insolvency cases, providing greater legal certainty for trade and investment, and creating fair and efficient administration of cross-border insolvencies. Chapter 15 applies where:

- A. A foreign court or a foreign representative seeks assistance in the United States in connection with a foreign proceeding;
- B. Assistance is requested in a foreign country in connection with a case under 11 USC;
- C. A foreign proceeding and a domestic bankruptcy for the same debtor are pending concurrently; or
- D. Parties of interest in a foreign country wish to commence or participate in a case under 11 USC.

5.9.7.2.1 (07-14-2015)

Chapter 15 Overview

1. **Chapter 15.** Chapter 15 is divided into several subchapters (general provisions; access of foreign representatives and creditors to the court; recognition of a foreign proceeding and relief; cooperation with foreign courts and foreign representatives; and concurrent proceedings) that provide a framework for cooperation between the United States and foreign countries as to insolvency cases. The proceedings commenced under Chapter 15 are termed "ancillary" cases. Other defined terms (see 11 USC § 1502) unique for Chapter 15 are:

- A. "Debtor" - an entity subject to a foreign proceeding.
- B. "Foreign court" - a judicial or other authority competent to control or supervise a foreign proceeding.
- C. "Foreign main proceeding" - a foreign proceeding pending in the country where the debtor has the center of its main interests.
- D. "Foreign nonmain proceeding" - a foreign proceeding (other than a foreign main proceeding) pending in a country where the debtor has an establishment.
- E. "Recognition" - the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under Chapter 15.

Note:

11 USC § 1508 requires the court to take into account the international origins of the Chapter and to apply it consistently with other similar statutes adopted by foreign jurisdictions.

2. **Petition for Recognition.** To commence an ancillary case under Chapter 15, a petition for recognition of the foreign proceeding is filed by the foreign representative. The Bankruptcy Code requires that certain documents accompany the petition for recognition, such as a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; a certificate from the foreign court affirming the existence of such foreign proceeding and the appointment of the foreign representative; or any other acceptable evidence proving the existence of the proceeding and appointment. The petition for recognition should also be accompanied by a statement identifying all known foreign proceedings related to the debtor. All documents must be translated into English. Also, Bankruptcy Rule 1007(a)(4) sets forth additional documents that must be filed with the petition for recognition.

Note:

All documents accompanying the petition for recognition should be reviewed by the Insolvency caseworkers for references to the Internal Revenue Service, including such references as the Commissioner of the Internal Revenue, the United States or the Department of the Treasury. It may be necessary to research the references to determine the extent of the involvement of the Internal Revenue Service.

3. **Notice of Hearing on Petition for Recognition.** Bankruptcy Rule 2002(a)(1) provides that the clerk, or some other person as the court may direct, provides notice of the recognition hearing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief (discussed below) is sought, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct. Such notice must be mailed at least 21 days in advance of the hearing on the petition for recognition of a foreign proceeding and such notice must state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding. See Bankruptcy Rule 2002(q).

Note:

The Bankruptcy Rules provide how the foreign representative must serve process when a petition for recognition is filed as to a foreign nonmain proceeding. See Bankruptcy Rule 1010(a). 11 USC § 1514(c) describes the notice requirements as to foreign creditors.

4. **Provisional Relief.** Unlike voluntary cases filed under title 11, the automatic stay does not go into effect when a petition for recognition is filed. There exists a gap period from the filing of the petition for recognition until the court rules on the petition. Where relief is urgently needed to protect the assets of the debtor or the interests of creditors, the foreign representative may request provisional relief. The court may grant the following types of provisional relief:

- Staying execution against the debtor's assets.
- Permitting the foreign representative or other authorized person, to administer the debtor's assets located in the United States to protect and preserve value. This generally involves assets which are perishable, susceptible to devaluation, or may otherwise be in jeopardy.
- Suspending the right to transfer, encumber or otherwise dispose of assets of the debtor.
- Providing for discovery of the debtor's assets and liabilities.
- Granting any additional relief that would be available to a trustee (excluding 11 USC §§ 522, 544, 545, 547, 548, 550, 724(a)).

Caution:

Caseworkers should not assume that action can be taken against assets of the debtor because the automatic stay does not go into effect at the time the petition is filed. They should determine if the court has granted provisional relief to the foreign representative that would prohibit any action proposed by the Internal Revenue Service. If there is a question as to whether the action has been prohibited by an order of provisional relief, Counsel should be consulted.

Provisional relief terminates (unless extended by the Bankruptcy Court) when the petition for recognition is granted.

5. **Effects of Recognition of a Foreign Main Proceeding.** When the court enters an order recognizing a foreign main proceeding, certain relief is granted to the foreign representative automatically, including, among other relief:

- 11 USC §§ 361 (adequate protection) and 362 (automatic stay) apply to the debtor and the debtor's property within the territorial jurisdiction of the United States.
- 11 USC §§ 363 (use, sale or lease of property), 549 (post-petition transactions) and 552 (post-petition effect of security interest) apply to a transfer of interest of the debtor that is within the territorial jurisdiction of the United States to the same extent as those sections would apply to property of the estate.
- The foreign representative may operate the debtor's business and exercise the powers of a trustee under 11 USC §§ 363 and 552, unless the court orders otherwise.

The court may grant any additional appropriate relief requested by the foreign representative once the court recognizes the foreign proceeding (whether main or nonmain) within the parameters of 11 USC § 1521 including (among other relief):

- A stay of the commencement or continuation of a proceeding involving the debtor's assets, rights, obligations or liabilities to the extent not already stayed.
- A stay of execution against the debtor's assets.
- A suspension of the right to transfer, encumber or otherwise dispose of the debtor's assets.
- Providing for discovery of the debtor's assets and liabilities.
- Granting any additional relief that may be available to a trustee (excluding 11 USC §§ 522, 544, 545, 547, 548, 550, and 724(a)).
- Permitting the foreign representative or other authorized person to administer the debtor's assets located in the United States.
- Permitting the foreign representative to distribute all or part of the debtor's assets located within the United States to the foreign representative or to another person, provided the court is satisfied that the interests of creditors in the United States are sufficiently protected.

5.9.7.2.2 (08-05-2013)

Concurrent Insolvency Proceedings

1. Commencement of a Case Under Another Chapter of the Bankruptcy Code After Recognition of a Foreign Main Proceeding in Chapter 15.

A. Upon recognition of a foreign main proceeding, the automatic stay takes effect and, 11 USC § 362 stays the commencement of a judicial proceeding against the debtor. Chapter 15 provides an exception to the stay in 11 USC § 1520(c) by allowing, upon recognition of a foreign main proceeding, a foreign representative or an entity to file a petition commencing a case under title 11.

B. Section 1520(c)'s exception complements 11 USC § 1511, which permits a foreign representative, upon recognition, to commence an involuntary case under 11 USC § 303 or, if a representative of a recognized foreign main proceeding, a voluntary case under 11 USC §§ 301 or 302.

Note:

11 USC § 1528 provides that a case under another chapter of the Bankruptcy Code may be commenced after recognition of a foreign main proceeding only if the debtor has assets in the United States. The effects of the case are restricted to the assets of the debtor within the territorial jurisdiction of the United States along with other assets of the debtor that are property of the estate and are not under the jurisdiction and control of the foreign proceeding that was recognized under Chapter 15.

C. Once a case is filed under another chapter, the caseworker handling an open Chapter 15 case should verify that the case has been loaded on the Automated Insolvency System (AIS), and should note in the history the details of the related case. The related case should be assigned based on the Case Assignment Guide. If the purpose of the Chapter 15 was to allow the foreign representative to file a bankruptcy case under another chapter, the caseworker should consult with Counsel, and if there is no objection, should close the Chapter 15 case.

2. **Coordination of a Case Under Title 11 and a Foreign Proceeding.** If a foreign proceeding and a case under another chapter of title 11 are pending at the same time regarding the same debtor, the Bankruptcy Court must seek cooperation and coordination with the foreign courts or representatives and may suspend or dismiss the title 11 case, if in the interest of the creditors and the debtor.

3. **Case Pending Under Another Chapter at the Time Petition for Recognition is Filed.** When there is a case under another chapter pending at the time a Chapter 15 case is filed, relief (including provisional relief) will be granted only if consistent with the relief granted in the case pending in the United States, and the effects of recognition of a foreign main proceeding (such as the automatic stay) do not apply. Generally a United States case trumps a foreign proceeding.

4. **Case Commenced Under Another Chapter after Recognition or Petition for Recognition Filed.** If a case is filed under another bankruptcy chapter after a petition for recognition is filed or after recognition is granted to the foreign representative, any relief granted in the Chapter 15 case must be modified or terminated if it is inconsistent with the case under another chapter of the Bankruptcy Code.

5. **Rule of Payment in Concurrent Proceedings.** In these concurrent proceedings, a creditor cannot receive more favorable treatment than other creditors in the same class by payment of the same claim in foreign insolvency proceedings.

Note:

Caseworkers assigned to a Chapter 15 case should be aware that an order in any other case filed under the Bankruptcy Code and involving the debtor may affect the actions that can be taken. It may be necessary to review the docket sheets of both cases. If there is any question as to whether an action can be taken, Counsel should be consulted.

5.9.7.2.3 (05-13-2008)

Centralized Insolvency

1. **Initial Processing.** As with Chapter 9 cases, Centralized Insolvency's involvement with Chapter 15 bankruptcies is limited to loading the cases on the Automated Insolvency System (AIS) and posting any Chapter 15 payments that are sent to the CIO in error rather than to the Field Insolvency office handling the case. Any reports generated by the Insolvency Interface Program must be forwarded to the Field Insolvency group assigned the case following expedited procedures. (See IRM 5.9.11.3.2, *Time Sensitive Mail*.)

5.9.7.2.3.1 (08-05-2013)

Chapter 15 Payments Received by the CIO

1. **Misdirected Payments.** Chapter 15 payments received at the CIO must be applied to the non plan screen. The CIO Payment Posting Unit must advise the Field Insolvency office assigned the case of the payment receipt, so the payment can be applied to the proper tax liability.

5.9.7.2.4 (07-14-2015)

Field Insolvency

1. **Initial Case Review.** Upon notice of a Chapter 15 case, Field Insolvency must add the case to AIS. The caseworker must review the Chapter 15 case to determine if a referral should be made to Counsel.

2. **Referral Criteria.** Caseworkers should review the petition for recognition and the related documents, and should research IDRS to determine if the debtor has any outstanding federal tax liabilities. The case should be referred to Counsel if the documents show that any of the following criteria are met:

- The debtor has assets within the United States valued at $\geq \$100,000$. Caseworkers should not rely solely on the valuation of the debtor's assets as shown on the petition, as this value may include assets located outside the United States.
- The debtor has assessed or estimated tax liabilities in a total amount of $\geq \$100,000$.

Caution:

If the petition for recognition and the related documents indicate that the foreign representative is requesting recognition in order to sell assets of the debtor located in the United States, the debtor may owe income taxes to the United States as a consequence of the sale. If the caseworker has any questions as to whether a proposed sale will have tax consequences, the caseworker should contact Counsel.

The petition for recognition or any of the related documents request a change to or relief from the requirements of the Internal Revenue Code, such as a change from return filing requirements or a request that the debtor's liability under the Internal Revenue Code be limited.

If none of the criteria is met, the caseworker does not need to make a referral to Counsel and the case can be closed. If a referral is made, the case should remain open until Counsel indicates it can be closed.

3. **Notification of Filings in a Chapter 15 Case.** If Field Insolvency receives notice of the filing of a motion or other document in a Chapter 15 case and an initial case review has not previously been conducted, caseworkers should conduct an initial review of the case, including a review of the document received, and determine if a referral should be made to Counsel. If an initial case review was previously conducted and it was determined the referral criteria was not met, the caseworker should review the document received and determine if it is now necessary to refer the case based on a change in conditions. If the caseworker has questions about the document received, Counsel should be contacted for guidance. For cases previously referred, the document should be forwarded to Counsel for association with the case.

4. **Referral to Counsel.** Caseworkers should refer cases meeting the referral criteria as soon as possible after the initial case review, or after a determination is made following receipt of notice that the referral criteria has been met. Caseworkers should include the following items in the referral package:

- A draft of a proof of claim showing the outstanding tax liability to the United States, if any;

Note:

A claim is filed in a Chapter 15 case only if the court orders it.

- A copy of any proofs of claim filed in a case filed under any other chapter for the debtor.
- A referral memo providing the name of the debtor, the complete TIN, if any, the case number and the court where the Chapter 15 case was filed, and the reason for the referral. If a case is open for the debtor under another chapter of the Bankruptcy Code, provide the case number and court where the other case was filed, along with any relevant history regarding the case.
- If the case was opened based on notice received of a motion or other document, copies of the documents received.

5. **Chapter 15 Payments.** The Field Insolvency office handling a Chapter 15 case must instruct the foreign representative to send bankruptcy payments to that local office.

6. **Closing a Chapter 15 Case.** A debtor in a Chapter 15 case does not receive a discharge. No tax liability should be abated when only a Chapter 15 case is filed in the United States. If another case is filed for the debtor under another chapter, such as a Chapter 7 or 11 case, refer to the discussion under IRM 5.9.7.2.2, Concurrent Insolvency Proceedings. A Chapter 15 case should be closed on AIS as a dismissal.

5.9.7.3 (08-05-2013)

Collecting Tax Debt in a Foreign Country When There is No U.S. Bankruptcy Proceeding

1. **Revenue Rule.** Generally, the Service does not participate in foreign insolvency proceedings because the majority of countries, including the U.S., prohibit the enforcement of foreign tax claims in their courts. This prohibition is commonly referred to as the revenue rule. The revenue rule provides that no country ever takes notice of the revenue laws of another.
2. **Tax Treaties.** Claims in foreign insolvency proceedings may be pursued through the mutual collection assistance request (MCAR) process provided under some U.S. Tax treaties. These tax treaties abrogate (or supersede) the revenue rule with respect to the U.S. and the particular treaty partner. Currently, there are five countries with which the U.S. has tax treaties that provide for mutual collection assistance - Canada, Denmark, France, the Netherlands, and Sweden. The tax treaties between the U.S. and these countries permit the U.S. and the other country to collect, for each other, taxes that have been finally determined (i.e., assessed and subject to immediate collection).
3. **Filing Claims.** When notified of an insolvency proceeding in a foreign country, Insolvency should refer the matter to Counsel to be coordinated with Branch 5, Office of the Associate Chief Counsel (Procedure and Administration). In non-treaty countries, there are important considerations as to whether the Service should proceed with collection, such as the ability to defend the claim because of the disclosure rules in IRC § 6103 and the potential for subjecting the U.S. (as a whole) to a foreign court's jurisdiction.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 8. Processing Chapter 11 Bankruptcy Cases

5.9.8 Processing Chapter 11 Bankruptcy Cases

- 5.9.8.1 [Introduction](#)
- 5.9.8.2 [The Chapter 11 Debtor](#)
- 5.9.8.3 [Initial Processing](#)
- 5.9.8.4 [Initial Case Review for Chapter 11](#)
- 5.9.8.5 [Adequate Protection](#)
- 5.9.8.6 [Pre-petition Levies](#)
- 5.9.8.7 [Cash Collateral/Property Depreciation of the Estate](#)
- 5.9.8.8 [Quickie Refunds](#)
- 5.9.8.9 [Collection Statute of Limitations and Chapter 11 Plans](#)
- 5.9.8.10 [Trust Fund Considerations in Chapter 11](#)
- 5.9.8.11 [Closing Chapter 11 No Liability Cases](#)
- 5.9.8.12 [Post-petition/Pre-confirmation BMF Monitoring](#)
- 5.9.8.13 [Internal Revenue Code § 1398 Issues](#)
- 5.9.8.14 [Disclosure Statements and Plans of Reorganization](#)
- 5.9.8.15 [The Chapter 11 Discharge and the Effects of Confirmation](#)
- 5.9.8.16 [Post-Confirmation Actions](#)
- 5.9.8.17 [Closing Chapter 11 Bankruptcies](#)
- Exhibit 5.9.8-1 [Adding the Confirmed Plan to AIS](#)

Manual Transmittal

September 29, 2015

Purpose

(1) This transmits a revised IRM 5.9.8, *Processing Chapter 11 Bankruptcy Cases*.

Material Changes

(1) The content in IRM 5.9.8, *Processing Chapter 11 Bankruptcy Cases*, has been updated, expanded, and reformatted to provide clarification of existing material. The table below shows substantive changes within this IRM revision.

IRM	Change
5.9.8.1(1)	A new paragraph has been added to discuss the users of this IRM.
5.9.8.1(7)	Cases may be referred to Associate Area Counsel or the U.S. Attorney's Office (USAO). The term "Counsel" is used to refer to whichever office is appropriate.
5.9.8.4(1)	An initial case review is required even when there are no outstanding liabilities or delinquent returns.
5.9.8.4.2	The requirement to determine if a referral to the Withholding Compliance Function for issuance of a lock-in letter during the initial case review has been removed.
5.9.8.4.2(1)	Caseworkers discuss the individual or joint debtor's responsibility to obtain an Employer Identification Number (EIN) and report income on Form 1041 at the 341 Meeting of Creditors.
5.9.8.4.2(2)	Caseworkers are cautioned that monitoring is required in the "no liability" case.
5.9.8.4.2(7)	The Letter 982, <i>Fiduciary Payment of Claim</i> , has been added to the list of letters that may be required during the initial case review. When a debtor does not provide their EIN after issuance of the Letter 4914, the caseworker is required to contact the debtor to secure the EIN.
5.9.8.7(4)	Content has been revised to clarify that the trustee or debtor-in-possession (DIP) may obtain post-petition financing.
5.9.8.8(3)	Since the automatic stay does not always prevent the Service from doing a setoff, the paragraph has been changed to show that the automatic stay sometimes (not always) prevents the Service from setting off refunds against liabilities.
5.9.8.10(7)	FI caseworkers must input a history item on IDRS to alert other functions that only FI should reverse a TC 470 cc 93 input to suspend collection of the TFRP from responsible parties.
5.9.8.11	<i>Chapter 11 No Liability Cases</i> has been moved from IRM 5.9.8.13 to IRM 5.9.8.11 and renamed <i>Closing Chapter 11 No Liability Cases</i> .
5.9.8.12(1)	Follow-ups may be scheduled on the Automated Insolvency System (AIS) to monitor post-petition compliance.
5.9.8.12.1(4)	A note has been added to remind caseworkers to contact the debtor to secure the EIN for reporting income on Form 1041 when not provided by the debtor.
5.9.8.12.1(5)	Generally, installment agreement requests for post-petition liabilities are not processable when a taxpayer is in bankruptcy.
5.9.8.12.1.1	A new subsection has been added which discusses post-petition pre-discharge Individual Shared Responsibility Payment (SRP) liabilities of the Chapter 11 debtor.
5.9.8.14.2(1)	Caseworkers must monitor to ensure Chapter 11 plans are timely filed.
5.9.8.14.2(4)(d)	The interest rate for large corporate underpayments has been corrected.
5.9.8.14.3	A new subsection discusses Chapter 11 plans and restitution assessments.
5.9.8.14.3.1	Restitution assessments paid outside the bankruptcy plan are discussed.
5.9.8.14.3.2	Restitution assessments paid inside the bankruptcy plan are discussed.
5.9.8.15.1	Chapter 11 discharge and pre-petition SRP liabilities are discussed.
5.9.8.16(2)	The stay may be lifted when discharge is denied.
5.9.8.16.2	The title of the subsection and content has been changed to clarify that the subsection addresses the refiling of the Notice of Federal Tax Lien (NFTL).
5.9.8.16.3(1)(e)	The note was removed from the paragraph as it was repetitive.
5.9.8.16.3(7)	No attempts can be made to collect discharged taxes from the debtor. However, discharged liabilities can still be collected from exempt, abandoned or excluded property.

5.9.8.16.4.1(1)	Caseworkers monitor post-confirmation filing, depositing, and paying compliance in the same manner they monitored post-petition/pre-confirmation compliance.
5.9.8.16.4.2(1)	The stay may be lifted when discharge is denied.
5.9.8.16.4.2(4)	In most instances, installment agreement requests for post-confirmation liabilities are not processable when a taxpayer is in bankruptcy.
5.9.8.17(1)	Discharge has been added to the list of events that may close a Chapter 11 case.

(2) Editorial changes were made throughout this section to add clarity and to update or correct citations.

Effect on Other Documents

his material supersedes IRM 5.9.8 dated April 17, 2013. This revision incorporates content from interim guidance: SBSE-05-1214-0083, *Processing the Individual Shared Responsibility Payment (SRP) in Bankruptcy Cases*, dated December 15, 2014; SBSE-05-0115-0007, *Procedures for Processing Bankruptcy Cases with Restitution Assessments*, dated January 15, 2015; SBSE-05-0315-0033, *Processing Installment Agreement Requests for Post-Petition Liabilities when a Taxpayer is in Bankruptcy*, dated March 23, 2015

Audience

All Operating Divisions

Effective Date

(09-29-2015)

Kristen Bailey, Director
Collection Policy

5.9.8.1 (09-29-2015) Introduction

- Audience of this IRM.** This IRM section contains guidance on processing bankruptcy cases filed under Chapter 11 of the United States Bankruptcy Code (USBC). Caseworkers in Field Insolvency (FI) within Specialty Collection Insolvency (SCI) are the primary users of this section. Caseworkers at the Centralized Insolvency Operation (CIO) within SCI also use this section. However, employees in other functions may refer to this section when dealing with a taxpayer that has filed Chapter 11 bankruptcy. Service employees may also refer to IRM 5.17.10, *Legal Reference Guide for Revenue Officers, Chapter 11 Bankruptcy (Reorganization)*, for additional information on Chapter 11 bankruptcies.
- Reorganization.** Chapter 11 bankruptcy is a rehabilitative case that gives the debtor a "breathing period" from the petition filing to plan confirmation, during which time business affairs can be reorganized and a plan devised for the orderly payment of creditors. Chapter 11 is frequently referred to as the *reorganization bankruptcy*. However, a debtor may choose to liquidate instead of reorganizing in a Chapter 11 bankruptcy.
 - A Chapter 11 bankruptcy petition may be filed *voluntarily* by the debtor or *involuntarily* by creditors.
 - An involuntary case may not be filed against a farmer or a noncommercial corporation.

Note:

The Service will not initiate or join in an action to request an involuntary bankruptcy for a taxpayer unless extraordinary circumstances are present. Insolvency will prepare a referral to Counsel to request the initiation or participation in the involuntary petition when qualifying circumstances are present.

- Debtor-in-Possession (DIP)/Trustee.** In a Chapter 11 case, the debtor usually operates as a debtor-in-possession (DIP). However, a trustee or an examiner may be appointed for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case (11 USC § 1104). For cases filed on or after October 17, 2005, the bankruptcy court may convert or dismiss a case for cause unless the court determines that appointment of a trustee or examiner is in the best interests of creditors and the estate (11 USC § 1112(b)(1)). The duties of the trustee or DIP include administering the estate and operating the debtor's business (11 USC §§ 1106 and 1108). In a timely fashion, the DIP or trustee must either:
 - File a plan or a report explaining why a plan will not be filed or
 - Recommend the case be converted to another chapter or be dismissed.
- Complex/Long Duration.** Chapter 11 cases are ordinarily more labor-intensive to monitor and evaluate than other bankruptcies because of complexities of the restructuring efforts in the process. After a plan is confirmed, the creditors must monitor their receipt of payments under the terms of the plan. A Chapter 11 bankruptcy case can last for several years.
- Centralized Insolvency Operation (CIO).** CIO loads Chapter 11 cases onto the Automated Insolvency System (AIS), runs IIP and works the error, Potential Invalid TIN and status reports (except for status 22) for those cases. If a MFT 31 split for a non-debtor spouse is required for an individual Chapter 11 case, the CIO technical units will perform all required mirroring actions. Chapter 11 mail received at the national mailing address in Philadelphia will be mailed, shipped overnight, or faxed to the FI group assigned the case depending on the urgency of the correspondence. (See IRM 5.9.11.3.2, *Insolvency Mail Processing, Time Sensitive Mail*, and IRM 5.9.11.3.3.1, *Insolvency Mail Processing, Routine Notice Requiring Further Processing*.)
- Field Insolvency (FI) Responsibility.** With the exception of initial clerical processing and MFT 31 mirroring, Chapter 11 casework remains the responsibility of FI groups. Chapter 11 caseworkers should ask trustees or DIPs to send plans, schedules, disclosure statements, and payments directly to the local FI office.
- Counsel.** Certain issues in a Chapter 11 case may be referred to Associate Area Counsel or directly to the U.S. Attorney's Office (USAO). Within this IRM, the term "Counsel" refers to Associate Area Counsel or the USAO, whichever is appropriate. For more information on referrals, see the following subsections in IRM 5.9.4, *Common Bankruptcy Issues*:
 - IRM 5.9.4.14, *Referrals — Representing IRS in Bankruptcy Court*
 - IRM 5.9.4.14.1, *Direct Referrals*
 - IRM 5.9.4.14.2, *Referrals to Counsel (Non-Direct Referrals)*
 - IRM 5.9.4.14.3, *Significant Bankruptcy Case Referrals*
 - IRM 5.9.4.14.4, *Referral Tolerances*

5.9.8.2 (04-17-2013) The Chapter 11 Debtor

- Eligibility.** Any entity eligible to file a Chapter 7 petition (individual, Limited Liability Company (LLC), partnership, or corporation) can file Chapter 11, *except* a stockbroker or a commodity broker. As in Chapter 7, certain banks, savings and loan associations, and insurance companies cannot file a Chapter 11 petition. A railroad, which cannot file a Chapter 7 petition, *may* file a Chapter 11 petition.

Note:

While some entities may not file Chapter 11 petitions, a corporation that owns that entity may file Chapter 11 if it may otherwise be a debtor in a Chapter 11 case.

2. **Main Chapter for Non-individual Debtors.** Chapter 11 is the primary reorganization chapter of the Bankruptcy Code for non-individual debtors. Ideally, a reorganizing Chapter 11 plan is acceptable to most of the debtor's creditors because the plan is more likely (over time) to pay a greater amount of the debtor's pre-bankruptcy debts than if the business were liquidated. A Chapter 11 bankruptcy allows the debtor to continue business operations through a plan of reorganization which meets statutory criteria (11 USC §§ 1123 and 1129). Cooperation among the various interests is crucial to a successful reorganization. Generally, reorganization, by preserving jobs and assets, is preferable to liquidation. However, a debtor may choose to liquidate in a Chapter 11 bankruptcy instead of reorganizing.
3. **Individuals and Chapter 11.** An individual is eligible to file Chapter 11 even if the individual is not engaged in a business.
4. **Property of the Estate.** Property of the estate in a Chapter 11 case includes the property listed in 11 USC § 541. When the Chapter 11 debtor is an individual in a bankruptcy case filed after October 17, 2005, 11 USC § 1115 provides that property of the estate also includes earnings from services performed by the debtor after the petition date until the case is dismissed, converted, or closed.

5.9.8.3 (04-17-2013) Initial Processing

1. **Notice.** The bankruptcy courts provide the IRS with notice of all Chapter 11 cases whether or not the IRS is listed as a creditor. This notice provides the date, time, and location of the first meeting of creditors, as required by 11 USC § 341. The court may also provide copies of the debtor's schedules of assets and liabilities and the statement of financial affairs to the creditor.
2. **First Meeting of Creditors and Pre-packaged Chapter 11 Cases.** The first meeting of creditors (also known as the 341 hearing) generally occurs 20—40 days after the filing of the petition. However, for cases filed on or after October 17, 2005, under 11 USC § 341(e), upon request of a party in interest and after notice and hearing, the court can order the US Trustee not to convene a meeting of creditors if the debtor files a pre-packaged Chapter 11. A pre-packaged Chapter 11 is where the debtor prepares a plan and solicits acceptance of the plan prior to the commencement of the case. FI, with Counsel's concurrence, may consider opposing the 11 USC § 341(e) request if the lack of a 341 hearing will compromise the Service's position.
3. **Preventing Violations of Automatic Stay.** If FI research reveals no liabilities or pending assessments in a case, a TC 520 control should remain on the account until the potential for a violation of the USBC expires. The freeze also allows for monitoring of post-petition tax compliance.
4. **Proof of Claim.** If the Automated Proof of Claim (APOC) system is unavailable and the debtor owes taxes above the tolerance specified in IRM Exhibit 5.9.13-1, *Manual Proofs of Claim and Common Bankruptcy Issues, Threshold for Claims*, a manual claim should be prepared and timely filed in accordance with IRM 5.9.13, *Manual Proofs of Claim and Common Claim Issues*. Motions and hearings involving the IRS can begin early in Chapter 11 cases, so the IRS claim should be on record as soon as possible. The bar date for filing proofs of claim in Chapter 11 cases is set by the court, but the Service has at least 180 days from the petition date pursuant to 11 USC § 502(b)(9).
 - A. 11 USC § 1111(a) provides a claim is deemed to be filed for any debt listed on the debtor's schedules, *except* a debt listed as disputed, contingent, or unliquidated.
 - B. There may be unfiled pre-petition returns when the claim is prepared. Show potential liabilities for any unfiled returns as "unassessed" (formerly listed as estimated).
 - C. APOC generates estimated claims systemically. When no basis is found for an estimated claim, APOC annotates the period as "Not Filed" and the dollar amount as "\$100.00".
5. **Proof of Claim Filing Criteria.** The IRS should not rely on being listed in the bankruptcy schedules. A proof of claim should be filed in every case meeting the tolerances specified in IRM Exhibit 5.9.13-1. However, the tolerance criterion does not prohibit FI from filing claims where liabilities fall below the stated dollar amounts. Local practice may specify filing claims on all balance due accounts.

Note:

APOC processing is not governed by IRM Exhibit 5.9.13-1 criteria.

5.9.8.4 (09-29-2015) Initial Case Review for Chapter 11

1. **Initial Review.** A timely and thorough initial case review is necessary to protect the interest of the Service in a Chapter 11 bankruptcy case. The review will identify issues that the caseworker needs to address at the Section 341 Meeting of Creditors. The caseworker must establish the frequency of post-petition monitoring based on the debtor's prior tax liabilities and compliance history.

Caution:

An initial case review is required even if there are no outstanding liabilities or delinquent returns.

5.9.8.4.1 (04-17-2013) Initial Case Review Time Frames for the Chapter 11 Case

1. **General Time Frame.** FI caseworkers must conduct an initial case review at least five calendar days prior to the 341 Meeting of Creditors. The review must be completed within 30 calendar days of assignment when the case is not received at least five calendar days prior to the 341. Primary case actions must be taken during the initial case review.

Caution:

Expeditious action is needed to protect the bar date when the case is received less than 30 calendar days before the bar date.

2. **Aspects of the Review that Are Required Earlier.** Certain elements of the initial case review are required sooner. Some of these elements are:

- Resolving stay violations
- Determining if the case is a pre-packaged Chapter 11 case
- Identifying cases that meet Significant Bankruptcy Case Program criteria
- Referral of the significant bankruptcy case to TEGE and Area Counsel
- Responding to pending motions or defensive litigation

3. **Aspects of the Review Requiring Action within Five Calendar Days.** The caseworker must work Automated Proof of Claim (APOC) flags within five calendar days of APOC identifying a potential violation of the stay. (IRM 5.9.14.2.7, *Electronic Proofs of Claim and Automated Proofs of Claim, APOC Flag Condition Time Frame Requirements*) Flags that identify possible stay violations are:

- Credits Posted After Petition Date
- Lien Recorded Date Blank

4. **Aspects of the Review Requiring Action within Ten Calendar Days.** Issues that must be addressed within ten calendar days of assignment are:

- Adequate protection, when APOC identifies that the Service has a NFTL on file. Caseworkers must work the "Secured Period" flagged condition within ten calendar days of APOC identifying the condition. (See IRM 5.9.14.2.7(1)(b), *Electronic Proofs of Claim and Automated Proofs of Claim, APOC Flag Condition Time Frame Requirements*.)
- Determining if the case is a pre-packaged Chapter 11 case.
- Determining if the case meets "significant case" criteria requiring a referral to Area Counsel. (IRM 5.9.4.14.3, *Common Bankruptcy Issues, Significant Bankruptcy Case Referrals*, and IRM 5.9.8.4.2(15), *Significant Cases and Referrals to Counsel*)
- Notice to TEGE when the case meets significant case criteria or the debtor is a nationally known company. (IRM 5.9.8.4.2(11), *Notice to TEGE*)

5.9.8.4.2 (09-29-2015)

Aspects of the Initial Case Review in the Chapter 11 Case

1. **Bankruptcy Petition, Schedules, and SOFA.** Numerous electronic tools are available to assist the caseworker with an initial case review. At minimum, the caseworker must review the debtor's bankruptcy petition and bankruptcy Schedules A - J. Additionally, the Statement of Financial Affairs (SOFA) must be reviewed. The debtor's attorney may mail the bankruptcy petition, schedules, and SOFA to the Service. The petition, schedules, and SOFA are also available electronically on PACER.

Issues requiring clarification at the 341 meeting of creditors may be identified as the caseworker completes the initial case review. The caseworker may also determine that there are no issues for discussion at the 341. Document the AIS history clearly with any issues requiring a discussion at the 341. If there are no issues, state that there are no issues for discussion at the 341. The caseworker must document whether or not they will attend the 341 meeting.

The following list contains examples of items that may be discussed at the 341 (not all-inclusive):

- Give the taxpayer Publication 1, *Your Rights as a Taxpayer*, when not issued prior to the 341.
- In an individual or joint debtor case, discuss the debtor's responsibility to obtain an Employer Identification Number (EIN), report income on Form 1041, *U.S. Income Tax Return for Estates and Trusts*, and to provide the EIN to the caseworker shown on the Letter 4914, *Notice to Individual Chapter 11 Debtor Regarding Income Tax Filing Responsibilities*.
- Ask the debtor how they arrived at the value of assets listed in the bankruptcy schedules.
- Ask why specific assets are not listed in the bankruptcy schedules. This is important when research performed by the Service locates assets not disclosed in the bankruptcy schedules.
- Who are the parties that may be responsible for the TFRP?
- Is the debtor's business continuing to operate?
- How many employees does the business currently employ?
- Does the business pay employees weekly, bi-weekly, or monthly?
- What is the total wage expense per payroll period?
- Ask the debtor to file any delinquent tax returns by an established deadline. Then, advise the taxpayer of the consequences of non-compliance.
- Take the opportunity to discuss Federal Tax Deposit (FTD) requirements with the debtor. Ask if they understand FTD requirements.
- Ask if the debtor plans to reorganize or liquidate through the Chapter 11 proceeding.

Note:

The caseworker can gather information regarding the taxpayer's business by sending Letter 3928 and Form 13648, *Request for Business Information*, to the taxpayer before the 341.

2. **Determination of Compliance Monitoring Requirements.** During the initial case review, the caseworker must determine the debtor's filing requirements. The frequency of required Federal Tax Deposits (FTDs) and/or estimated tax payments must also be determined. Post-petition compliance monitoring must be scheduled based on the debtor's pre-petition requirements. (IRM 5.9.8.12, *Post-petition/Pre-confirmation BMF Monitoring*, and IRM 5.9.8.12.1, *Post-petition Debts - Chapter 11 Individuals*)

Caution:

Monitoring is required in the "no liability" case. The "no liability" case cannot be closed until all the requirements in IRM 5.9.8.11, *Closing Chapter 11 No Liability Cases*, have been met. This includes a review of the proposed plan.

3. **Employee Leasing.** The caseworker must determine if employee leasing relationships exist. This is when the business purportedly transfers some or all of its employees to another entity that leases them back to the original employer. Coordination with Counsel is required if this situation is suspected.
4. **Exam Issues.** IRM 5.9.4.3, *Common Bankruptcy Issues, Examination and Insolvency*, provides guidance for addressing examination issues including abusive tax shelters and employee plans. A review of IDRS cc AMDISA and contact with the revenue agent or examiner may be necessary.
5. **IDRS.** The caseworker must review IDRS to clarify issues that will not be determined by the Automated Proof of Claim (APOC) program. These issues include the debtor's:
 - Filing requirements and return filing history.
 - Last quarter for which a Form 941 was filed, if applicable.
 - Currency with making FTDs since the filing of the latest Form 941, if applicable.
 - Failure to make any FTDs, if applicable.
 - Currency with making estimated tax payments, when required.
 - Ownership of real property as evidenced by the presence of mortgage interest paid on IDRS cc IRPTRL.

Note:

A review of IDRS will determine the frequency of post-petition compliance monitoring. (See IRM 5.9.8.12, *Post-petition/Pre-confirmation BMF Monitoring*, and IRM 5.9.8.12.1, *Post-petition Debts - Chapter 11 Individuals*.)

6. **Integrated Collection System (ICS).** Caseworkers must review any ICS history for prior Field Collection (FC) involvement. The caseworker may need to contact the Revenue Officer (RO).
7. **Letters to Fiduciary.** To promote post-petition filing and paying compliance, the caseworker must issue the following letters to the DIP or Trustee, when applicable:

- Letter 982, *Fiduciary Payment of Claim*. This letter advises the DIP or Trustee of the basic requirements for the treatment of the Service's claim in the bankruptcy plan for IRS to accept the proposed plan of reorganization.
 - Letter 986, *Letter to Fiduciary*. This letter clarifies the fiduciary's obligation to file tax returns and pay taxes that become due during the pendency of the bankruptcy proceeding.
 - Letter 4914, *Notice to Individual Chapter 11 Debtor Regarding Income Tax Filing Responsibilities*. This letter notifies the DIP in the individual or joint bankruptcy case that income tax filing and reporting requirements may have changed. In the joint bankruptcy case, send each individual a Letter 4914. The Form 1041 is not a joint income tax return. (See IRM 5.9.8.13, *Internal Revenue Code § 1398 Issues - The Bankruptcy Estate in the Individual Chapter 11 Case*.) The Letter 4914 also instructs the debtor to notify the FI caseworker of their EIN, when secured. If the debtor has not provided the EIN within 60 days of issuance of the Letter 4914, contact the debtor to secure the EIN.
8. **Letter to Non-Debtor Spouse.** The Letter 4521, *Non-Debtor Letter*, must be sent to non-debtor spouses who owe joint tax liabilities with the individual Chapter 11 debtor. The joint liability owed by the non-debtor spouse will not be abated for the non-debtor spouse, even though a discharge is entered in the bankruptcy case. Only the liability owed by the debtor spouse will be abated when the taxes are discharged in the Chapter 11 case. (See IRM 5.9.18.5.8, *Automated Discharge System (ADS), Flagged Conditions, Community Property*, for exceptions in community property locations.)
9. **NFTL Refile and Adequate Protection.** The caseworker must determine if any Notices of Federal Tax Lien (NFTLs) require refile. Request refile of the NFTL during the initial case review when the review is conducted during the refile window. A follow-up is required to refile the NFTL when the refile window occurs later in the bankruptcy. The potential for adequate protection must be addressed during the initial case review when a NFTL was filed pre-petition. (See IRM 5.9.8.5, *Adequate Protection*.)
10. **LLCs.** The caseworker must identify the presence of LLCs and determine how the LLC should be treated for tax and proof of claim filing purposes. Counsel may be consulted when issues arise that cannot be easily resolved. IRM 5.9.13.14, *Manual Proofs of Claims and Other Claim Issues, Limited Liability Companies (LLC)*, and IRM 5.9.14.2.8(5)(i), *Automated Proofs Of Claim (APOC), Case Flags, Case Flag Conditions and Resolution, LLC Flags*, provide more information about LLCs.
11. **Notice to TEGE.** To protect the integrity of the employee plans of businesses that have declared bankruptcy, FI must notify the Employee Plan (EP) function of the Tax Exempt/Government Entity (TEGE) Division when:

- A Chapter 11 bankruptcy meeting "significant case" criteria is filed, or
- A nationally known company has filed bankruptcy.

Note:

Notification to TEGE is required even though the company filing bankruptcy may not have a tax liability.

The caseworker must take the following steps within two business days of the identification of a "significant case" or within two business days upon learning that a nationally known company has filed bankruptcy:

- A. Print a copy of the AIS entity screen showing the debtor's name, TIN, docket number, and petition date.
- B. Prepare Form 3210, *Document Transmittal*, with the annotation, "The attached prints represent Chapter 11 bankruptcy filings which may impact employee plans."
- C. Mail the Form 3210 and attached AIS screen prints to:
Internal Revenue Service
EP Classification
9350 Flair Drive, 4th Floor
El Monte, CA 91731-2885
- D. Annotate the AIS history that an AIS print has been forwarded to EP for review.

If TEGE identifies an IRC § 4971 liability due to underfunding of a pension plan, or if an IRC § 4971 liability is assessed on IDRS, contact Counsel. (See IRM 5.17.10.6.3(2), *Legal Reference Guide for Revenue Officers, Chapter 11 Bankruptcy (Reorganization), Pensions and Penalties*, and Chief Counsel Notice (CCN) 2006-007.)

12. **Pre-packaged Chapter 11.** The caseworker must determine if the case is a pre-packaged bankruptcy. In the pre-packaged Chapter 11, the debtor solicits the creditors' approval of a plan of reorganization prior to the filing of the bankruptcy petition. If the plan has been pre-packaged and the Service was not part of the negotiations, the caseworker must secure a copy of the plan, review it expeditiously, and consult with Counsel.
13. **Prior Bankruptcies.** The caseworker must check for evidence of prior bankruptcies. A prior case may affect tolling or the automatic stay in the case, may indicate possible lack of feasibility of the plan in the current case, or may prohibit the debtor from receiving a discharge in the current case. In some cases where a debtor has previously filed bankruptcy, the automatic stay may not apply or may terminate early with respect to the debtor and property of the debtor that is not property of the bankruptcy estate. (See 11 USC § 362(c)(3) and (4) and 11 USC § 362(n) in cases of repeat filers.) In some instances, debtors may contend that the bankruptcy plan in previous bankruptcy cases discharged certain liabilities in the prior bankruptcy case. See the following content in IRM 5.9.5, *Opening a Bankruptcy Case*, for additional information:
- IRM 5.9.5.7, *Serial Filers*
 - IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*
 - IRM Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*
 - IRM Exhibit 5.9.5-4, *Common Processing Steps in Serial Filer Cases*
 - IRM Exhibit 5.9.5-5, *Processing the Serial Filer Case When the Stay Terminates After 30 Days*
 - IRM Exhibit 5.9.5-6, *Processing the Serial Filer Case When No Stay Goes into Effect*
14. **Refund Issues.** The caseworker must ensure the correct bankruptcy freeze code has been placed on the account and check for the presence of a "quickie" refund request. IRM 5.9.8.8, *Quickie Refunds*, provides guidance in addressing these refund requests.
15. **Significant Cases and Referrals to Area Counsel.** As directed in IRM 5.9.4.14.3, *Significant Bankruptcy Case Referrals*, cases meeting the Significant Bankruptcy Case Program criteria must be referred to Area Counsel within two business days of notification. Upon referral, Area Counsel takes an active role in coordinating the Service's efforts in these cases, which are usually Chapter 11 cases.

Reminder:

Even if the debtor has no outstanding pre-petition tax liability, the caseworker must refer the case meeting "Significant Bankruptcy Case Program" criteria to Area Counsel and TEGE.

16. **Stay Violations.** The caseworker must identify potential stay violations such as NFTLs recorded post-petition, levy proceeds received after the petition date, or notices sent in violation of the stay. IRM 5.9.8.6, *Pre-petition Levies*, provides guidance in addressing levies. Potential stay violations from enforced collections must be resolved.

17. **Subsidiaries or Parent Company.** The caseworker must determine if the entity is a subsidiary of a parent company or is a parent company with subsidiaries. Subsidiary refunds or liabilities must be noted in the AIS history. Difficult setoff issues arise when refunds are owed to members of a consolidated group. If a refund is owed to a group or some of its members and members of the group also owe liabilities, FI should consult Counsel regarding the Service's setoff rights.

Note:

Members of a group can be severally liable for pension underfunding penalties under IRC § 4971 as well as for income taxes.

18. **TFRP Issues.** For corporations and some Limited Liability Companies (LLCs), caseworkers must conduct an Automated Trust Fund Recovery (ATFR) review to determine what periods, if any, are currently proposed. Determine which responsible parties have been proposed assertions of the TFRP. The TFRP may be proposed against:

- Officers or other responsible parties of a corporation
- Members of a multi-member LLC taxed as a partnership
- Members, managers, or other responsible parties of the LLC taxed as a corporation
- The single-member of a LLC with liabilities for withholding periods that began on or after January 1, 2009
- Another corporation
- Payroll Service Provider (PSP)
- Responsible parties within a PSP
- Professional Employer Organization (PEO)
- Responsible parties within a PEO
- Responsible parties within the common law employer (client of the PSP or PEO)

Note:

See IRM 5.9.13.14, *Limited Liability Companies (LLCs)* for guidance on LLCs. See IRM 5.7.3.3.1, *Trust Fund Compliance, Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP), Establishing Responsibility*, for additional information regarding parties that may be assessed the TFRP.

This information should be paired with the data on IDRS using command code UNLCER. The current RO assignment should be annotated in the AIS history.

Based on local procedures, the investigation may be conducted by a RO in FC or by a FI caseworker. If local practice is to refer the investigation to FC, and the case is not currently assigned to a RO, an OI must be issued to FC through ICS. Insolvency caseworkers should request the TFRP investigation during the initial case review. IRM 5.9.3.11, *Debtors' Delinquent Accounts, Trust Fund Recovery Penalty, IRM 5.9.8.10, Trust Fund Considerations in Chapter 11*, and IRM 5.9.13.13, *Manual Proofs of Claim and Common Claim Issues, TFRP Assessments - Priority Status*, provide additional TFRP investigation information.

When requesting a TFRP investigation through an OI, provide the RO with information to assist them in completing the investigation. The information may be provided by updating the ICS case history. See IRM Exhibit 1.4.51-31, *Resource Guide for Managers, Insolvency, Guide for Other Investigation (OI) F/U Report (Field Insolvency)*, and IRM 5.9.3.11, *Trust Fund Recovery Penalty*.

Caution:

A RO will not work an OI to assert the TFRP if the ASER will expire within 6 months.

TFRP issues must be thoroughly documented in the AIS history. See IRM 5.9.5.4, *Opening a Bankruptcy Case, AIS Documentation*. If the TFRP is not applicable, notate the AIS history accordingly. The TFRP may not be applicable because there are no outstanding trust fund liabilities or the outstanding trust fund liability is below tolerance for assertion of the TFRP.

19. **Additional Aspects.** Facts and circumstances in the case may warrant additional research. Examples of additional research that may be necessary are:

- A review and analysis of locator services, such as Accurint.
- A review of any available on-line courthouse records.
- A review of the collection case history on ICS and contact with the RO previously assigned the case.
- A review of IDRS cc: AMDISA and contact with the revenue agent or examiner when there is evidence of activity by Exam (such as a TC 420 or L freeze on IDRS).
- A review of IDRS cc: IRPTL for possible mortgage interest paid.
- A review of Department of Motor Vehicle (DMV) records when expensive or collectible vehicles are listed in the bankruptcy schedules.

**5.9.8.5 (04-17-2013)
Adequate Protection**

1. **Protection for Secured Creditors.** Adequate protection safeguards a secured creditor against a decrease in the value of a creditor's collateral during the period *prior to confirmation* of the plan when a creditor is not receiving plan payments. Adequate protection may be requested based on IRM 5.9.4.14.4, *Referral Tolerances*, to protect the value of the creditor's interest in the property being used by the DIP and a valid Notice of Federal Tax Lien (NFTL) has been recorded (11 USC § 361).
2. **Initial Considerations for Adequate Protection.** The caseworker must first determine if schedules of assets and liabilities have been filed. If so, and the Service does not have copies, the caseworker must contact the DIP or trustee to request the schedules along with an aged list of the business' accounts receivable. Schedules may also be viewed electronically through PACER. From this information, the caseworker can establish a rationale for requesting adequate protection. The IRS may be entitled to adequate protection when a pre-petition NFTL attaches to equity in assets which will depreciate during the bankruptcy proceeding or which may be consumed in the normal course of business, as is the case with cash collateral or inventory. If the debtor arranges for post-petition financing for property subject to the NFTL, the IRS may also be entitled to adequate protection of its interest. When determining priority of competing security interests, including the NFTL, the caseworker should consider the "45-Day Rule". See IRC § 6323(c) and IRM 5.17.2.6.6.1, *Legal Reference Guide for Revenue Officers, Federal Tax Liens, Commercial Transaction Financing Agreements*, for additional information.

Note:

If available, Accurint should be researched to identify related entities and to value assets.

3. **Turnover/Adequate Protection.** A voluntary Chapter 11 filing is sometimes preceded by the Service levying upon or seizing assets of the debtor. After filing bankruptcy the debtor may immediately file a motion with the bankruptcy court requesting a "turnover" order for the IRS to surrender the property to the debtor or to release a levy (11 USC § 542). The Chapter 11 caseworker must ensure the debtor is providing adequate protection to the IRS for turnover of such property. Counsel guidance should be sought

when holding levy funds in anticipation of an adequate protection order.

4. **Most Common Types.** Adequate protection usually includes periodic cash payments (the most common form) on the secured claim and/or replacement liens on post-petition assets. SBSE Division Counsel has set minimum dollar criteria for pursuit of adequate protection with Area Counsel having leeway to adjust the dollar guidelines, if appropriate (IRM 5.9.4.14.4). FI offices must coordinate all adequate protection agreements with Counsel.
5. **Sources of Adequate Protection.** Adequate protection can take the form of:
 - Retaining a portion of any funds received
 - Receiving monthly payments (with post-petition interest) before a plan is confirmed
 - Obtaining replacement liens on after-acquired assets (for example, accounts receivable and inventory)
 - Providing for post-petition tax compliance
 - Any other appropriate relief
6. **Adequate Protection Agreement.** The Adequate Protection Agreement should provide for protection to replace the property being released. This can include:
 - A. The IRS receiving all of, or a portion of, the cash (if cash is involved);
 - B. Periodic payments, including payment of post-petition interest;
 - C. A replacement lien on after-acquired assets, such as inventory or accounts receivable;
 - D. Requiring the debtor to file all delinquent returns, timely file all post-petition returns, and pay all post-petition tax obligations (11 USC § 1112(b)(4)(I)); and
 - E. Default provisions. (See paragraph (7) below.)
7. **Default Provisions.** Adequate protection agreements should include language outlining actions to be taken in the event of default. Those provisions can include:
 - A. Notice of default to the debtor and debtor's attorney with a short "cure" time frame;
 - B. A "drop dead" clause providing for unopposed conversion to Chapter 7 if the default is not cured;
 - C. An automatic lifting of the stay against collection if the default is not cured; or
 - D. Any other appropriate remedy.
8. **Time Constraints.** Creditors, including the IRS, are only entitled to adequate protection if it is requested. If adequate protection is applicable, it must be requested before the assets are dissipated.

Note:

The court can deny a request for adequate protection deeming the proposed arrangement to be unsatisfactory or inadequate. The proposal may be renegotiated with court approval.

**5.9.8.6 (01-01-2006)
Pre-petition Levies**

1. **Intangible Property.** Under 11 USC § 542, unless the automatic stay is lifted, the IRS must release pre-petition levies on bank accounts and accounts receivable when the debtor retains an interest in the cash or cash equivalent on the date of the petition (i.e., the IRS has not actually received the cash and applied it to the taxpayer's account). (See IRM 5.9.3.13.1, *Debtors' Delinquent Accounts, Third-party Contacts*.)
2. **Avoidance.** If the IRS receives payment before the petition date as a result of a levy and applies the payment to the taxpayer's account, the funds are no longer subject to turnover under 11 USC § 542. However, they may be preferential transfers subject to *avoidance* under 11 USC § 547, if the requirements of 11 USC § 547 are met. (See IRM 5.9.4.6, *Common Bankruptcy Issues, Preferences*.)

Note:

Voluntary payments of the trust fund portion of employment taxes, and other payments of trust fund taxes made by persons other than the debtor, are not subject to avoidance. These payments are not transfers of property of the debtor.

3. **Tangible Property.** Absent extenuating circumstances which allow the automatic stay to be lifted, the IRS is required to release pre-petition levies on tangible property. If seized pre-petition, the property generally must be turned over to the estate as long as the debtor retains an interest in the property on the date of the petition (e.g., the property has not yet been sold at a tax sale).
4. **Right to Adequate Protection.** Although the property is generally required to be turned over, the IRS is entitled to adequate protection of its secured interest in the property if a pre-petition NFTL has been filed. (See IRM 5.9.8.7(2), *Lien Rights*.)
5. **Release versus Referral.** Negotiations involving adequate protection are the responsibility of FI employees and they are generally conducted with the debtor's attorney. Counsel should be consulted, as needed, for local procedures.
 - A. **Release.** If the value of the property does not exceed the minimum dollar criteria for a referral for a motion for relief from the stay or adequate protection, the levy or seizure should be released immediately.
 - B. **Referral.** If the value exceeds the minimum amount, FI should refer the case expeditiously to Counsel to consider a motion for relief from the stay or adequate protection while the agreement is being negotiated with the debtor.

**5.9.8.7 (09-29-2015)
Cash Collateral/Property Depreciation of the Estate**

1. **"Ordinary Course of Business."** In a Chapter 11 case, the DIP typically wants to continue running the business until it can be reorganized or sold. The debtor may automatically continue its routine ("ordinary course") use, sale, or lease of most of its pre-petition property pursuant to 11 USC §§ 363(c)(1) and 1107(a).
2. **Lien Rights.** If the IRS has a secured claim, the Service may be entitled to adequate protection when a NFTL, properly filed pre-petition, is still valid and attaches to equity in property and/or cash collateral. Consider the "45-Day Rule" when determining lien priority.
3. **Cash Collateral.** The Bankruptcy Code can significantly limit a debtor's ability to use its cash collateral without the consent of creditors with secured interests in such property. Cash collateral includes cash and cash equivalents, such as negotiable instruments and funds in depository accounts. (See IRM Exhibit 5.9.1-1, *Overview of Bankruptcy, Glossary of Common Insolvency Terms*.) For cases filed on or after October 17, 2005, the unauthorized use of cash collateral that is substantially harmful to one or more creditors is an express basis for conversion or dismissal of the case per 11 USC § 1112(b)(4)(D).

Note:

The limitations in the Bankruptcy Code on the debtor's use of cash collateral and restrictions are significant in Chapter 11 cases. This is because operating businesses in bankruptcy are found most typically in Chapter 11 cases and have the greatest need for immediate cash to continue running.

4. **Superpriority Liens in a Chapter 11 Proceeding.** 11 USC § 364 provides that the trustee or DIP may, with court approval, obtain post-petition financing. To induce lenders to grant this financing, superpriority liens can be offered. *Such liens become senior to all other liens.*

Note:

In accordance with 11 USC § 364(d), superpriority liens can be provided only if the holder of the previous lien, including the IRS, is adequately protected and agreements are negotiated.

5. **Real Property and Adequate Protection.** Adequate protection is seldom sought by the IRS regarding real property due to its unlikely depreciation. However, unusual situations might arise making adequate protection necessary. At a minimum, the debtor should be required to maintain sufficient insurance on buildings and other improvements.
6. **Insolvency Actions.** If the IRS is entitled to adequate protection based on lien equity, FI should:
- Send AIS Letter 2173, *Adequate Protection*, or an equivalent local letter to the debtor with a copy to the debtor's attorney advising that the IRS does not consent to the use of the cash collateral;
 - Based on response(s) received, attempt to reach an agreement; negotiations for adequate protection of the government's lien interests will follow guidelines similar to those used when the IRS negotiates a pre-petition levy agreement; and
 - Make a prompt referral to Counsel, asking for a motion to provide adequate protection to the IRS if delay is experienced and/or nonproductive responses are received.

5.9.8.8 (09-29-2015)

Quickie Refunds

- Tentative Carryback Adjustments.** Taxpayers who have net losses can sometimes carry back the losses to previous years where they paid taxes to reduce the liability in the prior year and generate a refund. Such taxpayers may also make a special request for such a refund, known as a tentative carryback adjustment also called a "quickie refund." To request a quickie refund, the taxpayer must file an application for the tentative carryback adjustment and the Service must make a limited review of the application and issue the refund within 90 days.
- IRS Offsets.** The Service has the right to offset the quickie refund against federal tax liabilities of the taxpayer. This right of offset becomes particularly important when the taxpayer is in bankruptcy, because dollar amounts of quickie refunds can be large, and offset may be the only assured way of collecting liabilities owing from the taxpayer. Difficult mutuality issues are raised, however, when losses from post-petition periods are carried back to pre-petition years or when a refund is owed to a consolidated group and the liabilities are owed by a single member of the group. FI should consult Counsel in such cases.
- The Automatic Stay Against Setoffs.** While the automatic stay sometimes prevents the Service from making the setoff by crediting the refund against the liability, the Service may freeze the refund until the stay is lifted. FI caseworkers must consult Counsel if the debtor is owed a quickie refund and the Service has a claim.
- IRS Offsets under BAPCPA.** 11 USC § 362(b)(26) provides that for cases filed on or after October 17, 2005, the IRS can setoff a pre-petition *income* tax refund against a pre-petition *income* tax liability without a lift of the automatic stay. If the quickie refund comes from a post-petition period or the liability is not for income tax, a lift of stay or local rules/standing orders allowing the offset are required regardless of the petition date.
- Inappropriate Refunds.** To prevent these special refunds from going out to taxpayers who are in bankruptcy and owe federal taxes, procedures have been set in place to review the quickie refund claims expeditiously so Counsel may file a motion for lift stay for offset, if necessary.
- Interagency Offset Requests.** The federal government is considered one creditor for purposes of offset. Upon becoming aware of a potential tax refund, a federal agency other than the IRS may seek to have the refund offset against its claim. However, the Service does not have the authority to disclose the refund to another federal agency. If FI receives a request to freeze a refund on behalf of another federal agency, the caseworker assigned to the account must consult Counsel before taking any action.
- TCB Units.** Tentative carrybacks for business returns originate from the filing of either a Form 1139, *Corporation Application for Tentative Refund*, or Form 1120-X, *Amended U.S. Corporation Income Tax Return*. For individuals, the appropriate forms are Form 1045, *Application of Tentative Refund*, or Form 1040-X, *Amended U.S. Individual Income Tax Return*. Tentative Carryback (TCB) Units responsible for processing the carryback requests are located at the Ogden and Cincinnati campuses. Generally, when the TCB Units determine a tentative carryback claim is processable, they research IDRS to see if the taxpayer owes federal taxes and if a bankruptcy freeze is on the account.
- Insolvency Contact.** When a bankruptcy freeze is on an account, the TCB Unit must contact the FI caseworker assigned the case. If the TCB Unit has difficulty in locating the insolvency caseworker, it should call the insolvency liaison at the CIO for the name and phone number of the caseworker working the bankruptcy case. The TCB Unit caseworker will advise the FI caseworker of the amount of the carryback credit and the processing time remaining.
- Counsel Contact.** Following the IRM criteria for referrals to Counsel, when appropriate, the FI caseworker should advise Counsel of the tentative carryback through a referral asking for a motion to lift the stay to setoff the refund against the taxes owed. Also, as mentioned above, Counsel should be consulted before the setoff of a quickie refund arising from the carryback of losses from a post-petition year to a pre-petition year, or when the refund is owed to a consolidated group and the liabilities are owed by a single member of the group.
- Interest Free Period.** Decisions to offset the tentative carryback credit or refund it to the debtor are under strict time constraints. By statute, quickie refunds must be issued within 90 days unless the government has a right of setoff. The statutory period during which the Service is exempt from paying interest to the taxpayer is only 45 days from the date the quickie refund request is received by the IRS to the date of refund issuance. Therefore, if setoff is not appropriate under 11 USC § 362(b)(26) because of the petition date or the period generating the refund, to minimize the amount of interest the Service may have to pay the debtor, both the TCB Units and FI need to react quickly in determining if a lift of stay should be requested.

5.9.8.9 (04-17-2013)

Collection Statute of Limitations and Chapter 11 Plans

- Tax Collection Waivers.** Pursuant to IRC § 6502(a), as amended by the IRS Restructuring and Reform Act of 1998 (RRA 98), the Service can no longer obtain waivers of the statute of limitations for collection (Form 900) *except* in conjunction with IRC § 6159 installment agreements or the release of a levy.
- Chapter 11 Plans Are Not Installment Agreements.** Although Chapter 11 plans frequently require the debtor to make a series of periodic (installment) payments to the Service, the Chapter 11 plan differs in many ways from an installment agreement. The Chapter 11 plan is not considered an installment agreement under IRC § 6159.
- Collection Statute Expiration Date (CSED) and Confirmed Plans.** The limitation period for collecting a tax *provided for* by a confirmed Chapter 11 plan is generally suspended automatically via IRC § 6503(h)(2) *while the taxpayer is current on Chapter 11 plan payments up to the time the taxpayer is in substantial default on the plan payments, plus six months.* In the post-BAPCPA individual case, the discharge no longer occurs at confirmation. The stay remains in place until completion of plan payments and entry of a discharge order by the court, unless the court closes the case at an earlier date.
- Waiver Expiration Date.** Collection statute limitation waivers (Form 900) obtained from taxpayers before December 31, 1999, outside of the context of an installment agreement, expired automatically on or before December 31, 2002.

Note:

The automatic suspension of the Collection Statute Expiration Date (CSED) pursuant to IRC § 6503(h)(2) while the automatic stay and a confirmed Chapter 11 plan providing fully for the tax is in effect, is not shortened by a collection limitation waiver between the debtor and the Service that expires at an earlier date.

5. **CSED and Corporate Cases in Chapter 11.** In corporate cases and other cases where the debtor is not an individual, the Service may generally rely on the suspension of the limitation period provided for in IRC § 6503(h)(2) to collect tax payments after confirmation of Chapter 11 plans. The Service should, nevertheless, insist Chapter 11 plans be paid in full within the time frames required by the Bankruptcy Code.
6. **CSED and Individuals in Chapter 11.** As stated in paragraph (3) above, the stay against the collection of pre-petition debts stays in effect after confirmation of the plan, unless the court orders otherwise for cause, for individuals filed on or after October 17, 2005. The Service may generally rely on IRC § 6503(h)(2) for the suspension of the collection period if the debtor is current on plan payments. *However, for cases filed before October 17, 2005, or for more recent cases where the court for cause allows the individual a discharge before completion of the plan (11 USC § 1141(d)(5)), the Service cannot rely on the IRC § 6503(h)(2) suspension where the debtor is an individual with respect to taxes that are both (1) non-dischargeable and (2) for which full payment is not provided in the plan.*
7. **CSED and Non-dischargeable Taxes in Individual Chapter 11.** In bankruptcy cases of individuals filed before October 17, 2005, where a confirmed Chapter 11 plan does not provide for full payment of non-dischargeable tax liabilities, such as priority tax claims, gap interest on those claims, penalties claimed as general unsecured for a return filed late within two years of the petition date, or others; or where surviving federal tax liens are not provided for fully by the confirmed plan, the Service must consider the following:

- A. **CSED on Non-dischargeable Taxes in Plan.** Collection, outside of the plan, of non-dischargeable liability not provided for in the plan, may be considered when the CSED will expire on the non-dischargeable period in question *before* the plan completion date.
- B. **Adverse Plan Language.** The plan should be reviewed for language restricting property of the estate from being revested in the debtor at confirmation or providing the bankruptcy estate will retain control of the property to some future point after confirmation. Language restricting collection outside of the plan should be considered when contemplating collection of non-dischargeable, non-plan liability concurrently with plan payments. Whenever possible, the Service should request deficient plans be modified prior to plan confirmation. The Service should request that the plan provide for administrative remedies for collecting the debtor's unpaid taxes following a substantial default in the plan. Additionally, the Service should request language in the plan which specifies that the Collection Statute Expiration Date (CSED) for tax debts is extended per IRC § 6503(h)(2). Specifically, the CSED will be suspended as long as the plan is in effect, not in substantial default, and for six months thereafter. Alternatively, the Service should request language that provides that the CSED will not expire for a reasonable period (as negotiated) after completion of plan payments or the plan falls into substantial default. Consultation with Counsel may be necessary to determine local practice with respect to default language. (See *IRM 5.9.8.14.2(4), The Plan of Reorganization, Plan Provisions.*)
- C. **Post-Confirmation NFTL Filing on Non-plan Portion of Non-dischargeable Liability.** 11 USC § 1141(a) states the provisions concerning non-dischargeability in 11 USC § 1141(d)(2) and (3) are exceptions to the general rule that a confirmed plan binds debtors. As non-dischargeable taxes are excepted from the binding effect of a plan, the argument can be made that 11 USC § 1141(a) does not bar the filing of a NFTL for non-dischargeable taxes. 11 USC § 1141(c) provides that after confirmation, all the property dealt with by a plan is free and clear of the claims of pre-petition creditors except as otherwise provided in the plan. Subsection (c) contains the same exception for subsections (d)(2) and (d)(3) as subsection (a). Therefore, it appears § 1141(c) does not apply to non-dischargeable taxes and that it typically does not bar the filing of NFTLs, post-confirmation, for non-dischargeable taxes. However, for cases filed on or after October 17, 2005, property of the estate includes property acquired by the debtor post-petition (as it does in Chapter 13) if the debtor is an individual (11 USC § 1115).

Caution:

When filing any NFTL, Insolvency must ensure the debtor receives all rights required by law. (See *IRM 5.12.2.3, Federal Tax Liens, Notice of Lien Determinations, Taxpayer Contact.*)

- D. **Plan Defaults.** The Service should consider the impact collection of a non-dischargeable liability not provided for in the confirmed plan may have on the successful completion of the confirmed plan, but at the same time must take appropriate action when the CSED is no longer suspended after the automatic stay is lifted. Where the plan has already defaulted, this should not be a concern since the harm has already occurred.
 - E. **Setoff.** The Service may use setoff opportunities to collect non-dischargeable, non-plan liability outside of the plan before the plan is in substantial default.
 - F. **Secured Claims and Exempt, Abandoned, or Excluded Property (EAEP).** Where the confirmed plan does not provide for full payment of the secured tax liability, the Service takes the position that its pre-petition, perfected NFTLs remain enforceable against the debtor's exempted, excluded, or abandoned property outside of the plan.
 - G. **Excluded Property.** Retirement plans with spendthrift provisions are excluded from the bankruptcy estate pursuant to 11 USC § 541. It is the position of the Service that collection can be pursued from excluded property due to the statutory lien. This is true even when a NFTL is not on file to pay non-dischargeable periods with a CSED that will expire prior to plan completion. Collection may also be pursued against excluded property to enforce a pre-petition lien for dischargeable periods.
 - H. **Revenue Officer Coordination.** Where collection of any non-dischargeable, non-plan liability is being considered outside the plan, the caseworker may request the assistance of a RO through an OI.
 - I. **Counsel Coordination.** In any case where collection of non-dischargeable liability is proposed outside the plan for liabilities not provided for in the confirmed plan, the FI caseworker should consult Counsel to determine an appropriate course of action.
 - J. **IDRS Status.** Where the plan provides for partial payment of non-dischargeable liability, the account will be kept in IDRS status 72 until there is a substantial plan default or until the plan is completed.
8. **CSED - Individuals and Secured Claims.** Similarly, in the cases of individuals filed before October 17, 2005, and cases of individuals filed on or after October 17, 2005, where the court granted the debtor a discharge at confirmation, the Service cannot rely on the suspension of the collection statute regarding secured claims if the plan does not provide for full payment of the secured claim. The following situations apply these principles:
- A. The tax is non-dischargeable, and the Service did not file a proof of claim (for example, the Service was not aware of the liability before the bar date).
 - B. The tax or tax penalty is non-dischargeable but is not entitled to priority claim treatment (for example, non-priority taxes and tax penalties described in 11 USC §§ 523(a)(1)(B), 523(a)(1)(C), or 523(a)(7), and the Service filed a general unsecured claim for these taxes or penalties; the plan provided for less than full payment of these claims).
 - C. The tax, though otherwise dischargeable, was secured by property that was excluded or exempted from, or abandoned by, the bankruptcy estate.

Reminder:

In individual Chapter 11 cases filed on or after October 17, 2005, the stay against the collection of any pre-petition debt remains in effect after confirmation unless the court orders otherwise for cause.

5.9.8.10 (09-29-2015)

Trust Fund Considerations in Chapter 11

1. **Policy Statement P-5-14.** Absent statute of limitations considerations, the general policy of the Service is to refrain from asserting the TFRP against non-debtor responsible persons in cases where the corporate debtor's Chapter 11 plan provides for full payment of trust fund taxes, as long as the plan is not in default (IRS Policy Statement P-5-14).
2. **RO Assigned Accounts.** When the trust fund balance due accounts (e.g., corporate Forms 941) are assigned to FC at the time of the bankruptcy petition, the RO manager is responsible for issuing an ICS *Other Investigation* to a RO to conduct the investigation as soon as possible. The RO should periodically update FI on the progress of the investigation.

3. **Non-RO Assigned Balance Due Accounts.** FI is responsible for initiating the TFRP investigation in bankruptcies not involving balance due accounts already assigned to FC as of the bankruptcy petition filing date. FI may either issue an ICS *Other Investigation* or assign the TFRP investigation to a FI caseworker. Also, see IRM 5.9.3.11, *Debtors' Delinquent Accounts, Trust Fund Recovery Penalty, and IRM 5.9.8.4.2(18), Aspects of the Initial Case Review in the Chapter 11 Case, TFRP Issues.*

Caution:

If there are less than six months remaining on the ASED, the case should not be forwarded to FC for a TFRP investigation.

4. **Tolerance Criteria for a TFRP Investigation.** Generally, FI should initiate a TFRP investigation based on =====

5. **Withholding of TFRP Investigation.** If a TFRP investigation is withheld based on the above criteria, expiration of the assessment statute may be allowed without FI intervention. In that circumstance, established procedures must be followed and clearly documented on AIS explaining the reason the TFRP investigation was withheld.

6. **In Chapter 11 – Withholding Assessment Against Responsible Persons.** For any case that exceeds tolerance criterion, the trust fund investigation must be conducted. If the corporate debtor has a confirmed reorganization plan *providing for full payment of the trust fund taxes*, assertion of the TFRP may be deferred. Each of the following conditions must be met to withhold assessment of the TFRP:

- The corporate debtor must have a confirmed plan,
- Payments under the confirmed plan are current, and
- Responsible persons have signed Form 2750, *Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty*. The waiver should extend the ASED of the responsible parties to one year beyond anticipated plan completion.

For any case with an aggregate trust fund liability of =====, the trust fund investigation should be initiated during the initial case review. If the trust fund liability reaches ===== after the initial case review, immediately request the TFRP investigation. At minimum, waivers should be secured to extend the ASED and Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*, completed during the TFRP investigation. The TFRP will not be assessed unless factors indicate ultimate collection is doubtful from the corporate debtor. Indicators of doubtful ultimate collections are:

- Potentially responsible parties will not sign Form 2750
- Additional unpaid liabilities pyramid after the petition date
- The corporation continues to operate at a loss
- Assets are liquidated
- Excessive compensation is paid to officers during the bankruptcy proceeding
- The debtor defaults on plan payments or is only paying on the plan sporadically

The caseworker must forward the TFRP file for assessment at anytime any of the above indicators occur.

Caution:

The caseworker must monitor the ASED of the responsible parties closely to ensure that it does not expire while assessment of the TFRP is being held in forbearance.

7. **Withholding Collection of Assessed TFRPs.** If the TFRP has been assessed against responsible parties, the Service may withhold from collecting the TFRP from the parties unless factors indicate ultimate collection is doubtful from the corporate debtor. (See IRM 5.9.8.10(6), above.) The FI caseworker may withhold collection of the TFRP assessed against responsible parties by inputting a TC 470 cc 93 on the TFRP modules of the responsible parties. However, before inputting the TC 470 cc 93 on the accounts of the responsible parties, the caseworker must:

- A. Make a NFTL filing determination against responsible parties. If appropriate, NFTLs should be filed.
- B. Determine if the responsible parties have the ability to pay from current assets or income.
- C. In most cases, no action other than offsetting a 1040 refund to the TFRP, will be taken to collect from responsible parties while the corporate bankruptcy plan is current. However, if the responsible parties have the ability to pay and do not make plans to pay the TFRP from personal assets, other collection actions may be taken. Managerial concurrence must be secured prior to taking collection action.

Caution:

If the confirmed plan of the non-individual Chapter 11 debtor contains language prohibiting the collection of the TFRP from corporate officers or other responsible parties, the Service may not be permitted to offset the income tax refunds to the assessed TFRP. In these instances, a manual refund will be required. Consult with Counsel for guidance in these instances.

The TC 470 cc 93 will suspend the TFRP account(s) of the responsible parties in Status 53 on IDRS. If the IDRS status code is 19, 20, 21, 54, 56, or 58 when the TC 470 cc 93 is input, the TC 470 cc 93 will reverse systemically at the end of 26 cycles. The caseworker must schedule follow-ups on AIS to monitor the TFRP liabilities closely. A new TC 470 cc 93 must be input on the TFRP modules before the 26 cycles expire. Otherwise, the modules will go back into collection status even though the corporate debtor is current on plan payments. When the TC 470 cc 93 is input to IDRS to suspend collection from responsible parties, input a history item on IDRS using IDRS cc ACTON to advise other functions that the TC 470 cc 93 was input by FI. The history item should advise other functions that only FI should reverse the TC 470 cc 93.

If the Chapter 11 debtor defaults on plan payments, reverse the TC 470 cc 93 by inputting a TC 472 with no closing code. Input of the TC 472 will allow the TFRP account(s) of the responsible parties to enter back into collection status.

Note:

The assigned FI caseworker must be alert to efforts by responsible parties who might be assessed TFRPs to persuade the court to prevent assessment and collection of the TFRP by the IRS, arguing they want to devote their time and attention to directing a successful Chapter 11 reorganization. The court cannot prevent collection from non-debtors.

8. **Designation of Payments in Chapter 11 Plans.** In Chapter 11 cases, when a corporate debtor owes the IRS significant pre-petition trust fund taxes, the DIP may seek in its plan to designate IRS application of the earliest payments required under the plan to satisfy the corporation's outstanding trust fund taxes *first*.

- A. A corporate debtor's designation of plan payments first to trust fund taxes can be an attempt to shift the risk of a failed Chapter 11 plan from the corporation's "responsible parties" onto the IRS. The DIP may be seeking to shield its "responsible parties" from the assertion and collection of a TFRP should the plan not be completed.

- B. The Supreme Court has ruled bankruptcy courts can approve Chapter 11 plans which order the IRS to apply a Chapter 11 debtor's plan payments to trust fund taxes *first if the court concludes the designation of payments in this manner is necessary for the success of the reorganization plan.* (U.S. v. Energy Resources., Inc., 495 U.S. 545 (1990))
- C. However, the Service may challenge whether proposed designations of payments to trust fund taxes are necessary to the success of reorganizing Chapter 11 plans on the ground that the continued existence of personal liability for taxes of the debtor corporation provide an incentive for responsible officers to make the reorganization a success. Given the Service's policy that, absent statute of limitations considerations, the Service will generally refrain from asserting the TFRP against non-debtor responsible officers where the plan provides for full payment as long as the plan is not in default (Policy Statement P-5-14), designations should rarely be necessary. Courts remain split on if a bankruptcy court may designate the application of payments made under a Chapter 11 plan to trust fund taxes when the plan provides for the debtor's liquidation, rather than the debtor's continuation as a reorganized business. (*In re Kare Chemical, Inc.*, 935 F.2d 243 (11th Cir. 1991) and *In re Indiana Grocery Co., Inc.*, 136 B.R. 182 (Bankr. S.D. Ind., 1990))
- D. *Application of the bankruptcy plan payments* will be made according to the Designated Payment Code (DPC) shown on the transaction as outlined in Document 6209. DPC 99 signifies the payment is "Miscellaneous" . If a payment posts with DPC 03, the payment is "Bankruptcy, Non-Designated" . DPC 11 identifies the payment as "Bankruptcy, Designated to Trust Fund" .

Reminder:

A TFRP assessment is classified as priority (unless secured by a NFTL) on the Service's proof of claim. A TFRP is never to be paid as a general unsecured claim. Despite being called a *penalty*, the TFRP is treated as a tax.

5.9.8.11 (04-17-2013)

Closing Chapter 11 No Liability Cases

1. **Significant Bankruptcy Cases.** Cases meeting the Significant Bankruptcy Case Processing Procedures criteria in IRM 5.9.4.14.3, *Significant Bankruptcy Case Referrals*, must be referred to Area Counsel upon initial case review regardless of a "no liability" determination.

Note:

Significant cases or cases referred to TEGE are not to be closed on AIS without express consent from Area Counsel or TEGE.

2. **No Liability Closures - Caution.** If a "no liability" determination is made in a Chapter 11 case, caution must be exercised in early closure of the case. Closure, in all instances, must conform to the provisions of the USBC to protect the debtor's rights.
3. **Required Research.** At a minimum, current research must be done which shows *all* of the following conditions have been met:
 - No balance due periods
 - No pending assessments
 - No unfiled returns
 - No pending examinations
 - No potential liability to the IRS indicated by the plan review
 - Debtor is current for at least a minimum of two consecutive post-petition quarters (BMF taxes)
 - No other issues requiring Insolvency's attention

Caution:

The Chapter 11 case cannot be closed until the debtor's proposed plan has been filed and reviewed. The plan in the "no liability" case may have language proposing tax consequences that may be detrimental to the Service.

4. **Amended Plan or Disclosure Statement Received After Case Closure.** If the Service receives an amended disclosure statement or plan after closing a no liability Chapter 11 case, FI should conduct another liability review taking any necessary actions, which may include reopening the case on AIS.

5.9.8.12 (09-29-2015)

Post-petition/Pre-confirmation BMF Monitoring

1. **After Initial Case Review.** Once the initial case review has been completed, FI caseworkers must monitor the debtor's compliance with filing, making FTDs, and adherence to adequate protection orders prior to plan confirmation. Compliance monitoring must be conducted for all in-business debtors, including those cases where no proof of claim will be filed or no money is owed. FI caseworkers may schedule follow-ups to monitor compliance using the "Tech Review" function under the "Letter" tab found on the "Taxpayer Screen" on AIS.
2. **Deposit Requirements.** Caseworkers should review pre-confirmation compliance for making federal tax deposits based on the business' FTD requirements. A business required to make deposits monthly or more frequently should be reviewed on a monthly basis. Businesses required to make quarterly deposits should be reviewed quarterly. If the debtor has been non-compliant pre-petition or becomes non-compliant post-petition/pre-confirmation, it may be advisable to review the case after each required deposit.

Note:

Form 944 filers (annual filing) must make FTDs under the applicable deposit rules.

3. **Contact with Debtor.** At any time the debtor is found to be delinquent in making FTDs, the caseworker must attempt to contact the debtor by phone. During the phone call, the caseworker must advise the debtor that the business has 10 calendar days to deposit all delinquent FTDs. The caseworker must enumerate the possible consequences of non-compliance, which may include the Service:
 - Filing Form 6338-A, *Request for Payment of Internal Revenue Taxes*, with the court (see paragraph (8) below)
 - Requesting the appointment of a trustee
 - Filing a motion to have the Chapter 11 proceeding converted to a Chapter 7 bankruptcy
 - Filing a motion to have the case dismissed
 - Filing a motion for relief from the automatic stay

If the debtor cannot be reached by phone, the caseworker must send a letter to the debtor establishing the 10 day deadline to respond. Alternatively, the caseworker may contact the debtor's attorney of record in the bankruptcy proceeding regarding the delinquent FTDs. However, the caseworker must first confirm the attorney's status as the debtor's bankruptcy attorney before making contact.

Note:

The caseworker should consider whether an existing adequate protection order requires timely deposits. If so, and the debtor is not making deposits, the case may be referred to Counsel if the tolerance criterion in IRM 5.9.4.14.4, *Common Bankruptcy Issues, Referral Tolerances*, is met.

4. **Contact Ineffective.** If contact with the debtor or debtor's attorney by phone or letter does not bring the debtor into FTD compliance, the caseworker should file an administrative claim, Form 6338-A, and send a copy to the US Trustee. Further actions to be considered are:
 - A. Negotiating an agreed order for compliance with FTD requirements containing a "conversion" or "drop dead" clause, or
 - B. Referring the case to Counsel to consider conversion or dismissal, if the post-petition unpaid tax meets the tolerance criteria in IRM 5.9.4.14.4. (See paragraph (9) below.)
5. **LAMS.** The Litigation Account Management System (LAMS) is a sub-system within AIS used to monitor compliance for all debtors in Chapters 11, 12, and 13. LAMS generates a report to match closed cases on AIS with unreversed TC 520s on IDRS. This report should be worked timely to identify violations of the automatic stay. Through LAMS, timely reviews can be conducted when working on large dollar and chronic repeater cases.

Note:

IRM 5.9.12.8, *Insolvency Automated Processes, Litigation Account Management System*, provides instructions for working LAMS reports.

6. **TC 136 BMF Monitoring.** The use of TC 136 assists FI when monitoring for Business Master File (BMF) compliance. For compliance monitoring, the Insolvency Interface Program (IIP) inputs a systemic TC 136 reflecting the Last Return Amount Code of "1".
 - A. The input of TC 136 suppresses both litigation transcripts for TC 650 and FTD alerts.
 - B. A FTD-FIDUC transcript is generated when a systemic check discloses substantial under-depositing.
 - C. When systemic monitoring is no longer necessary, a TC 137 should be input.
7. **Large Dollar/Chronic Delinquency Cases.** In lieu of systemic monitoring, FI should consider periodic manual monitoring of large dollar or chronic repeater cases on IDRS (as established by local management guidelines).
8. **Request for Payment.** If the post-petition liabilities remain unpaid, the caseworker must consider listing the liabilities on Form 6338-A, *Request for Payment of Internal Revenue Taxes*. The request for payment should be filed with the court. For cases commencing on or after October 17, 2005, under 11 USC § 503(b)(1)(D), the Service is not required to file a request for the payment of administrative expense taxes and related penalties. However, it is the Service's position that IRS will file the request for payment of these post-petition liabilities. (IRM 5.9.13.11, *Manual Proofs of Claim and Common Claim Issues, Administrative Claims*) Filing the Form 6338-A puts the debtor and creditors on notice as to the amounts due. Failure to include these liabilities on Form 6338-A may result in the liabilities being discharged in the bankruptcy case. Depending upon local court practices, the Service may find it beneficial to continue to file administrative claims to establish a basis for a motion for conversion or dismissal. FI should consult Counsel for guidance, if necessary.
 - A. The caseworker should send a copy of the Form 6338-A to the debtor and debtor's attorney. Include a letter advising them that IRS will request a motion to convert or dismiss the case if the non-compliance is not cured by the specified target date.
 - B. Include an estimate of the current tax period liability and an estimate of the amount due on any unfiled returns on the Form 6338-A.
9. **Referral.** If the delinquency is not resolved, the case should be referred to Counsel for court intervention. Failure to pay or file post-petition taxes as they become due are grounds for conversion, dismissal, or appointment of a trustee in cases filed on or after October 17, 2005. (See 11 USC § 1112(b)(4)(I) for additional information.) Additionally, if the debtor fails to file a tax return that becomes due post-petition or fails to properly obtain an extension, the Service may request that the case be converted or dismissed. The court is required to grant the request if the debtor does not file the return or obtain an extension within 90 days of the request. (11 USC § 521(j)(2)) The referral to Counsel must include the debtor's full TINs.

Note:

Consult Counsel for guidance on how to address the debtor's noncompliance with post-petition filing and paying requirements when the amounts involved do not meet IRM 5.9.4.14.4 criteria.

10. **Conversion Limitations.** Generally, a Chapter 11 case can be converted or dismissed voluntarily by the debtor or involuntarily by the request of a party in interest. However, for three types of debtors, the court is prevented from converting a case from Chapter 11 to Chapter 7 unless the conversion is requested by the debtor. In instances involving these special debtors, the court may only dismiss the case (assuming grounds exist to do so). The three types of debtors listed under 11 USC § 1112(c) are:
 - A. A farmer;
 - B. A corporation which is not moneyed, business or commercial; or
 - C. Any entity not eligible to file Chapter 7.

5.9.8.12.1 (09-29-2015)

Post-petition Debts - Chapter 11 Individuals

1. **Post-petition Liabilities - Individuals.** In the Chapter 11 case of an individual, the debtor and the bankruptcy estate represent two separate taxable entities. (See IRM 5.9.8.13, *Internal Revenue Code § 1398 Issues*, and IRB 2006-40, Notice 2006-83, for further information.) Any post-petition liability incurred by the individual debtor may not be claimed in the bankruptcy case. However, for cases filed on or after October 17, 2005, 11 USC § 1115 provides that personal service income earned by the individual debtor is property of the bankruptcy estate. The personal service income is reported on Form 1041, *U.S. Income Tax Return for Estates and Trusts*. The remaining income of the individual debtor is reported on Form 1040, *U.S. Individual Income Tax Return*.
2. **BAPCPA and Individual's Post-petition Liabilities.** No stay of collection is placed on the individuals post-petition debts. Such debts can be collected from non-estate assets, such as exempt assets; and, for cases filed before October 17, 2005, the individual debtor's post-petition wages. Collection of these accounts is not to be suspended.

In the Chapter 11 case on an individual filed on or after October 17, 2005, the automatic stay prohibits collection of Form 1041 liabilities. Form 1041 liabilities are administrative expenses that must be paid through the bankruptcy. The Collection Statute Expiration Date (CSED) is extended by the bankruptcy on these liabilities. If the liabilities are not paid through the bankruptcy, they will generally be discharged. The caseworker must:

- A. Contact the debtor or debtor's attorney and establish a 10 day deadline for the debtor to pay the outstanding post-petition tax liability. If the liability remains unpaid,
- B. File Form 6338-A, *Request for Payment of Internal Revenue Taxes*, to request payment of the outstanding liability from the bankruptcy estate, and
- C. Ensure that a TC 520 bankruptcy freeze is input for the outstanding liability that prevents all collection activity and suspends the CSED. Generally, the TC 520 cc 64 or TC 520 cc 65 is input, subject to local procedures.
- D. For liabilities that meet the referral tolerances in IRM 5.9.4.14.4, *Common Bankruptcy Issues, Referral Tolerances*, the caseworker must refer the case to Counsel for a motion to dismiss or convert, or an objection to discharge.

The automatic stay is not in place for the unpaid income tax liability of an individual reported on Form 1040, in cases filed on or after October 17, 2005. However, limited assets are available for collection under 11 USC § 1115. Only excluded, exempted or abandoned assets, and assets obtained by gift, inheritance, divorce settlement, or as life insurance proceeds acquired more than 180 days after commencement of the bankruptcy case are available for collection. To prevent any inadvertent collection activity against property of the estate, a TC 520 cc 84 should be placed on the post-petition/pre-discharge 1040 account on IDRS. Collection personnel must contact Insolvency before taking collection action to ensure no action is taken against property of the estate.

Note:

While these post-petition liabilities can be collected from non-estate property, the case should be referred to Counsel for dismissal, conversion, or an objection to discharge when post-petition Form 1040 liabilities meet the referral tolerances in IRM 5.9.4.14.4.

- Income From Business.** When an individual debtor operates a business as a sole proprietorship, or the debtor solely owns the business, the personal service income is property of the bankruptcy estate. The income and tax on the income are reported on Form 1041. Any self-employment tax on the personal service income is reported and collected on the debtor's Form 1040. It may not be clear whether income from the business is property of the estate or the debtor's separate post-petition income. In such cases, FI should consult Counsel.
- Filing Compliance.** The individual debtor is required to report all post-petition personal service income on Form 1041. Caseworkers must monitor the individual bankruptcy case to ensure that the Form 1041 is filed for each year in which the automatic stay is in place. Generally, this is from the petition date through discharge upon completion of the plan. Failure to file the Form 1041 should be referred to Counsel when local tolerances permit the referral.

Note:

If the debtor did not provide the EIN as directed in the Letter 4914, the caseworker must contact the debtor and secure the EIN.

- Installment Agreement (IA) Requests on Post-Petition Liabilities.** Taxpayers who are in Chapter 11 may submit a request for an installment agreement for post-petition liabilities. When a taxpayer is in bankruptcy, a request for an IA on post-petition liabilities is non-processable. Administrative appeal rights are not provided for a non-processable IA. A TC 971 ac 043 should not be input on these accounts. For additional information, see IRM 5.9.4.19.1, *Common Bankruptcy Issues, IA Requests for Post-Petition Liabilities Submitted During Bankruptcy*.

Note:

In a small number of cases, the debtor taxpayer may qualify for a guaranteed installment agreement under IRC § 6159(c). See IRM 5.14.5.3, *Guaranteed Installment Agreements*.

5.9.8.12.1.1 (09-29-2015)

Post-Petition Pre-Discharge Individual Shared Responsibility Payment (SRP) Liabilities of the Individual Chapter 11 Debtor

- The Debtor's Post-petition Form 1040 Liability.** As mentioned in IRM 5.9.8.12.1, above, the automatic stay does not prevent the collection of unpaid post-petition income tax liabilities reported by the debtor on Form 1040, *U.S. Individual Income Tax Return*, except that collection cannot be made from property of the estate. The liability is not a debt of the bankruptcy estate. It is not claimable on Form 6338-A, *Request for Payment of Internal Revenue Taxes*. Unlike the Chapter 13 case that provides for the filing of an 11 USC § 1305 claim for the individual's post-petition income taxes, Chapter 11 has no provision for claiming these post-petition liabilities in the individual or joint debtor Chapter 11 bankruptcy case. The plan should not provide for the discharge of any post-petition Form 1040 liability.

Caution:

Insolvency caseworkers must ensure that the debtor's plan does not discharge the debtor's post-petition Form 1040 or post-petition SRP liabilities.

- Post-Petition SRP Liabilities are Treated in the Same Manner as the Post-Petition Form 1040 Liability.** The individual SRP liability of the debtor is taken from the appropriate line on the debtor's income tax return, when the debtor's gross income reportable on Form 1040 meets the threshold requiring the debtor to file Form 1040. For the tax year ending December 31, 2014 (201412), the SRP liability is reported on:

- Form 1040, *U.S. Individual Income Tax Return*, Line 61
- Form 1040A, *U.S. Individual Income Tax Return*, Line 38
- Form 1040EZ, *Income Tax Return for Single and Joint Filers With No Dependents*, Line 11

Like post-petition Form 1040 tax liabilities, post-petition SRP liabilities are not dischargeable and not claimable as administrative expenses in Chapter 11 cases:

- While collection of the post-petition SRP liability is not prohibited by the automatic stay, a TC 520 cc 84 must be placed on post-petition SRP liabilities to prevent any inadvertent collection activity against any property of the bankruptcy estate.
 - Like income tax reported on the debtor's Form 1040, the post-petition SRP liability is not claimable as an administrative expense on Form 6338-A, *Request for Payment of Internal Revenue Taxes*.
 - The post-petition SRP liability is non-dischargeable in the individual or joint debtor's Chapter 11 bankruptcy case.
- SRP Mirrored Modules.** Beginning in January of 2016, certain joint SRP liabilities assessed under Master File Transaction (MFT) 35 on IDRS will be mirrored as individual SRP modules under MFT 65 on IDRS. For example, a joint SRP liability may be mirrored when one spouse filed bankruptcy and the bankruptcy case was dismissed or discharged. The SRP liability of the debtor is treated in the same manner in a bankruptcy case. It does not matter if the SRP is assessed under MFT 35 or MFT 65.

5.9.8.13 (04-17-2013)

Internal Revenue Code § 1398 Issues

- Special Tax Provisions.** IRC § 1398 contains special tax provisions for an individual filing Chapter 11. For an individual who files bankruptcy under Chapter 11 provisions, two taxpayers exist post-petition:

- The trustee or DIP files a return (Form 1041) for all income, which belongs to the estate; and
- The individual debtor files a return (Form 1040) for all income of the debtor, which is not part of the estate.

Note:

These same provisions are applicable to individual Chapter 7 cases. (See IRM 5.9.6.14, *Processing Chapter 7 Bankruptcy Cases, Bankruptcy Estate Income Taxes — Separate Taxable Entity*.)

- Post-petition Property under BAPCPA.** For cases filed on or after October 17, 2005, 11 USC § 1115 makes property acquired by an individual debtor post-petition property of the estate, as in Chapter 13 cases. However, unlike in Chapter 13 cases, the bankruptcy estate of an individual in Chapter 11 is a separate taxable entity. Gross earnings from a Chapter 11 debtor's performance of services and gross income from property (s)he acquired once the petition was filed must be included in the bankruptcy estate's gross income, not in the debtor's gross income. If the debtor is self-employed, the debtor remains responsible for paying the self-employment tax on post-petition income on his or her individual Form 1040 Schedule SE, even though that income must be reported on the estate's return for income tax purposes. Notice 2006-83, IRB 2006-40, provides detailed guidance on property of the bankruptcy estate for individuals filing Chapter 11 bankruptcy on or after October 17, 2005.

Note:

BAPCPA does not affect the application of employment and withholding taxes for a Chapter 11 debtor.

3. Individuals Can Terminate Tax Year. Although the practice is not common, individuals may elect to terminate their tax year when the bankruptcy petition is filed. (IRC § 1398(d))

- A. If this election is made, the tax year is terminated as of the day before the bankruptcy filing, which will result in the debtor's filing two "short-year" returns. This election is made by filing the first short year return on or before the due date, which is the 15th day of the fourth month following the close of the first short year.
- B. The debtor must write at the top of the *first* short year return: *SECTION 1398 ELECTION*. At the top of the *second* short year return, the debtor must write: *SECOND SHORT YEAR RETURN AFTER SECTION 1398 ELECTION*.

Note:

The election can also be made by filing an extension to file on or before the due date of this return.

- C. The spouse can join in this election. If the spouse does join, a joint return must be filed for the first short year. If the spouse does not join, a joint return cannot be filed for that year.
- D. If an individual files Chapter 11 and makes the IRC § 1398 election, the spouse may join in this election. If the spouse subsequently files Chapter 11, the second filing creates a second IRC § 1398 election opportunity. If the election should be made again, three short year returns are required.
- E. Once this election is made, it may not be changed unless the case is dismissed. (See paragraph (4) below.)

4. The Bankruptcy Estate in the Individual Chapter 11 Case. The bankruptcy estate in an individual Chapter 11 case is a separate taxable entity. A separate Employer's Identification Number (EIN) must be obtained for the estate.

- A. An income tax return must be filed on Form 1041, if the estate has sufficient income to meet the filing requirements. The 1041 filing requirements are the total of the amount of one exemption plus the standard deduction for a married person filing separately.
- B. The estate may initially choose its own taxable period (i.e., when its first tax year ends) as long as the initial period does not exceed one year.
- C. The DIP or the trustee must determine what portion of income, deductions, and/or credits belongs to the individual debtor and what portion belongs to the estate. For cases of individuals filed prior to October 17, 2005, earnings from personal services performed by the debtor after the petition date are not part of the estate and should be included on the Form 1040 of the individual. For cases of individuals filed on or after October 17, 2005, property and earnings acquired post-petition are property of the estate, as in Chapter 13 cases. See *IRM 5.9.8.12.1, Post-petition Debts - Chapter 11 Individuals*, and 11 USC § 1115 for further information. Income derived from assets of the estate should be reported on the estate's Form 1041.

Example:

A loss derived from rental property that is property of the estate would not be available to reduce the debtor's 1040 income as the rental property is part of the estate, and the loss should be reported on the estate's Form 1041.

- D. Also, the bankruptcy estate will succeed to and take into account any pre-petition net operating loss (NOL) available to the individual. The NOL will become part of the estate when the petition is filed and will not be available to the individual so long as the estate exists. When the estate terminates, any remaining NOL will revert to the individual, but first it must be reduced by the amount of any discharged debt. (IRC § 108)
- E. A joint bankruptcy petition actually creates two bankruptcy estates – unless the court has substantively consolidated the estates. If the estates have not been consolidated, two 1041 obligations exist.
- F. Caseworkers should send Letter 4914, *Notice to Individual Chapter 11 Debtor Regarding Income Tax Filing Responsibilities*, to individual Chapter 11 debtors and trustees advising them of these opportunities and their resultant tax responsibilities.
- G. If the Chapter 11 case is subsequently dismissed, the effect is as if a bankruptcy petition was never filed. Therefore, the debtor must file amended returns to replace any short year returns filed or 1041s filed.

5. Determining if Income is Property of the Estate or Property of the Debtor. Income earned by the debtor for services performed is "personal service income". Personal service income is reported and taxed on Form 1041, *U.S. Income Tax Return for Estates and Trusts*. There are other forms of income reported and taxed on the Form 1041. Examples of income reported on Form 1041 are:

- Wages and other compensation earned as an employee,
- Independent contractor income,
- Self-employment income, such as, income earned as a painter, CPA, consultant, attorney, plumber, etc., and
- Rental income from real property purchased with income of the estate after the filing of the bankruptcy petition.

The debtor may also be required to file Form 1040, *U.S. Individual Income Tax Return*. The Form 1040 is used to report income and tax that is not taxed as property of the estate. Some examples of income and tax reported by the debtor on Form 1040 are:

- Rental income from real property purchased using excluded, exempt, or abandoned assets.
- Rental income from real property using funds obtained from gifts, inheritance, or insurance proceeds received more than 180 days after the bankruptcy petition date.
- Income from excluded property, such as, an ERISA retirement plan.
- Self-employment tax on self-employment income earned by the bankruptcy estate and reported on the Form 1041 filed by the estate. The self-employment tax is included on the debtor's Form 1040.

Note:

See Notice 2006-83, IRB 2006-40, when determining if income is property of the estate or property of the debtor.

5.9.8.14 (04-17-2013)

Disclosure Statements and Plans of Reorganization

- 1. **Requirement.** Chapter 11 is the only chapter of the Bankruptcy Code requiring a disclosure statement to accompany a proposed plan of reorganization.
- 2. **Describes Plan.** The disclosure statement may be brief or lengthy. It should explain what the proposed plan means to particular creditors and to other interested parties. The contents of the disclosure statement are not binding on the IRS. The approval process for the disclosure statement provides the IRS with an opportunity to explore relevant facts regarding the debtor. The process also affords the Service a chance to clarify any plan issues.

3. **Tax Consequences.** The requirement that the disclosure statement provide "adequate information" to creditors to enable them to make a reasonable and informed judgment about the plan (11 USC § 1125(a)(1)) has been clarified by BAPCPA for cases filed on or after October 17, 2005. BAPCPA provisions require the disclosure statement to include a discussion of the potential federal tax consequences to the debtor, any successor to the debtor, and a typical "hypothetical investor." Among other issues, plans providing for liquidation or the sale of property should be reviewed for the tax impact.

Caution:

Any discussion of tax consequences in the disclosure statement should be reviewed to ensure that no language is included purporting to bind the Service. There may be tax consequences whenever a debtor is released from liability for debt. For example, a debtor may "restructure" a mortgage on real property for the current reduced value rather than the mortgage amount when purchased. The plan may also provide for liquidation of real property at values less than the existing mortgage. These situations may affect the debtor's tax attributes, such as, the basis in the property or the NOL carryover available to the debtor. The disclosure statement should not state that there are no tax consequences to the debtor, in these situations. These examples are not all inclusive. Consult with Counsel if questions arise regarding tax consequences.

4. **Notice of Hearing.** Once the debtor submits a disclosure statement and plan of reorganization, the court schedules a hearing on the disclosure statement. Notice of the hearing is sent to all creditors. The FI caseworker should immediately request a copy of the disclosure statement and plan from the debtor's attorney upon receipt of the notice of hearing. These documents can also be reviewed on PACER. If mailed, these documents should be sent directly to the FI office instead of the national Insolvency post office box address.
5. **Insolvency Review.** The FI caseworker should review the claim and IDRS to ensure all tax liabilities, assessed and estimated, are included on a proof of claim. The pre-petition claim should be amended, if appropriate. This review will also identify if administrative tax liabilities have been incurred. In the post-BAPCPA case, 11 USC § 1112(b)(4)(I) provides that failure to timely pay taxes owed after the petition date or failure to file post-petition tax returns is cause for dismissal or conversion. The Service is not required to file an administrative claim before requesting dismissal or conversion of the case. However, the Service takes the position that IRS will file Form 6338-A, *Request for Payment of Internal Revenue Taxes*, when actual or potential post-petition liabilities are present. The filing of the administrative claim puts the debtor and creditors on notice of the post-petition amounts due. (See *IRM 5.9.8.12, Post-petition/Pre-confirmation BMF Monitoring, IRM 5.9.8.12.1, Post-petition Debts - Chapter 11 Individuals*, and *IRM 5.9.8.14.2(4), The Plan of Reorganization, Plan Provisions*.)
6. **Lien and Equity Issues.** If the IRS has filed a NFTL allowing for a secured claim, schedules must be reviewed to determine if the equity to which the lien attaches is at least equal to the claim. If the equity is less than the secured claim, the portions of the claim to be reclassified as unsecured priority or unsecured general must be calculated. The claim must be amended accordingly. (See *IRM 5.9.13.19.2, Manual Proofs of Claim and Common Claim Issues, Secured Claim*.)
7. **Objections.** The disclosure statement must provide sufficient information for the reviewer to make a judgment about the plan. Comparison of debtors' schedules and statements of financial affairs should be made against other financial information. Examples of financial information that can be reviewed include:
- Accrual
 - Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*
 - Form 433-B, *Collection Information Statement for Businesses*

IRS will usually object to the disclosure statement only if it is grossly deficient and if major plan objections are identified. FI and Counsel should establish guidelines regarding objections to disclosure statements.

5.9.8.14.1 (04-17-2013)

The Small Business Election

1. **The Small Business Debtor.** For cases filed prior to October 17, 2005, the small business debtor or "fast track" election was optional. A "fast track" Chapter 11 bankruptcy accelerates the plan confirmation process by an eligible small business debtor. Under BAPCPA, the small business debtor provision is no longer optional for cases filed on or after October 17, 2005. Generally, the small business provisions will apply to Chapter 11 business debtors whose noncontingent, liquidated debts do not exceed \$2,490,925 (excluding any debts owed to affiliates and insiders):
- When the US Trustee has not appointed an unsecured creditors committee, or
 - When the court has determined the committee of unsecured creditors is not sufficiently active and representative to provide oversight of the debtor.
2. **Pre-BAPCPA "Fast Track" Bankruptcies.** A "fast track" Chapter 11 bankruptcy accelerates the plan confirmation process by an eligible debtor's electing to be treated as a small business. In "fast track" cases filed prior to October 17, 2005, the debtor may file a plan within 100 days after the date of the order for relief. All plans must be filed *within 160 days* after the date of the order for relief. Under certain conditions, these time frames may be reduced or increased by the bankruptcy court.
3. **BAPCPA "Fast Track" Bankruptcies.** For "fast track" cases commencing on or after October 17, 2005, the debtor may file a plan within the first 180 days after the date of the order for relief. All plans must be filed *within 300 days* after the date of the order for relief. Under certain conditions, these time frames may be reduced or increased by the bankruptcy court (11 USC § 1121(e)).
4. **Court-Conditional Approval.** For all cases, the court can conditionally approve the disclosure statement, subject to final approval after notice and a hearing. The DIP may solicit acceptances and rejections of the plan based on the conditionally approved disclosure statement. The conditionally approved disclosure statement must be mailed 10 days before the date of the plan confirmation hearing in the pre-BAPCPA case. In the post-BAPCPA case, the conditionally approved disclosure statement must be mailed at least 25 days before the date of the plan confirmation hearing. For small business cases, a hearing on the disclosure statement may be combined with a hearing on confirmation, regardless of when the petition was filed. Finally, for cases filed on or after October 17, 2005, the court may determine the plan provides adequate information and a separate disclosure statement is not necessary. It may approve a disclosure statement submitted on standard forms approved by the court (11 USC § 1125(f)).
5. **Monitoring the Small Business Debtor.** Provisions applicable to the small business debtor are designed to be less cumbersome to these debtors. The provisions move the case more quickly to confirmation. Because BAPCPA has made the small business provisions mandatory, the Service will receive more cases where:
- The debtor has solicited acceptances of a plan prior to filing the petition,
 - The debtor has filed a request to eliminate the § 341 hearing, or
 - The court has determined that a separate disclosure statement is not necessary.

It is incumbent upon Service personnel to monitor the debtor's case for post-petition tax compliance. The time frames in which the Service can react have been greatly contracted.

Note:

11 USC § 362(n) provides the automatic stay will not apply in certain small business debtor cases. Generally, the stay will not apply where the small business debtor had a previous case that was dismissed, or the plan was confirmed, within two years of the present case. (*IRM 5.9.5.7, Opening a Bankruptcy Case, Serial Filers*, and *IRM Exhibit 5.9.5-3, Allowable Elapsed Time between Bankruptcy Filings*)

5.9.8.14.2 (09-29-2015)

The Plan of Reorganization

1. **Time Frame for Filing a Chapter 11 Plan.** FI caseworkers must determine if the debtor's case is a small business (fast track) Chapter 11 case, or a "regular" Chapter 11 case. The time frame for which a small business debtor must file their proposed plan is discussed in *IRM 5.9.8.14.1*, above. If the case is not a small business case, the debtor has 120 days from entry of the order for relief to file their proposed plan in order to retain the exclusive right to do so. However, the 120 day period may be extended

for a period *up to 18 months* with court approval.

FI caseworkers must schedule a follow-up on AIS to monitor for timely filing of the Chapter 11 plan. The follow-up should be scheduled based on whether the case is a small business or regular Chapter 11 case.

- As the debtor in a small business case must file their plan within 300 days of the order for relief, schedule a follow-up for a time shortly after the 300 day period.
- In the "regular" case, schedule a follow-up for a time shortly after the 120 day period has expired. If a plan has not been filed, see if the court has granted the debtor an extension on the period to file the proposed plan.

Caseworkers may utilize the "Unfiled Plans" report on AIS to identify cases where plans have not been filed within a specified time period. However, the report will not be accurate when the "Plan Filed" field on the AIS Taxpayer Screen has not been updated with the date the proposed plan is filed. Ensure that the "Plan Filed" field is updated when the debtor's plan is filed.

Note:

If the debtor's plan has been filed but not confirmed within 180 days, check to see if another party has proposed another plan on behalf of the debtor.

2. **Negotiations.** The Bankruptcy Code prescribes minimal requirements for the structure and confirmation of a Chapter 11 plan. However, the final format of the plan results from negotiations among the debtor and its creditors. The IRS must monitor the development and feasibility of proposed Chapter 11 plans prior to confirmation of the plan. *Failure to monitor the plan may put IRS at risk for losing its rights under the law. Terms in the confirmed plan are binding on the debtor and the creditors.*
3. **Quality Plan Reviews/Timely Objections.** Chapter 11 plans may fail to provide properly for the claims of the Service. The Service must review proposed plans carefully. The court generally establishes a deadline for creditors to object to confirmation of the proposed plan. The Service must review the proposed plan in sufficient time to refer the case to Counsel to request an objection to confirmation by the deadline established by the court. The caseworker should refer the case to Counsel to object to deficient plans subject to tolerances in IRM 5.9.4.14.4. IRM 5.9.5.4(4), *Opening a Bankruptcy Case, AIS Documentation, Chapters 11 and 12 Plan Documentation*, provides the format to be followed in documenting a Chapter 11 plan summary on AIS.
4. **Plan Provisions.** The caseworker must review the proposed plan to ensure that it complies with 11 USC § 1129 regarding treatment of any liabilities (assessed and estimated) owed to the Service. The proposed plan must provide:

A. **Administrative Expenses.** Any unpaid administrative expense claims must be paid in full on the effective date of the plan unless the claim holder agrees to different treatment. (11 USC § 1129(a)(9)(A)) The effective date of the plan should be the confirmation date, or shortly follow it. The IRS rarely agrees to different treatment. (See paragraph (9) below.)

The Service should claim all administrative expense taxes on Form 6338-A, *Request for Payment of Internal Revenue Taxes*, filed prior to confirmation. Filing Form 6338-A prior to confirmation may avoid the debtor contending that any unclaimed taxes are discharged by confirmation. Further, caseworkers should review plans to ensure they provide a mechanism for the payment of assessed and estimated post-petition, pre-confirmation tax liabilities. An estimated administrative claim may be required to include potential liabilities on unfiled returns for income tax years ending before, or other taxes arising before, confirmation of the plan. An estimated administrative claim may also be required to include any potential withholding tax liabilities for FTDs that were not made, or that were insufficient. The tax on Form 941 is incurred when the wages are paid, not when the return is due. Therefore, an estimated claim may be required for tax on a return that is not due prior to the confirmation date.

Plans typically set a bar date for administrative expense requests. FI should negotiate for plan language allowing taxes for pre-confirmation liabilities for which a return has not been filed to pass through bankruptcy unaffected by such bar date. FI caseworkers should consult with Counsel if problems arise. If the debtor will not agree, the Service must object to the plan.

Caution:

Failure to file a timely request for payment presents substantial risk the court will hold such administrative taxes to have been discharged notwithstanding 11 USC §§ 1129(a)(9)(A) and 503.

B. **Administrative Expenses - under BAPCPA.** For cases filed on or after October 17, 2005, governmental units are not required to file requests for payment of administrative expenses. (11 USC § 503(b)(1)(D)) The taxpayer is generally required to pay taxes on or before the due date of the tax under applicable non-bankruptcy law per 28 USC § 960. The small business debtor must timely file tax returns (11 USC § 1116(6)(A)). 11 USC § 1112 (b)(4)(I) makes the failure to file or pay post-petition taxes an express reason for dismissal or conversion in any Chapter 11 case. Thus, debtors should be paying their post-petition tax obligations in the ordinary course of business pursuant to the tax laws. This includes the filing and paying of any income tax liabilities of the bankruptcy estate on Form 1041 in the individual or joint bankruptcy case.

While the administrative expense claim is not required in the post-BAPCPA case, it is the Service's position that IRS will file Form 6338-A in case the court imposes any bar date for administrative expense claims. The Form 6338-A puts the debtor and creditors on notice of assessed and estimated delinquent taxes and returns. Additionally, filing the "admin" claim serves to make the delinquent taxes or returns a matter of tax administration. The claim will alert other interested parties of the debtor's non-compliance. Any pursuit of a motion to convert or dismiss for failure to file the post-petition returns or pay the post-petition taxes requires a referral to Counsel subject to tolerances set forth in IRM 5.9.4.14.4.

Caution:

Caseworkers must review discharge language in the proposed plan closely. While BAPCPA no longer requires the filing of administrative expense claims, the claim should be filed in order for the claim to be paid in the plan. Additionally, the plan in the post-BAPCPA case may contain language discharging liabilities not included on Form 6338-A. If the plan is confirmed with the discharge language, and the liability is not included on Form 6338-A, the liability may be discharged.

C. **Secured Claims and Protection of the Government's Interests.** Prior to BAPCPA becoming effective on October 17, 2005, the Bankruptcy Code required the payment of secured claims within a reasonable amount of time, or from the petition date, if the claim was over-secured. Interest accrued from the effective date of the plan. BAPCPA requires the treatment of secured claims in the same manner as a priority claim when the claim would be a priority claim absent its secured status. (See 11 USC § 507(a)(8) to determine if the claim would be a priority claim.) The claim must be paid over a period ending not later than 5 years after the date of the order for relief. Interest must be paid at the IRC rate. (See 11 USC § 1129(a)(9)(C) and (D), 11 USC § 511, and list item (j) below.)

D. **Rate of Interest for Tax Claims.** The interest rate in the post-BAPCPA case is the IRC § 6621 rate for calendar month the plan is confirmed. (See 11 USC § 511.) The interest rate for large corporate underpayments under IRC 6621(c) is the "normal" interest rate plus two percentage points. In either instance, interest is *compounded daily*. The proposed plan may include language stating "of a value, as of the effective date of the plan" to address the payment of interest required for confirmation of the plan per 11 USC §1129(a)(9)(C)(i).

The caseworker must be alert for plans that do not provide for interest at the IRC rate or do not contain "present value" language. Plans may state "no interest." They may provide for an interest rate other than the IRC rate. They may provide for "simple" instead of "compound" interest. The caseworker should attempt to negotiate an amended plan to provide for interest at the IRC § 6621 rate. A referral to Counsel may be required to request an objection to confirmation if the debtor refuses to amend the plan. The confirmed plan is binding on the Service. Therefore, if the plan is confirmed at 2% simple interest, the Service is only entitled to collect 2% simple interest through the life of the plan.

E. **Full Payment Provision.** The Service should insist the plan *provide for full payment of secured claims before the CSED is due to expire, absent the IRC § 6503(h) suspension*. If the debtor does not include this provision in their proposed plan, the Service may ask for modification of the plan. The modified plan should include language clarifying the CSED will be suspended pursuant to IRC § 6503(h)(2). (See IRM 5.9.8.9, *Collection Statute of Limitations and Chapter 11 Plans*.)

F. **Collection Suspension and the Individual in Chapter 11.** BAPCPA changed discharge provisions for individuals in Chapter 11 who filed bankruptcy on or after October 17, 2005. 11 USC § 1141(d)(5) generally provides that confirmation of the plan does not discharge any debt provided for in the plan until the court refuses a discharge after the debtor has completed all payments required under the plan. Therefore, the collection statute is extended on periods covered under the plan. However, caseworkers must be alert for language in plans that provides for a discharge prior to plan completion. The caseworker should attempt to negotiate a

modified plan that provides for a discharge after completion of plan payments. If the debtor does not modify the plan, the case should be referred to Counsel for an objection to confirmation.

Some plans contain language allowing the court to close the case at "substantial consummation" of the plan. Pursuant to 11 USC § 362(c)(2), the automatic stay lifts at the earliest of case closure, dismissal, or the time discharge is granted or denied. The stay may be lifted long before completion of payments provided for in the plan. In these cases, the caseworker must protect the Assessment Statute Expiration Date (ASED) when there is an unagreed Examination or AUR deficiency.

- G. **Lien Retention Provision.** If the Service has a secured claim, the plan must contain a provision providing for retention of the Service's lien until plan completion. Unless the plan provides otherwise, 11 USC § 1141(c) provides that the property dealt with by the plan is free and clear of all claims of creditors and equity security holders once the plan is confirmed. Without lien retention language, the Service's lien could be released at confirmation.
- H. **Over-secured Claim.** The Service is over-secured when the value of the collateral exceeds the amount of the Service's secured claim. The plan should provide for interest on the claim from the petition date (11 USC § 506(b)).
- I. **Pre-BAPCPA Unsecured Priority Claims.** For cases filed prior to October 17, 2005, 11 USC § 1129(a)(9)(C) provided that unsecured priority claims must be paid in full, in cash, within six years of assessment. The payments must include interest on the claim. Interest accrued from the effective date of the plan to the date of payment. However, a creditor could agree to a different treatment.

Caution:

Plan reviewers should be on the alert for plans providing for payments over six years from the *effective* date of the plan rather than six years from the date of assessment.

- J. **Unsecured Priority Claims under BAPCPA.** The treatment of unsecured priority claims changed when BAPCPA became effective on October 17, 2005. Unsecured priority claims must be paid in regular installment payments in cash, over a period no later than five years after the petition date. Unless the plan provides otherwise, the Service is entitled to receive compound interest at the IRC rate the month of confirmation (11 USC § 511). If the plan states that the Service is paid interest, but is silent regarding the interest rate, interest is calculated per 11 USC § 511. If the plan does not specify interest terms, but contains language regarding "present value," interest accrues at the compound interest rate for the month of confirmation. If the plan provides for simple interest, a specified interest rate or states "no interest," the Service is bound by the terms of the confirmed plan. If the debtor liquidates through Chapter 11, the liquidating plan must provide for accrued interest. Interest requirements for the liquidating plan mirror those for a plan of reorganization. The payment schedule may not be less favorable than the most favored unsecured general claim provided for by the plan except for 11 USC § 1122(b) creditors.

Note:

11 USC § 1122(b) creditors file small unsecured general claims that may be paid separately in a lump sum for convenience sake.

- K. **Unsecured General Claims.** Unsecured general claims are not required to be paid in full. There is no requirement for the payment of post-petition interest. General creditors must be paid an amount at least equal to that which the creditors would have received under Chapter 7, in accordance with 11 USC § 1129(a)(7). An unsecured claim should be filed by the Service if unsecured amounts are due the IRS and the IRM 5.9.13.17, *Manual Proofs of Claim and Common Claim Issues, Below Tolerance - Non-Filing of a Proof of Claim*, dollar criterion is met. The general unsecured claims of the IRS must be treated in the same manner as all other general unsecured claims. The Service should request the payment of interest if the plan provides for payment of interest to other unsecured general creditors.

Note:

Plans may divide general claims into categories by amount and provide for more prompt disposition of smaller claims. In such cases, the reviewer may consider, with managerial concurrence, reducing the general claim for more prompt "up front" payments and disposition, depending on the terms and amounts. (See paragraph (8) below.)

- L. **Default Provisions.** The caseworker should attempt to negotiate *default provisions* in the proposed plan. The caseworker should also attempt to negotiate language clarifying that the plan does not discharge federal tax liabilities provided for in the plan until paid. In the case of entities other than individuals, the plan should permit administrative collection actions, upon default. The discharge in the individual or joint bankruptcy case does not occur until completion of plan payments. For the individual or joint bankruptcy case, the plan default language should include provisions for conversion or dismissal upon plan default. In light of the high default rate of Chapter 11 plans, negotiating default provisions is a significant aspect of the plan review. The absence of clear default provisions in the plan leaves the Service with an uncertain legal position, which can lead to litigation.

- M. **Default Language.** The following model language can be modified to fit local practice or the circumstances of a particular case:
"If the reorganized debtor substantially defaults on the plan payments due to the IRS, the outstanding balance is immediately due and payable. Payment shall be for the entire amount owed to the IRS under the plan. The IRS may collect these unpaid tax liabilities through the administrative collection provisions of the Internal Revenue Code."

Note:

This language should be modified for cases of individuals filed after October 17, 2005, since the discharge in such cases does not usually occur until after completion of payments under the plan. See IRM 5.9.8.16.3(3), *Plan Default, Administrative Collection*.

5. **Full Plan Review Critical.** The entire plan must be reviewed to ensure it adequately provides for the Service's claims. The review must ensure that there are no provisions detrimental to the government. Plans providing for liquidation or the sale of property should be reviewed for the tax impact. (See IRM 5.9.4.5.1, *Common Bankruptcy Issues, Sale of Property Considerations*.) The plan must not contain language that discharges debts that is not compliant with 11 USC § 1141. Finally, the plan must not provide for closure of the individual or joint case prior to discharge upon completion of plan payments.

Caution:

Terms of the confirmed plan are binding on the Service, even when not compliant with the USBC.

6. **Plan Review "Red Flags."** No list can be all-inclusive. FI must exercise caution when plan provisions are reviewed and any of the following factors are noted:

- Balloon payments. While irregular or fluctuating payments may be acceptable for a seasonal business, IRS should object to plans providing for a large final payment.
- Designation of payments. Especially, plans designating payments first to trust fund taxes.
- Discharge-like releases and/or injunctions in favor of non-debtor third parties, such as officers of the debtor corporation.
- Distribution of property to the government in lieu of cash.
- Excessive time periods between confirmation and the effective date.
- Excessive time to cure any default in the plan.
- Giving any third party, such as the creditor's committee, the right to delay payment to any creditor.
- Language which purports to change or conclusively determine tax consequences under the IRC.
- Payment of interest for only a portion of the claim.

- Payment of interest at a rate other than the IRC rate at confirmation.
 - Payment of priority claims for periods longer than six years from the assessment date for cases filed prior to October 17, 2005.
 - Payment of priority or secured claims otherwise entitled to priority longer than five years from the petition date for cases filed on or after October 17, 2005.
 - Providing for payment over several years, but not providing for equal monthly payments.
 - Providing for large immediate cash payments to general creditors but payments over time to priority creditors.
 - Provisions giving general unsecured creditors more favorable treatment than priority creditors.
 - Provisions dealing with any post-confirmation taxes or bringing post-confirmation matters under court jurisdiction.
 - Creation of a post-confirmation trust, funded by assets of the bankruptcy estate.
 - Unrealistically short administrative claim bar dates.
 - For cases commenced on or after October 17, 2005, any provision requiring the filing of an administrative expense claim for taxes.
 - Language discharging the individual or joint debtor prior to completion of plan payments in a reorganizing plan filed on or after October 17, 2005.
 - Any other provision which jeopardizes the government's interests.
7. **Deficient Plans - General.** If the plan proposes to pay less than the amount required by the USBC, the plan is a "deficient plan." The FI caseworker should attempt to negotiate "deficient" plans with the debtor's attorney when the plan does not meet minimum requirements for payment under the USBC. Any other serious concerns with the proposed plan should be negotiated with the debtor's attorney. The changes will then be included in an amended plan or in the order confirming the plan. In any event, the agreed-upon changes must be *in writing*.
8. **Deficient Plans - Exceptions.** If the debtor can demonstrate that acceptance of the proposed deficient plan is in the best interests of the government, refer the case to Counsel. Recommend acceptance of the plan in lieu of objection. Any unpaid pre-confirmation debt in a non-individual Chapter 11 will be discharged unless it meets one of the exceptions in USBC § 1141(d)(6).

Note:

This recommendation may be made only if no other creditor benefits to the detriment of the Service. *Management and Counsel must concur with this recommendation.*

9. **Prompt Objections.** Consider a referral to Counsel to object to confirmation of the plan when:
- Opposing counsel is unresponsive to requests for plan modifications
 - Opposing counsel is unable to demonstrate acceptance of a deficient plan is in the best interest of the government
 - The government's interests are at risk
- The referral to Counsel should be made as soon as possible and before the last day for a creditor to object to confirmation of the plan.
10. **Objection Contents.** The referral must state actions taken to negotiate with opposing counsel. Any factors considered in rejecting any settlement proposals should be included. Examples of factors include:
- The debtor did not demonstrate acceptance of a deficient plan is in the best interest of the government
 - Insufficient information was provided by the debtor to make a determination
 - The debtor's payment proposals are not feasible
 - The tax claims are non-dischargeable and full collection is likely outside of bankruptcy
11. **Written Notice to Debtor.** When the confirmed plan does not clearly specify the terms of the confirmed plan, FI should contact the debtor *in writing*. The letter should include the:
- Payment amount,
 - Payment due date,
 - Frequency of payments,
 - Address where the payments should be mailed, and
 - Name and telephone number of the caseworker assigned the debtor's bankruptcy case.
12. **Individual Debtor and Non-dischargeable Taxes.** If the bankruptcy is an individual case, advise the debtor and the debtor's attorney *in writing* of any *non-dischargeable* liabilities. These liabilities will survive the bankruptcy case. They will be collectible after lifting of the stay. Also, advise the debtor and debtor's attorney that any post-petition, pre-confirmation interest on these non-dischargeable liabilities will survive the bankruptcy, even if the taxes were paid in full under the plan. This interest is not claimable in the bankruptcy case. (See IRM 5.9.8.15(8) regarding collection outside the plan.)

5.9.8.14.3 (09-29-2015)

Chapter 11 Plans and Restitution Assessments

1. **General Information.** Following the conviction of a defendant for a criminal tax violation or tax-related offense, the court may order the defendant to pay restitution. The requirement that the defendant pay restitution will be contained in a document signed by the judge called a Judgment and Commitment (J&C) Order. The Dallas Centralized Restitution and Probation Advisory Unit can provide information regarding the terms for payment of the restitution and is responsible for monitoring whether the taxpayer is in compliance with the J&C Order. Contact information for the Dallas Advisory Unit is located at: <http://mysbse.web.irs.gov/collection/aiqorg/contacts/19176.aspx>. For general information regarding restitution assessments and dischargeability, see IRM 5.9.17.7.8, *Closing a Bankruptcy Case, Discharge and Restitution Assessments*. For information regarding proofs of claim and restitution assessments, see IRM 5.9.13.18.5, *Manual Proofs of Claim and Common Claim Issues, Claim Periods, Restitution Assessments*.
2. **Classifying the Case as Restitution.** When a RO or an Advisor learns that a taxpayer against whom a restitution assessment has been made has filed bankruptcy, the RO or Advisor will contact the CIO to inform them that the bankruptcy involves a restitution assessment. It does not matter if the IRS has otherwise received notice of the bankruptcy case and if the case has been opened on AIS. The CIO caseworker will input a "CRIMREST" case classification on the AIS case classification screen and document the information provided by the RO or Advisor in the case history.

Note:

If the FI caseworker becomes aware of the restitution assessment, and the case classification is not present on AIS, the FI caseworker will add the "CRIMREST" classification to AIS.

3. **Payment Schedule and J&C Orders.** The J&C Order usually contains a payment schedule specifying the manner in which the restitution order must be paid. The order normally specifies that restitution payments are made to the office of the clerk of the district court in which the J&C Order was entered. The clerk of the court office disburses the payments to the appropriate victims of the criminal action. In the case of the IRS as a victim, the payments are mailed to the Kansas City Submission Processing Center (KCSPC), which applies the payments to the restitution assessment. If the person ordered to make the restitution payments fails to make the required payments, the court may revoke or modify a term of supervised release, or may resentence the individual. In the case of the IRS, the assigned Advisor monitors the payments and reports if the taxpayer fails to make the required payments. FI caseworkers can obtain the restitution payment schedule contained in the J&C Order from the appropriate Advisor.
4. **Discharge Language in the Plan and Restitution Assessments.** In all cases, plans should be reviewed for language providing for a discharge of the restitution assessment. If the plan contains such language, the case should be referred to Counsel for an objection to confirmation. See IRM 5.9.17.7.8, *Closing a Bankruptcy Case, Discharge and Restitution Assessments*, for a discussion of dischargeability and restitution assessments.

5.9.8.14.3.1 (09-29-2015)

Restitution Assessment Paid Outside the Chapter 11 Plan

1. **Plan Review and Payment of the Restitution Assessment Outside the Plan.** Because restitution payments are monitored by the office of the clerk of the court, the taxpayer may provide in the plan for the restitution payments to be made to the office of the clerk outside the terms of the plan. If the taxpayer provides for restitution payments to be made outside the plan, FI caseworkers should not object to the plan solely for this reason. After confirmation, the FI caseworker should notify the Advisor that the taxpayer will continue to make payments to the office of the clerk of the court. The Advisor will monitor that payments pursuant to a restitution order are being made.
2. **Payments of the Restitution Assessment Outside the Plan and the Confirmed Plan Monitoring (CPM) Screen.** If payments are to be made outside the plan, the FI caseworker will need to remove the assessment amount from the Claim Screen. The restitution assessment must not be included on the CPM screen on AIS. This will ensure that the trustee or DIP does not duplicate the payment made directly to the office of the clerk of the court. It will also ensure that none of the payments made pursuant to the plan are applied to the restitution assessment.

5.9.8.14.3.2 (09-29-2015)

Restitution Assessment Paid in the Chapter 11 Plan

1. **Plan Provisions Mirror the J&C Order.** If the taxpayer provides in the plan for the restitution payment to be paid according to the payment scheduled in the J&C Order, FI caseworkers should verify that the plan complies with the terms of the J&C Order in terms of the amount of the payments and the schedule on which the payments are to be made. If the plan mirrors the provisions of the J&C Order, no objection should be raised to the plan unless some other reason for objection exists.

If the plan provides for the restitution assessment to be paid according to the J&C Order, upon confirmation the FI caseworker should notify the Advisor that the restitution payments are being made to the IRS pursuant to a Chapter 11 plan. The FI caseworker will monitor that the payments are being made. The FI caseworker should detail in the AIS history the amounts paid under the plan for restitution that are being applied to the restitution assessment.

2. **Plan Provisions Do Not Mirror the J&C Order.** If the plan provides for the restitution assessment to be paid through the plan, but in amounts less than the payments ordered in the J&C Order, or on a less frequent schedule than the J&C Order requires, the case should be referred to Counsel to object to confirmation of the plan. The basis of the objection to confirmation is that the plan contradicts a court order. In the event that the bankruptcy court confirms a plan in which the restitution payments do not mirror the J&C Order but are in accordance with the USBC, the caseworker should apply the payments in accordance with the provision of the plan and the order confirming the plan. The AIS history should contain the details regarding the appropriate payment application. The FI caseworker should notify the Advisor of the details of the confirmed plan and that the plan does not comply with the provisions of the J&C Order.
3. **Application of Payments.** Payments made pursuant to a plan for restitution must be applied to the restitution assessment. In the event it is necessary to determine how any payment(s) received in bankruptcy and designated for restitution should be applied, the FI caseworker should contact the Advisor for guidance.
4. **Actions Upon Default of a Chapter 11 Plan with Restitution Assessments.** The Insolvency caseworker should immediately contact the Advisor in the event that the debtor defaults on a confirmed plan and:
 - The restitution is being paid through the plan and
 - The restitution assessment(s) have not been fully paid.

The FI caseworker should also contact Counsel for guidance on whether a motion should be filed to dismiss the case. The caseworker should inform Counsel that there is an unpaid restitution assessment and provide the contact information for the assigned Advisor.

5. **Dismissal or Discharge of the Case with a Restitution Assessment.** The FI caseworker should notify the appropriate Advisor when a bankruptcy case is dismissed or discharged and there is a restitution assessment. Procedures for the dismissed case with a restitution assessment are the same as those for any dismissed case. See IRM 5.9.17.5, *Closing a Bankruptcy Case, Dismissal*, for information. For information on a discharged case with a restitution assessment, see IRM 5.9.17.7.8, *Closing a Bankruptcy Case, Discharge and Restitution Assessments*.

5.9.8.15 (04-17-2013)

The Chapter 11 Discharge and the Effects of Confirmation

1. **Bankruptcy Estate upon Confirmation.** Vesting of property depends on whether the case was filed on or after October 17, 2005. All property of the non-individual debtor generally vests back to the debtor upon confirmation. However, the plan or the confirmation order may provide otherwise in accordance with 11 USC § 1141(b). The automatic stay in cases other than individuals usually terminates at confirmation per 11 USC § 362(c) because the debtor is granted or denied a discharge. It does not matter if the non-individual case was filed pre-BAPCPA or post-BAPCPA. The pre-BAPCPA individual debtor is treated in the same manner as the non-individual debtor. Treatment of the individual debtor in the post-BAPCPA case is different. As in Chapter 13 cases, there is a provision that post-petition property is included in the estate; and, as in Chapter 13 cases, there is confusion as to what property reverts in the debtor at confirmation. The automatic stay in the post-BAPCPA case of an individual remains in effect until the earlier of dismissal, discharge, or closure of the case by the court. In any event, there is always a stay against collection from property of the estate. The discharge does not occur in the post-BAPCPA individual case until completion of all payments provided for in the plan. Caseworkers must be alert to plans that provide for premature closure of the case by the court, prior to the discharge. In such cases, the automatic stay will terminate prior to the discharge. Early termination of the stay may pose difficulties in calculation of the tolling of the Assessment Statute Expiration Date (ASED).
2. **Effective Date of Plan.** The effective date of the plan is usually defined in the plan. If not defined in the plan, the effective date is the date the confirmation order becomes final.
3. **Plan Confirmation Binding.** A Chapter 11 plan is confirmed when the court enters an order confirming the plan. Confirmation binds the debtor and creditors to the terms of the plan.

Caution:

Insolvency should scrutinize confirmation orders in all cases. The confirmation order is as binding as the plan and may contain problematic provisions. A referral to Counsel may be needed for a timely motion for relief from judgment or to appeal any problematic provisions in the confirmation order.

4. **Discharge.** In the pre-BAPCPA case, 11 USC § 1141(d) generally provided that confirmation of the plan discharged the debtor from any pre-confirmation debt. However, the exceptions to discharge listed in 11 USC § 523 apply in cases of individuals. A plan or confirmation order that provides otherwise should be referred to Counsel for an objection to confirmation or to request an appeal. BAPCPA amended 11 USC § 1141(d). The individual debtor in the case filed on or after October 17, 2005, does not receive a discharge upon confirmation. Rather, the individual receives a discharge after completion of payments, as in Chapter 13 cases. Additionally, similar to the Chapter 13 case, the court may grant the individual a hardship discharge in appropriate circumstances per 11 USC § 1141(d)(5).

5. **Automatic Stay Terminated.** The automatic stay is usually terminated at confirmation for all non-individual debtors. The automatic stay for individuals who filed prior to October 17, 2005, is also usually terminated at confirmation. There is no need to input a TC 520 cc 81 at confirmation. (See *IRM 5.9.8.16, Post-Confirmation Actions.*) For Chapter 11 cases of individuals filed on or after October 17, 2005, the stay usually remains in effect after confirmation and during the plan.

Note:

The automatic stay against acts to collect from property of the estate only ends when the property is no longer property of the estate, per 11 USC § 362(c).

6. **Non-Discharge.** For a debt to be discharged, the debtor must first be eligible to receive a discharge. Per 11 USC § 1141(d)(3), a debtor is not eligible to receive a discharge if:

- A. The plan provides for liquidation of all or substantially all property of the estate;
- B. The debtor does not engage in business after the confirmation of the plan; *and*
- C. The debtor would be denied a discharge in Chapter 7.

An *individual* or *non-individual* debtor may be denied a discharge when they have:

- Committed fraud.
- Not been open and truthful during the bankruptcy. For example, the debtor failed to explain satisfactorily the loss of assets when questioned at the meeting of creditors. Another example is the debtor knowingly changing the books and records of the non-individual to conceal income earned by the non-individual to creditors. These examples are not all-inclusive.
- Been granted a discharge in prior Chapter 11 case with a petition date *within eight years* of the current petition date.
- Been granted a discharge in prior Chapter 12 case with a petition date *within six years* of the current petition date. Payments in the Chapter 12 plan in the prior case must have either totalled 100% of allowed unsecured claims, or the debtor must show that the Chapter 12 plan was proposed in good faith, was the debtor's best effort, and the debtor paid 70% of such claims.

An *individual* debtor may also be denied a discharge when they were granted a discharge in a prior Chapter 13 case with a petition date *within six years* of the current petition date. Payments in the Chapter 13 plan in the prior case must have either totalled 100% of allowed unsecured claims, or the debtor must show that the Chapter 13 plan was proposed in good faith, was the debtor's best effort, and the debtor paid 70% of such claims.

If a creditor does not object to the discharge by the last date to object to the discharge set by the USBC, the USBC issues a discharge order.

Note:

See 11 USC § 727 for information on the denial of discharge in the Chapter 11 case.

7. **Individuals/Certain Taxes Not Discharged.** Confirmation in a Chapter 11 case does not discharge an *individual* debtor from certain taxes. 11 USC § 523(a)(1) lists the exceptions to discharge and includes:

- Priority taxes under 11 USC § 507(a)(8)
- Taxes on unfiled returns
- Taxes on returns that were filed late and within the two years prior to the bankruptcy petition date
- Taxes on fraudulent returns
- Any tax that the debtor willfully attempted to evade or defeat

If the non-dischargeable taxes are paid in the proceeding, the unpaid post-petition/pre-confirmation interest will survive the bankruptcy. It will be collectible after the discharge. Unpaid penalties relating to non-dischargeable taxes will also survive the bankruptcy, if the penalties arose from acts of the debtor after the date that is three years before the bankruptcy petition date.

8. **Non-Collection Outside of Plan.** Confirmation does not discharge an individual debtor from taxes excepted from discharge under 11 USC § 523(a). However, it is the Service's practice not to attempt to collect non-dischargeable pre-petition taxes outside of the plan unless:

- A. A substantial default has occurred;
- B. Circumstances allowing collection through setoff arise, or
- C. The plan does not provide for full payment of the non-dischargeable taxes.

5.9.8.15.1 (09-29-2015)

Chapter 11 Discharge and the Pre-Petition Individual Shared Responsibility Payment (SRP) Liability

1. **General Information.** As discussed in *IRM 5.9.8.12.1.1* above, post-petition SRP liabilities are non-dischargeable in an individual or joint debtor's Chapter 11 case. *IRM 5.9.8.15.1* discusses dischargeability and pre-petition SRP liabilities, only.

A bankruptcy discharge may be granted to individual or joint debtors who file Chapter 11. Typically, the discharge may be granted when the debtor completes all payments due and provided for in the confirmed plan, but the court may allow a discharge at another time for "cause". A discharge may also be granted when the court enters a hardship discharge to debtors who cannot complete their confirmed Chapter 11 plan.

2. **SRP Liability Assessments.** The SRP liability is treated as an excise tax under 11 USC § 507(a)(8)(E). It is reported on the appropriate line of the debtor's federal income tax return. The amount shown on the respective line of the income tax return is then assessed on IDRS as a MFT 35 module for the respective tax year. Since the liability for the SRP module is derived from an individual's federal income tax return, certain information from that return is used in determining dischargeability of the SRP liability.

3. **Discharge Eligibility.** As mentioned in *IRM 5.9.8.15(6)* above, the debtor must be eligible to receive a discharge in the current Chapter 11 bankruptcy case for any of the debtor's liabilities to be discharged. Liabilities owed by the individual or joint debtor may not be discharged if the IRS was not properly notified of the bankruptcy case. See *IRM 5.9.17.7.9, Closing a Bankruptcy Case, Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case*, for additional information. This also includes SRP liabilities.

4. **Discharge Upon Completion of the Chapter 11 Plan.** When an individual or joint debtor receives a discharge upon completion of the Chapter 11 plan under 11 USC § 1141(d)(5)(A), the pre-petition SRP liability:

- Is non-dischargeable if the Form 1040 was due, with extensions, within the three-years prior to the bankruptcy petition date. (11 USC § 523(a)(1)(A) and 11 USC § 507(a)(8)(E)(i))

- May be dischargeable if the tax on the Form 1040 is non-dischargeable due to willful evasion or fraud. However, IRS must be able to show that the debtor willfully evaded the SRP or committed fraud as to the SRP. When the SRP may be non-dischargeable for these reasons, concurrence that the liability is non-dischargeable is required from Area Counsel. (IRM 5.9.17.7.2(1), *Closing a Bankruptcy Case, The Fraud or Willful Evasion Exception, Exception to Discharge*, and 11 USC § 523(a)(1)(C))
- May be non-dischargeable if the tax on the Form 1040 was assessed before the debtor filed a return. Discharge can depend upon the jurisdiction where the bankruptcy case was filed. Discharge can also depend upon when/if the debtor filed their return for the respective year. See IRM 5.9.17.7.1, *Closing a Bankruptcy Case, Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared*, and 11 USC § 523(a)(1)(B)(i).
- Is non-dischargeable if the Form 1040 was filed late and after the date that is two-years before the date of the bankruptcy petition. (11 USC § 523(a)(1)(B)(ii))

Note:

The two year period with regard to late filed returns is tolled during a prior bankruptcy. See IRM 5.9.13.19.3(4), *Manual Proofs of Claim and Common Claim Issues, Unsecured Priority, BAPCPA Tolling*, for additional information.

5. **Hardship Discharge.** The exceptions to discharge above apply to a hardship discharge as well.
6. **Interest.** If the SRP liability is non-dischargeable, the interest is non-dischargeable. No penalty is assessed or accrued on the SRP liability.
7. **SRP Mirrored Modules.** Beginning in January of 2016, certain joint SRP liabilities assessed under Master File Transaction (MFT) 35 on IDRS will be mirrored as individual SRP modules under MFT 65 on IDRS. For example, a joint SRP liability may be mirrored when one spouse filed bankruptcy and the bankruptcy case was dismissed or discharged. The SRP liability of the debtor is treated in the same manner in a bankruptcy case. It does not matter if the SRP is assessed under MFT 35 or MFT 65.

**5.9.8.16 (09-29-2015)
Post-Confirmation Actions**

1. **Actions.** Take the following post-confirmation actions on cases filed by individual debtors prior to October 17, 2005, or non-individual debtors regardless of their filing date:

A. Input TC 520 cc 64 on all pre-confirmation modules.

Note:

Unusual language in the confirmed plan or confirmation order regarding offset provisions or post-confirmation collection actions may require the use of a TC 520 closing code other than TC 520 cc 64. If provisions are unclear, contact Counsel for assistance in interpreting the plan.

B. Verify that the TC 520 cc 64 has posted.

C. Reverse any TC 520 bankruptcy closing code that is present on the account except the TC 520 cc 64.

D. Input TC 137 on all accounts having a TC 136.

E. Request assessment of any unagreed deficiencies, as appropriate, with the exception stated in paragraph (2) below.

F. Document the terms of the confirmed plan in the AIS history. (See IRM 5.9.5.4(4), *Opening a Bankruptcy Case, AIS Documentation, Chapters 11 and 12 Plan Documentation*.)

G. Send the debtor a letter advising of the plan payment amount. Include the name, telephone number, and mailing address of the caseworker in the letter. (See IRM 5.9.8.14.2(11), *The Plan of Reorganization, Written Notice to Debtor*.)

H. Add the plan to the Confirmed Plan Monitoring (CPM) screen on AIS. (*Exhibit 5.9.8-1, Adding the Confirmed Plan to AIS*.)

I. Schedule a follow-up for receipt of the first plan payment.

2. **BAPCPA.** For individual debtors whose bankruptcies commence on or after October 17, 2005, the automatic stay generally remains in place until the discharge upon completion of plan payments. The TC 520 code should not be changed without a specific need to do so. Unagreed deficiencies on pre-petition periods cannot be assessed until the stay is lifted. The stay is lifted at the earliest of closure of the case by the court, dismissal, discharge, or denial of discharge. The caseworker must:

A. Document the terms of the confirmed plan in the AIS history. (See IRM 5.9.5.4(4), *Chapters 11 and 12 Plan Documentation*.)

B. Send the debtor a letter advising of the plan payment amount. Include the name, telephone number, and mailing address of the caseworker in the letter. (See IRM 5.9.8.14.2(11), *The Plan of Reorganization, Written Notice to Debtor*.)

C. Add the plan to the Confirmed Plan Monitoring (CPM) screen on AIS. (See *Exhibit 5.9.8-1, Adding the Confirmed Plan to AIS*.)

D. Schedule a follow-up for receipt of the first plan payment.

Note:

When the confirmed plan does not specify the plan payment amount, the caseworker must determine the plan payment amount by computing an amortization schedule.

The DIP or trustee in the Chapter 11 case of an individual debtor filed post-BAPCPA is required to report income of the bankruptcy estate on Form 1041. This filing requirement remains until discharge upon completion of the plan. Any outstanding 1041 liability is a debt of the bankruptcy estate and claimable on Form 6338-A. For additional information, see IRM 5.9.8.12.1, *Post-petition Debts - Chapter 11 Individuals*, and IRM 5.9.8.13, *Internal Revenue Code § 1398 Issues*.

Caution:

Any unclaimed pre-confirmation liability on the Form 1041 may be dischargeable. The caseworker must monitor post-confirmation filing and paying compliance of the individual debtor closely. Any unclaimed post-confirmation Form 1041 liability may be uncollectible outside the bankruptcy.

**5.9.8.16.1 (01-01-2006)
Disposition of Acquired Property**

1. **Disposing of Acquired Property.** If property is received in accordance with the plan, the plan should be reviewed for restrictions or considerations that inhibit disposing of the property. If none are identified, the property should be treated similarly to property acquired by redemption. This includes recording any deeds, certificates of title or similar documents, and then selling the acquired property. (See IRM 5.10.5, *Seizure and Sale, Sale Procedures*.)

**5.9.8.16.2 (09-29-2015)
Monitoring the Plan and Reviewing for Refiling of the Notice of Federal Tax Lien (NFTL)**

1. **AIS Follow-up.** FI caseworkers must monitor plans after confirmation. This will ensure debtors are making required payments to the IRS. It will also ensure that NFTLs are refiled, when appropriate.

2. **Monitoring Time Frame.** Schedule an AIS follow-up to monitor compliance with terms of the confirmed plan. In most cases, this should be done *at least quarterly*.

Caution:

To ensure protection of the government's interests in large dollar cases, and in cases of unusual complexities and/or sensitivity, monitoring should be conducted monthly.

3. **Plan Payments Review.** To monitor the debtor's payments under the plan effectively, FI must review and identify the terms governing payments to the IRS in the confirmed plan, including:

- Payment amounts.
- Payment dates.
- Default provisions.
- Claim classifications
- Frequency and regularity of payments.
- Amount of any arrearage.
- Accrued interest rate for payments under the confirmed plan.
- Accrued interest rate on large corporate balances due for cases filed on or after October 17, 2005 (generally the "normal" underpayment interest rate plus two percent).
- Payments to general unsecured creditors.
- Length of time to pay the claim.
- Projected date of discharge for individuals in cases filed on or after October 17, 2005.
- Special conditions.

4. **Application of Payments.** Payments should be applied to the claim for which the payment was received. For example, payments designated for the secured claim must be applied to the secured claim. Payments designated for the priority claim must be applied to the priority claim. Finally, payments designated for general claims must be applied to the unsecured general claim. In addition, *the payment must be applied in accordance with the plan, if specified*. Otherwise, the payments will be applied in the best interests of the government. (See IRM 5.9.15, *Payments in Bankruptcy*.)

5. **Payment Follow-up.** After the receipt of each plan payment, the caseworker must:

- Annotate the AIS history with the dollar amount of the next expected payment.
- Document how the next payment should be applied.
- Schedule a follow-up date on the AIS letter file to monitor for the next required payment.

This allows anyone to post the payment properly, in the event the assigned caseworker is absent.

6. **NFTL Refile Review.** When the Service's claim includes an unpaid secured claim, the caseworker must make a determination whether refiling of the NFTL is appropriate to protect the lien from releasing. IRC § 6325(g) defines the refiling period for NFTLs. *Column e* on the NFTL contains the ending date of the refile period. There are two types of refile periods but the length of both types is a year. The first type of refile period begins 9 years and 30 days after the original assessment date and ends 10 years and 30 days after the original assessment date. The second type of refile period covers any subsequent refile. That window begins 9 years after the end of the previous refile period and ends 10 years after the end of the previous refile period. See IRM 5.12.8, *Notice of Lien Refiling*, for additional information.

A follow-up should be scheduled on AIS to refile the NFTL during the refile period. The results of the NFTL refile determination must be entered in the AIS history. (See IRM 5.9.5.9.2, *Opening a Bankruptcy Case, Refiling Notices of Federal Tax Lien (NFTLs)*.)

5.9.8.16.3 (09-29-2015)

Plan Default

1. **Default Notice.** If required plan payments have not been received, the caseworker must promptly address the default. Prompt action will reduce the amount of accrued interest owed by the taxpayer on the delinquent payment(s). The likelihood of the debtor becoming current is greater when there are fewer delinquent payments. When the taxpayer is non-compliant with terms of the confirmed plan, the caseworker must review the plan for default provisions. When the plan contains default provisions, the caseworker must comply with those provisions. When the plan does not contain default provisions, the following steps should be taken, as appropriate:

A. The assigned caseworker must attempt phone contact with the DIP or trustee (if one was appointed) to negotiate a cure for the default. When an agreement cannot be reached during phone contact, additional action is required. Advise the DIP/trustee that (s)he has five business days to become current on plan payments. Advise them that a default letter will be issued if the plan is not brought current by the deadline

When the caseworker cannot make phone contact within a reasonable period, a default letter should be issued to the DIP/trustee. Generally, five business days constitutes a reasonable period.

Note:

Managerial approval is not required when sending a default notice without prior phone contact.

B. If the arrearage is not cured by the sixth business day, or if a cure cannot be agreed upon during phone contact, send a pending default notice. The pending default notice or "last-chance" letter should be sent in accordance with the plan's default provisions. It should also be sent when the plan does not contain default provisions. Generally, the notice is sent to the DIP/trustee.

C. A date must be *specified* in the letter for the DIP/trustee to come into compliance with the plan provisions. For example, request payment within 30 days from the date of the "pending default" letter. The letter should request full remittance of delinquent plan payments, to date. Advise the DIP/trustee that they must stay current on plan obligations.

D. The letter must explain possible consequences of failing to cure the plan default.

E. When the DIP/trustee *does not* come into full compliance by the deadline established in the "last chance" letter, issue a *default notification letter*. The letter must be sent to the DIP/trustee and attorney for the DIP or trustee.

2. **Available Options.** If the default is not cured by the time required in the plan or the default letter, available options include:

- A. Administrative collection,
- B. A motion to convert or dismiss, or

C. Referral to Counsel for legal advice on action needed to address the default in the specific case.

Caution:

The automatic stay in the post-BAPCPA individual case generally remains in place until discharge upon completion of plan payments. Administrative collection actions may violate the stay. Consider a motion to convert or dismiss.

3. **Administrative Collection.** Pursuant to *IRM 5.9.8.14.2(4)(l)*, *The Plan of Reorganization, Plan Provisions, Default Provisions*, the Service should seek language in the plan specifying remedies upon default. Suggested remedies differ for the non-individual and individual case. In the non-individual case, and the individual case filed prior to October 17, 2005, the Service should be allowed to exercise administrative collection remedies to collect liabilities provided for in the plan when the debtor defaults in plan payments. A referral to Counsel is not required in these instances.

In the individual case filed on or after October 17, 2005, the DIP/trustee may request, or the plan may provide for, closure of the case by the court prior to discharge upon completion of the plan. In these instances, if the plan provides for administrative collection remedies, there is no need to refer the case to Counsel for dismissal or conversion. The stay lifted at court closure. If the case remains open upon default, and the plan contains language for immediate dismissal or conversion upon default in payments provided for in the plan, a referral to Counsel is required. Established local procedures should be followed.

A. Plan Language. If the plan provides specific default language, the Service and the DIP/Trustee are bound by that provision.

B. Consult Counsel. If the plan has no provision specifying the Service's remedies upon default, the Service's options are less clear. FI should consult Counsel for guidance with local practice and case law.

4. **Substantial Default.** Generally, in the case of a non-individual debtor, the Service can administratively collect the full amount of the liabilities provided for in a Chapter 11 plan upon substantial default. In the non-individual case, regardless of petition date, administrative collection can be taken upon substantial default. Administrative collection action can be taken at substantial default in the individual case filed prior to October 17, 2005. The post-BAPCPA individual case must be dismissed before administrative collection action can be taken. The plan is in substantial default when all of the following conditions have occurred:

A. The DIP/trustee has defaulted on a series of plan payments and has ceased making regular payments under the plan,

B. The Service has sent a notice of default, and

C. The DIP/trustee clearly will not cure the default in a reasonable time nor remain current on plan obligations

Note:

In such cases, the DIP/trustee is no longer operating under the terms of the plan. The DIP/trustee has opted out of participation in the bankruptcy process.

5. **Payments Current/Arrearage Exists.** When the DIP/trustee is behind on plan payments but continues to make regular payments under the plan, administrative collection of only past due payments may be appropriate. Collection of the entire amount due under the plan may be inappropriate.

Example:

If the DIP/trustee missed three \$1,000 payments but continued to make regular payments, \$3,000 (which is the amount of the arrearage), can be collected administratively.

6. **Administrative Collection.** If administrative collection is appropriate and identifiable levy sources are found, consideration may be given to FI sending a *modified* notice of intention to levy. Otherwise, Form 2209 should be sent to Field Collection to request administrative collection of the defaulted amount, or the entire amount, as appropriate. FI should consult with Counsel, should this situation arise.

7. **Discharged Taxes.** No attempts can be made to collect discharged taxes from the debtor. However, discharged liabilities may still be collected from exempt, abandoned or excluded property (EAEP). See *IRM 5.9.17.4, Exempt, Abandoned or Excluded Property (EAEP)*, and subsections, for additional information.

- Non-Individual. Unless the plan provides otherwise in the non-individual Chapter 11 case, any *pre-confirmation* tax liabilities are discharged unless the debt comes within one of the exceptions listed in 11 USC § 1141(d)(6).

- Individual Pre-BAPCPA. *Pre-confirmation* liabilities owed by individuals in Chapter 11 cases filed prior to October 17, 2005 are discharged, except as provided for in the plan. However, the debts listed in 11 USC § 523 are excepted from discharge. Post-petition liabilities of the individual debtor, as opposed to the bankruptcy estate, are not subject to the bankruptcy discharge.

- Individual under BAPCPA. Chapter 11 individual debtors whose bankruptcies commence on or after October 17, 2005, are not granted a discharge until completion of all payments provided for in the plan. A discharge may be granted earlier if the court finds hardship.

Note:

See *IRM 5.9.8.15*, for more information on the discharge in the Chapter 11 case.

8. **Motions to Convert or Dismiss.** When deciding to refer a case for a motion to convert or dismiss, FI must consider each case separately. In some cases, administrative collection may not be feasible because of a lack of assets. In other cases, the court may retain jurisdiction over the assets. In these instances, conversion to a Chapter 7 proceeding may be appropriate. (See *IRM 5.9.17.5, Closing a Bankruptcy Case, Dismissal*.)

5.9.8.16.4 (04-17-2013)

Accrual of Post-Confirmation Tax Liabilities

1. **BAPCPA Impact on Post-Confirmation Tax Liabilities.** The treatment of post-confirmation debts of the individual Chapter 11 debtor changed when BAPCPA became effective on October 17, 2005. Prior to October 17, 2005, individual post-confirmation tax liabilities were treated in the same manner as post-confirmation debts of the non-individual debtor. Prior to proceeding with the collection of post-confirmation taxes, caseworkers must determine if the individual filed bankruptcy before or after October 17, 2005. The enactment of BAPCPA had no impact on post-confirmation liabilities of the non-individual debtor.

5.9.8.16.4.1 (09-29-2015)

Post-Confirmation Tax Liabilities of the Non-individual Debtor or Individual Debtor (Pre-BAPCPA)

1. **Tax Debts Arising After Confirmation.** Caseworkers continue to monitor post-confirmation filing, depositing, and paying compliance in the same manner they monitored post-petition/pre-confirmation compliance (*IRM 5.9.8.12*). However, no administrative claim is filed for post-confirmation debts. Post-confirmation liabilities of the non-individual debtor are not discharged or paid under the bankruptcy plan. Similarly, post-confirmation debts of the individual debtor in a case filed before October 17, 2005 are not discharged or paid under the plan. They cannot be claimed in the proceeding. *Insolvency should not input any codes to IDRS which suspend collection of these liabilities.* Advise the taxpayer that the Service may file a NFTL for post-confirmation liabilities, that the liabilities are non-dischargeable, and that the Service may pursue collection of these post-confirmation liabilities outside the bankruptcy.

Note:

If the non-individual debtor is liquidating through Chapter 11, and incurs a post-confirmation liability, consult with Counsel for guidance on how to proceed.

2. **Withholding Tax Reported by Partnerships on Form 8804.** When a partnership files bankruptcy, any discharge of indebtedness income is income to the partners. If the partnership has foreign partners, the partnership has a withholding requirement for the foreign partners' share of effectively connected income, including income from the discharge of indebtedness. The withholding tax is reported by the partnership on Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*. Unless the

plan provides otherwise, unpaid tax on the Form 8804 attributable to income from discharge of indebtedness created when a plan is confirmed is a post-confirmation debt. It should be treated as any other post-confirmation debt of a non-individual debtor. The debt may be collected from the partnership or the partners, as appropriate.

3. **Notice of Federal Tax Lien (NFTL).** If the automatic stay has ended and the assets of the estate have reverted in the taxpayer, the filing of a NFTL is an effective action to protect the interest of the government and to promote compliance. The FI Insolvency caseworker should make a NFTL determination when:
- The case was filed by a non-individual debtor.
 - The case was filed by an individual debtor prior to October 17, 2005.
 - The aggregate unpaid balance on the post-confirmation liability is $\equiv \equiv \equiv \equiv \equiv \equiv \equiv \equiv \equiv \equiv$.
 - There is no sound business reason not to file a NFTL
 - A reasonable effort has been made to contact the taxpayer per IRM 5.12.2.2.2, *Federal Tax Liens, Notice of Federal Tax Lien Determinations, Taxpayer Contact*, if contact has not already been made. Issuance of the statutory assessment notice and the balance due notices during the collection process will generally constitute a reasonable effort. Caseworkers may still wish to contact the debtor to request full payment and warn of the possible filing of a NFTL, in an attempt to resolve the case without the need to file the NFTL.

Caution:

The NFTL should not include any pre-confirmation liabilities. The automatic stay must not be imposed on the post-confirmation liabilities by the plan or confirmation order.

Caseworkers must document the AIS history explaining the decision to file or to refrain from filing a NFTL, along with a description of all lien filing actions taken.

4. **Insolvency Assistance.** Accounts Management, ACS, or FC personnel should proceed with appropriate collection activities on these accounts. However, if issues and questions arise at the field level, the employee must contact the FI caseworker for assistance. The employee must also contact the FI caseworker if uncertainty exists on how to proceed with collections. If the matter is complex, FI should suspend these accounts from collection until clarification of the issue. The FI caseworker should request advice from Counsel.

5.9.8.16.4.2 (09-29-2015)

Post-Confirmation Tax Liabilities of the Individual Debtor (Post-BAPCPA)

1. **Automatic Stay.** Unless the plan specifies otherwise, the automatic stay in the individual case ends at the earliest of:

- Closure of the case by the court;
- Dismissal; or,
- Discharge or denial of discharge.

Caution:

The automatic stay remains in place against property of the estate until the property no longer belongs to the estate.

2. **Income Tax Reporting.** The DIP or trustee in the Chapter 11 case of an individual is required to file Form 1041, *U.S. Income Tax Return for Estates and Trusts*, to report personal service income earned prior to lifting of the automatic stay. The Form 1041 is also used to report the income generated by property of the bankruptcy estate. The individual reports any remaining income on Form 1040, *U.S. Individual Income Tax Return*.
3. **Collection Considerations.** The automatic stay always remains to prohibit collection from property of the estate. It may be difficult to determine whether an asset is property of the estate or property of the debtor. To prevent inadvertent violations of the stay, a bankruptcy indicator should be placed on the post-confirmation/pre-discharge modules.
- A. **Form 1041 Liabilities.** The CSED is extended during the period the assets are under the control of the court. A TC 520 cc 64 or 65 (per local procedures) should be input to post-confirmation modules until the stay is lifted. Any liability is a debt of the bankruptcy estate and claimable on Form 6338-A, *Request for Payment of Internal Revenue Taxes*. The case should be referred to Counsel to request dismissal when the liability is not paid within a reasonable period. Any unpaid post-confirmation liability is not discharged.
- B. **Form 1040 Liabilities.** Post-confirmation income tax liabilities of the individual debtor for income that is not property of the estate is reported on Form 1040, *U.S. Individual Income Tax Return*. Additionally, income generated from property that is not property of the estate is reported on Form 1040. Self-employment tax on income reported on Form 1041 is also reported on the Form 1040. To prevent inadvertent collection activity against any property of the bankruptcy estate, a TC 520 cc 84 should be placed on the post-confirmation/pre-discharge modules. The TC 520 cc 84 will alert Service employees to contact Insolvency prior to taking any collection action. The automatic stay does not protect non-estate property from the collection of post-petition debts. The CSED is not extended. The liability is not claimable on Form 6338-A. The debt is non-dischargeable. A TC 522 cc 84 should be input to the module upon discharge. Consider a referral to Counsel to request dismissal when post-confirmation debts are incurred.

Note:

The FI caseworker must consult Counsel when clarification is needed regarding property of the estate. A referral may also be required when it is not clear if the automatic stay is in place.

- C. **Notice of Federal Tax Lien (NFTL).** Due to the complex nature of the post-BAPCPA individual case, it is not common practice to file a NFTL for post-confirmation debts prior to discharge. Consult with Counsel should a situation arise that may justify filing a NFTL.

4. **Installment Agreement (IA) Requests on Post-Confirmation Liabilities.** Taxpayers who are in Chapter 11 may submit a request for an installment agreement (IA) for post-petition liabilities. When a taxpayer is in bankruptcy, a request for an IA on post-petition liabilities is non-processable. It does not matter if the post-petition liabilities are pre-confirmation or post-confirmation. Administrative appeal rights are not provided for a non-processable IA. A TC 971 ac 043 should not be input on these accounts. For additional information, see IRM 5.9.4.19.1, *Common Bankruptcy Issues, IA Requests for Post-Petition Liabilities Submitted During Bankruptcy*.

Note:

In a small number of cases, the debtor taxpayer may qualify for a guaranteed installment agreement under IRC § 6159(c). See IRM 5.14.5.3, *Guaranteed Installment Agreements*.

5.9.8.17 (09-29-2015)

Closing Chapter 11 Bankruptcies

1. **Reasons for Closure.** Events that may close a Chapter 11 case are:

- Dismissal (including voluntary)
- Conversion to a Chapter 7 liquidation proceeding

- Default of the payment plan
 - Plan completion
 - Discharge
2. **Closing Actions.**IRM 5.9.17, *Closing a Bankruptcy Case*, provides information on closing bankruptcy cases, including Chapter 11 cases. Dismissal is discussed in IRM 5.9.17.4, *Closing a Bankruptcy Case, Dismissal*, and subsections. Discharge is discussed in IRM 5.9.17.7, *Discharge and Exceptions to Discharge*, and subsections. In addition to these subsections, caseworkers should refer to:
- IRM 5.9.17.10, *Closing Chapter 7 and Liquidating Chapter 11 Partnerships*
 - IRM 5.9.17.11, *Closing Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)*
 - IRM 5.9.17.12, *Closing Liquidating Chapter 11 Corporations and Liquidating Chapter 11 LLCs*
 - IRM 5.9.17.12.1, *Closing Chapter 11 Non-Individual Entities that Reorganize in Chapter 11*
 - IRM 5.9.17.12.2, *Closing Chapter 11 Cases Filed by Individuals*
 - IRM 5.9.17.12.3, *Consolidated Chapter 11 Filings*
 - IRM 5.9.17.15, *Trust Fund Recovery Penalty Adjustments*

Exhibit 5.9.8-1
Adding the Confirmed Plan to AIS

Step	Action
1.	Select the "Case Files" button on the AIS home page and the "Taxpayer Screen" will appear.
2.	Select "Query" on the navigation toolbar at the top of the "Taxpayer Screen." The cursor will appear in the "AIS Case Number" field.
3.	Type the numeric case number in the "AIS Case Number" field in XX-XXXXX format.
4.	To quickly access the specific case without having to query multiple cases, add the court key in the "Court" field on the "Taxpayer Screen." For example, add the court key as MSN01.
5.	Select "Execute" on the navigation toolbar at the top of the "Taxpayer Screen" to bring the case up on AIS.
6.	Add the confirmation date to the "Confirmed" field on the "Taxpayer Screen."
7.	Select the "CPM" tab at the top of the "Taxpayer Screen." The CPM Screen will appear.
8.	Select the "Insert" tab on the navigation toolbar to add information from the confirmed plan to AIS.
9.	Select the plan "Type" of "Administrative," "Confirmed" or "Adq. Protect" from the drop down menu.
10.	The confirmed plan will specify the frequency of plan payments. Move the cursor to "Frequency" and click on the "+" to bring up the drop down list. Select the frequency of payments as Monthly, Quarterly, Semi-Annual, Annually, or Misc., based on the frequency of payments specified in the confirmed plan.
11.	When the CPM is inserted, AIS defaults the "Effective" date of the plan to the confirmation date entered on the "Taxpayer Screen." If the effective date is a date other than the confirmation date, overlay the confirmation date with the effective date specified in the confirmed plan.
12.	Move the cursor to the "Due" date field. Type in the due date using MM/DD/YYYY format. This is the due date of the first payment under the plan.
13.	Move the cursor to the "Amount" block and type the plan payment amount in using XXX.XX format.
14.	Move to the drop down menu in the "Interest" field on the CPM screen to select the interest type provided for in the plan. Generally, "Daily Compounded" is the interest type unless "Simple" is specified as the interest type in the confirmed plan.
15.	Select the "Optional" block to add the interest rate provided for in the plan. If no specific rate is noted in the plan, the interest rate is generally the IRC rate on the confirmation date (unless the plan specifies no interest will be paid). There is no need to add a decimal point (.) or % symbol in the "Optional" field for AIS to calculate the accrued interest on the plan. Only use the decimal point (.) when the plan provides for an interest rate that is not a whole number. For example, add 3.4% as 3.4. If the plan is confirmed at 3%, enter 3.
16.	Go to the "Employee" field and select the name of the employee assigned the case from the drop down menu. Click "OK" to enter the employee information.
17.	The confirmed plan information must be saved to AIS. Select "Save" on the navigation toolbar to save the confirmed plan.
18.	A "pop-up" will appear stating, "Tax Periods from the Claim Table will now be added to the plan." Select "OK" to move the most recent saved proof of claim information to the CPM Screen.
19.	Select "Save" again from the navigation toolbar to save the confirmed plan information to the "CPM" screen.
20.	Select "Exit" on the navigation toolbar to exit the "CPM Screen."

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 9. Processing Chapter 12 Bankruptcy Cases

5.9.9 Processing Chapter 12 Bankruptcy Cases

- 5.9.9.1 [Introduction to Chapter 12 Bankruptcy](#)
- 5.9.9.2 [Chapter 12 Eligibility](#)
- 5.9.9.3 [Processing Duties](#)
- 5.9.9.4 [Initial Case Processing](#)
- 5.9.9.5 [Adequate Protection in the Chapter 12 Case](#)
- 5.9.9.6 [Chapter 12 Plans](#)
- 5.9.9.7 [Reasons to Object to the Plan](#)
- 5.9.9.8 [Chapter 12 "Pay-out" Arrangements](#)
- 5.9.9.9 [Confirmation](#)
- 5.9.9.10 [Chapter 12 Plans and Restitution Assessments](#)
- 5.9.9.11 [Monitoring Compliance](#)
- 5.9.9.12 [Conversions](#)

Manual Transmittal

September 29, 2015

Purpose

(1) This transmits a revised IRM 5.9.9, *Bankruptcy and Other Insolvencies, Processing Chapter 12 Bankruptcy Cases*.

Material Changes

(1) IRM 5.9.9, *Processing Chapter 12 Bankruptcy Cases*, has been updated and expanded to provide clarification of existing material. The table below shows substantive changes within this IRM revision.

IRM	Change
5.9.9.1(2)	Cases may be referred to Associate Area Counsel or the U.S. Attorney's Office (AUSO). The term "Counsel" is used to refer to whichever office is appropriate in this IRM.
5.9.9.2(2)	Debt limits for the Chapter 12 case will be adjusted April 1, 2016.
5.9.9.4.2	Employees no longer refer cases to the Withholding Compliance Function for a lock-in letter. The requirement to determine if a referral is needed has been removed from the aspects of the initial case review.
5.9.9.4.2(10)	Chapter 12 individual debtors are eligible to receive a discharge in the current case even when they received a discharge in a prior case.
5.9.9.6.1(3)	Contacts for prompt determination requests are clarified.
5.9.9.7(6)	The rate of interest on secured claims locks in at the rate provided for in the plan during the life of the plan.
5.9.9.10	A new subsection has been added which discusses Chapter 12 plans and restitution assessments.
5.9.9.11.3(5)	In most instances, requests for installment agreements on post-petition liabilities are not processable when a taxpayer is in bankruptcy.
5.9.9.11.4(4)	A list of additional citations has been added for IRM content on Limited Liability Companies (LLCs).

(2) Editorial changes were made throughout this section to add clarity and to update or correct citations.

Effect on Other Documents

This material supersedes IRM 5.9.9, dated April 18, 2013. This revision incorporates content from interim guidance SBSE 05-0115-0007, *Procedures for Processing Bankruptcy Cases with Restitution Assessments*, dated January 15, 2015. This revision also incorporates content from interim guidance SBSE 05-0315-0033, *Processing Installment Agreement Requests for Post-Petition Liabilities when a Taxpayer is in Bankruptcy*, dated March 23, 2015.

Audience

All Operating Divisions

Effective Date

(09-29-2015)

Kristen Bailey, Acting Director
Collection Policy

5.9.9.1 (09-29-2015)

Introduction to Chapter 12 Bankruptcy

1. **Audience of this IRM.** This IRM provides information and guidance for processing Chapter 12 bankruptcy cases. It is primarily intended for caseworkers in Field Insolvency (FI). However, employees in SBSE and other functions, such as the Centralized Insolvency Operation (CIO), may also refer to this IRM.
2. **Counsel.** Certain issues in a Chapter 12 case may be referred to Associate Area Counsel or directly to the U.S. Attorney's Office (USAO). Within this IRM, the term "Counsel" refers to Associate Area Counsel or the USAO, whichever is appropriate. For more information on referrals, see the following subsections in IRM 5.9.4, *Common Bankruptcy Issues*:
 - IRM 5.9.4.14, *Referrals — Representing IRS in Bankruptcy Court*

- IRM 5.9.4.14.1, *Direct Referrals*
- IRM 5.9.4.14.2, *Referrals to Counsel (Non-Direct Referrals)*
- IRM 5.9.4.14.3, *Significant Bankruptcy Case Referrals*
- IRM 5.9.4.14.4, *Referral Tolerances*

3. **Permanent Reenactment of Chapter 12.** Since its enactment in 1986, Chapter 12 has been subject to reenactments for periods of limited duration. The passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) made Chapter 12 a permanent part of the Bankruptcy Code effective July 1, 2005.
4. **Chapter 12 Debtors.** Chapter 12 is the bankruptcy chapter used for the adjustment of debts of a family farmer or family fisherman with regular annual income. A Chapter 12 case closely resembles a Chapter 13 case. However, Chapter 12 incorporates some aspects of the Chapter 11 case.
5. **Voluntary Filing Only.** Relief under this chapter is "voluntary." Only the debtor may file a petition for Chapter 12 bankruptcy relief (11 USC § 303). There are no provisions for an "involuntary" Chapter 12.
6. **Debt Reorganization.** Chapter 12 allows the family farmer/fisherman to reorganize debts by paying debts through a payment plan. Secured debts may be reduced to the present value of the assets securing the debt and by extending the repayment periods.
7. **Debtor Operates Business.** A debtor may continue to operate the farming or commercial fishing operation as a debtor-in-possession (DIP). The DIP has the duties and rights of a trustee. The court may, for cause, appoint a trustee (11 USC §§ 1203 and 1204).

5.9.9.2 (09-29-2015) Chapter 12 Eligibility

1. **Income Requirements.** The Bankruptcy Code provides that only a family farmer or family fisherman, whose annual income is sufficiently stable and regular to enable the debtor to make payments under a Chapter 12 plan, is eligible to file this type of bankruptcy (11 USC § 101(19) and (19B)).
2. **Eligibility.** The following table contrasts the eligibility requirements between the family farmer and the family fisherman. Debt limits are adjusted at three year intervals to reflect changes in the Consumer Price Index (11 USC § 104(b)). The limits below are based on the April 1, 2013 adjustment. The next scheduled adjustment will be on April 1, 2016.

Characteristics	Family Farmer	Family Fisherman
Entity	Individual, partnership, Limited Liability Company (LLC), or corporation	Individual, partnership, Limited Liability Company (LLC), or corporation
Debt Limit	\$4,031,575.00, subject to periodic adjustment for inflation pursuant to 11 USC § 104(b)	\$1,868,200.00, subject to periodic adjustment for inflation pursuant to 11 USC § 104(b)
Percent of Debt from Operation of Business	50% of liabilities must be attributable to farming operations (excluding debt for personal residence of the farmer or residence of the farmer partner/shareholder)	80% of liabilities must be attributable to fishing operations (excluding debt for personal residence of the fisherman or residence of the fisherman partner/shareholder)
Gross Income (Individuals Only)	More than 50% of the debtor's income is received from a farming operation in the tax year prior to the petition or more than 50% of the debtor's income is received from a farming operation in each of the second and third years before the petition	More than 50% of the debtor's gross income is received from commercial fishing operations for the tax year preceding the commencement of the case

3. **50 and 80 Percent Rules —Partnerships/Corporations.** The family farmer/fisherman partnership or corporation must have more than 50 percent ownership by one family. The family or relatives must conduct the operation. In addition, more than 80 percent of the value of its assets must consist of farm or fishing-related property. The same debt levels for the family farmer or family fisherman apply to the farming or fishing partnership/corporation, respectively. Finally, if the family farming/fishing corporation issues stock, that stock may not be publicly traded (11 USC § 101(18)(B) and (19A)(B)).

5.9.9.3 (04-18-2013) Processing Duties

1. **Centralized Insolvency Operation (CIO) Responsibilities.** The Centralized Insolvency Operation (CIO) clerical units are responsible for loading new Chapter 12 cases on the Automated Insolvency System (AIS). CIO also:
 - Resolves IIP status reports.
 - Resolves IIP error reports, including the Potentially Invalid TIN (PIT) report.
 - Inputs dismissal notices on AIS.
 - Creates MFT 31 mirrored accounts when required because a non-debtor spouse owes a joint income tax liability with the debtor spouse.
2. **Field Insolvency (FI) Groups.** Field Insolvency (FI) bankruptcy caseworkers handle all aspects of Chapter 12 case processing not specifically assigned to the CIO. This includes posting payments and processing discharges.

5.9.9.4 (04-18-2013) Initial Case Processing

1. **Initial Actions.** Upon notification of a Chapter 12 filing, Insolvency must follow the processing procedures outlined in IRM 5.9.5, *Opening a Bankruptcy Case*. IRM 5.9.9.4.1, *Initial Case Review Time Frames*, discusses acceptable time frames for completion of the initial case review. Aspects of the initial case review are discussed in IRM 5.9.9.4.2, *Aspects of the Initial Case Review*.

5.9.9.4.1 (04-18-2013) Initial Case Review Time Frames

1. **General Time Frame.** FI caseworkers must conduct an initial case review at least five calendar days prior to the 341 meeting. The initial case review must be completed within thirty calendar days of assignment when the case is not received at least five calendar days prior to the 341. When the bar date or confirmation of the plan is within 30 days of assignment, the review must be completed earlier. Certain aspects of the review must be completed earlier.
2. **Aspects of the Review that Are Required Earlier.** Certain elements of the initial case review are required sooner. Some of these elements are:
 - Resolving stay violations
 - Responding to pending motions or defensive litigation
 - Addressing adequate protection when the Service has a pre-petition Notice of Federal Tax Lien (NFTL) on file
3. **Aspects of the Review Requiring Action within Five Calendar Days.** The caseworker must work Automated Proof of Claim (APOC) flags within five calendar days of APOC identifying a potential violation of the stay. (IRM 5.9.14.2.7, *Electronic Proofs of Claim and Automated Proofs of Claim, APOC Flag Condition Time-Frame Requirements*) Flags that identify possible stay violations are the "Credits Posted After Petition Date" and "Lien Recorded Date Blank" flags.

4. **Action Required within Ten Calendar Days.** The caseworker must address the potential for adequate protection within ten calendar days of APOC identifying the "Secured Period" flagged condition (IRM 5.9.14.2.7(1)(b)).

**5.9.9.4.2 (09-29-2015)
Aspects of the Initial Case Review**

1. **Bankruptcy Petition, Schedules, and SOFA.** Numerous electronic tools are available to assist the caseworker with an initial case review. At minimum, the caseworker must review the debtor's bankruptcy petition, bankruptcy Schedules A - J, and the Statement of Financial Affairs (SOFA). The debtor's attorney may mail these documents to the Service. The bankruptcy petition, bankruptcy schedules, and SOFA are also available electronically on PACER. Issues requiring clarification at the 341 meeting of creditors may be identified as the caseworker completes the initial case review. The caseworker may also determine that there are no issues for discussion at the 341. Document the AIS history clearly with any issues requiring a discussion at the 341. If there are no issues, state that there are no issues for discussion at the 341. The caseworker must document whether or not they will attend the 341 meeting. See IRM 5.9.8.4.2(1), *Processing Chapter 11 Bankruptcy Cases, Aspects of the Initial Case Review in the Chapter 11, Bankruptcy Petition, Schedules, and SOFA*, for a list of issues that may be clarified at the 341 meeting of creditors. The caseworker can gather information regarding the taxpayer's business prior to the 341 by sending the debtor Form 13648, *Request for Business Information*.

2. **IDRS.** A review of IDRS will assist the caseworker in determining if the debtor is compliant with tax laws. The review will also assist the caseworker in determining post-petition monitoring requirements. The caseworker must review IDRS to determine the debtor's:

- Filing requirements and return filing history
- Current balances due and delinquent returns
- The latest period for which a Form 941 or Form 943 was filed, if applicable
- Requirements for federal tax deposits (FTDs), if applicable
- Currency with making FTDs since the latest Form 941 or Form 943 was filed, if applicable
- Failure to make any FTDs, if applicable
- Currency in making estimated tax payments, when applicable

3. **Integrated Collection System (ICS).** Caseworkers must review any ICS history for prior Field Collection (FC) involvement. Consider contact with the Revenue Officer (RO).

4. **Notice of Federal Tax Lien (NFTL) Refile Determination.** The caseworker must determine if any Notices of Federal Tax Lien (NFTL) should be refiled and take necessary actions to request the refile of the NFTL. (IRM 5.9.5.9.2, *Opening a Bankruptcy Case, Refiling Notices of Federal Tax Liens (NFTLs)*) The caseworker must schedule a follow-up on AIS to refile the NFTL when the "refile window" for the NFTL is expected to occur during the pendency of the bankruptcy case.

5. **Adequate Protection.** If the Service is a secured creditor in the Chapter 12 case, the caseworker must determine if adequate protection should be pursued during the initial case review. See IRM 5.9.9.5, below, for information regarding adequate protection in the Chapter 12 case.

6. **TFRP Issues.** For corporations and some Limited Liability Companies (LLCs), caseworkers must conduct a review of the Automated Trust Fund Recovery (ATFR) program to determine if a Trust Fund Recovery Penalty (TFRP) has been proposed for specific tax modules. If a TFRP has been proposed, determine which responsible parties the TFRP has been proposed against. The TFRP may be proposed against:

- Officers or other responsible parties of a corporation
- Members of a LLC taxed as a partnership
- Members, managers, or other responsible parties of the LLC taxed as a corporation
- The single-member of a LLC with liabilities for withholding periods that began on or after January 1, 2009
- Another corporation
- Payroll Service Provider (PSP)
- Responsible parties within a PSP
- Professional Employer Organization (PEO)
- Responsible parties within a PEO
- Responsible parties within the common law employer (client of the PSP or PEO)

Note:

See IRM 5.9.13.14, *Manual Proofs of Claim and Common Claim Issues, Limited Liability Companies (LLC)*, for guidance on LLCs. See IRM 5.7.3.3.1, *Trust Fund Compliance, Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP), Establishing Responsibility*, for additional information regarding parties that may be assessed the TFRP.

This information should be paired with the data on IDRS using command code (cc) UNLCER. The current RO assignment should be annotated in the AIS history.

7. **TFRP Actions for Debtors.** If unpaid trust fund taxes are part of the balance owed by the business, a Trust Fund Recovery Penalty (TFRP) investigation must be considered. Based on local procedures, the investigation may be conducted by a RO in FC or by a FI caseworker. If local practice is to refer the investigation to FC, and the case is not currently assigned to a RO, an Other Investigation (OI) must be issued to FC through the Integrated Collection System (ICS). FI caseworkers should request the TFRP investigation during the initial case review. =====
===== IRM 5.9.8.10, *Processing Chapter 11 Bankruptcy Cases, Trust Fund Considerations in Chapter 11*, and IRM 5.9.3.11, *Debtors' Delinquent Accounts, Trust Fund Recovery Penalty*, and IRM 5.9.13.13, *Manual Proofs of Claim and Common Claim Issues, TFRP Assessments - Priority Status*, provide additional TFRP investigation information.

When requesting a TFRP investigation through an OI on ICS, provide the RO with information to assist them in completing the investigation. The information may be provided by updating the ICS history. (See IRM Exhibit 1.4.51-31, *Resource Guide for Managers, Insolvency, Guide for Other Investigation (OI) FIU Report (Field Insolvency)*, and IRM 5.9.3.11, *Trust Fund Recovery Penalty*.)

Caution:

A RO will not work an OI to assert the TFRP if the Assessment Statute Expiration Date (ASED) will expire within 6 months.

TFRP issues must be thoroughly documented in the AIS history. (See IRM 5.9.5.4, *AIS Documentation*.) If the TFRP is not applicable, notate the AIS history accordingly. The TFRP may not be applicable because there are no outstanding trust fund liabilities or the outstanding aggregate trust fund liability is below tolerance for assertion of the TFRP.

8. **Exam Issues.** IRM 5.9.4.3, *Common Bankruptcy Issues, Examination and Insolvency*, provides guidance for addressing examination issues. A review of IDRS cc AMDISA and contact with the Revenue Agent (RA) or examiner may be beneficial.
9. **LLCs.** The caseworker must identify the presence of LLCs and determine how the LLC should be treated for tax and proof of claim filing purposes. Consultation with Counsel is advised. IRM 5.9.13.14, *Manual Proofs of Claim and Other Claim Issues, Limited Liability Companies (LLC)*, and IRM 5.9.14.2.8(5)(i), *Automated Proofs of Claim (APOC), Case Flags, LLC Flags*, provide more information about LLCs.
10. **Prior Bankruptcies.** The caseworker must check for evidence of prior bankruptcies. A prior case may affect tolling or the automatic stay. It may indicate possible lack of feasibility of the plan in the case. In some cases, where the debtor has previously filed a bankruptcy case, the automatic stay may not apply. 11 USC § 362(c) and 11 USC § 362(n) contain additional information regarding the automatic stay. In some instances, debtors may contend, in as much as prior plans were supposed to have addressed the tax liabilities, those liabilities are no longer considered to be a tax claim. See the following subsections and exhibits in IRM 5.9.5, *Opening a Bankruptcy Case*, for additional information:
 - IRM 5.9.5.7, *Serial Filers*
 - IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*
 - IRM Exhibit 5.9.5-4, *Common Processing Steps in Serial Filer Cases*
 - IRM Exhibit 5.9.5-5, *Processing the Serial Filer Case When the Stay Terminates After 30 Days*
 - IRM Exhibit 5.9.5-6, *Processing the Serial Filer Case When No Stay Goes into Effect*

Chapter 12 individual debtors who file Chapter 12 bankruptcy petitions are eligible to receive a discharge in the current even when they received a discharge in a prior bankruptcy case. The provisions in IRM Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*, are not applicable in Chapter 12 cases.

11. **Letter to Non-Debtor Spouse.** The Letter 4521, *Non-Debtor Letter*, must be sent to non-debtor spouses who owe joint liabilities with the individual Chapter 12 debtor. The liability may not be fully abated for the non-debtor spouse when included in the debtor's bankruptcy filing.
12. **Additional Aspects.** Facts and circumstances in the case may warrant additional research. Additional research that may be necessary include:
 - A review and analysis of locator services, such as Accurint.
 - A review of any available online courthouse records.
 - A review of IDRS cc IRPTRL for possible mortgage interest paid for identification of real property ownership.
 - A review of Department of Motor Vehicle (DMV) records when expensive or collectible vehicles are listed in the bankruptcy schedules.

5.9.9.5 (04-18-2013)

Adequate Protection in the Chapter 12 Case

1. **Adequate Protection.** If the Service is a secured creditor in the Chapter 12 case due to the filing of a NFTL prior to the filing of the bankruptcy case, it is just as important for the Service to obtain adequate protection in the Chapter 12 case as in other cases. The secured creditor is only entitled to the types of adequate protection specifically provided for in Chapter 12 (11 USC § 1205). The provisions for adequate protection available for use in other chapters may not be applicable in the Chapter 12 case.
2. **Situations in which the Secured Creditor is Entitled to Adequate Protection.** A secured creditor in a Chapter 12 case is entitled to adequate protection when the value of the creditor's collateral decreases after the petition date. Because the use of cash collateral may result in a decrease in the creditor's collateral, a Chapter 12 debtor may not use cash collateral unless the secured creditor agrees or the court authorizes the debtor's use of the cash collateral.

Note:

Proceeds from the sale of a farmer's crops or livestock or the sale of a fisherman's catch will be cash collateral.

A secured creditor may also be entitled to adequate protection because the value of the creditor's collateral has decreased due to other circumstances, such as the debtor's use, sale, or lease of the property. If the value of the collateral remains constant, the secured creditor is not entitled to any adequate protection. There is no adequate protection in Chapter 12 for lost opportunity costs.

3. **Ways that Adequate Protection May be Provided.** In a Chapter 12 case, adequate protection may be provided in the following ways, to the extent that either the value of the property or the secured creditor's ownership in the property has decreased:
 - By the trustee making cash payments to the secured creditor
 - By giving the secured creditor an additional or replacement lien
 - When the collateral is farmland, by paying the secured creditor a reasonable rent customary in the community where the property is located
 - By granting the creditor other relief which will protect the value of the property or the creditor's interest in the property, except by giving the creditor an administrative claim
4. **Referring the Chapter 12 Case to Counsel for Adequate Protection.** While an adequate protection agreement in a Chapter 12 case may provide for less than the agreement in other chapters, a failed adequate protection agreement will still provide the Service with the superpriority of Bankruptcy Code § 507(b). Caseworkers must refer the case to Counsel when the debtor fails to provide the Service with adequate protection on its secured claim. The referral is subject to the tolerances in IRM 5.9.4.14.4(6)(a), *Common Bankruptcy Issues, Referral Tolerances, Chapters 11 and 12*.

5.9.9.6 (04-18-2013)

Chapter 12 Plans

1. **Time Frames.** Generally, a debtor is required to file a plan *within 90 days* of the petition date. A confirmation hearing is to be held *within 45 days* of the plan filing. In practice, the date for filing a plan is often extended. Plans range *from three to five years*. However, pursuant to 11 USC § 1222(b)(9), payments to secured claims may extend beyond five years.

Reminder:

Payments on secured claims may go beyond the last day to refile the NFTL. To ensure the NFTL does not "self-release," the caseworker must schedule a follow-up on AIS to refile the NFTL during the "refile window."

2. **Notice to Creditors.** Creditors must be given at least 21 days prior notice of the confirmation hearing. (Federal Rule of Bankruptcy Procedure 2002(a)(8))
3. **The Chapter 12 Plan.** The bankruptcy caseworker must secure a copy of the debtor's plan and schedules for evaluation, as soon as possible. 11 USC §§ 1222 and 1225 deal with Chapter 12 plans. The debtor's plan must provide for payment of the Service's claim as follows:
 - A. Full payment of secured claims with post-confirmation interest at the compound IRC rate in the month of confirmation (11 USC §§ and 1225(a)(4) and 511);

B. Full payment of priority claims in deferred cash payments, unless the holder of the claim agrees to different treatment; and

Note:

For cases filed on or after April 20, 2005, Chapter 12 was amended to create an exception to the full-payment requirement for priority claims. Pre-petition tax claims that arise because of the disposition of farm assets used in the debtor's farming operation are treated as a general unsecured claim in the Chapter 12 case (11 USC § 1222(a)(2)(A)). Any balance remaining on this unsecured general claim is dischargeable. Insolvency should contact Counsel when plans raise this issue. (See *IRM 5.9.9.11.3(1), Post-petition Liabilities in Chapter 12 — Individual Cases, No Provision for Post-petition Tax Debts in Individual Cases*, for guidance on post-petition tax incurred from the sale of farm assets.)

C. Payment of general unsecured claims in an amount not less than the IRS would receive in a Chapter 7 liquidation and debtor has committed all of his disposable income to the plan over the life of the plan. (11 USC §§ 1225(a)(4) and 1225(b)(1)(B))

Note:

A feature unique to Chapter 12 bankruptcies allows plan payments to be due *seasonally* when the debtor receives income (such as, after the harvesting of crops).

For cases filed on or after October 17, 2005, the plan may provide for post-petition interest on unsecured claims that are non-dischargeable. Interest is provided only when the debtor has disposable income available to pay interest after making provisions for full payment of all allowed claims (11 USC §§ 1222(b)(11) and 1228(a)(1) and (2)). Interest on the unsecured non-dischargeable taxes is collected at the rate provided for in the plan. If there are no interest provisions, no interest is collected under the plan. Any unpaid tax and interest on the non-dischargeable tax survives the bankruptcy.

Note:

See *IRM 5.9.9.7, Reasons to Object to the Plan*, for common reasons for the Service to object to a Chapter 12 plan. Discharge in the Chapter 12 case is discussed in *IRM 5.9.17, Closing a Bankruptcy Case*. In particular, see *IRM 5.9.17.13, Chapter 12 Discharge*, *IRM 5.9.17.13.1, Chapter 12 Hardship Discharge*, and *IRM 5.9.17.13.2, Exceptions to Discharge in the Individual Chapter 12 Case*.

5.9.9.6.1 (09-29-2015)

Determinations of Tax Implications of Chapter 12 Plans

1. **Tax Effects of Proposed Plans.** BAPCPA amended 11 USC § 1231(b). Bankruptcy courts can authorize proponents of Chapter 12 plans to request determinations of the federal income tax effects of reorganization. Determinations are limited to questions of law. Should a controversy arise between the Service and the debtor, the court may declare the tax effects of the plan. The court may not make such a declaration until after the earlier of the date on which the governmental unit responds to the request or 270 days after the request.

Note:

See Rev. Proc. 2006-52, 2006-48 IRB 995, for additional information on the procedure the plan proponent must follow to request a determination of the income tax effects of a proposed plan.

2. **Mailing Address.** Requests for determinations of income tax effects must be filed in writing with the CIO. The envelope must be marked, "Request for Determination of Tax Effects of Chapter 12 Plan." The correct mailing address for the request for determination depends on whether or not the request contains a remittance.

- Requests with remittance must be mailed to:
Internal Revenue Service
Post Office Box 7317
Philadelphia, PA 19101-7317
- Requests without remittance must be mailed to:
Internal Revenue Service
Post Office Box 7346
Philadelphia, PA 19101-7346

3. **Required CIO Action.** CIO caseworkers must forward the Chapter 12 determination requests via overnight carrier to the appropriate function. Contact information and mailing addresses for the various functional coordinators can be found on the Prompt Determination Contact List on the CIO shared Drive. The requests must be forwarded to the appropriate function within three workdays of receipt of the tax return by Insolvency based on the receipt date stamped on the return. The appropriate function will complete all review and follow-up actions required. If the debtor's total assets listed on the Form 1120 or Form 1120S are greater than \$10 million, the request is sent to the Large Business (LB&I) Division at:
Internal Revenue Service
Arka Monterey Park Building
1973 North Rulon White Blvd.
M/S 4912 Attn: LB&I Bankruptcy Coordinator
Ogden, Utah 84404-5402

4. **Time Frame.** Within 270 days from receipt of a processable application, the appropriate function will notify the plan proponent of the determination.

5. **Effects of Determination.** Unless the bankruptcy court declares otherwise pursuant to 11 USC § 1231(b), a field office examining the debtor's return must follow the determination when each of the following is met:

- A copy of the determination is attached to the tax return to which it relates
- The determination is properly reflected in the return
- The representation upon which the determination was made reflected an accurate statement of the controlling facts
- The transactions proposed in the plan were carried out substantially as proposed
- A change has not occurred in the law that applies to the period during which the transactions were consummated

Note:

Caseworkers should see *IRM 5.9.4.8, Common Bankruptcy Issues, Prompt Determination Requests from Trustee*, and *IRM 5.9.4.8.1, Common Bankruptcy Issues, Processing Prompt Determination Requests*, for additional information.

5.9.9.6.2 (04-18-2013)

Plan Modification

1. **Modified Plans.** Upon occasion, changed circumstances necessitate the debtor's modifying or amending a Chapter 12 plan either before or after confirmation. *Insolvency should review a modification of a plan as carefully as if it were the original plan.* Insolvency may confer with Counsel if plans require clarification. An objection may be needed to protect the government's interests.

2. **Modification after Confirmation.** For cases filed on or after October 17, 2005, 11 USC § 1229(d) lists exceptions to post-confirmation plan modifications. These exceptions serve to protect the debtor against any increase in payments beyond their disposable income. This particularly protects the debtor against increases in the last year of the plan. Only the debtor may seek payment increases under these circumstances.

5.9.9.7 (09-29-2015)

Reasons to Object to the Plan

1. **Inadequate Plan Provisions.** If the plan does not provide for appropriate payment of the Service's claims, the Insolvency caseworker should contact debtor's counsel to discuss the deficiencies. If the debtor can demonstrate acceptance of a deficient plan is in the best interests of the government, the case should be referred to Counsel. The caseworker should recommend acceptance of the plan in lieu of objection. Include the debtor's TIN(s) in the referral.

Note:

This recommendation may be made only if no other creditor benefits to the detriment of the Service. *Under no circumstances will the IRS accept less than would be recoverable in a Chapter 7 case.*

2. **Decision Factors for Evaluating Deficient Plans.** IRM 5.9.10.5.5(6), *Processing Chapter 13 Bankruptcy Cases, Reasons to Object, Factors for Evaluating Deficient Plans*, lists factors to consider when determining if the IRS should agree to treatment of its claim. Consider the factors when the plan provides less than required by the Bankruptcy Code.

3. **Acceptance of Deficient Plans.** If a debtor can demonstrate that agreeing to treatment different from statutory requirements under the Bankruptcy Code is in the best interest of the government, the specific payment terms:

- Must be incorporated in the debtor's plan.
- Are subject to the approval of the bankruptcy court.

Provisions protecting the government's rights to collect upon a default in plan payments should be included in the terms of the plan. IRM 5.9.10.5.5(7), *Reasons to Object, Acceptance of Deficient Plans*, outlines other requirements for deficient plan provisions.

Note:

The AIS history must reflect the factors considered in the decision to accept treatment of the Service's claims irrespective of Bankruptcy Code requirements.

4. **Prompt Objections.** Insolvency must refer the case to Counsel to object to the plan when IRM 5.9.4.14.4, *Common Bankruptcy Issues, Referral Tolerances*, criteria are met and:

- Debtor's counsel is unresponsive to Insolvency contacts,
- Debtor's counsel is unable to demonstrate that it is in the best interest of the government to agree to a deficient plan, and
- Interests of the government are at risk.

5. **Contents of Objection Referral.** IRM 5.9.10.5.5(9), *Reasons to Object, Contents of Objection Referral*, explains information needed on the referral to Counsel objecting to a deficient plan.

6. **Common Problems with Plans.** The debtor may add provisions to a plan adversely affecting the Service's position. Insolvency should consult Counsel if the plan does not appear to provide for the IRS' claim. Subject to the tolerances in IRM 5.9.4.14.4, the caseworker must refer the plan to Counsel for an objection to confirmation when the debtor's attorney refuses to amend the unacceptable plan prior to confirmation. Common reasons for the Service to object to a Chapter 12 plan include the following:

- The debtor does not meet the requirements for a Chapter 12 bankruptcy.
- The debtor is not in compliance.
- The plan is not feasible. Payments to creditors provided by the plan are more than the net income of the debtor after necessary living and operating expenses are taken into account.
- The plan proposes to discharge taxes not dischargeable under the Bankruptcy Code. For example, a plan containing language discharging post-petition income taxes should be referred to Counsel.
- The plan proposes to discharge individual(s) other than the debtor, in the discharge. For example, the plan proposes to discharge a related Trust Fund Recovery Penalty for another responsible party.
- The plan allows the debtor to change provisions of the plan affecting the payment of the Service's claim without a court hearing. This deprives the IRS of an opportunity to object.
- In lieu of cash payments, the plan proposes to distribute physical property to the IRS in payment of the IRS' claim. (See 11 USC § 1222(b) and IRM 5.9.9.8(3), *When Property is Proposed as Payment*, below.)
- The plan allows for payments to be made *outside* the plan.
- All of the debtor's disposable income is not committed to the plan while the general unsecured tax claim will not be paid in full under the plan.
- The plan proposes a balloon payment at the end of the plan instead of consistent regular payments throughout the plan.
- The plan discriminates against the general unsecured claims of the IRS. The plan proposes to pay a larger percentage of the general unsecured claims of other creditors.
- The plan does not provide for the payment of interest on the secured claim per 11 USC § 511. The Service is entitled to compound interest at the IRC rate for the month of confirmation during the life of the plan. Any interest rate provided for in the plan "locks in" at the rate provided for in the plan during the life of the plan..

5.9.9.8 (04-18-2013)

Chapter 12 "Pay-out" Arrangements

1. **Debtor's Disposable Income.** All of the debtor's disposable income (which excludes amounts reasonably necessary for post-petition domestic support obligations) must be committed to the plan if unsecured claims are not paid in full (11 USC § 1225(b)(2)).

2. **Secured Claims and Collateral.** The time allowed for payment of secured claims must be evaluated based on the nature and worth of the collateral securing the claim.

3. **When Property Is Proposed as Payment.** 11 USC § 1225(b)(1)(C) provides that a plan may be confirmed if the value of property being distributed under the plan is not less than the debtor's projected disposable income for the plan period. An objection to the plan may be in order if the plan proposes distribution of property in lieu of cash payments. Some factors to consider when determining if an objection is warranted are:

- Value of the property is less than the allowed amount of the claim

- Disposition of the property is burdensome or costly
- Costs may be incurred to store/maintain the property (i.e. livestock)
- Costs incurred to dispose of the property result in reduction of the value of the property to less than the allowed amount of the claim
- Overall not in the best interest of the government
- Holders of other claims in the same classification receive different or more favorable repayment options
- Proposes property in lieu of deferred cash payments to claims entitled to priority under 11 USC § 507, in violation of 11 USC § 1222(a)(2)

If property, other than cash payments, is received as part of the plan, Insolvency should follow procedures in IRM 5.9.8.16.1, *Processing Chapter 11 Bankruptcy Cases, Post-Confirmation Actions, Disposition of Acquired Property*.

Note:

Under no circumstance should the IRS accept less than would be recoverable in a Chapter 7 case.

**5.9.9.9 (04-18-2013)
Confirmation**

1. **Confirmed Plan.** When no objections are filed, or after objections are resolved, the plan will be confirmed by the court. The trustee or DIP then begins distribution of the funds to the creditors. Once the court confirms the plan, it is incumbent upon the debtor to make it succeed.
2. **Confirmation Actions.** The caseworker must add the "Confirmed Plan Monitoring (CPM)" screen to AIS upon confirmation. (See IRM Exhibit 5.9.8-1, *Processing Chapter 11 Bankruptcy Cases, Adding the Confirmed Plan to AIS*, for instructions on adding the CPM screen.) Terms of the plan must be documented in the AIS history per IRM 5.9.5.4(4), *Opening a Bankruptcy Case, AIS Documentation, Chapters 11 and 12 Plan Documentation*.

**5.9.9.10 (09-29-2015)
Chapter 12 Plans and Restitution Assessments.**

1. **General Information.** Chapter 12 cases with restitution assessments are treated in the same manner as Chapter 11 cases with restitution assessments. For general information regarding restitution assessments and Chapter 12 plans, see the following subsections in IRM 5.9.8, *Processing Chapter 11 Bankruptcy Cases*:
 - IRM 5.9.8.14.3, *Chapter 11 Plans and Restitution Assessments*
 - IRM 5.9.8.14.3.1, *Restitution Assessment Paid Outside the Chapter 11 Plan*
 - IRM 5.9.8.14.3.2, *Restitution Assessment Paid in the Chapter 11 Plan*
2. **Proofs of Claim in Chapter 12 Cases with Restitution Assessments.** For information about filing proofs of claim in cases with restitution assessments, see IRM 5.9.13.18.5, *Manual Proofs of Claim and Common Claim Issues, Claim Periods, Restitution Assessments*.
3. **Discharge and Restitution Assessments in Chapter 12 Cases.** For general information regarding restitution assessments and dischargeability, see IRM 5.9.17.7.8, *Closing a Bankruptcy Case, Discharge and Restitution Assessments*.

**5.9.9.11 (04-18-2013)
Monitoring Compliance**

1. **Monitoring No Liability Cases.** Insolvency must monitor Chapter 12 no liability cases for compliance until plan confirmation. Close the no liability case on AIS upon confirmation.
2. **Monitoring Liability Cases.** Insolvency must monitor post-petition compliance of the Chapter 12 debtor owing pre-petition debts. Compliance monitoring can be discontinued at dismissal, discharge, conversion, or closing of the case. See IRM 5.9.8.12, *Processing Chapter 11 Bankruptcy Cases, Post-petition/Pre-confirmation BMF Monitoring*.
 - A. Insolvency should establish a follow-up schedule to monitor plan payments after confirmation or use AIS plan reports.
 - B. Systemic monitoring for Forms 941 can be conducted in the same manner as in Chapter 11 proceedings. (See IRM 5.9.8.12, *Post-petition/Pre-confirmation BMF Monitoring*.)
 - C. Manual monitoring for Form 943 will be necessary. However, the Last Return Amount code (LRA-CD) may be input with a TC 136 to cause post-petition Form 943 delinquencies to appear on the Post-petition Monitoring Report.
 - D. If the debtor becomes delinquent on plan payments, the Insolvency caseworker must contact the DIP or trustee, if appointed, by phone. The cause of and a cure for the delinquencies/default must be determined. Caseworkers must *establish a deadline* for the payments to become current. Advise the DIP or trustee that the Service will request dismissal of the case if the payments are not current by the deadline. Confirm the contact *in writing*.
 - E. If the debtor fails to comply with current filing and payment requirements, the Insolvency caseworker must contact the debtor by phone. Advise the debtor of the non-compliance. Give the debtor a *deadline* to come into full compliance. Advise the debtor of the consequences for failing to come into filing or paying compliance. Confirm the conversation with the debtor *in writing*.

Note:

The caseworker may *only* contact the debtor's attorney instead of the debtor regarding post-petition noncompliance *when* the IRS has filed a court action or filed a response to a court action regarding the debtor's post-petition tax liability.

- F. If the Service has an unpaid secured claim, Insolvency must make a NFTL refile determination. The NFTL must be refiled during the NFTL "refile window" when that window occurs during the pendency of the bankruptcy. (IRM 5.9.5.9.2, *Opening a Bankruptcy Case, Liens and Insolvency, Refiling Notices of Federal Tax Liens (NFTLs)*)

**5.9.9.11.1 (04-18-2013)
Referral to Counsel**

1. **Serious Delinquencies.** The debtor may continue to incur significant post-petition tax liabilities. Problems with unfiled tax returns may continue. The Insolvency caseworker must take appropriate actions to protect the interest of the government when:
 - The debtor is not addressing compliance concerns
 - The debtor cannot resolve the concerns given present circumstances

2. **Referral.** The debtor may have continuing non-compliance problems with plan provisions. If the debtor's explanation for the delinquencies is unsatisfactory, and the delinquencies are not cured, Insolvency should consider a referral to Counsel. The options generally available to the Service are to have the debtor's case dismissed or to have the stay lifted so administrative collection can be pursued.

5.9.9.11.2 (01-01-2006) After-Acquired Property

1. **Property of the Estate.** Much of the property the debtor acquires after the bankruptcy petition is filed becomes property of the bankruptcy estate. Therefore, such property is not subject to administrative collection (11 USC § 1207(a)).

5.9.9.11.3 (09-29-2015) Post-petition Liabilities in Chapter 12 — Individual Cases

1. **No Provision for Post-petition Tax Debts in Individual Cases.** Unlike a Chapter 13 case, no provision exists for filing claims for post-petition taxes owed by a debtor who is an individual in a Chapter 12 bankruptcy. In the case of *Hall v. United States*, 132 S. Ct. 1882 (2012), the debtors attempted to argue that the post-petition tax arising from the post-petition sale of their farm qualified as an administrative expense priority tax that could be treated as an unsecured general claim in their Chapter 12 plan under 11 USC § 1222(a)(2)(A). They argued the tax was incurred by the bankruptcy estate and, therefore, entitled to administrative priority status because the tax was incurred post-petition. The Supreme Court agreed with the Government that the IRC makes only certain estates liable for post-petition taxes, and since there is no separately taxable estate in a Chapter 12 or 13 case, the debtors, not their estate, were liable for the tax. The Supreme Court, therefore, ruled that an individual debtor cannot treat post-petition taxes as an administrative expense of the bankruptcy estate and must pay the post-petition taxes as they become due. Because of the *Hall* decision, 11 USC § 1222(a)(2)(A) applies only to pre-petition taxes. The post-petition income tax liability of an individual Chapter 12 debtor cannot be paid or discharged through a Chapter 12 plan. (See *IRM 5.9.9.6(3)*, *Chapter 12 Plans*, *The Chapter 12 Plan*, for guidance on pre-petition taxes incurred from the sale or other disposition of a farm asset used in the debtor's farming operation.)
2. **Refer for Dismissal.** If an individual debtor does not pay significant post-petition liabilities timely, Insolvency should consider a referral to have the bankruptcy dismissed. The caseworker should make the decision to refer the case to Counsel for dismissal early in the case. The court is more inclined to grant a dismissal request on a plan in its early stages, rather than in its advanced stage.
3. **Removal of Debtor as DIP.** When the debtor incurs post-petition liabilities, Insolvency should consider referring the case to Counsel to request removal of the DIP and appointment of a trustee (11 USC §§ 1202 and 1204). The trustee supervises the administration of the debtor's affairs. The court may remove the debtor as DIP for cause including:
 - Fraud
 - Dishonesty
 - Incompetence
 - Gross mismanagement of the affairs of the debtor
4. **Notice of Federal Tax Lien (NFTL).** The filing of a NFTL is an effective action to protect the interest of the government and to promote compliance. The FI caseworker should make a NFTL filing determination when:
 - The plan has been confirmed
 - The post-petition liability has not been made a part of the plan and the plan does not prohibit taking collection actions for the periods included
 - The aggregate unpaid balance on the post-petition liability is ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡
 - There is a sound business reason to file a NFTL
 - The automatic stay is not in effect for the periods included in the NFTL
 - A reasonable effort has been made to contact the taxpayer per *IRM 5.12.2.2*, *Federal Tax Liens, Notice of Lien Determinations, Taxpayer Contact*. Issuance of the statutory assessment notice and the balance due notices during the collection process will generally constitute a reasonable effort to contact the taxpayer. Caseworkers may still wish to contact the debtor to request full payment and warn of the possible filing of a NFTL in an attempt to resolve the case without the need to file the NFTL.

Caseworkers must document the AIS history with the decision to file, not file, or defer filing of the NFTL. The history must include a description of any NFTL filing actions taken. In addition, caseworkers and their managers must follow the approval for do not file and deferral found in *IRM 5.12.2.5.3*, *NFTL "Do-Not-File" and Filing Deferral Determination Approvals*.

5. **Installment Agreement (IA) Requests on Post-Petition Liabilities.** Taxpayers who are in Chapter 12 may incur post-petition liabilities. To prevent any inadvertent collection action against property of the bankruptcy estate, a TC 520 cc 84 should be input to post-petition liabilities. The TC 520 cc 84 will alert Service employees to contact Insolvency before taking any collection actions on the post-petition modules. These taxpayers may submit a request for an installment agreement (IA) for post-petition liabilities. When a taxpayer is in bankruptcy, a request for an IA on post-petition liabilities is non-processable. Administrative appeal rights are not provided for a non-processable IA. A TC 971 ac 043 should not be input on these accounts. For additional information, see *IRM 5.9.4.19.1*, *Common Bankruptcy Issues, IA Requests for Post-Petition Liabilities Submitted During Bankruptcy*.

Note:

In a small number of cases, the debtor taxpayer may qualify for a guaranteed installment agreement under IRC § 6159(c). See *IRM 5.14.5.3*, *Guaranteed Installment Agreements*.

5.9.9.11.4 (09-29-2015) Post-Petition Liabilities in Chapter 12 — Non-Individual Cases

1. **Requests for Payment of Administrative Expense Taxes in Certain Non-Individual Cases.** Although the bankruptcy estate of an individual in Chapter 12 does not incur a post-petition tax and there is no provision for filing a claim for post-petition taxes owed by the individual debtor in Chapter 12 cases, the bankruptcy estate of a corporation, partnership, or LLC in Chapter 12 may incur an administrative expense liability for taxes incurred prior to confirmation. The Service may file an "administrative claim", Form 6338-A, *Request for Payment of Administrative Expenses*, for these post-petition liabilities in non-individual cases.
2. **Corporations.** If a corporation in Chapter 12 fails to timely pay post-petition income, employment, or excise taxes incurred prior to confirmation, Insolvency may file a Form 6338-A, *Request for Payment of Administrative Expenses*, (an "administrative claim"), in the Chapter 12 case. (See IRC § 6012(b)(3), which requires the trustee or the DIP of a corporation in bankruptcy to file income tax returns for the corporation.)
3. **Partnerships and S-Corporations.** Partnerships and S-Corporations are flow-through entities for income tax purposes and, therefore, do not incur an income tax liability. The income is reported on the partner or shareholder return. However, a partnership or S-Corporation in Chapter 12 can incur a post-petition employment tax liability. If a partnership or S-Corporation in Chapter 12 fails to timely pay post-petition employment taxes incurred prior to confirmation, Insolvency may file a Form 6338-A, *Request for Payment of Administrative Expenses*, (an "administrative claim"), in the Chapter 12 case.
4. **Limited Liability Companies (LLCs).** A LLC can be treated as a sole proprietorship, partnership, corporation, or S-Corporation. Consequently, not all LLCs will be treated the same in Chapter 12 for tax purposes.

- A. **Income Taxes.** If a LLC that is treated as a corporation for income tax purposes fails to timely pay post-petition income taxes incurred prior to confirmation, Insolvency may file a Form 6338-A, *Request for Payment of Administrative Expenses*, ("administrative claim"), for those taxes in the LLC's Chapter 12 case.
- B. **Employment Taxes.** In general, a LLC is liable for employment taxes. However, if a single member LLC that is treated as a disregarded entity paid wages *before January 1, 2009*, the single member owner (SMO) is the taxpayer, not the LLC. (See IRM 5.1.21.8, *Bankruptcy Proceedings*). If a single member LLC that is treated as a disregarded entity pays wages *on or after January 1, 2009*, it is treated as a corporation for employment tax purposes and the LLC is the taxpayer. The following explains when a Form 6338-A, *Request for Payment of Administrative Expenses*, may be filed for unpaid employment taxes in a Chapter 12 case filed by a LLC:
- LLC Classified as a Corporation, S-Corporation, or Partnership.* Insolvency may file a Form 6338-A for post-petition employment taxes incurred prior to confirmation in the Chapter 12 case of a LLC that is classified as a corporation, S-Corporation, or partnership.
- LLC Classified as a Disregarded Entity — Wages Paid Before January 1, 2009.* Do not file a Form 6338-A for post-petition/pre-confirmation employment taxes on wages paid by the LLC before January 1, 2009. The SMO, not the LLC, is liable for those taxes.
- LLC Classified as a Disregarded Entity — Wages Paid After January 1, 2009.* Insolvency may file a Form 6338-A for post-petition/pre-confirmation employment taxes on wages paid by the LLC on or after January 1, 2009. The LLC is treated as a corporation for employment tax purposes with respect to wages paid on or after January 1, 2009. The LLC, not the SMO, is the taxpayer in this instance.

See the following IRM subsections for additional information on LLCs:

- IRM 5.1.21.8, *Collecting from Limited Liability Companies, Bankruptcy Proceedings*
 - IRM Exhibit 5.1.21-2, *Collecting from Limited Liability Companies, Income Taxation for LLCs*
 - IRM Exhibit 5.1.21-3, *Collecting from Limited Liability Companies, Employment Taxation for LLCs*
 - IRM 5.9.13.14, *Manual Proofs of Claim and Common Claim Issues, Limited Liability Companies (LLC)*
 - IRM 5.9.14.2.8(5)(i), *Automated Proofs of Claim (APOC), Case Flags, Case Flag Conditions and Resolutions, LLC Flag*
 - IRM 5.9.17.11, *Closing a Bankruptcy Case, Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)*
 - IRM 5.9.17.12, *Closing a Bankruptcy Case, Closing Liquidating Chapter 11 Corporations and Liquidating Chapter 11 LLCs*
5. **Post-confirmation Taxes.** In general, an "administrative claim", Form 6338-A, *Request for Payment of Administrative Expenses*, cannot be filed for post-confirmation taxes incurred in a non-individual Chapter 12 case. Insolvency should follow the procedures in IRM 5.9.9.11.3(2), *Post-petition Liabilities in Chapter 12 — Individual Cases, Referral for Dismissal*, and IRM 5.9.9.11.3(4), *Post-petition Liabilities in Chapter 12 — Individual Cases, Notice of Federal Tax Lien (NFTL)*, when a non-individual Chapter 12 debtor incurs post-confirmation taxes.

Note:

Except as otherwise provided in the plan or order confirming the plan, confirmation vests property of the estate in the debtor (11 USC §1227(b)). This means the property is the debtor's property again. When property vests in the debtor, the estate generally terminates and there is no estate left to incur an administrative expense. However, courts interpreting a similar provision in Chapter 13 (11 USC § 1327(b)) vary on when the estate terminates. In addition, some Chapter 12 plans specifically provide that property of the estate will remain in the estate post-confirmation. In jurisdictions or cases where the estate does not terminate after confirmation, it may be possible to file a Form 6338-A, *Request for Payment of Administrative Expenses*, in a non-individual case, if such a request could have been filed in the case prior to confirmation. Insolvency should contact Counsel for guidance on filing an administrative claim in a non-individual chapter 12 case if a confirmed plan or confirmation order provides that property of the estate will remain in the estate post-confirmation.

**5.9.9.12 (04-18-2013)
Conversions**

1. **Conversion Only for Fraud.** Chapter 12 is not like Chapters 11 and 13. A creditor cannot move for conversion of the Chapter 12 case to Chapter 7 unless the debtor has committed fraud in connection with the case (11 USC § 1208(d)). Referrals to Counsel in a Chapter 12 case will usually be to request a motion for dismissal rather than conversion.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 10. Processing Chapter 13 Bankruptcy Cases

5.9.10 Processing Chapter 13 Bankruptcy Cases

- 5.9.10.1 [Introduction](#)
- 5.9.10.2 [Chapter 13 Eligibility](#)
- 5.9.10.3 [Initial Case Review for Chapter 13 Bankruptcy](#)
- 5.9.10.4 [Pre-Confirmation Compliance Efforts](#)
- 5.9.10.5 [The Chapter 13 Plan](#)
- 5.9.10.6 [Transfer of Chapter 13 Cases from Field Insolvency \(FI\) to the Centralized Insolvency Operation \(CIO\)](#)
- 5.9.10.7 [After Confirmation](#)
- 5.9.10.8 [Monitoring the Chapter 13 Plan](#)
- 5.9.10.9 [Post-Petition Tax Liabilities](#)
- 5.9.10.10 [Court Intervention](#)
- 5.9.10.11 [Distribution of Funds](#)
- 5.9.10.12 [Trustee Audit](#)
- 5.9.10.13 [Chapter 13 and the Individual Shared Responsibility Payment \(SRP\) Liability](#)

Manual Transmittal

October 01, 2015

Purpose

(1) This transmits a revised IRM 5.9.10, *Processing Chapter 13 Bankruptcy Cases*, with table of contents, text, and exhibits.

Material Changes

(1) The content in IRM 5.9.10, *Processing Chapter 13 Bankruptcy Cases*, has been updated to provide clarification and expansion of existing material. The table below shows substantive changes within this IRM revision.

<i>IRM</i>	<i>Change</i>
5.9.10.1(6)	Cases may be referred to Associate Area Counsel or the U.S. Attorney's Office (USAO). The term "Counsel" is used to refer to whichever office is appropriate.
5.9.10.3.2	The requirement to determine if a referral is needed to the Withholding Compliance Function for issuance of a lock-in letter during the initial case review has been removed.
5.9.10.3.2(1)	The Director, Advisory and Insolvency (AI) is now the Director, Specialty Collection Insolvency (SCI). Certain aspects of the initial case review may not be required in a "streamlined" case.
5.9.10.3.2(7)	Content has been revised to clarify that the petition date in a prior bankruptcy case and the petition date in the current bankruptcy case determine if a taxpayer is eligible for discharge in the current Chapter 13 case.
5.9.10.3.2(11)	An individual who is a partner in a partnership may also be responsible for the Trust Fund Recovery Penalty.
5.9.10.4(2)	Referral to Counsel for conversion, dismissal, and/or objection to confirmation of the plan due to unfiled returns is subject to the tolerances in IRM 5.9.4.14.4.
5.9.10.5(2)	The reader is referred to additional content in IRM 5.9.17 for guidance on discharge in a Chapter 13 case.
5.9.10.5.2.1(1)	Unless otherwise provided in a plan, when a Chapter 13 plan provides for the payment of interest, the interest type should be "Daily Compounded" on the Confirmed Plan Monitoring (CPM) Screen on AIS. At no time should "IDRS Compounded" be the interest type on the CPM Screen.
5.9.10.5.4(1)	Referrals to Counsel for an objection to confirmation of the plan are subject to the tolerances in IRM 5.9.4.14.4.
5.9.10.5.5(3)(e)	An exception has been noted for cases with criminal restitution assessments.
5.9.10.5.5(8)	A deficient plan may not be referred to Counsel to object to confirmation of the plan if the case does not meet referral tolerances.
5.9.10.5.6	A new subsection has been added which discusses Chapter 13 plans and criminal restitution assessments.
5.9.10.6(1)	There is no longer a requirement for Chapter 13 cases to remain in Field Insolvency (FI) until the Chapter 13 plan is confirmed.
5.9.10.6.1	FI actions taken prior to transfer to the Centralized Insolvency Operation (CIO) are discussed.
5.9.10.6.2	CIO monitors for confirmation of the plan and updates the confirmation date on the Automated Insolvency System (AIS). Actions taken by CIO to monitor for confirmation and actions taken at confirmation are discussed.
5.9.10.7.1(2)	When a plan is modified or amended, do not change the confirmation date on AIS to the date of the order modifying or amending the plan.
5.9.10.7.2(1)	The automatic stay is lifted when discharge is denied.
5.9.10.8(5)	A TC 520 cc 84 should be input on post-petition modules to alert Service employees to contact Insolvency before taking any collection action on post-petition liabilities.
5.9.10.9(5)	IRS may allow the debtor to make voluntary payments on post-petition liabilities but not enter into an installment agreement (IA) for post-petition liabilities unless the liability qualifies for a guaranteed IA.
5.9.10.9(7)	Generally, requests for an IA on post-petition liabilities are not processable when a taxpayer is in bankruptcy unless the liability qualifies for a guaranteed IA.
5.9.10.9(11)	Certain liabilities are not discharged in a Chapter 13 case even when provided for in the plan.
5.9.10.9.1(4)	Caseworkers are reminded to input a TC 520 cc 84 on post-petition modules.
5.9.10.9.2(14)	An additional example of a non-dischargeable liability on an 11 USC § 1305 claim is provided.
5.9.10.11(2)	Failure to credit payments received under a confirmed plan correctly is a violation of the discharge injunction.
5.9.10.11(5)	Clarifies that payment may be received and credited to the taxpayer's account in exchange for a Certificate of Discharge of Property from Federal Tax Lien.
5.9.10.13	General information is provided regarding Chapter 13 and the Individual Shared Responsibility Payment (SRP) liability.
5.9.10.13.1	A new subsection discusses proofs of claim and SRP liabilities.
5.9.10.13.2	Setoffs and SRP liabilities are discussed.
5.9.10.13.3	Closing actions in cases with SRP liabilities are discussed.

(2) Editorial changes were made throughout this section to add clarity and to update or correct citations.

Effect on Other Documents

This material supersedes IRM 5.9.10, dated June 25, 2013. This revision incorporates the Memorandum of Understanding (MOU) on the movement of unconfirmed Chapter 13 cases from Field Insolvency (FI) to the Centralized Insolvency Operation (CIO). The revision also incorporates content from the following interim guidance memoranda:

- SBSE-05-1214-0083, *Processing the Individual Shared Responsibility Payment (SRP) in Bankruptcy Cases*, dated December 15, 2014.
- SBSE-05-0115-0007, *Procedures for Processing Bankruptcy Cases with Restitution Assessments*, dated January 15, 2015.
- SBSE-05-0315-0033, *Processing Installment Agreement Requests for Post-Petition Liabilities when a Taxpayer is in Bankruptcy*, dated March 23, 2015.

Audience

All Operating Divisions

Effective Date

(10-01-2015)

Kristen Bailey
Director, Collection Policy

5.9.10.1 (10-01-2015)

Introduction

1. **General Information.** This IRM provides guidance for processing Chapter 13 bankruptcy cases. It is primarily intended for caseworkers in Field Insolvency (FI) and caseworkers at the Centralized Insolvency Operation (CIO). However, other employees in SBSE and other operating divisions may also refer to this IRM.
2. **Reorganization of Debts for Individuals.** A Chapter 13 bankruptcy represents a *voluntary* reorganization of debts for individuals. The debtors, who usually retain all of their assets, commit a portion of their future income to repay creditors. Cases normally remain open for 36 to 60 months, with 60 months being the maximum and most common time frame. Under the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), for bankruptcies commencing on or after October 17, 2005, the plan length is determined by the relationship of the debtor's income to the median income in the state where the debtor filed the bankruptcy petition (11 USC § 1322(d)). This chapter is not available to corporations, Limited Liability Companies (LLCs), or partnerships. Chapter 13 is available only to individuals (wage earners and sole proprietors) with regular income.
3. **Chapter 13 Trustee Contact.** A court-appointed trustee oversees the administration of a Chapter 13 bankruptcy case. Generally, FI caseworkers make direct contact with trustees. Limited contact between CIO and the trustee may be necessary, usually to resolve payment posting issues.
4. **Trustee Duties.** The Chapter 13 trustee:
 - A. Acts as an agent of the court;
 - B. Oversees the fair and economical administration of cases;
 - C. Ensures all creditors receive an equitable distribution;
 - D. Receives periodic payments from the debtor; and
 - E. Distributes periodic payments to creditors.
5. **Protection of the Government's Interests.** Sometimes, the interests of other creditors compete with the interests of the IRS. Because confirmation hearings take place early in Chapter 13 cases, Insolvency must address case issues at a pace sufficient to protect the interests of the Government. Confirmation hearings usually take place within two to three months from the petition date.
6. **Counsel.** Certain issues in a Chapter 13 case may be referred to Associate Area Counsel or directly to the U.S. Attorney's Office (USAO). Within this IRM, the term "Counsel" refers to Associate Area Counsel or the USAO, whichever is appropriate. For more information on referrals, see the following subsections in IRM 5.9.4, *Common Bankruptcy Issues*:
 - IRM 5.9.4.14, *Referrals — Representing IRS in Bankruptcy Court*
 - IRM 5.9.4.14.1, *Direct Referrals*
 - IRM 5.9.4.14.2, *Referrals to Counsel (Non-Direct Referrals)*
 - IRM 5.9.4.14.3, *Significant Bankruptcy Case Referrals*
 - IRM 5.9.4.14.4, *Referral Tolerances*

5.9.10.2 (06-25-2013)

Chapter 13 Eligibility

1. **Criteria.** 11 USC § 109(e) describes the criteria the debtor must meet to file a Chapter 13 bankruptcy case:
 - A. The debtor must be an individual, or an individual and spouse, who can file a joint bankruptcy petition. An individual who is a stockbroker or a commodities broker cannot be a debtor in a Chapter 13 case;
 - B. The debtor must have regular income (including income from self-employment);
 - C. *Non-contingent, liquidated, secured debts* must total less than \$1,149,525; and
 - D. *Non-contingent, liquidated, unsecured debts* must total less than \$383,175.

Note:

These limitations became effective April 1, 2013. The debt ceilings are for *the total of all* debts, not just tax debts.

- E. BAPCPA established a fifth criteria under 11 USC § 109 for Chapter 13 bankruptcies filed on or after October 17, 2005. Debtors must undergo credit counseling within the 180 days prior to the filing of the bankruptcy petition, unless specific exceptions are met. For those exceptions, see 11 USC § 109(h).
2. **Eligibility/Automatic Adjustments.** As required under 11 USC § 104(b), the Chapter 13 dollar amounts are automatically adjusted at three-year intervals to reflect changes in the Consumer Price Index. As required under 11 USC § 104(b)(2), the next three-year automatic adjustments of the dollar amounts affecting the eligibility of a debtor to file Chapter 13 will occur on April 1, 2016.

5.9.10.3 (06-25-2013)

Initial Case Review for Chapter 13 Bankruptcy

1. **Initial Actions.** Upon notification of a Chapter 13 filing, Insolvency must follow the processing procedures outlined in IRM 5.9.5, *Opening a Bankruptcy Case*. IRM 5.9.10.3.1, *Initial Case Review Time Frames*, discusses the acceptable time frame for completion of the initial case review by FI caseworkers. Aspects of the initial case review are discussed in IRM 5.9.10.3.2, *Aspects of the Initial Case Review*.

5.9.10.3.1 (06-25-2013)

Initial Case Review Time Frames

1. **General Time Frame.** When the Chapter 13 case is assigned to the FI caseworker at least five calendar days prior to the 341, the caseworker must conduct an initial case review and take primary case actions the earlier of:

- A. The locally required time for submitting a referral to Counsel for objections to confirmation of the plan or
- B. At least five calendar days before the scheduled 341 meeting of creditors.

If the case is assigned to a FI caseworker less than five calendar days prior to the 341 date (or after the 341 date), the initial case review must be completed ten (10) business days prior to the earlier of the:

- Locally required time for submitting a referral to Counsel for objections to confirmation of the plan or
- General bar date,
- Whichever is earlier and has not passed.

Elements of this review may be required sooner (see below). All actions taken and findings in the review must be documented in the AIS history.

2. **Aspects of the Review that are Required Earlier.** Certain elements of the initial case review are required sooner. Some of these elements are:

- Resolving stay violations
- Responding to pending motions or defensive litigation
- Addressing adequate protection when the Service has a pre-petition Notice of Federal Tax Lien (NFTL) on file

3. **Aspects of the Review Requiring Action within Five Calendar Days.** The caseworker must address Automated Proof of Claim (APOC) flags within five calendar days of APOC identifying a potential violation of the stay. (IRM 5.9.14.2.7, *APOC Flag Condition Time Frame Requirements*) Flags that identify possible stay violations are the "Credits Posted After Petition Date" and "Lien Recorded Date Blank" flags.

4. **Action Required within Ten Calendar Days.** The caseworker should address the potential for adequate protection within ten calendar days of APOC identifying the "Secured Period" flagged condition which identifies a module in which a NFTL has been filed. (IRM 5.9.14.2.7(1)(b))

5.9.10.3.2 (10-01-2015)

Aspects of the Initial Case Review

1. **Bankruptcy Petition, Schedules, and SOFA.** Numerous electronic tools are available to assist the FI caseworker with an initial case review. The bankruptcy petition, bankruptcy schedules, and Statement of Financial Affairs (SOFA) are available electronically on PACER. The debtor's attorney may also mail these documents to the Service. Actions taken during the initial case review will depend on the facts and circumstances in the case. The case with a large outstanding liability will require a more in-depth review than a case with a small balance due.

Note:

The Director, Speciality Collection Insolvency (SCI), may provide "streamlined procedures" for FI caseworkers to follow in certain cases. Certain aspects of the initial case review within this IRM may not be required in the "streamlined" case.

Issues requiring clarification at the 341 meeting of creditors may be identified as the caseworker completes the initial case review. The caseworker may also determine that there are no issues for discussion at the 341. The caseworker must document the AIS history clearly with any issues that require a discussion at the 341. If there are no issues to be discussed at the 341, document the AIS history accordingly. The caseworker must document whether or not they will attend the 341 meeting of creditors. If the debtor has a business, the caseworker can gather information regarding the taxpayer's business prior to the 341 by sending the debtor Form 13648, *Request for Business Information*.

2. **IDRS.** A review of IDRS will assist the caseworker in determining if the debtor is compliant with tax laws. The review will also assist the caseworker in determining:

- Filing requirements and return filing history
- Current balances due and delinquent returns
- The latest period for which a Form 941, 940, 942, or 943 was filed, if applicable
- Requirements for federal tax deposits (FTDs), if applicable
- Failure to make any FTDs, if applicable
- Currency in making estimated tax payments, when applicable

3. **Pre-Bankruptcy Collection Actions.** Activity in other Service functions may be pending or ongoing when the bankruptcy is filed (for example, a revenue officer may have outstanding levies). Coordination between Insolvency and the functions taking collection or examination action helps the IRS comply with the provisions of the automatic stay.

- The Service must protect taxpayer rights by avoiding actions in violation of the automatic stay.
- If a violation of the stay occurs, the IRS may be liable for damages and attorney's fees, but not punitive damages.

4. **Levy Issues.** In general, the Service should release all levies on an account immediately upon learning that the taxpayer has filed bankruptcy and that the automatic stay is in effect (but, see 11 USC § 362(c)(3) and (4)). Any funds levied upon but not paid over, or property seized but not yet sold, are property of the bankruptcy estate. The property should be turned over to the debtor or the bankruptcy trustee, if ordered by the court. Field Insolvency (FI) caseworkers should contact Counsel on a case-by-case basis when serious levy issues arise. (See IRM 5.9.5.8, *Levies and Bankruptcy*.) The FI caseworker must take appropriate actions to address any outstanding pre-petition levies, including issuing a release of levy, when needed.

5. **Adequate Protection.** Although used infrequently in a Chapter 13 bankruptcy case, adequate protection may be considered in cases where levied funds are significant, or the debtor's property could be easily liquidated or moved. Alternately, FI may propose a request to lift the stay if a debtor's ability to complete the plan is questionable. FI must confer with Counsel on unusual situations of this nature.

Note:

A detailed discussion of adequate protection and cash collateral, more common in Chapter 11 cases than in Chapter 13, can be found in IRM 5.9.8.5, *Processing Chapter 11 Bankruptcy Cases, Adequate Protection*, and IRM 5.9.8.7, *Cash Collateral/Property Depreciation of the Estate*.

6. **Automatic Stay Review.** Cases filed on or after October 17, 2005, should be reviewed for dismissals of previous bankruptcies within one year of the current bankruptcy. See the following IRM subsections and exhibits within IRM 5.9.5, *Opening a Bankruptcy Case*, for guidance on conducting the review and correct actions that should be taken depending upon the results of the review:

- IRM 5.9.5.7, *Serial Filers*
- IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*
- IRM Exhibit 5.9.5-4, *Common Processing Steps in Serial Filer Cases*
- IRM Exhibit 5.9.5-5, *Processing the Serial Filer Case When the Stay Terminates After 30 Days*
- IRM Exhibit 5.9.5-6, *Processing the Serial Filer Case When No Stay Goes into Effect*

7. **Discharge Limitations.** In Chapter 13 cases filed on or after October 17, 2005, debtors may not be eligible to receive a discharge in the current bankruptcy case when they received a discharge in a prior bankruptcy case. Courts have held that eligibility for discharge depends on the petition date of the prior bankruptcy case and the petition date of the current bankruptcy case, as well as the type of prior bankruptcy case filed by the debtor. See:

- In re Sanders, 551 F.3d 397 (6th Cir. 2008)
- In re Bateman, 515 F.3d 272, 280 (4th Cir. 2008)
- In re Gagne, 394 B.R. 219, 230 (1st Cir. BAP 2008)

But, see In re Sidebottom, 430 F.3d 893, 897 n.1 (7th Cir. 2005) (dicta that eligibility depends on discharge date in prior bankruptcy).

Failure to adhere to the minimum time limitation may result in the debtor's liabilities being non-dischargeable (11 USC § 1328(f)). IRM 5.9.5.7.1(5), *Systemic Identification in Serial Filer Cases, Discharge Limitations*, and IRM Exhibit 5.9.5-3, *Allowable Elapsed Time between Bankruptcy Filings*, provide instructions for reviewing accounts to determine if the debtor is eligible to receive a discharge in the current bankruptcy case based on the petition date in the prior case and the petition date in the current case.

Note:

The prior bankruptcy case need not have been filed after October 17, 2005. *Example:* If a Chapter 13 case was filed on October 18, 2005, and that same debtor received a discharge in a previous Chapter 7 case filed on June 10, 2002, the debtor is not eligible for a discharge in the current Chapter 13 case.

8. **NFTL Refile Determinations.** The caseworker assigned the Chapter 13 case must review IDRS for any periods where a Notice of Federal Tax Lien (NFTL) has been filed to determine if a NFTL refile is appropriate. IRM 5.9.5.9.2, *Refiling Notices of Federal Tax Lien (NFTLs)*, explains the window for refiling NFTLs and provides guidance for determining if a NFTL should be refiled. A NFTL refile review is required for Chapter 13 accounts only during initial case reviews.

9. **Letter to Non-Debtor Spouse.** Upon initial Chapter 13 case review, Letter 4521, *Non-Debtor Letter*, must be sent to non-debtor spouses who owe joint liabilities with the individual Chapter 13 debtor. The liability may not be fully abated for the non-debtor spouse when included in the debtor's bankruptcy filing.

10. **Exam Issues.** IRM 5.9.4.3, *Examination and Insolvency*, provides guidance for addressing examination issues. A review of AMDISA and contact with the revenue agent or examiner may be required.

11. **TFRP Issues.** A review of the bankruptcy schedules or SOFA may reveal that the debtor is an officer of a corporation, a member of a LLC, or a partner in a partnership. If the corporation, LLC, or partnership has unpaid withholding or excise taxes, the Chapter 13 debtor may be responsible for the Trust Fund Recovery Penalty (TFRP). A review of the Automated Trust Fund Recovery (ATFR) program is necessary to determine what periods may have a TFRP proposed but not yet assessed against the debtor. These unassessed liabilities must be added manually to the proof of claim. Information on parties that may be assessed a TFRP can be found in:

- IRM 5.7.3.3.1, *Establishing Responsibility and Willfulness for the Trust Fund Recovery Penalty (TFRP), Establishing Responsibility*
- IRM 5.9.8.4.2(18), *Aspects of the Initial Case Review in the Chapter 11 Case, TFRP Issues*
- IRM 5.15.1.13, *Financial Analysis Handbook, Business Entity Types*

12. **Debtor is a Member of a LLC.** When reviewing the debtor's bankruptcy schedules, SOFA, or IDRS, the caseworker may discover that the debtor has an interest in a LLC. If the Chapter 13 debtor is the single member in a LLC, the debtor may be personally liable for certain employment tax debts under the EIN of the LLC. The debtor may also be liable for the TFRP when a LLC has unpaid trust fund taxes due to unpaid excise tax incurred after January 1, 2008, or withholding taxes incurred after January 1, 2009. See IRM 5.9.13.14, *Limited Liability Companies (LLC)*, and subsections, for additional information.

Note:

Manual intervention is required in these cases to determine the responsibility of the debtor and if the liabilities must be included on the proof of claim.

13. **Additional Aspects.** Facts and circumstances in the case may warrant additional research, especially in the "large dollar" Chapter 13 case. Additional research that may be necessary include:

- A review and analysis of locator services, such as Accurint.
- A review of any available online courthouse records.
- A review of IDRS cc: IRPTRL for possible mortgage interest paid for identification of real property ownership.
- A review of Department of Motor Vehicle (DMV) records when expensive or collectible vehicles are listed in the bankruptcy schedules.

5.9.10.4 (10-01-2015)

Pre-Confirmation Compliance Efforts

1. **In-Business Monitoring.** In jurisdictions experiencing substantial delays prior to confirmation, FI should monitor in-business taxpayers prior to confirmation. Business Master File (BMF) liabilities can be tracked systemically using TC 136. If the confirmation occurs very soon after the filing of Chapter 13 bankruptcy, the use of TC 136 may not be warranted. (See 5.9.8.12, *Processing Chapter 11 Bankruptcy Cases, Post-Petition/Pre-Confirmation BMF Monitoring*.)

2. **Unfiled Returns.** Effective October 17, 2005, no later than the day before the 341 meeting is first scheduled, the debtor must file all tax returns "with the appropriate tax authorities" that are due under applicable non-bankruptcy law for taxable periods ending during the four year period prior to, or on, the date of the filing of the bankruptcy petition (11 USC § 1308(a)). After FI has made a reasonable attempt to resolve the non-compliance administratively, if tax returns remain unfiled by the 341 meeting, the case should be referred to Counsel for conversion or dismissal (11 USC § 1307(e)) and/or for objection to confirmation of the plan, subject to the tolerances established in IRM 5.9.4.14.4, *Referrals - Representing IRS in Bankruptcy Court, Referral Tolerances*. IRM 5.9.13.18.2, *Manual Proofs of Claim and Common Claim Issues, Claim Periods, Addressing Unfiled Returns*, explains the use of Letter 1714 and proofs of claims to alert the trustee to debtor non-compliance. Also, see 11 USC § 1325(a)(9) which makes filing the returns a requirement for confirmation.

Note:

It is the Service's policy to address filing compliance for the six years prior to the filing of the bankruptcy petition.

3. **Delaying the 341 Meeting.** The trustee may hold open the 341 meeting to provide the debtor an opportunity to file tax returns. For returns that are not past due as of the petition date, such time may be no more than the later of:
- 120 days after the date the first meeting is held or
 - The return due date plus timely filed extensions.

For returns that are past due as of the petition date, delay of the 341 meeting cannot extend beyond 120 days after the date of the first meeting of creditors. After notice and a hearing and before the tolling period for filing the return(s) terminates, the bankruptcy court may extend the trustee's filing period, but the extension may not exceed 30 days for delinquent returns or the extended due date for returns that are not yet due.

5.9.10.5 (10-01-2015) The Chapter 13 Plan

1. **Time Limitations.** In a Chapter 13 bankruptcy case, the plan may be filed concurrently with the petition. If this is not the case, the debtor *must* file a plan *within 14 days* of the petition date (Bankruptcy Rule 3015(b)). 11 USC § 1326(a)(1) requires plan payments to begin within 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, unless the court orders otherwise.
2. **Basic Plan Requirements.** In general, the plan should specify:
- A. The length of the plan;
 - B. The monthly payment amount;
 - C. The percentage of the claims being paid to each class of creditors;
 - D. The rate of interest, if applicable, as set forth in IRC § 6621; and
 - E. Other conditions that affect the treatment of each creditor.

For cases filed prior to October 17, 2005, if all plan requirements are met, the court must grant the debtor a "super discharge" of all debts provided for in the plan at the end of the Chapter 13 proceeding. Certain taxes in cases filed on or after October 17, 2005, are excepted from discharge. If a debtor fails to complete the plan payments, the court may still grant a "hardship" discharge. For more information on discharge in a Chapter 13 case, see the following subsections in IRM 5.9.17, *Closing a Bankruptcy Case*:

- IRM 5.9.17.7, *Discharge and Exceptions to Discharge*, including subsections
- IRM 5.9.17.14, *Chapter 13 Discharge Pre-BAPCPA*
- IRM 5.9.17.14.1, *Chapter 13 Discharge Changes under BAPCPA*
- IRM 5.9.17.14.2, *Chapter 13 Hardship Discharge*

5.9.10.5.1 (06-25-2013) Notice of Plan and Hearing

1. **Court Notification to Creditors.** Bankruptcy Rule 3015 provides that the clerk of the court shall mail a copy of the plan or a summary of the plan to each creditor, along with the notice of the confirmation hearing. Bankruptcy Rule 2002(b) provides for *28 days notice* to creditors of the hearing on confirmation. For cases where the IRS is listed as a creditor, the plans are mailed to the CIO's post office box. The CIO does not forward the plan to Field Insolvency (FI). It is placed in classified waste. The FI caseworker must review the plan electronically on PACER. (See IRM Exhibit 5.9.11-2, *Insolvency Mail Processing, Mail Direct to Classified Waste*, for additional information.)

Note:

An objection can be filed if a creditor receives less than 28 days notice.

2. **Confirmation Hearing.** The confirmation hearing for Chapter 13 cases may not be held earlier than 20 days and no later than 45 days after the 341 meeting, unless it is in the best interests of both the creditors and the estate to hold the hearing at an earlier date and no objection is filed (11 USC § 1324(b)).

5.9.10.5.2 (06-25-2013) Plan Requirements

1. **Necessary Plan Provisions.** An *adequate* Chapter 13 plan will:
- A. Provide the trustee all, or a portion of, the debtor's future earnings for the repayment of debts;
 - B. Provide for full payment of all priority claims under 11 USC § 507 in deferred cash payments unless the creditor agrees to a different treatment; and
 - C. Provide all claims in the same class receive equal treatment.
2. **BAPCPA Amendments.** In addition to the requirements of an adequate plan listed in paragraph (1) above, for cases filed on or after October 17, 2005, BAPCPA has added two provisions to 11 USC § 1322 that may affect the Service.
- A. **Payment of Interest.** The debtor may provide for the payment of interest on unsecured claims that are non-dischargeable under 11 USC § 1328(a) if the debtor has disposable income sufficient to pay interest after making provisions for the full payment of all allowed claims. See IRM 5.9.10.5.2.1, *Interest in the Post-BAPCPA Case*, below for additional information.
 - B. **Length of Plan.** The allowable length of a plan is determined by comparing the debtor's current monthly household income (times 12) to the annual median income of the debtor's state (11 USC § 1322(d)). Extensions of plan length can be granted by the court, but the court may not approve a period longer than five years.
3. **Additional Provisions.** 11 USC § 1322(b) sets forth permissive actions that may be incorporated in the plan, including:
- A. Modifying the rights of secured creditors (for example, paying a secured creditor the amount of its claim in deferred payments instead of having the debtor surrender the collateral); and

B. Making provisions for certain post-petition claims.

Caution:

Vague or ambiguous language in plans should be flagged for possible objections. Seek Counsel's input, if necessary.

4. **Plan Confirmation Conditions.** 11 USC § 1325(a) states the court shall confirm a plan if the enumerated requirements are met. The requirements include:

- A. All provisions contained in the Bankruptcy Code are met and all fees are paid;
- B. The plan is proposed in good faith;
- C. Unsecured creditors will receive at least the amount to which they would be entitled in a Chapter 7 bankruptcy;
- D. Secured creditors will receive their collateral, or the amount of their claim with interest, if paid in installments;

Note:

11 USC § 1325(a)(5)(B)(i) provides the lien securing the claim must be retained until the earlier of the time the underlying debt is paid or the time a discharge is granted. Also, the plan must provide for the retention of the lien if the case is dismissed or converted without completion of the plan.

- E. The plan is feasible (i.e., the debtor will be able to make all plan payments and comply with the plan); and
- F. The debtor has filed all applicable Federal, State, and local tax returns as required by 11 USC § 1308.

5.9.10.5.2.1 (10-01-2015)

Interest in the Post-BAPCPA Case

- 1. **Interest Provisions.** In the Chapter 13 case filed on or after October 17, 2005, the Service may be entitled to the payment of accrued post-confirmation interest during the life of the plan. Field Insolvency (FI) caseworkers must review the plan for interest provisions. Any interest rate provided for in the plan "locks in" at the rate and type provided for in the plan during the life of the plan. If the plan provides for the payment of accrued interest, but does not specify the interest type, treat the interest type as "Daily Compounded" as provided for by IRC § 6621. If the plan provides for the payment of simple interest, "Simple" should be the interest type on the Confirmed Plan Monitoring (CPM) Screen on AIS. At no time should "IDRS Compounded" be the interest type on the CPM Screen on AIS.
- 2. **Interest on Secured Claims.** The Service is entitled to the payment of interest on a claim at the IRC § 6621 rate during the month of confirmation (See 11 USC § 511) during the life of the plan, unless the plan is confirmed with another specified rate, or states "no interest". If the plan is silent on the payment of interest, it is the position of the Service that the Service is entitled to compound interest at the IRC rate on the confirmation date during the life of the plan.
- 3. **Interest on Unsecured Claims.** Generally, the Bankruptcy Code has no provision for the payment of accrued interest on dischargeable unsecured liabilities. The plan *may* provide for interest on non-dischargeable unsecured liabilities when the debtor has disposable income available to pay such interest after providing for full payment of all allowed claims (11 USC § 1322(b)(10)). If the plan provides for interest on the unsecured claim, the Service will not litigate the interest rate. If the plan provides for interest, but does not specify if the plan interest is "simple" or "compound" interest, treat the interest type as "Daily Compounded."

5.9.10.5.3 (06-25-2013)

Plan Review

- 1. **Timely Review of Plan.** Field Insolvency (FI) caseworkers have sole responsibility for reviewing Chapter 13 plans and plan amendments. Absent extenuating circumstances, FI caseworkers must review plans *prior* to the deadline for objection to confirmation. This ensures if an objection is necessary, the referral will be made in time for the Service to be represented in bankruptcy court. The FI caseworker must access the plan on the court's electronic site or contact the court or debtor's attorney to have a copy sent directly to the FI office address.
- 2. **Pre-BAPCPA Reviews.** For cases filed prior to October 17, 2005, once a plan is confirmed, *the provisions of the confirmed plan bind the IRS as a creditor, whether or not the plan provides for payment of the proof of claim filed by the Service.*
- 3. **BAPCPA Reviews.** The implementation of BAPCPA provisions for cases filed on or after October 17, 2005, does not lessen the need for thorough review of Chapter 13 plans. However, BAPCPA has codified some plan requirements and exceptions to discharge that protect creditors and, if appropriately adhered to in the plan, reduce the Service's need to request that objections to confirmation be filed:
 - A. Periodic payments to secured creditors must be in equal monthly amounts.
 - B. If a case is dismissed or converted before completion of a plan, the Service retains its liens (if any) to the extent recognized by non-bankruptcy law.
 - C. Liabilities on unfiled returns, or late returns filed after two years before the petition date, are non-dischargeable.
- 4. **Pre-Confirmation Trustee Plan Review.** The Chapter 13 trustee reviews plans and claims prior to confirmation. The Service should file proofs of claim as soon as possible after a Chapter 13 petition is filed. (See 11 USC § 1324(b), *IRM 5.9.10.5.4, Objecting to a Plan*, and *IRM 5.9.10.5.5, Reasons to Object*, for additional information concerning plan objections.)
- 5. **"Provides for" – Plan Provision Problem.** Frequently, Chapter 13 plans include a provision stating all priority debts under 11 USC § 507 will be paid in full. Some courts have held such a provision adequately "provides for" priority tax debts; consequently, they must be discharged under 11 USC § 1328(a), even if the plan does not actually provide for any payments on the tax debt.
- 6. **Timely Claims.** The Service should file a claim prior to the general bar date, or preferably by the confirmation date (should confirmation occur first), whenever possible. This protects the interests of the Government by ensuring priority and other tax claims will be included and paid under the plan.

Note:

For cases filed on or after October 17, 2005, trust fund taxes are excepted from discharge *even if the Service files an untimely claim or does not file any claim* (11 USC § 1328(a)(2)). Therefore, it is in the Service's best interest to file an untimely claim, if necessary, as the debtor may modify the plan to provide for the liability.

7. **Unacceptable Plan.** If the plan does not provide for appropriate payment of the Service's claims, the FI caseworker should follow the guidance in *IRM 5.9.10.5.4* below.

5.9.10.5.4 (10-01-2015)

Objecting to a Plan

- 1. **Objection/Negotiations.** When a FI bankruptcy caseworker judges a plan to be inadequate, an objection must be considered. The objection may be raised by:
 - A. Insolvency negotiating acceptable plan terms with the debtor's attorney prior to confirmation to avoid potential litigation;
 - B. Raising concerns with the plan at the 11 USC § 341 meeting; or
 - C. Making a referral to Counsel, requesting that Counsel file a formal objection to confirmation of the proposed plan, subject to the referral tolerances in *IRM 5.9.4.14.4, Common Bankruptcy Issues, Referral Tolerances.*

2. **Referral System.** Field Insolvency (FI) and Counsel should work together to coordinate an efficient system for routing referrals, allowing for adequate control and timely actions through use of the AIS "referral" screen. All referrals must include the debtor's TIN(s). All referrals to Counsel *must be* documented on the AIS referral screen.

Reminder:

Referrals to local Counsel should address case-specific questions, not policy or procedural issues set forth by the National Office.

3. **Insolvency Responsibilities.** When an objection is in order, the FI caseworker should:
- A. Refer to the local bankruptcy court rules controlling the case for time frames to object;
 - B. Make prompt contact with the debtor's attorney to attempt informal resolution; and,
 - C. If appropriate, consult with Counsel on the proper method for a formal objection.
4. **Objection to Plan Factors.** Besides IRM 5.9.4.14.4 criteria, special circumstances and local guidelines may be established to control the number of plan objections.
5. **Timely Objections.** Once a FI caseworker has decided to refer an objection to confirmation to Counsel, the referral must be made timely to give Counsel adequate notice to prepare a quality objection to the plan. Counsel can advise local offices of the number of days in advance Counsel needs to receive a referral to prepare an adequate objection.
6. **Outreach Efforts.** Outreach to Insolvency stakeholders should be an integral part of the local Insolvency program. Personal interactions with trustees and bar association members can foster cooperation of all parties and address issues of mutual concern.

5.9.10.5.5 (10-01-2015)

Reasons to Object

1. **Protection of the Government's Interests.** In many jurisdictions, the Chapter 13 trustee assures the court that the plan meets the conditions listed under 11 USC § 1325. However, the trustee might not object to a plan that adversely affects an IRS claim. The IRS should object to a plan when appropriate to protect the Government's interests while tax accounts are under the jurisdiction of the bankruptcy court. (See *IRM 5.9.10.7, After Confirmation.*)
2. **Ineligibility.** One ground for filing a motion to dismiss the case and an objection to the plan is "*ineligibility.*" A debtor may be ineligible for Chapter 13 relief for several reasons. The most common reason a debtor is ineligible for Chapter 13 relief is that their liabilities exceed the dollar limitations for a Chapter 13 case. The following examples demonstrate debtors that are ineligible to file Chapter 13. The list is *not* all inclusive:
- A. The total of the debtor's secured or unsecured debts exceed the limitation for secured or unsecured debt in a Chapter 13 bankruptcy.
 - B. The entity's name on the petition is the name of a *partnership*, which research confirms; but, a partnership is not eligible to file Chapter 13.
 - C. The debtor's occupation is listed in court filings as a stockbroker or a commodities broker. Neither is eligible to file a Chapter 13 bankruptcy case.
3. **Plan Concerns.** Additionally, the Service may object to confirmation because the plan:
- A. Fails to meet the requirements of 11 USC §§ 1322 and 1325 (for example, priority and secured claims will not be paid in full);
 - B. Is not feasible given the debtor's current income, expenses, and future tax obligations;
 - C. Proposes a balloon payment;
 - D. Discriminates against the IRS by treating the Service's claims differently than other creditors in the same classification;
 - E. Proposes payments *outside* the plan with an exception for cases with restitution assessments (see *IRM 5.9.10.5.6*);
 - F. Proposes to abandon collateral to the Government or proposes to distribute property in lieu of cash;
 - G. Is to be modified by the debtor after confirmation if such a modification could impair the Government's claim;
 - H. Proposes less than full payment of all unsecured general tax claims *and* provides for less than all of the debtor's disposable income, as defined in 11 USC § 1325(b), to fund the plan; or,
 - I. Contains language discharging liabilities that are non-dischargeable per the Bankruptcy Code.
4. **Deficient Plans - Exceptions.** In exceptional cases, the Chapter 13 debtor may be unable to pay the Service's claims as required under the Bankruptcy Code and it is in the taxpayer's and the Government's best interests not to have the case converted or dismissed.

Example:

A taxpayer files a Chapter 13 bankruptcy petition to prevent foreclosure on the family residence. Conversion to a Chapter 7 case will result in minimal or no payments toward the Service's priority or secured claim. It may be in the best interest of the Service and the debtor to agree to partial payment of the Service's claims; then, exempt the claims from discharge under the terms of the plan. When the bankruptcy is closed after completion of the plan, the taxpayer may submit an administrative OIC for the remaining tax liabilities. A deficient plan in this instance is better than a conversion to a Chapter 7 case, which will result in minimal or no payments towards the Service's priority or secured claims.

5. **Unacceptable Deficient Plans.** Under no circumstances will the IRS accept less than would be recoverable in a Chapter 7 case. Nor, will the IRS consider a plan providing for payment of less than is statutorily required unless the following is true:
- The plan does not provide for the payment of claims with lower priority than those of the IRS.
 - All income not necessary for the health and welfare of the debtor's family or the production of income is committed to the plan.
6. **Factors for Evaluating Deficient Plans.** The following considerations should be weighed before deciding to agree to treatment of the Service's claims in the proposed plan that does not meet the requirements for confirmation in the Bankruptcy Code:
- Debtor's ability to pay the IRS's claim as required by the Bankruptcy Code
 - Debtor's compliance with filing requirements
 - Probability the plan will pay the IRS more than if the case is dismissed or converted to a Chapter 7 liquidation
 - Debtor's probable ability to continue making payments over the time remaining on the CSED
 - Feasibility of the proposed plan of reorganization
 - Existence of factors precluding the debtor from dismissing the bankruptcy and submitting an administrative offer in compromise

Example:

The IRS is the only priority creditor in the case.

- Dischargeability of the tax liabilities
- Agreement by other creditors with the same priority, such as state taxing authorities, to receive less than full payment of their claims

7. **Acceptance of Deficient Plans.** If a debtor demonstrates that it is in the Government's best interest to accept less favorable treatment than is required under the Bankruptcy Code, the specific payment terms must be incorporated into the debtor's plan. The debtor's plan is subject to the approval of the bankruptcy court. The plan must also provide statements asserting:

- A. The Service has affirmatively agreed to a lesser treatment of its claim than is required under the Bankruptcy Code;
- B. The debtor will comply with all filing, withholding, and estimated tax payment requirements during the life of the plan; and
- C. The Government's right to collect upon a default in plan payments.

Note:

The AIS history must reflect the factors considered in the decision to accept treatment of the Service's claims, irrespective of Bankruptcy Code requirements.

8. **Burden Falls to the Debtor.** The case should be referred to Counsel to file an objection to the plan unless:

- The Chapter 13 debtor timely provides information to Insolvency that demonstrates the ability to pay the Service's claim as required by the Bankruptcy Code,
- Conversion or dismissal of the case is not in the best interest of the Government, or
- The case does not meet referral tolerances in IRM 5.9.4.14.4.

9. **Contents of Objection Referral.** The referral to Counsel objecting to the plan must state the actions taken to resolve plan deficiencies with debtor's counsel. These may include the following:

- The debtor did not demonstrate acceptance of a deficient plan is in the Government's best interest
- The debtor did not provide sufficient information to make such a determination
- The debtor's payment proposal is not feasible
- The tax claims are non-dischargeable and full collection is likely outside of bankruptcy

Reminder:

The referral to Counsel must contain the complete TIN of the debtor.

5.9.10.5.6 (10-01-2015)

Chapter 13 Plans and Criminal Restitution Assessments

1. **General Information.** A debtor may file Chapter 13 bankruptcy and owe a liability for a criminal restitution assessment. Chapter 13 cases with criminal restitution assessments are generally treated in the same manner as Chapter 11 cases with criminal restitution assessments. For general information on criminal restitution assessments, see IRM 5.9.4.21, *Common Bankruptcy Issues, Criminal Restitution Assessments*, and IRM 5.9.4.21.1, *Common Bankruptcy Issues, Working Criminal Restitution Cases*. All cases with criminal restitution assessments are classified and assigned in the same manner.

- **Case Classification** - When a Revenue Officer (RO) or Advisor learns that a taxpayer against whom a criminal restitution assessment has been made has filed bankruptcy, the RO or Advisor will contact the CIO. The CIO caseworker inputs a "CRIMREST" classification on the AIS case classification screen and notes the information provided by the RO or Advisor in the AIS case history. If the FI caseworker becomes aware of the criminal restitution assessment, and there is no "CRIMREST" case classification on AIS, the FI caseworker adds the classification to AIS.
- **Case Assignment** - FI works all cases with criminal restitution assessments. A criminal restitution assessment is considered a "complex" issue. These cases are not transferred from FI to CIO. They must remain in FI until the bankruptcy case is closed.

2. **Proofs of Claim in Chapter 13 Cases with Criminal Restitution Assessments.** For information about filing proofs of claim in cases with criminal restitution assessments, see IRM 5.9.13.18.5, *Manual Proofs of Claim and Common Claim Issues, Claim Periods, Restitution Assessments*.

3. **Chapter 13 Plans.** Debtors may pay criminal restitution assessments in the Chapter 13 plan or outside the Chapter 13 plan. FI caseworkers should not object to the proposed plan for the sole reason that the criminal restitution assessment is being paid outside the Chapter 13 plan. However, the FI caseworker may object to confirmation of the plan for other reasons. Since Chapter 13 cases with criminal restitution assessments are treated in the same manner as Chapter 11 cases with criminal restitution assessments, see the following subsections in IRM 5.9.8, *Processing Chapter 11 Bankruptcy Cases*, for additional information:

- IRM 5.9.8.14.3, *Chapter 11 Plans and Restitution Assessments*
- IRM 5.9.8.14.3.1, *Restitution Assessment Paid Outside the Chapter 11 Plan*
- IRM 5.9.8.14.3.2, *Restitution Assessment Paid in the Chapter 11 Plan*

4. **Discharge and Criminal Restitution Assessments in Chapter 13 Cases.** For general information regarding restitution assessments and dischargeability, see IRM 5.9.17.7.8, *Closing a Bankruptcy Case, Discharge and Restitution Assessments*.

5.9.10.6 (10-01-2015)

Transfer of Chapter 13 Cases from Field Insolvency (FI) to the Centralized Insolvency Operation (CIO)

1. **Case Transfer from FI to CIO.** There is no longer a requirement for Chapter 13 cases to remain in FI until the Chapter 13 plan is confirmed. CIO now monitors for confirmation of the Chapter 13 plan and updates the case with the plan confirmation date. This may require the CIO to change the fictitious confirmation date of 2/2/2222 to the "actual" plan confirmation date. Unless there are "complex" or "non-complex" issues that require the case to remain in FI (IRM 5.9.1.4, *Overview of Bankruptcy, The Role of Insolvency*), Chapter 13 cases are transferred from FI to CIO when:

- A. The initial case review has been completed by FI;
- B. All proofs of claim have been completed and acknowledged by the Bankruptcy Court; and,
- C. There is no follow-up action that requires the case to remain in FI.

See IRM 5.9.5.4.3(2), *Chapter 13 Summary Histories, General Transfer Criteria*, for additional information. See IRM 5.9.10.6.1, below, for actions required of FI prior to case transfer. IRM 5.9.10.6.2, below, discusses actions taken by CIO to monitor for confirmation and the actions taken by CIO at confirmation.

5.9.10.6.1 (10-01-2015)

Field Insolvency (FI) Actions Prior to Case Transfer

1. **Determine the Age of the Case.** When a case qualifies for transfer from FI to CIO (see above), actions taken on the case by FI depend upon the age of the case. If the case has a petition date more than 180 days prior to the current date, FI caseworkers follow the procedures for *Older Cases*, below. If the petition date is less than 180 days before the current date, FI caseworkers follow the procedures for *Newer Cases*, below.

2. **Older Cases.** If the petition date is more than 180 days prior to the current date, the FI caseworker must check PACER to see if the Chapter 13 plan has been confirmed.

If PACER research shows that the plan has been confirmed:

A. Add the "CPM" Payment Screen to AIS, if not previously added. See IRM Exhibit 5.9.8-1, *Adding the Confirmed Plan to AIS*, for guidance on adding the "CPM" Payment Screen to AIS.

Note:

If a "CPM" screen was previously added to AIS, ensure the plan is updated with the terms of the confirmed plan.

B. Add the confirmation date to the "Confirmed" field on the Taxpayer Screen on AIS.

C. Add the confirmation date in the "Effective" date field on the CPM screen.

D. Recompute (verify) the plan to ensure payments are applied per the confirmed plan and to allow for the accrual of interest from the true confirmation date.

E. If recomputing (verifying) the plan results in a need for adjustments, prepare any necessary adjustment documents. (See IRM 5.9.5.10, *Adjusting Bankruptcy Accounts*.) Schedule a follow-up to ensure adjustments post to IDRS prior to the transfer of the case to CIO. Do *not* transfer the case to CIO until the adjustments have posted to IDRS and the follow-ups are closed.

F. Check the "Plan Verified" box on the "CPM" Screen.

G. Add a "SUMMARY History" to AIS (see below and IRM 5.9.5.4.3, *Chapter 13 Summary Histories*).

H. Add any case classifications necessary to identify issues that must be addressed at case closure. Add case classifications that identify streamlined cases. See IRM 5.9.5.4.1, *Case Classifications*, for additional information.

I. Ensure any follow-ups on the Letter Screen have been worked and closed.

J. Reassign the case to CIO.

If PACER research shows that the plan has not been confirmed:

A. Notate in the AIS history, "FI reviewed PACER. Case not yet confirmed."

B. Enter 2/2/2222 as the plan confirmation date in the "Confirmed" field on the "Taxpayer Screen" on AIS.

C. Add the "CPM" Payment Screen to AIS, if no plan screen was previously added. (See IRM Exhibit 5.9.8-1, *Adding the Confirmed Plan to AIS*, for details on adding the "CPM" Payment Screen.) If the plan payment amount is known, enter the payment amount on the "CPM" Screen. If the payment amount is not known, enter a fictitious low dollar amount.

D. Add 2/2/2222 in the effective date field on the "CPM" Screen.

E. Add a "SUMMARY History" to AIS (see below and IRM 5.9.5.4.3, *Chapter 13 Summary Histories*).

F. Add any case classifications necessary to identify issues that must be addressed at case closure. Add case classifications that identify streamlined cases. See IRM 5.9.5.4.1, *Case Classifications*, for additional information.

G. Ensure any follow-ups on the Letter Screen have been worked and closed.

H. Reassign the case to CIO.

3. **Newer Cases.** If the petition date is less than 180 days prior to the current date, the FI caseworker is not required to check PACER to see if the plan has been confirmed. Follow steps b) through h) above for older cases where the plan has not been confirmed.

4. *******Summary***** Histories.** Before a case is transferred to the CIO, the FI caseworker must summarize the case history on AIS. If specific information is lengthy, the summary can reference previous history entries by date. Summary histories are discussed in IRM 5.9.5.4.2, *Summary Histories*, and in IRM 5.9.5.4.3, *Chapter 13 Summary Histories*.

The summary should be identified by *****SUMMARY***** in upper case letters. Sample minimum summaries, which may differ in "streamlined" cases, are as follows:

- Unfiled returns, including MFTs and periods (e.g., "Unfiled 30 200912").
- Prior installment agreement information, including agreement type, payment amount, and day of the month the payment is due (e.g., "Prior IA: direct debit @ \$150, 25th ea. mo.").
- Refund turnover orders (e.g., "Refund turnover order, trustee John Doe" or "Refund order, see history 4/02/04").
- Pending exam or reassessment (e.g., "Exam on 2009" or "Reassessment of TC 300 for 2002 at close of bk").
- Non-debtor spouse information (e.g., "NDS - Jane Smith SSN XXX-XX-1234 for 2009").
- Unusual plan provisions (e.g., "Plan does not provide for secured periods. Do not discharge 30 2008.").
- Potential fraud.
- Lack of legal notice of the bankruptcy to the Service.
- A previous discharge that prevents a discharge in the current case.
- Any special treatment regarding 11 USC § 1305 claims.

Note:

If no issues exist, the summary should simply state "No Issues" .

5. **Case Classifications.** When there are issues that must be addressed at case closure, or the case meets streamlined criteria, FI must open the appropriate "Case Classification" on AIS. Once CIO addresses the "Case Classification," the caseworker will close the classification. See IRM 5.9.5.4.1, *Case Classifications*, for a complete list of case classifications. The list defines the classifications and identifies if the classification prevents case closure.

6. **Amended Claims and Plans.** Field Insolvency (FI) caseworkers must update the "CPM" Payment Screen when an amended claim is filed and allowed by the court.

Caution:

Failure to update the "CPM" payment screen when a proof of claim is amended may result in the misapplication of plan payments.

5.9.10.6.2 (10-01-2015)

Centralized Insolvency Operation (CIO) Case Actions

1. **Confirmation Orders.** The CIO may receive a confirmation order via paper notification or through an email from the Bankruptcy Noticing Center (BNC). When CIO receives a confirmation order on a case that is open on AIS, CIO will:

- A. Enter the "actual" confirmation date from the confirmation order or notice to the "Confirmed" date field on the AIS Taxpayer Screen. This may require changing the fictitious confirmation date of 2/2/2222 to the date on the confirmation order.
- B. Access the CPM Screen and enter the confirmation date in the "Effective" and "Due" field on the CPM Screen.
- C. If a date is shown in the "Last Payment" field on the CPM screen, CIO will select "Recompute Plan" so payments will be applied per the confirmed plan and to allow the accrual of any interest from the "actual" confirmation date. (See IRM Exhibit 5.9.15-5, *Plan Recomputation*, for additional information.) If no date is present, no recomputation of the plan is needed.
- D. If any adjustments are needed resulting from confirmation actions and plan recomputation, CIO will transfer the case to FI to determine the needed adjustments. FI will document the needed adjustments in the AIS history and the case will be returned to CIO for completion of the adjustments.
- E. Add an AIS history stating, "Received order confirming Chapter 13 plan. Input confirmation date."

2. **Chapter 13 Confirmed Case Report.** In January and July of each year, CIO generates an Eureka report to capture all open Chapter 13 cases in CIO inventory that reflect a confirmation date of 2/2/2222 and 365 days or more have passed since the 341 meeting date. The CIO accesses PACER and checks the Case Summary screen on PACER for each case. Actions taken by CIO depend upon the findings on PACER. See the If/Then chart below for required actions for the CIO based on the case status on PACER:

IF:	THEN:
The case has been confirmed on PACER,	<ul style="list-style-type: none"> A. Update AIS with the confirmation date on the Taxpayer Screen. B. Add the confirmation date in the "Effective" and "Due" field on the CPM Screen. C. If a date is shown in the "Last Payment" field on the CPM Screen, select "Recompute Plan" . If no date is present, no recomputation of the plan is needed. D. If adjustments are needed resulting from confirmation actions or plan recomputation, CIO will transfer the case to FI to determine the needed adjustments. FI will document the needed adjustments in the AIS history and the case will be returned to CIO for completion of the adjustments. See IRM Exhibit 5.9.15-5, <i>Plan Recomputation</i>, for additional information. E. Add a history to AIS stating, "Per PACER plan confirmed. Input confirmation date." F. Note report with action(s) taken.
The case has been dismissed on PACER,	<ul style="list-style-type: none"> A. Update AIS with the dismissed and noticed dates. B. Add history item to document actions. C. Note report with action(s) taken.
The case is discharged on PACER,	<ul style="list-style-type: none"> A. Update AIS with the discharge date and noticed dates. B. Add history item to document actions. C. Note report with action(s) taken.
The case has been converted on PACER,	<ul style="list-style-type: none"> A. Input the conversion date on the Taxpayer Screen. B. Update the 341 meeting date, bar date, chapter type, and trustee information. C. Reassign the case to the appropriate FI employee using the "Assign CAG" button. D. Add history item to document actions. E. Note report with action(s) taken.
The case is not converted, not confirmed, and not dismissed or discharged,	<p>Check AIS and IDRS to see if the IRS has received any plan payments for the case and take action based on findings:</p> <p><u>Plan Payments have been received:</u></p> <ul style="list-style-type: none"> • Document history, "Plan not confirmed but payments received from trustee. No other action at this time." • Note report with action(s) taken. <p><u>No plan payments have been received:</u></p> <ul style="list-style-type: none"> • Reassign case to a FI caseworker using the "Assign CAG" button or manually assign, as appropriate. • Add a history item stating, "Chapter 13 case remains unconfirmed. Reassigned to FI caseworker to pursue confirmation." • Note report with action(s) taken.

5.9.10.7 (01-01-2006)

After Confirmation

1. **Property of the Estate.** 11 USC § 1327 explains the effects of confirmation. All pre-petition property of the estate vests in the debtor upon confirmation *unless* the plan or order confirming the plan provides for different treatment. Except as otherwise provided in the plan, property that vests in the debtor is free of any claim or interest provided for in the plan.
2. **Terms Binding.** *The IRS is bound by the terms of a confirmed plan even if it provides for less than full payment of the Service's claims.* But, IRS should object to a plan if the terms conflict with the Service's rights under the bankruptcy code (e.g., discharge of taxes resulting from a fraudulent return is prohibited for cases filed on or after October 17, 2005).

Reminder:

Objecting to a plan *before* confirmation is critical when an objection is appropriate.

3. **Modifications.** The IRS may be able to move for modification of the plan to obtain an increase in payment of its unsecured general claims when the debtor's disposable income has increased.

5.9.10.7.1 (10-01-2015)

Modification of Plan

1. **Plan Modified.** The plan may be modified after confirmation but before full payment to increase or reduce the amount of payments, to extend or reduce the time for such payments, or to alter the amount of the distribution to a creditor.
 - A. For cases filed prior to October 17, 2005, payments may not extend beyond three years after the date the first payment is remitted under the original confirmed plan or beyond the extended five-year period as approved by the court.

Note:

The length of the plan period for cases filed on or after October 17, 2005, is tied to the debtor's income in relation to the median income of the state in which the debtor resides (11 USC § 1322(d)).
 - B. 11 USC § 1329(a) provides the debtor, the trustee, or an unsecured creditor may request modification of a confirmed plan.
 - C. Insolvency should scrutinize a plan modification as carefully as an original plan.
 - D. If modification is not acceptable to the Service and IRM 5.9.4.14.4 criteria for referral to Counsel are met, a timely objection to the modified plan should be raised. Field Insolvency (FI) should consult Counsel for advice, as necessary.

Caution:

In many jurisdictions, post-confirmation modifications will not be considered when an objection should have been raised prior to confirmation. Once confirmation has occurred, the court is less inclined to allow a change in the plan unless some significant change has developed since confirmation. (See IRM 5.9.10.9, *Post-Petition Tax Liabilities*, and IRM 5.9.10.9.2, *11 USC Section 1305 Claims*, for additional information.)

2. **Orders Modifying or Amending Plans.** When a Chapter 13 plan is amended or modified, the court enters an order approving the modification or amendment. The modification does not change the original confirmation date. The amended or modified plan does not change the plan terms from the original confirmation date until the entry of the order approving the modified plan or the amended plan. As such, do **not** change the confirmation date on the AIS Taxpayer Screen or the Confirmed Plan Monitoring (CPM) Screen on AIS to the date of the order approving the plan modification or amendment. Instead, note the date of the order approving the modification or amendment in the AIS history. Also, note the terms of the amended or modified plan in the AIS history.

5.9.10.7.2 (10-01-2015)

Impact of the Automatic Stay

1. **Duration of the Automatic Stay.** For cases filed prior to October 17, 2005, the automatic stay is *not* lifted until the case is dismissed, the debtor receives a discharge, the discharge is denied, or the case is closed by the court. Therefore, contacting the debtor for demand of payment and collection of pre-petition liabilities may be prohibited. (IRM 5.9.10.8, *Monitoring the Chapter 13 Plan*, and IRM 5.9.10.9, *Post-Petition Tax Liabilities*) For cases filed on or after October 17, 2005, the automatic stay may be impacted by prior bankruptcy filings for "serial filers". The automatic stay against the debtor or property of the debtor that is not property of the bankruptcy estate may terminate 30 days after the petition date when the debtor had a prior bankruptcy case dismissed within 365 days of the current petition date.

Note:

Notwithstanding the termination of the stay in all other respects, the stay against property of the estate remains in place in this situation until such property is no longer property of the estate.

The automatic stay, including the stay against property of the estate, may not arise at all when the debtor had two prior dismissals within 365 days of the current petition date.

For additional information, see IRM 5.9.3.6, *Automatic Stay*, and the following subsections and exhibits in IRM 5.9.5, *Opening a Bankruptcy Case*:

- IRM 5.9.5.7, *Serial Filers*
- IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*
- IRM Exhibit 5.9.5-4, *Common Processing Steps in Serial Filer Cases*
- IRM Exhibit 5.9.5-5, *Processing the Serial Filer Case When the Stay Terminates After 30 Days*
- IRM Exhibit 5.9.5-6, *Processing the Serial Filer Case When No Stay Goes into Effect*

Note:

The stay may be lifted to grant a creditor temporary relief from the stay regardless of the petition date.

2. **Domestic Support Obligations.** For bankruptcies commencing on or after October 17, 2005, 11 USC § 362(b)(2)(F) excepts from the automatic stay the interception of tax refunds to pay any past due domestic support obligations. (See IRM 5.9.4.4.3.13, *Offset Bypass Indicators, BPI 07*.)
3. **Post-Petition Payments for Pre-Petition Taxes.** Acceptance of post-petition payments in a Chapter 13 bankruptcy proceeding for pre-petition taxes may violate the automatic stay. Thus, post-petition tax payments for pre-petition taxes should usually be made through the Chapter 13 trustee. FI may confer with Counsel if this matter arises.
4. **Pre-Petition Installment Agreements.** Payments from a debtor on a pre-petition installment agreement generally should *not* be accepted from a Chapter 13 debtor *after* the debtor has filed for bankruptcy. Counsel may provide guidance, as needed.

5. **Debtor Spouse and Non-Debtor Spouse/Joint Return.** To minimize chances of a violation of the Bankruptcy Code occurring, a TC 520 freeze code should be input on the jointly-filed balance due account even when only one of the spouses is in bankruptcy. (See IRM 5.9.4.2(5)(e), *CSED Indicator Codes*.) However, Insolvency must address issues relating to debtor and non-debtor situations (for example, CSED concerns and community property issues). Advice from Counsel should be sought, as necessary.
6. **CSED Issues and Considerations.** *Periodic CSED monitoring of the non-debtor spouse must be conducted by Insolvency.*
- A. Insolvency may issue an "Other Investigation" (OI) to a field revenue officer group to determine collection potential from the non-debtor spouse or to protect the CSED, if the collection statute is a concern.
 - B. The delinquent account could be addressed in the debtor's plan.
 - C. The non-debtor spouse may continue with a previously-approved payment agreement with the Service (if applicable).
 - D. If the non-debtor spouse makes payments on the joint tax liability in addition to the debtor spouse making plan payments through the trustee, FI must amend the Service's claim periodically or send a credit letter to the trustee to update the claim amount(s) for the court.

Note:

If a CSED for a non-debtor spouse is imminent or has passed, management must be informed.

7. **Decision to Retain or Return Payment.** A payment may be received by the Service from a source other than the trustee after the bankruptcy filing. If research indicates a balance due account on a joint liability, yet only one spouse is in bankruptcy, Insolvency should:
- A. Determine who submitted the payment (the debtor or the non-debtor spouse);
 - B. Try to determine the designation or intent of the payment to decide if IRS has a right to retain the funds (for example, the funds may be from the non-debtor spouse who wants to continue with a pre-petition installment agreement);
 - C. Take precautionary measures so the debtor's rights are not violated; and
 - D. Consult Counsel when legal advice is required.
8. **Revenue Officer Contact with Insolvency.** Revenue officers may not take any collection action after a taxpayer has filed Chapter 13 unless such action is cleared with Insolvency. Employees in Field Collection (FC) must contact Insolvency promptly after a taxpayer has filed a bankruptcy to determine if any information or advice is needed. If necessary, Insolvency will elevate complex or unusual situations to Counsel. (See IRM 5.9.3.10, *Revenue Officers and Insolvency*, for additional information.)

Caution:

On cases where the automatic stay is in effect, collection must be stayed on any pre-petition tax debt. Every effort must be made to prevent enforcement actions against the debtor (e.g., notice, NFTL filing, levy) for pre-petition periods while the debtor is under the protection of the automatic stay.

**5.9.10.8 (10-01-2015)
Monitoring the Chapter 13 Plan**

1. **Monitoring of Plans.** In most jurisdictions, trustees provide their own plan payment monitoring systems to default Chapter 13 debtors who fail to make payments. CIO may choose to use the "Delinquent" Payment Monitoring Report on AIS to determine if payments are being received as promised. Post-petition tax obligations are best monitored through the weekly generation of Litigation Transcript System (LTS) "New Assessment" reports. Post-petition tax obligations may also be monitored using the "LAMS Postpetition Case Listing" report on AIS. For additional information, see the following:
- IRM 5.9.12.2, *Litigation Transcript System (LTS)*
 - IRM 5.9.12.8.3, *LAMS Postpetition Case Listing*
 - IRM 5.9.16.3.2, *"New Assessment" Reports*
2. **Debtor Compliance.** 11 USC § 521(j) provides that if a debtor who files bankruptcy on or after October 17, 2005 fails to file a post-petition tax return or properly file for an extension, the Service may request the court convert or dismiss the case. The court must convert or dismiss the case if the debtor fails to satisfy the requirement within 90 days of the request by the Service. FI should refer a request to Counsel for a motion to convert or dismiss, subject to referral tolerances.
3. **Collection Actions Prohibited.** Systemic notices and collection actions for pre-petition taxes are not appropriate in a Chapter 13 proceeding unless the automatic stay is lifted or not imposed. However, one informational notice of a pre-petition balance due is allowed.
4. **Post-Petition Liabilities and Property of the Estate.** Collection of post-petition tax liabilities of a Chapter 13 debtor is complicated by a division among courts concerning what is considered "property of the estate" after confirmation. Some court cases have granted IRS the right to take collection action on post-petition debts in Chapter 13 proceedings *when earnings or income used to fund the plan are not adversely impacted.*
5. **TC 520 Input on Post-Petition Modules.** To prevent inadvertent collection actions on post-petition liabilities from property of the bankruptcy estate, a TC 520 cc 84 should be input to post-petition modules on IDRS as soon as Insolvency becomes aware of the post-petition liability. Whichever Insolvency function (FI or CIO) becomes aware of the liability should input the TC 520 cc 84 to IDRS. The TC 520 cc 84 will alert Service employees to contact Insolvency before taking any collection action on post-petition liabilities. Insolvency may become aware of post-petition liabilities in many ways. This includes, but is not limited to:
- The debtor contacting IRS regarding a notice received on a post-petition liability,
 - The debtor contacting IRS and requesting an IA on a post-petition liability,
 - The caseworker finding the post-petition liability when working the LAMS Postpetition Case Listing (see IRM 5.9.12.8.3), or
 - The Litigation Transcript System (LTS) generating a "New Assessment" LTS transcript on the post-petition module. See IRM 5.9.12.2, *Litigation Transcript System (LTS)*; IRM 5.9.16.3, *Litigation Transcript System*; and IRM 5.9.16.3.2, *"New Assessment" Reports*, for additional information.
6. **Impact of Bankruptcy Estate Interpretations.** After consultation with Counsel, as necessary, FI must determine the most appropriate and effective actions to be taken regarding post-petition tax liabilities within the boundaries, if any, imposed by the court. The legal interpretation of the "bankruptcy estate" in a given area will determine the course of action taken by the Service.
7. **Conversion/Dismissal Considerations.** When Insolvency determines a debtor is not adhering to the plan and the plan is not modified, Insolvency may consider referring the case to Counsel to request a motion for dismissal or conversion, particularly in cases of egregious non-compliance. No action should be taken until FI has contacted the trustee to attempt to resolve the plan problems and issues. Counsel may be consulted on an "as needed" basis before the formal referral is forwarded. The bankruptcy court is more likely to give favorable consideration to the Service's conversion or dismissal motion if the motion is filed in the early stages of the bankruptcy rather than toward the end of the plan.

**5.9.10.8.1 (06-25-2013)
Property of the Estate after Confirmation**

1. **Bankruptcy Code Guidelines.** Three sections of the Bankruptcy Code affecting the determination of "property of the estate" after confirmation are:

- A. 11 USC § 541. The property of the estate includes virtually all property in which the debtor has an interest at the time the petition is filed, including property in another's possession and community property.
 - B. 11 USC § 1306. Included in property of the estate is any property acquired after the petition date but before the case is closed, dismissed, or converted, including both § 541 property, wages, and other income.
 - C. 11 USC § 1327. Assets revert in the debtor at confirmation, unless otherwise specified in the plan or confirmation order.
2. **Service Position – Property of the Estate in a Chapter 13 Proceeding.** The *general* position of the Service is that after confirmation, the bankruptcy estate is limited to the portion of the debtor's income or other earnings necessary to fund the plan.
- A. Case law reflects various other positions on this issue. The two most common are the position that all of the debtor's property remains in the estate post-confirmation and the position that only property acquired post-confirmation remains in the estate.
 - B. The plan can provide that property remains in the estate.
 - C. Counsel's advice should be sought when clarification is required on this subject.
3. **Community Property.** In community property locations, property of the estate includes post-petition community property acquired by the non-debtor spouse. IRM 5.9.3.6.1.1, *Community Property*, provides additional information on this topic.
4. **No Separate Taxable Entity in a Chapter 13.** Although the bankruptcy estate is a separate taxable entity upon the filing of petitions by individuals under Chapters 7 and 11, no separate taxable entity exists in a Chapter 13 case (IRC §1398 and IRC § 1399). As a result, separate tax returns (Form 1041) are not filed in Chapter 13 cases.
5. **Allowed/Disallowed Post-Confirmation Actions.** After confirmation, the Service can generally file NFTLs for *post-petition* taxes. In some jurisdictions, the Service can administratively seize real estate or tangible property to collect post-petition liabilities, but cannot take collection against property committed to the plan or needed by the debtor to make payments to the trustee. Wage levies should exclude the amount needed to fund the monthly plan.

Caution:

The Service must be wary of taking collection actions that interfere with funding the Chapter 13 plan. Even if assets are not property of the estate, collection may impair the debtor's ability to fund the plan (for example, seizure of a debtor's business) and may be prohibited by the Bankruptcy Code.

6. **When Property Remains Property of the Estate.** Where local law provides all property remains property of the estate after confirmation, no collection action for post-petition taxes is permitted unless relief is obtained from the automatic stay. Or, if the debtor's plan provides all property remains property of the estate after confirmation, no collection action may be taken against such property.

Note:

Setting off post-petition overpayments against post-petition liabilities does not violate the automatic stay.

7. **Seek Counsel Advice.** If any collection action is contemplated against a Chapter 13 debtor (or any debtor in a bankruptcy) while the stay is in effect, FI should seek the advice of Counsel *prior to taking distraint action*. The debtor is under the protection of the bankruptcy court and the debtor's rights must be protected.

**5.9.10.9 (10-01-2015)
Post-Petition Tax Liabilities**

1. **Post-Petition Tax Liabilities.** Taxes incurred after the date of the bankruptcy filing are considered to be *post-petition tax liabilities*. The Service's position is the *accrual date*, not the date of the assessment nor the date the tax was payable, determines whether a 1040 account is considered a pre-petition or a post-petition liability. Income taxes are incurred on the last day of the taxable period, which is usually December 31st of the respective tax year. Employment taxes accrue when the wages of the debtor's employees are earned. Thus, when a debtor files bankruptcy during the middle of a quarter, and the debtor has employment tax filing requirements, the taxes on wages earned prior to the petition date are pre-petition. Taxes on wages earned after the petition date are post-petition.

Example:

A 2009 income tax (balance due) return has a year ending of December 31, 2009. Taxpayer filed bankruptcy on December 30, 2009. The tax was assessed on April 30, 2010. The resulting balance due account is considered a *post-petition* tax liability, because the tax liability accrued on December 31, 2009, one day after the petition was filed.

Example:

A debtor filed bankruptcy on April 30, 2009. The tax on wages the debtor's employees earned from April 1, 2009 through April 30, 2009 are pre-petition. The tax on the wages the debtor's employees earned from May 1, 2009 through June 30, 2009 are post-petition.

2. **Factors and Considerations.** Post-petition tax liabilities are handled in various ways by FI groups throughout the country. In all cases, ACS caseworkers or revenue officers should contact a CIO liaison to confirm that the actions they are contemplating against debtors in bankruptcy are appropriate.
3. **Important Considerations.** The Service can deal with post-petition tax liabilities in several ways. In determining which option to exercise, FI caseworkers must consider:
- A. If the automatic stay is in effect, and if the CSED is tolled or running;
 - B. The amount owed;
 - C. The debtor's ability to pay;
 - D. The debtor's past compliance history; and
 - E. If the plan is just beginning or has progressed to later stages.
4. **Local Level Considerations.** At the local level, the following factors may play a role in determining how FI caseworkers handle post-petition liabilities:
- A. Local FI staffing and resources
 - B. Local Field Collection (FC) staffing and resources
 - C. Counsel's staffing, resources, and recommendations
 - D. The level of cooperation with the trustees and members of the local bar
 - E. The commitment, activity, and success of local outreach efforts
 - F. Established procedures and guidelines among the various Service functions and their effectiveness
 - G. The existence of local rules/agreements and standing orders

5. **Approaches.** FI groups may use various approaches when dealing with post-petition tax liabilities, including:

- Filing 11 USC § 1305 claims — see paragraph (8) below and IRM 5.9.10.9.2, *11 USC Section 1305 Claims*.
- Sending OIs to ROs for investigation and possible collection actions (may require lifting of stay).
- Filing a motion to lift the automatic stay for possible refund offset — may require court intervention.
- Referrals for motions to convert or dismiss — determined on a case-by-case basis (e.g., conversion due to ineligibility for Chapter 13 or dismissal due to non-compliance).
- Assertive actions by trustees — some trustees will initiate dismissal actions when debtors are accruing post-petition liabilities.
- Administrative collection against exempt property or property not used to fund the plan (collection from specific assets).
- Exploring alternatives with the debtor prior to distraint action(s).
- Allowing the debtor to make voluntary payments but not entering into an installment agreement (IA) on the post-petition liabilities unless the liability qualifies for a guaranteed IA under IRC § 6159(c). See IRM 5.14.5.3, *Guaranteed Installment Agreements*, for additional information. The debtor does not qualify for a guaranteed IA unless all six requirements in IRM 5.14.5.3(1) are met. In the rare instance that a post-petition liability qualifies for a guaranteed IA, Insolvency should pursue lifting of the automatic stay in jurisdictions where all property remains property of the bankruptcy estate until the bankruptcy case is closed. Once the stay is lifted, or it is determined that a lifting of the stay is not required, Insolvency will enter a history on Account Management Services (AMS) that lets functions outside of Insolvency know that the taxpayer's IA request is processable. For example, the history on AMS will state, "The taxpayer qualifies for a guaranteed IA on 30-20XX12. The IA request is processable even though the taxpayer is in bankruptcy."

Note:

Generally, a request for an IA on post-petition liabilities is not processable when a taxpayer is in bankruptcy.

- Modification of the plan.

Caution:

If the debtor refuses to modify the plan or is negligent in doing so, the Chapter 13 trustee may pursue modification in the bankruptcy court. The IRS also has the right to file such a motion, if necessary. Because courts may be reluctant to interfere with the terms of a confirmed Chapter 13 plan, creditors generally have limited success with such a request.

- Referring the case to Counsel to move for conversion or dismissal on bankruptcies commenced on or after October 17, 2005, when a post-petition tax return has not been filed (11 USC § 521(j)).
- Pursuing collection from the non-debtor spouse on a joint income tax return filing (*except* in community property locations where this is disallowed). (See IRM 5.9.3.6.1.1, *Community Property*.)
- Local outreach efforts with the courts, trustees, and local bar associations.
- Waiting to pursue administrative collection outside of bankruptcy.

Note:

All of these options may not be available in some jurisdictions.

6. **Post-Petition Levy Action.** In a Chapter 13 case, if the plan does not provide for payment of a post-petition tax liability, generally the post-petition liabilities can be collected (including by use of levy action) from any asset not dedicated to the plan. (But, see *IRM 5.9.10.8.1* — the debtor's other property may be considered estate property and be protected by the stay.) In addition to monies required to fund the plan, the debtor is entitled to receive the exempt amounts from a wage levy accorded to taxpayers under the IRC. Further, FI must follow local rules or standing orders impacting this position.

- A. If wages and future earnings of the debtor are designated to fund the plan, and the IRS serves a wage levy against the debtor for post-petition debts, *the levy must state it reaches only those wages which exceed the payments to the trustee.*
- B. IRM 5.9.3.8, *Collection Due Process (CDP) Cases*, provides information on debtors' rights, including pre-levy notice, when levy action is being considered for post-petition tax debts.

Caution:

The automatic stay may prohibit some actions to collect post-petition tax liabilities after confirmation of the Chapter 13 plan. However, the filing of Notices of Federal Tax Lien (NFTL) and setting off post-petition overpayments against post-petition liabilities may not be violations of the automatic stay. Counsel should be consulted for legal advice because judicial districts differ as to which assets (if any) are protected property of the estate after confirmation. IRM 5.9.4.1 and *IRM 5.9.10.8.1* give additional information on property of the estate.

Note:

The same considerations regarding Chapter 13 post-petition levy actions apply to individual Chapter 11 cases filed on or after October 17, 2005.

7. **Payments Made Outside the Plan.** The IRS may allow the debtor to make voluntary payments on post-petition liabilities outside the plan. However, IRS will not enter into an IA for these post-petition liabilities. An IA request for post-petition liabilities is not processable when a taxpayer is in bankruptcy. See IRM 5.9.4.19.1, *IA Requests for Post-Petition Liabilities Submitted During Bankruptcy*, for actions that should be taken when a taxpayer requests an IA on post-petition liabilities when they are in bankruptcy. If the taxpayer has additional funds available, the debtor should use them to pay unsecured general claims. The debtor is expected to dedicate all disposable income to fund the plan per provisions of the Bankruptcy Code.

Note:

In a small number of cases, the debtor taxpayer may qualify for a guaranteed installment agreement under IRC § 6159(c). See IRM 5.14.5.3, *Guaranteed Installment Agreements*. See (5) above for additional guidance on processing the case when the debtor qualifies for a guaranteed IA.

8. **Payment through the Trustee.** Insolvency may request payment of post-petition debt through the court by filing an 11 USC §1305 claim. Although § 1305 claims may be accepted as filed, they are not always paid. Some debtors fail to modify the plan to include the post-petition liabilities, complicating the discharge process. In addition, CSED concerns can be created for the Service with the filing of 11 USC § 1305 claims (*IRM 5.9.10.9.2*).

9. **Detailed Documentation Imperative.** Because the CIO technical units work Chapter 13 discharges for all jurisdictions, the action a FI caseworker takes on a post-petition module must be documented in detail, including instructions for discharge if an 11 USC §1305 claim has been filed. See the following subsections for additional guidance:

- IRM 5.9.5.4, *AIS Documentation*
- IRM 5.9.5.4.2, *Summary Histories*

- IRM 5.9.5.4.3, *Chapter 13 Summary Histories*
- IRM 5.9.10.6.1(4), *Field Insolvency (FI) Actions Prior to Case Transfer, *****Summary***** Histories*

Note:

Depending on local court practice, some 11 USC § 1305 claims must be discharged even if not paid.

10. **CNC Accounts – 53'd.** A tax account may be put in a *Currently Not Collectible* (CNC) "53" status (completed by use of Form 53) only under strict IRM CNC guidelines. In a Chapter 13 bankruptcy with a joint return balance-due situation where only one of the spouses in bankruptcy, a "53" of a joint account, or any portion of the account, *is not appropriate while the debtor spouse is under the court's jurisdiction.*
11. **Post-Discharge Administrative Collection.** The Service may choose to do nothing to collect the post-petition tax debt(s) until the Chapter 13 debtor receives a discharge. The Service may then attempt to collect the tax administratively. Generally, post-petition taxes will not be discharged *unless* provided for in the plan. However, certain liabilities are not discharged in a post-BAPCPA case even when provided for in the plan. For additional information on discharge and exceptions to discharge, see the following subsections in IRM 5.9.17, *Closing a Bankruptcy Case*:
 - IRM 5.9.17.7, *Discharge and Exceptions to Discharge*, and related subsections
 - IRM 5.9.17.14, *Chapter 13 Discharge Pre-BAPCPA*
 - IRM 5.9.17.14.1, *Chapter 13 Discharge Changes under BAPCPA*
 - IRM 5.9.17.14.2, *Chapter 13 Hardship Discharge*

When deciding if the Service will wait until the discharge to collect post-petition liabilities, IRS must consider the following:

- A. The debtor is disadvantaged if the IRS waits until discharge to collect post-petition liabilities because the liabilities continue to accrue interest and penalties during the bankruptcy.
- B. The debtor may be in a better financial position after discharge to pay the taxes due, but the reverse could be true.
- C. Serious collection statute complications and issues may arise.

Caution:

The CSED may not be tolled by the bankruptcy since the automatic stay does not absolutely prohibit the collection of post-petition liabilities not provided for in the plan. Counsel can provide guidance.

12. **Discharge Provisions of 11 USC § 1328(a).** Unless an exception applies, only pre-petition claims provided for by the plan which have been filed and allowed or disallowed, and post-petition 11 USC § 1305 claims provided for by the plan, are discharged by 11 USC § 1328(a).

5.9.10.9.1 (10-01-2015)

Collection from Specific Assets

1. **Other Investigations.** FI has the option to request an OI from FC when real property not specifically retained in the estate is available to effect collection.
2. **Retirement Plans.** FI may levy on some types of retirement plans without going through FC in order to collect post-petition liabilities when it has been determined that the plans were excluded from the bankruptcy estate. (See 5.9.17.4.4, *Insolvency Levy Procedures for Excluded Retirement Plans.*)
3. **Benefits of Distraint Action.** FI may consider issuing a levy on excluded retirement plans or request an OI for distraint action with Counsel's guidance and concurrence, after alternatives have been considered. If a levy/seizure is to be done, lifting of the automatic stay may be required. The benefits of a distraint action may be:
 - Outstanding post-petition tax debts can be collected after confirmation and applied towards the taxpayer's tax debt(s) to reduce taxpayer burden
 - Stay violations can be minimized by taking collection action against targeted property which is not property of the estate
 - Future tax compliance can be promoted and encouraged by the deterrent effect
4. **Risks of Distraint Action.** The risks inherent in taking distraint actions are:
 - Generally, few assets merit collection activity in a typical Chapter 13 case
 - Analysis can be time-consuming
 - FI caseworkers may need to review each plan and confirmation order to ensure specific property was not retained as property of the estate
 - Collection actions that may prevent the debtor from completing the plan may still be challenged (for example, a seizure of the debtor's business may be challenged in court because it has an adverse effect on completion of the confirmed plan)
 - Collection personnel, unfamiliar with the bankruptcy case or provisions of the Bankruptcy Code, may violate the automatic stay by making a demand for payment of pre-petition taxes or by applying payments to pre-petition tax liabilities instead of to post-petition debts
 - Lifting of the stay, requiring court approval, may still have to be requested to avoid legal repercussions

Reminder:

A TC 520 cc 84 should be input on post-petition modules to alert IRS employees to contact Insolvency before taking any collection action on post-petition liabilities.

5.9.10.9.2 (10-01-2015)

11 USC Section 1305 Claims

1. **Post-Petition Tax liabilities — 11 USC § 1305.** Chapter 13 specifically provides for post-petition debt in 11 USC § 1305. This section of the Bankruptcy Code allows IRS to claim tax liabilities that accrue post-petition in Chapter 13 cases as well as for payment of the post-petition liability in the Chapter 13 plan.
2. **Who Can File.** Under 11 USC § 1305, only tax claimants (for example, the IRS) and consumer debt creditors, whose debt is necessary to the Chapter 13 plan, have the authority to file a claim under 11 USC § 1305 procedures.
3. **Classification.** An 11 USC § 1305 claim is treated as a pre-petition claim. Claims for post-petition taxes should not be filed as administrative claims because the Service views post-petition taxes as constituting a liability of the debtor, rather than the estate.

4. **Interest and Penalties.** Local practice regarding claiming penalty and interest on 11 USC § 1305 claims varies. In some locations, no penalty and interest is claimed. In other locations, penalty and interest are claimed up to the date the proof of claim is prepared. Follow the local practice in your area. If unsure of the practice in your area, consult with Counsel.

5. **Bar Date.** 11 USC § 1305 claims have no bar date. Local procedures may set time limitations.

6. **Form to Use.** Counsel's assistance may be needed to determine the correct form to use in a particular FI area. However, *Form B10*, *Proof of Claim*, and *Form 10 Attachment*, are usually completed for this purpose. A statement should be entered on each 11 USC § 1305 claim to identify for the court the type of claim being filed.

Example:

"THIS CLAIM IS BEING FILED UNDER THE AUTHORITY OF TITLE 11 USC § 1305."

7. **Local Rules.** FI caseworkers must understand local rules and agreements or standing orders affecting the treatment of post-petition tax liabilities in their area. They should include a detailed summary in the AIS history so caseworkers in the CIO can take appropriate action upon discharge.

8. **Benefits of 11 USC § 1305 Claims.** The IRS can benefit from filing 11 USC §1305 claims because:

- The possibility of violating the stay is lessened
- Collection is achieved through the trustee
- Monitoring of payments can be done systemically using AIS
- Full compliance may be achieved
- Future tax compliance may be promoted
- The Service will be paid as a priority creditor
- Tax delinquencies may not "follow" the taxpayer out of bankruptcy to be collected post-discharge
- The debtor is provided with a more thorough "fresh start"

9. **Risks of Filing 11 USC § 1305 Claims.** Attendant with benefits are the following risks of 11 USC § 1305 Claims:

- In most jurisdictions, the plan must be modified to provide for the additional claim. If debtors fail to do this, the discharge determination process is complicated.
- Once provided for in the plan, the tax liability may be dischargeable.
- Plan modification may lower the amount the Service's pre-petition unsecured claims receive.
- The Service may receive little or nothing for interest and penalties.
- The trustee may not pay 11 USC § 1305 claims because they are generally filed after plan confirmation and funds may not be available to pay post-petition debts.
- 11 USC § 1305 claims require monitoring by Insolvency.
- *Serious CSED issues may arise which generally result in Counsel involvement.*
- 11 USC § 1305 claims may not be accorded priority status and thus may be discharged without full payment unless excepted from discharge.

10. **Filing an 11 USC § 1305 Claim.** FI management sets local policy on filing § 1305 claims based on economic feasibility.

Caution:

Even though an 11 USC § 1305 claim is technically allowed by the court, it does not always result in the IRS receiving payment(s) on its claim.

11. **Modification of Plan Based on an 11 USC § 1305 Claim.** The debtor may need to file a motion to modify the plan to include the 11 USC § 1305 claim. The Service should send a written request to the debtor and the debtor's attorney to advise of the need for a modification of the plan to provide for the payment of 1305 claims before the Service files a 1305 claim unless such claims are typically paid per local practice.

Reminder:

In some areas, the Chapter 13 trustee may request the debtor to modify the plan to include post-petition tax liabilities. The trustee, as well as the IRS, can file a motion to modify the plan. Per 11 USC § 1329, an unsecured creditor has the right to seek modification of the plan.

12. **Field Insolvency (FI) Assignment.** If a FI caseworker files an 11 USC § 1305 claim and modification of the plan is required before the Service can receive payments, the FI group must retain control of that case until the plan modification has been approved. Only after plan modification has been approved by the court should the case be transferred back to the CIO for monitoring. (See paragraph (14) below for an exception.)

13. **Discharge under 11 USC § 1305.** If a claim is filed under 11 USC § 1305 and the debtor provides for the post-petition tax claim by modifying the plan, upon completion of the Chapter 13 plan, the debtor will receive a discharge of these taxes under 11 USC § 1328(a). *Only through completing a Chapter 13 plan and receiving a discharge under 11 USC § 1328(a) will the debtor obtain relief for these post-petition taxes.*

Reminder:

For BAPCPA cases, certain taxes will be excepted from discharge even if provided for in the plan.

14. **Plan Modification Not Required.** If the court or trustee does not require a plan to be modified to allow for 11 USC § 1305 payments, the case can be transferred back to CIO once the 11 USC § 1305 claim has been acknowledged by the court. The AIS documentation must specify under what circumstances the period(s) on the 11 USC § 1305 claim can be discharged.

Example:

"1305 claim filed on 30 2011. If 1305 claim not full paid, do not discharge."

Example:

"1305 claim filed on 30 2011. Liability not discharged because the return was filed late."

15. **Collection Alternatives.** The IRS does not have to file such a claim and the debtor cannot file an 11 USC § 1305 claim on behalf of the IRS.

16. **Adding the 11 USC § 1305 Claim to AIS.** To facilitate systemic posting of payments to the 11 USC § 1305 claim, the liability must be added to the "CPM" screen on AIS by selecting "Confirmed" as the plan type. **Do not use "Administrative" as the plan type.** Failure to add the 11 USC § 1305 claim correctly to the "CPM" screen can result in payments being misapplied to unsecured general claims before the 11 USC § 1305 claim.

5.9.10.10 (05-20-2008)

Court Intervention

1. **Motions before the Court.** In cases of serious post-petition non-compliance, court intervention may be an appropriate solution. Some of the court options the Service may consider include a motion to:

A. Convert the case to a Chapter 7 proceeding;

Note:

For cases filed on or after October 17, 2005, conversion to a Chapter 7 case might be subject to dismissal under the means test (11 USC § 707(b)).

B. Dismiss the case; or

C. Lift the automatic stay to allow distraint action.

Reminder:

For certain cases filed on or after October 17, 2005, the stay may not be in effect; or with respect to the debtor and the debtor's property that is not property of the estate, the stay may terminate 30 days after the petition is filed. (See IRM 5.9.5.7, *Serial Filers*, and related subsections and exhibits.)

2. **Counsel Coordination.** Coordination with Counsel and adherence to IRM 5.9.4.14.4 must be maintained since the volume of non-compliant debtors might overwhelm Counsel's ability to file motions and to argue and resolve issues. For the benefit of all parties, litigation should become an option only after all alternatives have been explored.

3. **Advantages of Court Intervention.** The Service may benefit from court intervention because:

- It may prove to be a positive influence on the debtor's tax compliance, present and future
- It may allow the debtor to remain in bankruptcy longer, improving the debtor's overall finances and opportunity for a fresh start
- The debtor is prohibited from filing another bankruptcy for 180 days after the debtor requests dismissal subsequent to a motion to lift the stay (11 USC § 109(g)(2))
- The debtor may lose protection of the automatic stay if (s)he files another bankruptcy within one year
- Seeking relief through court action may be the only means not in violation of the automatic stay to address a debtor's non-compliance
- Avoidance of damages against the Service due to the stay being lifted

4. **Risks of Court Intervention.** The downsides of asking the court for relief are it:

- May be expensive for the Government
- Is time consuming for all parties concerned
- May increase tax non-compliance due to delay (e.g., pyramiding of taxes could continue)
- Can delay collection actions due to pending legal action

Note:

Courts may be unwilling to grant such requests. If so, the Service's options are limited.

5. **Protection of the Government's Interests.** In some cases, after a court motion is filed, modification of the plan to pay a post-petition claim may be an acceptable resolution. To protect the Government's interests in this event, aside from requiring a modification of the plan that does not have an adverse impact on pre-petition claims, the IRS should secure (as applicable) a provision requiring:

A. Future compliance (for example, filing of required tax returns);

Reminder:

For cases filed on or after October 17, 2005, non-compliance is grounds for conversion or dismissal (11 USC § 1307(e)).

B. Lifting of the stay to collect any future liabilities; and/or

C. Proofs of deposit and/or estimated tax payments.

5.9.10.10.1 (03-01-2007)

Conversion

1. **Conversion to Another Chapter.** A debtor may convert from Chapter 13 to another chapter as long as the debtor is eligible to file under that chapter. A court order is not required for a voluntary conversion from Chapter 13 to Chapter 7. For cases filed prior to October 17, 2005, the debtor is required only to file a notice of conversion. The filing date of the notice is deemed to be the date of conversion to Chapter 7.

Reminder:

For cases filed on or after October 17, 2005, conversion to a Chapter 7 filing might be subject to dismissal under the means test.

2. **Creditor Election.** A creditor may also seek a conversion for cause, although this is not often done in Chapter 13.

3. **U.S. Trustee.** The Chapter 13 trustee may seek a conversion for cause.

5.9.10.11 (10-01-2015)

Distribution of Funds

1. **Application of Payments.** IRM 5.9.15, *Payments in Bankruptcy*, discusses the posting of bankruptcy payments in detail. Generally, funds received from the trustee are posted to AIS using the "Post Automatic Payment" option on the "Payment Monitoring Menu" on AIS. Occasionally, payments may be applied as "Partially Designated", "Semi-Automatic", or "Manual" payments. Unless designated differently by the court, payments are systemically applied to allowed claims, by category, as follows:

A. Secured claims. (Each secured period is paid in full, then payment is applied to accrued interest on that module before payments are applied to the next oldest module.)

- B. Priority claims. (Only the tax and interest are paid.)
- C. Unsecured claims. (Only the tax and interest are paid.)
- D. Penalties on priority claims.
- E. Penalties on unsecured general claims.

Note:

The Service maintains its right to apply payments according to the best interests of the Government, which may not be reflected in the above list of order of payment application.

2. **BAPCPA Payment Provision.** BAPCPA added 11 USC § 524(i) which makes it a violation of the discharge injunction for any creditor to willfully fail to credit payments correctly which were received under a confirmed plan for bankruptcies commencing on or after October 17, 2005. If the debtor can prove misapplied payments caused material injury, the Service may be subject to damages and attorney's fees under IRC § 7433(e). The following are exceptions to this provision:

- The order confirming the plan is revoked
- The plan is in default
- The creditor has not received payments in the manner required by the plan

If the creditor corrects the misapplication of payments *before* the discharge is granted, no violation of the discharge injunction is considered to have occurred.

3. **Non-Plan Payments.** Occasionally, non-plan payments are received by the Service on a bankruptcy case that are *not* remitted through the Chapter 13 trustee. Insolvency must document all particulars surrounding receipt of such payments. If payments are retained, AIS should be updated to indicate a payment received outside the plan to reflect an accurate balance amount.

4. **Payment Screening.** Insolvency should screen such a payment to determine if the Service is entitled to apply the payment as a credit to the debtor's federal tax account.

- A. If Insolvency determines a payment should not be credited, timely actions must be taken to dispose of the funds appropriately. This may include returning the uncashed check to the remitter or preparing a manual refund request on Form 5792.
- B. If a payment has been received and deposited by the Service, and determination is made later the payment should be returned, Insolvency will initiate actions to generate a refund either to the Chapter 13 trustee or to the debtor, per local procedures.

5. **Proper Screening/Allowance of Payments.** Examples of payments that may be credited to the taxpayer's account and generally allowed to be credited to the debtor's account after proper screening is done by Insolvency (e.g., research conducted, advice obtained from Counsel, concurrence from trustee, if appropriate), are as follows:

- A voluntary payment from the debtor or co-debtor
- A payment received from the sale of property
- A payment received in exchange for a Certificate of Discharge of Property from Federal Tax Lien
- A payment from a non-debtor spouse on a joint return

6. **Clarify Claim/Amend or Withdraw.** If such a payment is received, and the Service determines it is entitled to retain the payment, FI will amend or withdraw the proof of claim, as applicable, or send a credit letter to the trustee depending upon local procedures. This is necessary for claim clarification purposes.

5.9.10.12 (10-01-2015)

Trustee Audit

1. **Audit of Chapter 13 Debtors.** In 2006, a Chapter 13 debtor audit program was implemented. The U.S. Trustee randomly selects cases to be audited by private contractors who check for material misstatements in the debtors' statement of affairs and schedules. The auditors send notice with a list of material misstatements to the U.S. Trustee and parties in interest, including creditors. When received at the CIO, these notices will be forwarded to the assigned FI offices for review. FI may refer the case to Counsel for civil action. Where warranted, FI will consult with the Fraud Technical Advisor (FTA) concerning a criminal referral to CI.

5.9.10.13 (10-01-2015)

Chapter 13 and the Individual Shared Responsibility Payment (SRP) Liability

1. **Definition.** Under the Affordable Care Act (ACA), the Federal government, state governments, insurers, employers, and individuals are given shared responsibility to reform and improve the availability, quality, and affordability of health insurance coverage in the United States. Beginning in 2014, IRC § 5000A required all individuals to have qualifying health care coverage (called minimum essential coverage or MEC) in each month of the year, qualify for an exemption, or make an individual shared responsibility payment (SRP) when they file their tax return for the year.

2. **General Information.** See IRM 5.9.4.18.1, *Individual Shared Responsibility*, for general information regarding the Individual Shared Responsibility Payment (SRP). The individual SRP is taken from the appropriate line of the debtor's Federal income tax return, when the debtor's gross income reportable on the Federal income tax return meets the threshold requiring the debtor to file a Federal income tax return. For the tax year ending December 31, 2014, the SRP liability is reported on:

- Form 1040, *U.S. Individual Income Tax Return*, Line 61
- Form 1040A, *U.S. Individual Income Tax Return*, Line 38
- Form 1040EZ, *Income Tax Return for Single and Joint Filers With No Dependents*, Line 11

3. **Enforcement.** The SRP liability is not subject to penalties or the filing of a Notice of Federal Tax Lien (NFTL). The Service will not levy on any property of the taxpayer for failure to pay the SRP liability. However, interest accrues on the SRP liability until the total SRP liability is paid. Unless the taxpayer is in bankruptcy, the Service may offset Federal income tax refunds to SRP liabilities until the liability is paid *unless the refund is derived from a levy or lien action.*

4. **Pre-Petition or Post-Petition.** The SRP liability follows the Federal income tax return information from which it arose for the taxable period. If the Federal income tax is pre-petition, the SRP liability for that taxable period is also pre-petition. If the Federal income tax is post-petition, the SRP liability for that taxable period is also post-petition.

5.9.10.13.1 (10-01-2015)

Proofs of Claim and Individual SRP Liabilities

1. **Assessment and Treatment in Bankruptcy.** Individual SRP liabilities for pre-petition and post-petition periods are claimable as an excise tax on the Service's proof of claim. For additional information on claiming these liabilities, see IRM 5.9.13.18.6(2), *Manual Proofs of Claim and Common Claim Issues, Affordable Care Act Provisions, IRC 5000A - Individual Shared Responsibility Provision.*

5.9.10.13.2 (10-01-2015)

Setoffs and Individual SRP Liabilities

1. **Setoffs and Pre-Petition Individual SRP Liabilities.** Although the Bankruptcy Code allows setoff of pre-petition income tax refunds to pre-petition income tax liabilities without a lifting of the stay, this does not apply to individual SRP liabilities. Setoffs are not permitted between pre-petition SRP modules. Setoffs are not permitted between pre-petition income tax modules and pre-petition SRP liabilities. To setoff any pre-petition credit and pre-petition liability where both are not income tax requires a lifting of the stay.
2. **Setoffs and Post-Petition Individual SRP Liabilities.** Setoffs between post-petition income tax modules and post-petition SRP liabilities are permitted, as they are not prohibited by the Bankruptcy Code. No lifting of the stay is required.

5.9.10.13.3 (10-01-2015)

Closing Chapter 13 Cases with SRP Liabilities

1. **Dismissal and SRP Liability Modules.** When there is a joint liability and the bankruptcy was a joint bankruptcy case, the dismissal will be processed through routine Insolvency Interface Program (IIP) processing. When there is a joint income tax liability and only one spouse filed bankruptcy, IIP processes the dismissal and the joint module is systemically mirrored establishing two separate accounts. However, mirroring of SRP liability modules will not be implemented until January of 2016. See (3) below for additional information about mirroring of SRP liability modules when only one spouse filed bankruptcy.
2. **Discharge and SRP Liabilities.** As mentioned previously, the SRP liability is treated as an excise tax under 11 USC § 507(a)(8)(E) for bankruptcy purposes. Since the liability for the SRP is taken from the appropriate line on the debtor's Federal income tax return (see IRM 5.9.10.13(2) above), certain information from the debtor's income tax return is used in determining dischargeability of the SRP liability. The debtor must be eligible to receive a discharge in the bankruptcy case. The rules for determining discharge are determined by the type of discharge received by the debtor - a discharge upon completion of the plan under 11 USC § 1328(a) or a hardship discharge under 11 USC § 1328(b). All rules for determining the dischargeability of income tax are used when determining dischargeability of the SRP liability except the "240 day rule" and the "unassessed but assessable rule" set forth in 11 USC § 507(a)(8)(A)(ii) and (iii).
 - A. **Eligibility for Discharge.** An individual or joint debtor may not be eligible to receive a discharge in the current Chapter 13 case if they received a discharge in a prior bankruptcy case. Eligibility is determined by the type of prior bankruptcy filed and the petition date of the prior bankruptcy. See IRM Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*, and IRM 5.9.10.3.2(7), for additional information. Discharge may also depend on whether or not IRS was properly notified in the bankruptcy case. See IRM 5.9.17.7.9, *Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case*.
 - B. **Chapter 13 Plan Completion Discharge.** When a debtor receives a discharge upon completion of a Chapter 13 bankruptcy plan under 11 USC § 1328(a), the remaining balance of debts "provided for" by the bankruptcy plan are generally discharged unless they are an exception to discharge. The dischargeable liability may be a pre-petition debt or a post-petition debt included on an 11 USC § 1305 claim that was "provided for" by the Chapter 13 plan. The following are exceptions to discharge for the SRP liability when the Chapter 13 debtor receives a discharge upon completion of the bankruptcy plan:
 - The SRP liability may be dischargeable if the tax on the income tax return is non-dischargeable due to willful evasion or fraud. However, IRS must be able to show that the debtor willfully evaded the SRP liability. When the SRP liability may be non-dischargeable due to willful evasion or fraud, refer the case to Counsel for guidance. See IRM 5.9.17.7.2(1).
 - The SRP liability is non-dischargeable if the tax on the income tax return is non-dischargeable because the tax was assessed before the return was filed. See IRM 5.9.17.7.1, *Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared*, for more information on SFRs.
 - The SRP liability is non-dischargeable if the income tax return was filed late and after the date that is two-years before the date of the bankruptcy petition. This includes post-petition SRP liabilities included on an 11 USC § 1305 claim and the related income tax returns were not timely filed.

Reminder:

The two-year period with regard to late filed returns is tolled during a prior bankruptcy. See IRM 5.9.13.19.3(4), *Tolling*, for additional information.

- C. **Chapter 13 Hardship Discharge.** In addition to the exceptions to discharge listed above, the SRP liability may also be excepted from discharge if the income tax return was due, with extensions, within the three-years prior to the bankruptcy petition date and the debtor received a hardship discharge.

Reminder:

The three-year "look-back" provision in 11 USC § 507(a)(8) and two-year period with regard to late filed returns are automatically tolled during a prior bankruptcy while the automatic stay is in effect. See IRM 5.9.13.19.3(4), *Tolling*, for additional information.

3. **Mirroring and SRP Liabilities.** When there is a joint SRP liability and only one spouse filed bankruptcy, the SRP liability cannot be mirrored at this time. Mirroring of joint SRP liabilities will not be implemented until January of 2016. In the meantime, utilize the following interim procedures:
 - A. **Dismissed Cases.** IIP will generate a Process J error when there is a joint SRP liability, only one spouse filed bankruptcy, and there is a TC 520 on the module with a CSED indicator of P or S. IIP will systemically input an "ACA CD 36" case classification on AIS. The case classification will prohibit systemic closure of the case on AIS until the module can be mirrored. The caseworker will route the Process J Error to the CIO Operation Support Unit for monitoring of the case until January of 2016. Once mirroring is implemented in 2016, the joint SRP liability will be manually mirrored and the case will be closed.
 - B. **Discharged Cases.** ADS will generate a Discharge Determination Report (DDR) when there is a joint SRP liability, only one spouse filed bankruptcy, and there is a TC 520 on the module with a CSED indicator of P or S. ADS will systemically input an "ACA CD 36" case classification on AIS. The case classification will prohibit systemic closure of the case on AIS until the module can be mirrored. The caseworker will route the case to the CIO Operation Support Unit for monitoring of the case until January of 2016. Once mirroring is implemented in 2016, the joint SRP liability will be manually mirrored. Any dischargeable amounts will be adjusted for the debtor spouse.

5.9.10.13.3.1 (10-01-2015)

Addressing the Pre-Petition Installment Agreement (IA) at Case Closure When there is a SRP Liability

1. **Addressing the Suspended IA at Case Closure.** When a taxpayer has an IA and files bankruptcy, the IA is suspended but not terminated by the bankruptcy. When the bankruptcy case is dismissed or discharged, and there are outstanding liabilities that survive the bankruptcy, the caseworker must address the prior IA at case closure. The IA must be reinstated or the taxpayer notified of proposed termination when the IA cannot be reinstated. See IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing a Case*, for additional information.
2. **Installment Agreement Cannot Be Reinstated.** Normally, when the taxpayer has incurred an additional liability that was not included in the original IA, the IA cannot be reinstated. For the purpose of IA reinstatements, SRP liabilities are **not** considered additional liabilities. Income tax (MFT 30) liabilities or other taxes are additional liabilities when not included in the original IA.

Example:

John Doe had an IA for 30-201112 and 30-201212 when the bankruptcy was filed on 03/14/2013. John's IA was suspended by the bankruptcy. During the bankruptcy, John accrued a liability for 30-201312. The bankruptcy case was dismissed on 05/01/2014. Since the 30-201312 liability was not included in the original IA, the IA cannot be reinstated.

Example:

John Doe had an IA for 30-201312 taxes when the bankruptcy was filed on 05/15/2014. John's IA was suspended by the bankruptcy. During the bankruptcy, he accrues a liability for 30-201412 and a SRP liability for 201412. When his bankruptcy case is dismissed on 06/01/2015, John's IA cannot be reinstated. The additional income tax liability on 30-201412, *not the SRP liability*, is the reason the IA cannot be reinstated.

When the IA is not reinstated, the Service is terminating the IA. The taxpayer must be notified of the proposed termination and given appeal rights. Send Letter 2975-C, *Intent to Terminate IA*, to the taxpayer to give notice of proposed termination and appeal rights. Include any additional income tax liabilities not included in the original IA in Paragraph C of the letter. If the debtor has also incurred a SRP liability, check Paragraph A on the Letter 2975-C. Paragraph A states:

"The shared responsibility payment (SRP) amount that you owe is assessed payment for not having minimum essential health coverage for you and, if applicable, your dependents per Internal Revenue Code Section 5000A - Individual Shared Responsibility Payment. The SRP amount that you owe is not subject to penalties or to lien or levy enforcement actions. However, interest will continue to accrue until you pay the total SRP balance due. We may apply your federal tax refunds to the SRP amount that you owe until it is paid in full."

See IRM 5.9.17.23.1(3), *Installment Agreement Letters Used During Case Closure, Letter 2975-C*, and IRM Exhibit 5.9.17-5, *Installment Agreement Cannot be Reinstated*, for additional information.

3. **Installment Agreement Can be Reinstated.** When a bankruptcy case is closed and the debtor has not incurred any additional liability, or the only additional liability is a SRP liability, the debtor's installment agreement must be reinstated. The following example illustrates a case with a prior IA and the only additional liability is a SRP liability:

Example:

John Doe had an IA for 30-201312 taxes when the bankruptcy was filed on 05/15/2014. John's IA was suspended by the bankruptcy. During the bankruptcy, he accrues a SRP liability for 201412, but no additional income tax liability. When his bankruptcy case is dismissed on 06/01/2015, the IA must be reinstated. There is no additional liability for IA reinstatement purposes.

To reinstate an IA when there is no additional liability, follow the guidance in:

- IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing a Case*
- IRM 5.9.17.23.1, *Installment Agreement Letters Used During Case Closure*
- IRM Exhibit 5.9.17-2, *Regular Installment Agreement Reinstatements*
- IRM Exhibit 5.9.17-3, *Reinstating Direct Debit or Payroll Deduction Installment Agreements as a Regular Installment Agreement*
- IRM Exhibit 5.9.17-4, *Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)*

4. **Reinstating the Suspended IA When the Only Additional Liability is the SRP Liability.** In most instances, IAs suspended by bankruptcy no longer have the original IA terms available on IDRS. Therefore, "reinstatements" are input to IDRS as new IAs, waiving the User Fee. IDRS requires all balances due which are not in ST 72 to be included when an IA is input.

• **Modules to be Included.** If a SRP liability was included in the original IA, the module will be included in the IA reinstatement. If a SRP liability was not included in the original IA, it cannot be included in the reinstatement.

• **CIO Reinstatement Procedures.** CIO is responsible for reinstating all IAs during case closure when reinstatement criteria are met. When the only additional debt is the SRP liability, CIO will take the following steps to reinstate the IA at case closure:

- A. If not already present, add an "IA Issues" case classification to the case on AIS.
- B. Input a TC 520 cc 64 to any SRP liability modules not included in the original IA using the bankruptcy petition date. This will put the SRP liability module into ST 72 on IDRS.
- C. Input a TC 971 ac 063 to all modules included in the IA reinstatement.

Caution:

Do *not* input a TC 971 ac 063 to the SRP liability modules unless they were included in the original IA.

- D. Reverse the TC 520 cc 6X on the pre-petition modules using the dismissal or discharge date. Do *not* reverse the TC 520 cc 64 on the SRP liability modules unless they were included in the original IA being reinstated.
- E. Input the IA to IDRS for only the modules included in the original IA. Do *not* include the SRP liability modules unless they were included in the original IA. Follow the guidances in IRM Exhibit 5.9.17-2 through IRM Exhibit 5.9.17-4, as applicable.
- F. Once the pre-petition modules are in ST 60 on IDRS, reverse the TC 520 cc 64 on the SRP liability modules using a TC 522. The TC 522 will take the SRP liability modules out of ST 72.
- G. Input a TC 530 cc 35 to the SRP liability modules with a 2-cycle posting delay if the SRP liability modules do not systemically return to ST 53.
- H. Add all TC 520/TC 521/TC 522 and TC 971 transactions to the Freeze Screen on AIS.
- I. Document all actions taken on the case in the AIS history.
- J. Close the case on AIS.

Beginning in 2016, these procedures will apply to joint SRP liability modules that are mirrored as individual SRP liability modules.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 11. Insolvency Mail Processing

5.9.11 Insolvency Mail Processing

- 5.9.11.1 [Insolvency Mail](#)
- 5.9.11.2 [Field Insolvency Mail](#)
- 5.9.11.3 [Centralized Insolvency Operations Mail Processing](#)
- 5.9.11.4 [Undeliverable \(UD\) Mail](#)
- Exhibit 5.9.11-1 [Accessing a Case on AIS](#)
- Exhibit 5.9.11-2 [Mail Direct to Classified Waste](#)

5.9.11.1 (10-15-2010)

Insolvency Mail

1. **National Addresses.** The Internal Revenue Service has established two national addresses for the receipt of most Insolvency mail, one for trustee remittances and another for administrative mail. Chapter 7 and Chapter 13 payments are to be sent to Insolvency Remittance, Post Office Box 21125, Philadelphia, PA 19114-0325. Administrative mail such as court documents, forms, general correspondence, and most other bankruptcy related communications should be sent to Centralized Insolvency Operation, Post Office Box 21126, Philadelphia, PA 19114-0326.

Note:

Effective on 1/2/2011, all trustee remittances will be mailed to Centralized Insolvency Operation, Post Office Box 7317, Philadelphia, PA 19101-7317. Administrative mail such as court documents, forms, etc. will be mailed to Centralized Insolvency Operation, Post Office Box 7346, Philadelphia, PA 19101-7346.

2. **Local Addresses.** From a standpoint of practicality, some mail should continue to be mailed to local Field Insolvency addresses. However, mail better handled at the Centralized Insolvency Operation (CIO) and received at a Field office should be faxed (if "expedite") or sent by overnight courier to the CIO street address: 2970 Market St., Philadelphia, PA 19104. (See IRM 5.9.11.2(3), *Expedite Mail for CIO*.)

5.9.11.2 (10-15-2010)

Field Insolvency Mail

1. **Local Mail Receipt.** Mail received by Field Insolvency offices must be date stamped upon receipt. When multiple documents are received in one envelope, the front page of each document must be stamped individually. Assignment of mail opening, stamping, sorting and distribution is determined by local Insolvency management.
2. **Mail Meant for CIO.** Mail that may be received in the Field, but normally worked by Centralized Insolvency includes the following:

- Notices of bankruptcy filings (§ 341 notices)
- Correspondence on cases assigned to CIO
- Chapter 13 or 7 trustee payments
- Documents from courts, Counsel, AUSA, SAUSA, and trustees for cases assigned to CIO

The nature of these receipts must be reviewed to determine if expedited handling is required.

3. **Expedite Mail for the CIO.** Mail to be considered as "expedite" includes:

- first notices of bankruptcy filings for all chapters
- Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*, for cases assigned to the CIO
- violations of the automatic stay for cases assigned to the CIO
- any notice/order/objection naming the Service and giving a deadline to respond for cases assigned to the CIO
- mail requiring action within 10 calendar days for cases assigned to the CIO

Note:

Expedite mail that will eventually be handled by Field Insolvency even though the case is currently residing at the CIO, such as adversary proceedings or Chapter 13 amendments to plans, should be retained and worked by the Field. The Field should reassign the case to the Field's inventory until the issue is resolved, at which time the case can be transferred back to the CIO.

4. **Speciality Mail Received by the Field.** A Field Insolvency office may receive mail for a special proceeding being worked by another Field office.

- Securities Investor Protection Act (SIPA) cases are worked by St. Paul Insolvency for Area West and by Manhattan Insolvency for Area East.
- All Foreign Bank and Financial Account Reports (FBAR) cases are worked by Los Angeles Insolvency.
- All Chapter 15, Cross-Border Insolvency cases are worked by the Field Insolvency office in Philadelphia.
- All FDIC Receivership cases are worked by the Field Insolvency office in Dallas.

Mail concerning these cases received in other Field Insolvency offices must be forwarded to the appropriate Insolvency office following the expedite procedures in paragraph (5) below.

5. **Expedite Mail Procedures for the Field.** When a piece of mail is identified as "expedite," the assigned Field employee must transmit, on the day of receipt, a copy by fax to a designated CIO liaison. After the fax has been sent, the Field employee must telephone the liaison to advise the CIO a fax has been transmitted that requires immediate attention.
6. **Solicited Mail.** Courts are expected to send all notices to the national post office box because it is listed as the Service's address of record for all court generated documents. But local Insolvency caseworkers should ask debtors, trustees, and debtors-in-possession involved with Chapter 9, 11, 12, and 15 cases to mail correspondence directly to the local office address. If mail from those sources, other than payments, is received at the CIO, it will be forwarded to the appropriate Field Insolvency office.
7. **Mail Forwarded from the CIO.** When CIO tax examiners forward mail to Field Insolvency, and the Field determines no action is needed on the correspondence, the receiving caseworker must annotate in the AIS history the correspondence has been received and no actions were taken. Then, the unnecessary correspondence should be placed in classified waste. The mail should not be returned to the CIO unless the CIO has a demonstrable need to work that specific piece of correspondence. If that is the case, the Field caseworker must explain in the history why that correspondence requires CIO action.
8. **Original Returns.** If appropriate, Field Insolvency should request debtors to mail original prepetition tax returns directly to the local Insolvency office address. In cases where multiple returns are received in a single envelope, a received date must be stamped on the front page of each return. The left margin of the first sheet of the original returns should be annotated with "TC 599 69." Within one business day of receipt, the return along with any attached payment must be sent to the delegated Campus for processing. Form 3210 must accompany the returns and remittances annotating:
 - the volume and return type(s) (e.g., 1040, 941, 1065)
 - the TIN(s)
 - the dollar amount(s) of the check(s)

Note:

If an Insolvency caseworker cannot review a return before it is sent for processing, photocopies should be made for later review.

9. **Trustee Payments.** Although the Office of the US Trustee has advised trustees of the national address for mailing Chapter 7 and Chapter 13 payments, some Chapter 7 or Chapter 13 trustee payments may be sent to local offices in error. After being date stamped, these misdirected checks from trustees should be overnighted to the CIO Payment Posting Unit using Form 3210. For trustee checks Form 3210 must list the check(s) received from the trustee(s) by check number and the trustee's last name. The checks must be sent to Centralized Insolvency Operation, 2970 Market St., Philadelphia, PA 19104.

Note:

Chapter 11 and 12 checks should be posted by the Field Insolvency office assigned to the cases and forwarded to the Remittance Processing Units in the appropriate Campuses. (See IRM 5.9.15, *Payments in Bankruptcy*.)

5.9.11.3 (10-15-2010)

Centralized Insolvency Operations Mail Processing

1. **Mail Receipts.** Insolvency mail received at the CIO consists of letters, court documents, correspondence, plans, forms, payments and other communications. CIO tax examiners sort and distribute the administrative receipts to either the appropriate CIO units or Field Insolvency groups. All mail concerning Chapters 9, 11, 12, or 15, with the exception of 341 notices, is sent to the appropriate Field Insolvency offices regardless of the nature of the mail.
2. **Live Checks.** "Live" checks (those that are negotiable) are not to leave the Campus Support function of the mail room. If a live check (not a photocopy) is received outside of the Campus Support function, it must be returned to the mail room immediately. Bankruptcy payments remitted by the bankruptcy estate and received by Centralized Insolvency will be processed at the Campus site regardless of chapter type. Procedures for advising Field Insolvency caseworkers of Chapter 11, Chapter 12, and Chapter 15 payments received and posted at the CIO can be found in IRM 5.9.15 *Payments in Bankruptcy*.

5.9.11.3.1 (10-15-2010)

Administrative Mail

1. **Mail Receipt.** The CIO clerical units receive mail based on a daily schedule set by the Campus Support function. Mail received for Insolvency is extracted by Campus Support. Insolvency mail tax examiners must date stamp the front page of each document received in the Centralized site.
2. **Tax Returns.** Original tax returns are sometimes delivered through Insolvency mail. In cases where multiple returns are received in a single envelope, the Insolvency mail tax examiners must ensure a received date is stamped on the front page of each return. Original returns involving all bankruptcy chapters (except Chapter 7 No Asset) must be photocopied by the mail unit. CIO tax examiners must input TC 599 cc 69 on the appropriate master file tax (MFT) and tax period using FRM49 to indicate an original return has been received. After the photocopies are made and the TC 599s are input, the returns must be reviewed by the CIO tax examiners to identify those that are considered "statute imminent returns" by referring to the Statute Alert issued for Campus processing. CIO management will establish local procedures for processing statute imminent returns received by taxpayers in bankruptcy. IRM 21.8.1.1.15.3, *Statute Year Claims*, and IRM 25.6.1.9.9.2, *After Hours & Imminent Assessments*, provide information for addressing statute imminent returns. Returns not meeting the statute imminent return criteria must be forwarded to the appropriate Campus for processing. The photocopies will be sent by fax or overnight mail to the Field specialist currently assigned the case.
3. **Transmittal Required.** When moving mail out of the clerical unit to Insolvency Field groups or to other CIO units, mail tax examiners must prepare Form 3210, *Document Transmittal*, to accompany the referenced mail item(s).
4. **Types of Mail.** Administrative mail is classified into the following categories:
 - A. **Time Sensitive Mail.** Mail setting a deadline date for an IRS response within ten calendar days is considered time sensitive and must be given expedited handling.
 - B. **Routine Insolvency Mail.** Routine mail gives notice of a case action, but does not require an immediate response or may not require any response from the Service. It may be routine mail requiring further processing or routine mail requiring no further processing.
 - C. **Direct to Classified Waste.** This is bankruptcy mail that has no bearing on the Service's handling of a case. (*Exhibit 5.9.11-2*)
 - D. **Non-Insolvency Mail.** Misrouted mail is correspondence that does not belong to Insolvency.

5.9.11.3.2 (10-15-2010)

Time Sensitive Mail

1. **Identifying Time Sensitive Mail.** For Insolvency's purposes the definition of "time sensitive" mail is documents and letters requiring IRS action of some kind within ten calendar days. Examples of mail that can be time sensitive include the following:
 - Objection to proof of claim
 - Notice of levy
 - Notice of lien
 - Notice of hearing to waive 341 meeting of creditors

- Motion to sell property free and clear of liens
 - Notice of emergency hearing (involving IRS)
 - Adversary proceeding (involving IRS)
 - Notice of summons and complaint (involving IRS)
 - Automatic stay violations
 - Any notice/order/objection naming IRS and giving a deadline to respond
 - Motion for a cash collateral agreement
 - Notice of § 341 hearing (and case not loaded onto AIS)
 - Urgent correspondence from attorneys, Area Counsel, or other interested parties
 - FBAR correspondence (to be forwarded to Los Angeles Insolvency)
2. **Specialty Mail for Field Insolvency.** In addition to bankruptcies, the Field Insolvency operation handles receiverships, assignments for the benefit of creditors, FBAR bankruptcies, and SIPA proceedings. When the CIO receives correspondence on any of these issues, that mail must be processed using time sensitive procedures.

A. Receiverships and Assignments. All mail regarding receiverships and assignments for the benefit of creditors must be forwarded to the local Field Insolvency office handling that court's jurisdiction.

B. SIPA Procedures. All mail concerning SIPA proceedings for jurisdictions in Insolvency Area East must be forwarded to the Manhattan Insolvency office. All mail concerning SIPA proceedings for jurisdictions in Insolvency Area West must be forwarded to the St. Paul Insolvency office.

C. FBAR Correspondence. All FBAR mail must be forwarded to the Los Angeles office for processing.

Note:

Specialty mail may be forwarded by scanning the document(s) and E-mailing the scans to the appropriate office.

3. **Processing Time Sensitive Mail.** If the mail is time sensitive, the mail tax examiner must query the case on the Automated Insolvency System (AIS) or the Integrated Data Retrieval System (IDRS) to determine where and to whom the case is assigned. (See Exhibit 5.9.11-1.)
4. **AIS Research.** When the case appears on the AIS screen, the name and docket number must match the debtor name and the docket number on the notice. The state in which the bankruptcy was filed can help identify the correct case. The court jurisdiction code within a state (e.g., ILN for Illinois North) may also be helpful.
5. **Advising Field Insolvency.** Within two workdays of receipt, the mail tax examiner must advise Field Insolvency of the notice. Methods of advice may include:
- transmission of a secure E-mail to a designated Field group E-mail box with a "read receipt" request
 - sending a copy of the notice via overnight delivery to the Field caseworker assigned the case

Note:

Managerial approval is required for overnight shipping.

- faxing a copy to the Field caseworker or group secretary, preceded by a phone call to advise the office of the fax

The preferred method for time sensitive communication will be via E-mail. A copy of the E-mail will be retained for 60 days. If an Out of Office (OOO) response is received, the original message will be forwarded to the individual designated in the OOO message. No action will be taken to confirm the receipt of information submitted via E-mail. It will be assumed the employee is receiving messages unless an OOO message is received.

6. **Documentation.** The mail tax examiner must document the AIS case history briefly with the nature of the time sensitive mail and the actions taken.
7. **Assigned to Campus.** If the case is assigned to a Centralized Insolvency unit, the tax examiner must identify and sort by team/assignee and follow approved methods of intra-Campus delivery to the appropriate team lead. The time sensitive mail must be delivered to the proper CIO unit within two workdays of receipt.

**5.9.11.3.3 (03-01-2007)
Routine Insolvency Mail**

1. **Routine Mail.** Routine mail does not require an immediate IRS response, or it may not require an IRS response at all. Routine mail can be a motion, notice, or order advising the Service of an action. This type of mail may include:
- order of dismissal
 - order of discharge
 - order of conversion
 - notice of possible dividend
 - other routine notice
 - photocopy of an Insolvency check
 - acknowledgement of receipt of a proof of claim

2. **Routine Mail and AIS Action.** In processing routine mail, the tax examiner must determine if AIS processing is required by the clerical unit, such as the input of dismissal or conversion dates. In cases where AIS data must be input, the tax examiner must query the case referenced in the correspondence on AIS. (*Exhibit 5.9.11-1*) After the tax examiner has verified that the name, taxpayer identification number (TIN), and docket number on the notice match the name on the AIS screen, (s)he must document the type of notice received and what action, if any, is being taken.

**5.9.11.3.3.1 (10-15-2010)
Routine Notice Requiring Further Processing**

1. **Further Processing Required.** Routine notices requiring further processing can include the following:
- Original tax returns (See IRM 5.9.11.3.1(2).)
 - Photocopies of tax returns

- Order vacating/revoking/rescinding or terminating the discharge
 - Order reinstating/revoking or rescinding a dismissal
 - Notice to file a claim
 - IRS Form 4442, Inquiry Referral
 - Any motion or order mentioning IRS
 - Copy of an amended plan (send to the Field)
 - Copy of a Chapter 11 disclosure statement (send to the Field)
 - Copy of a bankruptcy petition and case *not* loaded on AIS
 - Trustee's final report and account (except Chapter 7N and Chapter 13)
 - Motion to amend or modify a confirmed plan (They must be forwarded to Field Insolvency.)
 - Order establishing a deadline to object
 - Area Counsel responses/requests
 - Correspondence from debtors, trustees or attorneys
 - Any correspondence addressed to a specific Insolvency employee
 - Case reassignment (changing judges)
 - Change of venue
2. **Disposition.** When mail is a routine notice or order (not time sensitive) requiring further processing and the tax examiner accesses the case on AIS, if the case is assigned to Field Insolvency, the tax examiner must annotate the standard employee identification (SEID) designation in the upper right hand corner of the document before forwarding it to Field Insolvency. The tax examiner must prepare Form 3210, *Document Transmittal*, to accompany mail leaving the clerical unit. AIS documentation of receipt of this mail by CIO tax examiners is not required.
3. **Timeframe.** The CIO must forward routine mail to Field Insolvency offices, if forwarding is necessary, at least twice weekly via the US Postal Service priority mail or an overnight courier service. The choice is up to the discretion of CIO management.

5.9.11.3.3.2 (10-15-2010)

Routine Notice Requiring No Further Processing

1. **No Further Processing Required.** Routine notices received from the bankruptcy court requiring no further processing may include the following:

- Motion or application to employ another attorney/accountant
- Duplicate notices of any kind
- Copy of a petition and the case is already loaded on AIS

Note:

Chapter type and petition date should be verified with AIS data before discarding potentially duplicate petitions.

- Order approving reaffirmation agreement
- Order granting a motion to amend schedules
- Notice pursuant to Rule 2002
- Motion to abandon property (unless Notice of Federal Tax Lien filed)
- Payment of priority claim wages

2. **Review and Document.** If the mail is a routine notice or order requiring no further processing, the tax examiner should query the case on AIS and document the case regarding the type of notice received unless the notice is a duplication of an earlier notice. The documentation should be brief. After documentation, the mail can be discarded in classified waste.

Exception:

Items on the classified waste list (*Exhibit 5.9.11-2*) may be disposed of without annotating their receipt in the AIS history.

Reminder:

All mail for Chapter 9, 11, or 12 cases, except those items identified on the classified waste list (*Exhibit 5.9.11-2*), must be forwarded to the appropriate Field Insolvency office via Form 3210. Unless special handling is required on any of these documents, the AIS history need not document the receipt of the correspondence at the CIO.

5.9.11.3.4 (03-01-2007)

Direct to Classified Waste

1. **Direct to Classified Waste.** Some mail is sent to the IRS as a matter of course when it has no relevance to Insolvency case processing. This mail can be directed to classified waste without annotating either AIS task-specific screens (such as the proof of claim screen) or the AIS history screen. Exhibit 5.9.11-2 provides a list of notices and documents that are included in this category of mail.

5.9.11.3.5 (10-15-2010)

Inputting Dismissal Dates

1. **Clerical Actions.** CIO tax examiners input dismissal dates for all chapters on the AIS entity screen when paper notifications of dismissal are received in the CIO. To input the dismissal date on AIS, the tax examiner must take the following steps.

STEP	ACTION
1	Access the case on AIS. (See Exhibit 5.9.11-1.)
2	Review the Taxpayer Screen to determine if a dismissal date is present.

3	If a dismissal date has been entered or the case has otherwise been closed as no liability or full paid, no action is necessary. The dismissal order should be placed in classified waste unless otherwise directed by the manager.
4	If no date is present, input the dismissal date, fill in the "Noticed on" field if required, and update the AIS history. These inputs cause the dismissed case to appear on the court closure report, so the technical units or Field Insolvency caseworkers can take the final closing actions. IRM 5.9.18.2(2) lists issues that may need to be resolved before closing a case, some of which pertain to dismissals.

2. **Field Cases.** After CIO tax examiners input dismissal dates, paper dismissals for Chapters 9, 11 and 12 are mailed to the Field Insolvency groups assigned the cases.

5.9.11.3.6 (10-15-2010) Discharge Orders

1. **Clerical Actions on Paper Discharges.** If the mail being sorted is an order for discharge, the Insolvency tax examiner must take the following steps.

STEP	ACTION
1	Access the case on AIS (see Exhibit 5.9.11-1).
"2"	To ensure a discharge is processed correctly, it is extremely important to verify the proper chapter type is listed on AIS. If the chapter type does not match; take action to convert the case on AIS. IRM 5.9.11.3.8.
3	Review the Taxpayer Screen to determine if a discharge date is present.
4	If a discharge date has been entered that matches the date on the notice, or the case has otherwise been closed as no liability or full paid, no action is necessary. The order should be placed in classified waste unless otherwise directed by the manager.
5	If no date is present or if the discharge date on the notice differs from the discharge date on AIS, forward the notice to the assigned technical unit.

5.9.11.3.7 (10-15-2010) Document Disposition

1. **Distribution.** Duplicate correspondence or correspondence cited on the classified waste list requires no AIS history documentation. Receipt of other correspondence must be documented on AIS if it is routine and will be disposed of in classified waste or is correspondence that requires special handling such as time sensitive mail or original tax returns. Tax Examiners do not need to annotate the AIS history concerning routine correspondence being forwarded to Field Insolvency or to other areas of the CIO.

Reminder:

All correspondence forwarded outside of the clerical unit working mail must be listed on Form 3210, *Document Transmittal*.

5.9.11.3.8 (10-15-2010) Conversion or Dividend

1. **Order of Conversion or Notice of Possible Dividend.** Chapter 11, Chapter 12, or Chapter 13 cases may be converted to Chapter 7 Asset or No Asset cases, and Chapter 7 Asset cases may be converted to Chapter 7 No Asset cases. Occasionally a Chapter 7 case is converted to a Chapter 11 proceeding. Most bankruptcy courts open Chapter 7 cases as no asset cases. A Notice of Possible Dividend converts a Chapter 7 No Asset case to a Chapter 7 Asset case. Conversions to a Chapter 7 Asset case may also be identified as "Notice of Assets" or "Notice to File Proof of Claim". When an Order for Conversion or Notice of Possible Dividend is received, the Insolvency tax examiner must take the following steps.

STEP	ACTION
1	Access the case on AIS (See Exhibit 5.9.11-1).
2	Review the Taxpayer Screen to determine if the conversion date is present.
3	If the correct conversion date is present, place the notice in classified waste.
4	If no date is present, input the "Court Date" field, the new 341 meeting date, if any, the new bar date, if any, and the chapter to which the case is converted. If the notice does not provide a bar date, input the bar date as 90 days from the 341 meeting date.
5	If a paper Notice of Conversion is received, review the trustee information to determine if the trustee has been changed. If so, input the new trustee information on AIS. If the previous trustee had requested a refund turnover, remove the "TTEE RFND" from the "Classification" field and annotate actions taken in the AIS history. Check for the appropriate 520 cc. If different, change the closing code on IDRS. Remove the follow up date from the Letter Screen.
6	If the case is assigned to a Field employee, notify the employee via secured E-mail, fax, or telephone of the conversion.
7	If necessary, transfer the case to the proper Field or CIO caseworker. (See Exhibits 5.9.5-1 and 5.9.5-2.)
8	If the case is assigned to the CIO, walk the notice to the CIO team lead or deliver by any other approved method of distribution.
9	Document the case history.

5.9.11.3.9 (10-15-2010) Turnover Requests

1. **Refund Credits to Trustees.** CIO tax examiners are responsible for inputting trustee turnover information on AIS. If an entity for the debtor has not been established on master file, the mail tax examiner should take the case to the clerical lead to set up a dummy module. The guidance in IRM 5.9.15.5(2), *Procedures for Creating New (Dummy) Modules*, should be followed to establish an account for the debtor on master file. But if an entity for the debtor is already on master file, the tax examiner will only need to input a TC 520 cc 81 on the debtor's most recent tax period to prevent a systemic refund to the debtor.
2. **Property of the Estate.** In Chapter 7 and Chapter 13 cases, prepetition refunds are considered part of the estate. In Chapter 13 cases postpetition refunds are also considered part of the estate if such refunds are committed to the plan or the plan provides that property of the estate does not vest in the debtor until the plan is completed. Procedures for setting up a request for a refund turnover to a Chapter 7 trustee are found in Exhibit 5.9.6-2. Turnover requests for Chapter 13 refund credits are handled similarly. To signal the presence of a trustee turnover request, on the AIS Taxpayer Screen, the CIO tax examiner must click on "TTEE RFND" from the drop down menu in the "Classification" field.

5.9.11.3.10 (10-15-2010) Rescission of Trustee Turnover Requests

1. When a trustee decides that he/she no longer has an interest in the taxpayer's refund, the trustee will notice IRS. The title of the notice may vary from court to court. Some notices may be titled as *Vacate Turnover*, *Reverse Request for Refund*, *Release the Trustee's Directive for Refund* or *Order Abandoning Trustee's Interest in Refund*. The following actions should be taken when this type of notice is received:
 - Remove "TTEE RFND" from the case classification field on AIS.
 - If the case is a no liability case and the only reason the case was open on AIS was because of the trustee turnover order, input a TC 522 on IDRS to reverse the TC 520. Use the current date as the TC 522 input date and close the case on AIS as "No Liability" using the current date.
 - If the case had an outstanding liability, a discharge was previously received, and the closing actions were completed by ADS as indicated by "RegDiscCmplte-RC" or "SupDiscCmplte-SC" in the method of closure field on the Taxpayer Screen on AIS, input the current date in the "On AIS" field on the Taxpayer Screen and close the case on AIS.
 - If the case should remain open because an adjustment is in process and has not been completed, or because the case is open and a claim has been filed, etc., do not reverse the TC 520.

5.9.11.3.11 (10-15-2010)

Non-Insolvency Mail

1. **Misrouted Mail.** Mail is sometimes misrouted to the Insolvency mail drop. The tax examiner should query AIS and, if necessary, IDRS to determine the intended destination of the mail. If the mail is non-Insolvency, the tax examiner should make a reasonable attempt to determine the correct mail address and forward it accordingly. If all efforts to locate the proper recipient are fruitless, the tax examiner should return it to Campus Support.

5.9.11.4 (10-15-2010)

Undeliverable (UD) Mail

1. **Returned Mail.** Mail sent by the Service to the last address of record or the address provided in the bankruptcy records may be returned to the sender (CIO or Field Insolvency) as undeliverable (UD). The US Postal Service has abbreviations to explain why UD mail is being returned, such as FOE (forwarding order expired) or UAA (undeliverable as addressed). Processing of UD mail depends on the return address of the sender and the nature of the correspondence.
2. **Field Insolvency UD Mail.** Field Insolvency necessarily sends some mail to debtors, attorneys, trustees, and third parties giving the local Insolvency location as the return address. When this mail is returned to the local office as UD, depending on the urgency of the mail and local practice, the specialist or advisor receiving the UD mail is responsible for obtaining a correct mailing address for the mail recipient. The AIS history must be updated with the nature of the mail, who was to have received the mail, and if appropriate, what steps were taken to secure a valid address, and if the correspondence was resent to a newly found address. If a determination is made not to pursue a new address, the correspondence should be disposed of in classified waste.
3. **CIO UD Mail.** The bulk of correspondence going to debtors has the national post office box for the CIO as the return address. Consequently most UD mail will be received by the CIO. The CIO's processing of UD mail depends on the correspondence being returned.
 - A. **1714 Letter.** When 1714 letters (notices advising debtors of missing tax returns) are received by the CIO as undeliverable, the CIO mail tax examiner should annotate in the AIS history that the letter has been returned as UD and give enough of the bad address so anyone attempting to mail subsequent correspondence to the debtor will not use the bad address. After the AIS history has been updated, the UD mail should be disposed of in classified waste.
 - B. **3927-C Letter.** When 3927-C letters (notices advising debtors of postpetition debt and asking for payment) are returned to the CIO as undeliverable, the CIO tax examiner should update the AIS history stating the letter has been returned as UD and give enough of the bad address so subsequent correspondence to the debtor will not be sent to the bad address. After the AIS history has been updated, the UD mail should be disposed of in classified waste. Then the case should be reassigned to the Field for processing in the manner appropriate for that local office.
 - C. **3929-C Letter.** When 3929-C letters advising debtors to stop making installment agreement payments are returned as UD mail, generally the Chapter 13 plan has not yet been confirmed, and Field Insolvency has control of the case. The CIO tax examiner must update the AIS history stating the letter has been returned as UD and give enough of the bad address so subsequent correspondence will not be sent to the bad address. The Field caseworker must attempt to locate a current address for the debtor, usually by contacting the debtor's attorney. See IRM 5.9.4.17, *Installment Agreements and Bankruptcy*, to determine when voluntary installment payments can be retained in Chapter 7 cases. After the AIS history has been updated, the UD mail should be disposed of in classified waste.

Reminder:

Field Insolvency specialists are responsible for resolving stay violations on cases assigned to them.

Exhibit 5.9.11-1

Accessing a Case on AIS

STEP	ACTION
1	Sign onto the NT network.
2	Double click on the AIS-Oracle icon.
3	At the bottom of the screen that appears, input logon and password and click on "Connect" or hit "Enter" on the computer key pad.
4	The AIS "Welcome" screen will appear with a menu on the left-hand side.
5	Select the "Case Files" tab from the menu to bring up the Taxpayer Screen.
6	Click on the "Query" button on the Taxpayer Screen tool bar. Several methods may be used to access the correct case. One of the most effective methods is to query the "AIS Case Number" field using the numeric case number followed by the percent sign (%) and refining the query further by including the taxpayer's last name in the "Last Name" field followed by the percent sign (%) on the Taxpayer Screen on AIS. Example: 06%12345% and Taxpayer%. Another way to query a corporate entity is by using the name of the corporation followed by the percent sign (%) in the "Last Name" field on the Taxpayer Screen and the initials for the state where the debtor is located followed by the percent sign (%) in the "Court" field.
7	Example: ABC Corporation% and GA%. Note: Completing as many fields on the Taxpayer Screen as possible better targets the search for the proper case.
8	Click on "Execute" on the Taxpayer Screen tool bar.
9	If the correct case does not immediately appear, click on "Next" on the tool bar until the case in question is displayed.
10	Once the correct debtor is identified, you may select the desired screen by clicking on the tabs immediately beneath the tool bar.

Exhibit 5.9.11-2

Mail Direct to Classified Waste

CIO employees may discard the following categories of mail for Chapter 7 and Chapter 13 cases without annotating their receipt on AIS. If the employee is unsure if a notice can be placed into classified waste, the employee should consult with their lead or their manager.

- acknowledgement of proof of claim receipt
- correspondence for cases closed as no liability *except* for trustee turnover requests
- trustee report of confirmation
- motion to amend order requiring strict compliance
- motion to convert
- motion to discharge
- motion to incur debt
- notice of intent to pay claims
- trustee motion to allow claims determination and designation of unsecured dividend
- administrative order allowing claims

- order granting motion to retain excess insurance proceeds
- notice of report on claims and setting bar date for objections
- order for payment of fees in installments
- order determining debtor's compliance with filing requirements
- order establishing 1) duties of trustee and debtor; 2) plan confirmation procedures; 3) requirements for debtor's compliance; 4) procedures for allowance of administrative expenses; and 5) procedures for adequate protection payments
- unsworn declaration under penalty of perjury
- trustee final report
- order to add creditor, not IRS
- 341 Meeting minutes
- notice of no distribution on 7 No Assets
- certificate of service
- mailing matrix
- order for attorneys to be paid additional expenses
- order authorizing appointment of accountants
- notice of trustee intent to sell personal property
- notice of filing final report
- order directed to debtor's employer
- notice requesting interim counsel
- trustee application to settle disputed matter not including IRS
- blank proofs of claim (with or without discharge managers' names)
- notification that motion/order filed electronically
- trustee report of receipts
- motion to reduce percentage paid to unsecured general creditors
- trustee interim report and account and notice of objection deadline in completed case and ready for discharge
- order to show cause not involving the IRS
- notice of plan completion, final account and eligibility of debtors for discharge
- Chapter 13 case management order
- motion to amend confirmation order to provide for correct arrearage
- notice of consummation of Chapter 13 plan
- trustee notice to debtor and creditors of filed claims, classification, and proposed distribution
- notice of hearing for payment of attorney fees
- motion for disbursement of debtor settlement proceeds
- final decree
- notice of discharge on a case closed as no liability (NL)
- notice of dismissal on a case closed as no liability (NL)
- notice of vacated discharge on a case closed as no liability (NL)
- notice of reinstatement after discharge on a case closed as no liability (NL)
- notice to creditors and others of provisions
- motion to advance mortgage
- motion to forgive missed payments
- motion to add missed payments to mortgage arrearage
- motion and notice to allow claims
- motion to borrow money to purchase a vehicle
- declaration of employee of trustee office
- motion regarding automatic stay not specifically mentioning the IRS
- order returning documents to debtor
- motion to permit postpetition financing
- motion to suspend payments
- motion to substitute attorney

- motion to dismiss
- trustee recommendations concerning claims
- trustee opposition/objection to confirmation of plan
- conditional dismissals
- original confirmation orders
- notice of an original confirmation hearing
- original plans
- original schedules
- amended or modified mailing matrix
- trustee objection to exemptions
- Notice of reinstatement after dismissal on a case closed as NL
- motion regarding automatic stay
- amended motion to extend the automatic stay
- notice of Chapter 13 plan
- notice of trustee filing a report of no distribution
- notice of trustee's final report and application for compensation
- order authorizing trustee to employ an attorney to represent debtor and bankruptcy estate
- order denying motion to extend automatic stay
- order denying confirmation
- order for case management of a Chapter 13 case
- order granting motion to excuse debtor
- amended order to the employer to pay trustee
- transfer of claim other than for security

CIO employees may discard the following categories of mail for Chapter 9, 11, and 12 cases without annotating their receipt on AIS:

- duplicate 341 notices where the 341 date is already present on AIS
- original 341 notices after the notice has been added to AIS
- original plans
- schedules
- confirmation orders
- all documents on closed cases with the exception of an order to vacate the dismissal or discharge

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 12. Insolvency Automated Processes

5.9.12 Insolvency Automated Processes

- 5.9.12.1 [Reports](#)
- 5.9.12.2 [Litigation Transcript System \(LTS\)](#)
- 5.9.12.3 [Paper Petitions](#)
- 5.9.12.4 [Bankruptcies Filed in Puerto Rico](#)
- 5.9.12.5 [Insolvency Interface Program \(IIP\)](#)
- 5.9.12.6 [Automated Discharge System](#)
- 5.9.12.7 [Electronic Noticing System](#)
- 5.9.12.8 [Litigation Account Management System](#)
- 5.9.12.9 [Unpostable Reports](#)
- 5.9.12.10 [Aged Case Reports](#)
- 5.9.12.11 [Integrated Automation Technologies \(IAT\)](#)
- Exhibit 5.9.12-1 [Correcting a Case Number](#)
- Exhibit 5.9.12-2 [Potential Invalid TIN \(PIT\) Report](#)
- Exhibit 5.9.12-3 [Integrated Automation Technologies \(IAT\) Tools](#)

Manual Transmittal

March 15, 2016

Purpose

(1) This transmits a revised IRM 5.9.12, *Bankruptcy and Other Insolvencies, Insolvency Automated Processes*, with table of contents, text, and exhibits.

Material Changes

- (1) IRM 5.9.12.1 was updated to delete information regarding conversion to Oracle.
- (2) IRM 5.9.12.1(3) added additional reports that are worked by FI.
- (3) IRM 5.9.12.1(4) was updated with revised instructions for working Litigation Accounts Management System (LAMS) reports.
- (4) IRM 5.9.12.2 was updated to move LTS instructions from 5.9.16.3.
- (5) IRM 5.9.12.2.2 was updated to instruct CIO to input TC 520 cc 84 on post-petition periods. Tolerance for reassignment of cases to Field Insolvency was increased.
- (6) IRM 5.9.12.3(2) added earliest IRS to stamped received date and updated method to load attorney/trustee information.
- (7) IRM 5.9.12.4(5) updated information to input on case classification screen.
- (8) IRM 5.9.12.5(2) corrected reference to 1.4.51 and updated steps to generate IIP reports.
- (9) IRM 5.9.12.5(3) updated current employee title and updated steps to print IIP reports.
- (10) IRM 5.9.12.5(5) replaced clerk with Technical Support.
- (11) IRM 5.9.12.5.1(4) updated current employee title.
- (12) IRM 5.9.12.5.1(6) changed LEM reference to IRM reference.
- (13) IRM 5.9.12.5.1(7) was updated to revise Chart on St 71 Notices.
- (14) IRM 5.9.12.5.1(8) updated IRM reference.
- (15) IRM 5.9.12.5.2 replaced clerical with Technical Support.
- (16) IRM 5.9.12.5.2(6) added Chart for resolving PIT reports.
- (17) IRM 5.9.12.5.3 added instructions for working process D errors.
- (18) IRM 5.9.12.5.4 added instructions for working process J error report.
- (19) IRM 5.9.12.7 was updated throughout with current information on ENS options.
- (20) IRM 5.9.12.7.1 added Electronic (ENS and BNC Mailbox) and paper Notice Checklist.
- (21) IRM 5.9.12.7.2 added BNC Electronic Mail Procedures.
- (22) IRM 5.9.12.8 updated IRM reference.
- (23) IRM 5.9.12.8.1 was updated with current information on resolving LAMS Closed Case Listing.
- (24) IRM 5.9.12.8.2 was revised to include current information on running and resolving the LAMS Not Found on AIS Case Listing.
- (25) IRM 5.9.12.8.3 updated information on running the Post-petition Case Listing.

(26) IRM 5.9.12.10 updated with current information for Aged Case Reports.

(27) IRM 5.9.12.11 added information on Integrated Automation Technologies (IAT).

Effect on Other Documents

This material supersedes IRM 5.9.12, dated May 20, 2008.

Audience

Field Insolvency and the Centralized Insolvency Operation.

Effective Date

(03-15-2016)

Kristen Bailey, Director
Collection Policy

**5.9.12.1 (03-15-2016)
Reports**

1. **Purpose.** Reports are tools to be used by Insolvency groups to control inventory efficiently. The use of most available standard reports is optional. IRM 1.4.51, *Insolvency*, provides a listing of reports available to Insolvency to meet the Service’s expectations for adherence to the Internal Revenue Code (IRC) and the Bankruptcy Code.
2. **Assignments.** Although the Centralized Insolvency Operation (CIO) is responsible for generating and working most reports for Chapter 7 No Asset and Chapter 13 cases, Field Insolvency (FI) retains responsibility for working reports on cases assigned to its inventories. In addition, the CIO may refer certain cases appearing on its reports to the appropriate FI office for resolution.
3. **Field Reports.** FI at a minimum must work the following AIS reports, or equivalent custom reports, for cases in its inventory:
 - Bar Date
 - Aged Cases
 - Litigation Transcript System (LTS)
 - Court closure follow-up report
 - GUF
 - Non Master File Listing
 - LAMS Closed Case
4. **Printing and Working CIO Reports.** The CIO support units are accountable for the following report actions.

Report	Action	Frequency
IIP error reports	Generate and work	Daily
IIP status reports	Generate and work all reports except for status 22 reports for Chapter 11. Status 22 reports for Chapter 11 are given to FI for appropriate action.	Daily
Litigation Accounts Management System (LAMS) reports	Generate all reports for cases in CIO inventory.	Quarterly (or as available)
Potentially Invalid TIN (PIT) Report	Generate reports for all chapters except 9 and 15. Chapters 9 and 15 PIT reports are distributed to FI for necessary action.	Daily
Aged case report	Generate and work reports for Chapter 7 No Asset, Chapter 7 Asset and Chapter 13 cases assigned to CIO inventory.	Annually Note: PACER match may be used in conjunction with the aged report.
Automated Discharge System (ADS, sometimes called IIP 2)	Generate.	Twice Weekly
ADS Error Report	Generate and work.	Twice weekly
Litigation Transcript System (LTS)	Generate.	Weekly

**5.9.12.2 (03-15-2016)
Litigation Transcript System (LTS)**

1. **Overview.** The LTS program matches master file (MF) data (-V and -W freeze codes) with the Taxpayer Identification Number (TIN) records of the Automated Insolvency System (AIS) database. Each week the data is systemically extracted to a file that can be sorted by employee case assignment number or Insolvency group/unit number.
2. **Sorting LTS Transcripts.** The LTS transcripts are in one file and systemically sorted into the following types:
 - After Petition
 - All Other (optional for CIO)
 - Case Closed on AIS
 - Credit Balance with New Transaction
 - New Assessments
 - Other Credit Balance
3. **Generating LTS Transcripts.** To generate LTS transcripts the user must take the following actions:
 - A. Log into the AIS program,
 - B. Go to left side of screen, Misc Options,

- C. Select Reports,
- D. Scroll down to **Litigation Transcripts**,
- E. Select **Litigation Transcripts**,
- F. On right, set Parameters for Organization,
- G. Click drop down by **Audit Cycle**, select cycle,
- H. Select **Cases on AIS**,
- I. Select Include TIN(s) that start with **N**,
- J. Run report.

Reminder:

CIO prints only LTS transcripts for cases assigned to CIO. FI prints and works transcripts and reports for cases assigned to the Field. CIO and Field assignments are identified by the AIS assignment number and sorted by group number.

4. **Distributing LTS Reports within the Campus.** Automated Process Control (APC) employees assemble the printed LTS transcripts and prepare Form 3210, *Document Transmittal*, accordingly. The completed transmittals and related transcripts are forwarded to assigned technical groups to be worked.
5. **Field LTS Distribution.** Field management will set procedures to be followed in Field Insolvency offices for printing and distribution of these reports.
6. **LTS Retention.** LTS transcripts must be retained for one month. Local management must set procedures for storing the reports on site.
7. **Working Transcripts.** LTS reports identify stay violations, new assessments, and module credits in part to meet the requirements of the Bankruptcy Code Compliance Program (BCCP) regarding correction of violations of the automatic stay. CIO caseworkers only work LTS reports for cases assigned to them. FI generates and works LTS reports for those cases assigned to its specialists. The transcripts can be viewed or printed at the option of the requestor. Reports can be generated by organization code, group number or specific employee. CIO may use their "Manual Refund Report" in lieu of working the "Credit Balance with New Transaction" transcripts. The transcripts are identified by six categories:
 - After Petition
 - All Other (optional for CIO)
 - Case Closed on AIS
 - Credit Balance with New Transaction
 - New Assessments
 - Other Credit Balance

**5.9.12.2.1 (03-15-2016)
"Credit Balance" and "Other Credit Balance" Reports**

1. **Pre-petition Credit and Pre-petition Liability.** If a credit and liability are both pre-petition, the caseworker must determine if the credit is a true module overpayment. Based on local rules or standing orders, the credit balance may be resolved by:
 - A. manual refund to the debtor;
 - B. manual refund mailed to the trustee;
 - C. transfer of the credit to another period; or
 - D. partial refund to the taxpayer and mailed refund to the trustee.

When a true module credit exists:	
IF...	Then...
standing orders or local rules allow offsets,	<p>CIO Action: Input a credit transfer online. (See IRM 21.5.8.4.1, <i>IDRS Guidelines for Credit Transfers</i>, and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i>.) If an amended proof of claim is required, reassign the case to the appropriate FI caseworker, documenting the AIS history with the reason for the reassignment. The FI caseworker will be advised of the potential need for case action via an email sent by AIS to their Outlook email address.</p> <p>FI Action: Prepare Form 2424, and forward it to Centralized Case Processing (CCP). The document may be sent electronically by secure email to *SBSE ccpinslv or mailed via Form 3210 to CCP at Internal Revenue Service, 2970 Market St., Mail Stop 5-E04.114, Philadelphia, PA 19104.</p> <p>Note:</p> <p>When preparing a credit transfer that will absorb the entire credit, caseworkers must access the Refund File on AIS to update the " Issue to" field to a "Never Process" value to prevent the case from appearing on the Pending Manual Refund report</p>
standing orders or local rules do not allow offsets, and the dollar amount meets the criteria for referral to Counsel to request a lift stay for offset,	<p>CIO Action: Document the AIS history, noting the research results and the basis for transferring the case to the Field. Reassign the case to the appropriate Field caseworker. The FI caseworker will be advised of the potential need for case action via an email sent by AIS to their Outlook email address.</p> <p>FI Action: Depending on local agreement with Area Counsel, make a determination about requesting a lift of the stay for offset.</p>
the credit cannot be offset and does not meet the criteria for referral to Counsel, (See IRM 5.9.4.14.4, <i>Referral Tolerances</i>),	<p>Prepare Form 5792, <i>Request for Manual Refund</i>, to refund the overpayment to the debtor or to send the credit to the debtor c/o the trustee.</p> <p>If the overpayment came from the trustee, the overpayment should be sent back to the trustee, unless otherwise directed by the trustee.</p> <p>If the overpayment came from the debtor or third party, the refund of the overpayment should be sent to the debtor or the trustee, depending on whether the trustee has made a valid turnover request.</p> <p>Reminder: The first name line on the refund request must always match the first name line on the tax return for the specific module.</p>

Caution:

Caseworkers must update the "Issue to" field to "Never Process" on the refund screen on AIS when a 5792 will not be issued.

Note:

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 allows offset of pre-petition income tax refund credits to pre-petition income tax liabilities for cases filed on or after October 17, 2005.

2. **Post-Petition Credit with Additional Liability.** If the LTS credit is post-petition, the caseworker must research IDRS to determine if post-petition liabilities exist.

IF....	Then....
research shows existing post-petition liabilities,	apply the credit to the existing post-petition liability unless offset is barred by local rules or standing orders. CIO Action: Input a credit transfer online. (See IRM 21.5.8.4.1, <i>IDRS Guidelines for Credit Transfers</i> , and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i> .) FI Action: Prepare Form 2424 (or other form accepted by CCP) requesting a credit transfer and send to CCP.
more than one post-petition liability exists,	apply the credit to the most imminent CSED first, and continue in this same manner until the credit is exhausted unless offset is barred by local rules or standing orders.
the credit is not exhausted but standing orders or local rules allow post-petition credits to offset to pre-petition debts,	CIO Action: Input a credit transfer online. (See IRM 21.5.8.4.1, <i>IDRS Guidelines for Credit Transfers</i> , and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i> .) Update the AIS history explaining actions taken. If a proof of claim has been filed, reassign the case to the appropriate FI caseworker. The FI caseworker will be advised of the potential need for case action via an email sent by AIS to their Outlook email address. FI Action: Prepare Form 2424 (or other form accepted by CCP) requesting a credit transfer and send to CCP. Amend claim or send credit letter to trustee as needed.
the case is Chapter 13, the credit is not exhausted, no standing orders exist for offset to pre-petition liabilities, but the dollar amount meets IRM criteria for referral to Counsel to request a lift of stay,	CIO Action: Document the AIS history, noting the research results and the basis for transferring the case to the Field. Reassign case to appropriate Field caseworker. The FI caseworker will be advised of the potential need for case action via an email sent by AIS to their Outlook email address. FI Action: Consider requesting a lift of stay for offset based on local referral tolerances.
the credit is not exhausted, no standing orders exist for offset to pre-petition liabilities, and the amount does not meet the criteria for referral to Counsel to request a lift of stay,	prepare Form 5792, Manual Refund Request, for any remaining credit and document the AIS history. The refund should be directed to the debtor or the trustee depending upon local rules or trustee turnover requests. IRM 5.9.16.4, <i>Manual Refunds</i> .)

3. **Post-petition Credit and No Additional Liability.** If the credit is post-petition and no additional liabilities are identified, the caseworker must prepare Form 5792, *Manual Refund Request*, asking a refund be issued to either the debtor or payable to the debtor and mailed in care of the trustee. See IRM 5.9.16.4, *Manual Refunds*.)

4. **Payment Posting IRM Section.** IRM 5.9.15.6, *Proper Application of Payments*, guidance can be followed on determining the most appropriate manner in which to address credits identified by LTS reports.

**5.9.12.2.2 (03-15-2016)
"New Assessment" Reports**

1. **Identified by Transaction Codes.** For each debtor TIN on an open AIS case, LTS generates a New Assessment report when the following newly posted transaction codes appear on a balance due module:

- TC 150 - Return posted with assessment
- TC 240 - Miscellaneous penalty
- TC 290 - Additional tax assessment
- TC 300 - Additional tax or deficiency by Examination
- TC 671 - Dishonored check

Note:

The LTS New Assessment reports are not worked in Chapter 7 No Asset cases and, when generated, may be discarded into classified waste.

2. **Transaction Code Analysis.** Caseworkers must analyze the transcripts for cases in their inventory to determine which transaction codes are present and what the next appropriate action is. Additional AIS and IDRS research may be required.

IF....	THEN....
the new assessment is on a pre-petition period, and the case is a Chapter 13 or Chapter 7 Asset bankruptcy,	CIO Action: re-assign the case to the appropriate Insolvency caseworker and document actions in the AIS history. FI Action: determine if a new claim should be filed or if an existing claim should be amended. (See IRM 5.9.5.4, <i>AIS Documentation</i> and IRM 5.9.14.3.1, <i>Amends Process</i>).
the new assessment is on a pre-petition period and the case is a Chapter 7 Asset assigned to FI, Chapter 11 or Chapter 12,	FI Action: determine if a new claim should be filed or if an existing claim should be amended.
the new assessment is on a post-petition Chapter 13 period and the assessed liability is ≡≡≡≡≡≡≡≡≡ for the current period and the aggregate assessed total of all post-petition assessments is ≡≡≡≡≡≡≡≡≡ ,	CIO Action: input TC 520 cc 84 (See, IRM 5.9.10.8(5) <i>TC 520 Input on Post-Petition Modules</i>), update the AIS history (example - Working LTS New Assessment for \$ XX-20XX12 for \$XX, TC 520 cc 84 input, discard) and discard the transcript in classified waste.
the new assessment is on a post-petition Chapter 13 period and IDRS indicates full pay has been received based on the systemic balance due notice,	CIO Action: place the transcript in classified waste if full payment has been received.
the new assessment is on a post-petition Chapter 13 period, and IDRS indicates full pay has NOT been received based on the systemic balance due notice, and the outstanding liability is ≡≡≡≡≡≡≡≡≡ , or the aggregate assessed total of all	CIO Action: <ul style="list-style-type: none"> • Input TC 520 cc 84 (See, IRM 5.9.10.8(5), <i>TC 520 Input on Post-Petition Modules</i>). • Check to see if the petition date is within the last 4 calendar years. If not, update the AIS history (example - Working LTS New Assessment for \$XX-20XX12, petition date not within last 4 calendar years, TC 520 cc 84 input, discard) and discard the transcript in classified waste. • If the petition date is within the last 4 calendar years, update the AIS history (example - Working LTS New Assessment XX-20XX12 for \$XX, TC 520 cc 84 input, reassigned to field). Transfer the case to the appropriate field caseworker.

post-petition assessments ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ,

- The FI caseworker will be advised of the potential need for case action via an email sent by AIS to their Outlook email address notifying them of the case transfer.

FI Action:

- Follow local procedures for addressing post-petition liabilities.
- Annotate the AIS history explaining how post-petition liabilities are to be handled upon discharge. (See IRM 5.9.5.4, *AIS Documentation*).

3. **Amending Proofs of Claim or the Issuance of Creditor Letters.** IRM 5.9.13.18.1, *Unassessed Claims*, provides direction for amending claims. If a trustee requires evidence from the Service for a payment outside of Bankruptcy, Insolvency offices can send the trustee a credit letter if a liability is less than the amount shown on the Service's original claim and an amended claim is inappropriate or would induce needless litigation. Insolvency caseworkers can provide either depending on the underlying circumstances and local trustee practices and conventions.

**5.9.12.2.3 (03-15-2016)
"Case Closed on AIS" LTS**

1. **Case Closed on AIS.** For each debtor TIN, LTS generates a "Case Closed on AIS" transcript when AIS shows a closed docket, and a current -V or -W freeze condition is present on at least one MF module. The caseworker must analyze IDRS to determine if TC 521 is input on all modules where the Insolvency TC 520 had previously posted. **CAUTION:** Other functions, such as Appeals, use TC 520 transaction codes. The closing code (CC) associated with the TC 520 identifies which area has restricted the tax account. See Document 6209 for explanations of the closing codes associated with TC 520.

IF....	Then....
the TC 521 has not posted on all modules,	use IDRS command code REQ77 to input TC 521 to those modules where TC 521 is lacking. See IDRS Command Code Job Aid on SERP.
the TC 521 has posted on all modules,	review IDRS for the status of TC 520s. For multiple TC 520s, determine which TC 520 remains unreversed. See "Caution " above.
the TC 521 has gone unpostable on at least one module because of an incorrect closing code,	use IDRS command code REQ77 to input TC 521 with the correct closing code to those modules where TC 521 unposted. See IDRS Command Code Job Aid on SERP.
the TC 520 relates to the LTS report bankruptcy case and the bankruptcy TC 521 has posted,	<p>CIO Action:</p> <ul style="list-style-type: none">A. Using command code REQ77, input TC 470 with no transaction date.B. At the same time input TC 472 with no transaction date, but with a one cycle delay. (Status 72 will change to status 47 and then to status 50 systemically)C. Once the case is in status 50, input command code STAUP, using status of case prior to bankruptcy and 00 cycles to remove the status 72 indicator. See IDRS Command Code Job Aid on SERP <p>FI Action: Request the above actions from Centralized Case Processing.</p>
the TC 520 relates to an Appeals case or other non-bankruptcy litigation,	no action is necessary as the TC 520 is valid.
the TC 520 applies to a bankruptcy case not related to the LTS report case,	no action is necessary.

When the LTS "Case Closed on AIS" transcript has been resolved, the caseworker must document the AIS history on all cases where action was taken and retain the transcript per managerial direction.

Note:

When another tool or automated report is available to identify TC 520s on closed cases that may need reversal, that tool or report may be used in lieu of the case " Closed on AIS" LTS.

**5.9.12.2.4 (03-15-2016)
"All Other" LTS**

1. **All Other.** For each debtor TIN, LTS generates an "All Other" transcript when AIS has an open docket and:

- A. IDRS shows a current -V or -W freeze condition;
- B. A TC 670 has recently posted with a designated payment code other than 03 or 11;
- C. Any other condition that generates a transaction code.

2. **Violations of the Automatic Stay.** AIS and IDRS must be researched to determine if payment(s) are in violation of the automatic stay. (See IRM 5.9.3.6.1, *Violations of the Automatic Stay*, IRM 5.9.6.5.1, *Debtor Payments on Dischargeable Taxes*, and IRM 5.9.6.5.2, *Voluntary Payments on Non-Dischargeable Taxes*.)

IF....	THEN....
the case is a Chapter 13 or a Chapter 7 No Asset bankruptcy and payments have a Designated Payment Code (DPC) 05 and are in violation of the automatic stay,	prepare Form 5792, Request for Manual Refund. (See IRM 5.9.16.4, <i>Manual Refunds</i> .)
the case is a Chapter 13 or a Chapter 7 No Asset bankruptcy with DPC 06, 07, or 08, and payments are in violation of the automatic stay,	<p>CIO Action: The case should be given to the CIO liaison to advise the appropriate Field liaison that the case is being transferred to the Field for review and necessary actions.</p> <p>FI Action: Review case and consult Counsel for guidance.</p>
the case is a Chapter 7A, 11, or 12 bankruptcy, and payments are in violation of the automatic stay,	a decision must be made to refer the case to Counsel for a motion for offset, adequate protection or to prepare Form 5792, <i>Request for Manual Refund</i> .
payments are not in violation of the automatic stay,	determine if other liabilities exist where an offset is applicable.
payments are not in violation of the automatic stay, and an offset is applicable,	apply the payment according to the Bankruptcy Code or local rules/standing orders. <p>CIO Action: input a credit transfer online. (See IRM 21.5.8.4.1, <i>IDRS Guidelines for Credit Transfers</i>, and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i>.) Update the AIS history explaining actions taken. If a proof of claim has been filed, reassign the case to the appropriate FI caseworker. The FI caseworker will be advised of the case reassignment from the CIO by an email sent to their Outlook email address by AIS.</p>

	FI Action: prepare Form 2424 (or other form accepted by CCP) requesting a credit transfer and send to CCP. Amend claims or send credit letters as needed.
payments are not in violation of the automatic stay, but an offset is not applicable,	prepare Form 5792, <i>Request for Manual Refund</i> . (IRM 5.9.16.4, <i>Manual Refunds</i> .)

When the LTS All Other transcript has been resolved, the caseworker must document the AIS history and retain the transcript according to managerial instruction.

5.9.12.2.5 (03-15-2016)
"After Petition" LTS

- 1. After Petition Transcripts.** LTS generates "After Petition" transcripts when specific transaction codes post after the petition date. These transcripts will assist Insolvency employees in recognizing potential bankruptcy stay violations.
- 2. Transaction code (TC) 670.** LTS will generate a transcript for a TC 670 payment when the payment is made after the petition date listed on AIS. These transcripts will only be generated for cases that have no confirmation date on AIS, which would primarily involve Chapter 7N and 7A cases. Follow the instructions in the chart below for processing transcripts with 670 payments.

IF....	THEN....
DPC code: Blank or 99	<ul style="list-style-type: none"> • Check RTR https://rtr.enterprise.irs.gov:9125/rtr/home/home.do • If lien or levy payment, follow IRM 5.9.5.8, <i>Levies and Bankruptcy</i>. • If not a lien or levy payment, update AIS history with findings, no other action is needed • Update AIS history with all actions taken
Designated Payment Code (DPC): 04,20, 21 (state levy) 05 (levy) 07 (payment received expressly for full or partial payoff of the Notice of Federal Lien) 18 (FPLP Primary) 19 (FPLP Secondary)	<ul style="list-style-type: none"> • Follow IRM 5.9.5.8, <i>Levies and Bankruptcy</i>. • Update AIS history with all actions taken.
DPC other than 04, 05, 07, 18, 19, 20 or 21	Update AIS history listing reason for no additional action. Example: "Working LTS After Petition for cycle 2014## for MFT-Period on SSN, TC670 DPC is 03, no action needed."

- 3. Transaction code (TC) 582.** LTS will generate a transcript when a TC 582 is posted to IDRS after the bankruptcy petition date listed on AIS. Follow the instructions in the chart below for processing transcripts with TC 582.

IF....	THEN....
AIS history shows NFTL period already addressed,	Update AIS history stating NFTL was already addressed and no additional action is needed.
AIS history doesn't support leaving NFTL in place,	<ul style="list-style-type: none"> • Follow IRM 5.9.5.9.1, <i>NFTL Filing after Bankruptcy Filing</i>. • Update AIS history with all actions taken. <p>Note: You must read the case history and access the NFTL on Automated Lien System (ALS) to determine if the lien was in fact filed in violation. The existence of the TC 582 on IDRS should not be the only indicator used to determine the validity of a lien.</p>

- 4. Transaction Code (TC) 291/301.** LTS will generate a transcript when a TC 291/301 posts (tax adjustment generally from an amended return) to IDRS after the bankruptcy petition date listed on AIS. Follow the instructions in the chart below for processing transcripts with TC 291/301.

IF....	THEN....
Chapter 7N,	Update AIS history stating Chapter 7N and no action is needed
Chapter 7A or 13 and no credit balance,	CIO action: <ul style="list-style-type: none"> • Review for possible reassignment to the field to adjust Proof of Claim (POC). • Update AIS history with all actions taken. FI action: <ul style="list-style-type: none"> • Amend POC if needed. • Update AIS history with all actions taken.
Chapter 7A or 13 and credit balance,	<ul style="list-style-type: none"> • Follow IRM 5.9.4.4, <i>Credits, Refunds, and Offsets</i>. • Update AIS history with all actions taken.

- 5. Transaction Code (TC) 706.** LTS will generate a transcript when a TC 706 (offset) posts to IDRS after the bankruptcy petition date listed on AIS. These transcripts will only be generated for cases that have no confirmation date on AIS, which would primarily involve Chapter 7N and 7A cases. Follow the instructions in the chart below for processing transcripts with TC 706.

IF....	THEN....
pre-petition to pre-petition or post-petition to post-petition,	update AIS history stating offset allowed and no additional action needed.

pre-petition to post-petition or post-petition to pre-petition,	review IRM 5.9.18.5.7, <i>Post-petition Payment</i> , and BLARE local rules to see if offsets are allowed <ul style="list-style-type: none"> • If allowed, no action needed. • If not allowed, reverse offset. • Update AIS history with all actions taken.
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6. **Transaction Code (TC) 610/640/650.** LTS will generate a transcript when a TC 610, TC 640 or TC 650 posts to IDRS after the bankruptcy petition date listed on AIS.

IF....	THEN....
TC 610 (Remittance with Return) TC 640 (Advance Payment of Determined Deficiency or Underreporter Proposal) TC 650 (Federal Tax Deposit)	Update AIS history stating transaction code and no action is needed EXAMPLE: "Working LTS After Petition for cycle 2014## for MFT Period on SSN, TC 610, no action needed."

5.9.12.3 (03-15-2016) Paper Petitions

1. **Paper 341 Notices.** A paper 341 notice is received through the mail or by fax. The 341 notice is also known as the notice of the First Meeting of Creditors and is named for the section of the bankruptcy code which establishes the procedure (11 USC § 341). The Technical Support units are responsible for reviewing the 341 notices for all chapters and ensuring the bankruptcy case information contained in the notices has been entered into the AIS database.
2. **Adding New Cases Manually.** CIO caseworkers must review the AIS database to determine if the case information provided on the paper 341 notice has previously been input on AIS. Exhibit 5.9.11-1 gives the steps for accessing accounts on AIS. If an open case with the same case number and debtor name is found, the paper 341 notice should be discarded in classified waste. If no record appears on AIS, the CIO caseworker must add the new case to AIS as follows:

STEP	ACTION
1	From the Case Files Taxpayer Screen, select Insert . Enter the following: <ul style="list-style-type: none"> • Case number (following local court's format) • Bankruptcy chapter • Court key • Debtor type (J - Joint, I - Individual, C- Corporation, P- Partnership) • Debtor's last name • Debtor's first name <p>Note:</p>
2	If an aka or dba is present, it should be listed on the 3rd line of the taxpayer entity information (1st line for an address). If more than 1 aka or dba is present on the case, list those not shown on the taxpayer screen in the AIS history. <ul style="list-style-type: none"> • Debtor's address • City, state, and zip • Judge Initials (optional) • Taxpayer Identification Number (TIN) • Petition date (the "Opened by Court" date) • First Meeting of Creditors (FMC) date • Notice date (the earliest IRS stamped received date) • Bar date (if provided)
3	<p>Note:</p> Click on Atty/Trustee tab to enter attorney and trustee information. Then click find attorney button to access stored attorney/trustee information. If no information is found you must add all necessary information using the Add new Attorney to AIS Attorney Table button.
4	Save information by clicking the Save button.
5	Update the AIS history by choosing the appropriate history option for loading a case.
6	Discard the paper 341 notice in classified waste.

3. **Correcting a Case Number.** The only reasons a docket number should be corrected are if:

- A. the case record was manually loaded incorrectly;
- B. the case converts from one chapter to another and the docket number indicates the chapter;
- C. the case is moved from one judge to another, altering the judge's initials on the docket number; or
- D. the courts mandate a conversion of docket numbering to a certain type (as has happened to accommodate electronic filing of claims);
- E. the case changed venue (court jurisdiction).

Note:

If the case is assigned to FI, send a secure email to the assigned caseworker as the case may need to be reassigned or paper files transferred.

While internal security is in place to track all actions taken on a case, the user who changes a docket number should indicate in the AIS history what the old docket number was and the reason the docket number was changed. Exhibit 5.9.12-1 gives step directions on how to correct a docket number.

4. **Mining the Court's Electronic Files.** Insolvency is not to expend resources mining electronic filing systems used by the courts, such as PACER, to independently identify new filings of cases in chapters other than Chapter 11. The courts are obligated to notice the IRS when the Service has been listed as a creditor. (See Bankruptcy Rule 2002.) If a pattern arises where the Service is not being noticed on cases where it is a creditor, FI must determine the cause and take necessary action. (See IRM 5.9.5.2.1, *Notices Not Received*.) Depending upon local procedures, FI may find it beneficial to mine the court's electronic files to identify new Chapter 11 filings.

**5.9.12.4 (03-15-2016)
Bankruptcies Filed in Puerto Rico**

1. **Individual US Taxpayer.** Individuals who are US citizens or residents are generally subject to tax on their worldwide income, regardless of source. Aliens who are residents of Puerto Rico are likewise subject to US income tax. However, except for wages paid to employees of the US federal government, bona fide residents of Puerto Rico (See Publication 570, *Tax Guide for Individuals with Income from US Possessions*) do not pay US tax on wage income derived from sources within Puerto Rico. Such individuals have a US federal income tax filing obligation only if their wages or other income from sources outside Puerto Rico exceeds the federal filing threshold (i.e., their deductions under IRC 151 relating to personal exemptions). Because US federal employees may not exclude their federal wages, they must file a US income tax return if their federal wages plus their income from sources outside Puerto Rico exceed the federal filing threshold. Individuals with self-employment income connected with a trade or business in Puerto Rico must file Form 1040-SS or Form 1040-PR and pay any resulting tax liability. (See IRM 3.21.3.68, *Puerto Rico - General Instructions*.)
2. **Business US Taxpayer.** Employers located in Puerto Rico are treated the same as employers located in a state for purposes of the employment tax provisions of the IRC. The Federal Insurance Contributions Act (FICA) imposes wage-based taxes on employers and employees in Puerto Rico to support Social Security and Medicare. And the Federal Unemployment Tax Act (FUTA) imposes a tax on wages paid to employees in Puerto Rico. Accordingly, employers and self-employed individuals must file employment tax returns (e.g., Forms 941 and 1040-SS or 1040-PR) with the IRS. Corporations organized outside the United States, including corporations organized in Puerto Rico, are generally treated as foreign corporations for US tax purposes. These corporations are taxed on their US source earnings and income that is effectively connected to a US trade or business, but income from Puerto Rico sources generally is not subject to US tax.
3. **Determining Individual Taxpayer Status.** When an ENS or paper 341 notice is received for a debtor filing as an individual, the caseworker working the notice must advise the caseworker assigned the case of the filing. The caseworker must determine if a debtor is a US taxpayer (self-employed, resident alien, Puerto Rican resident with income from sources outside of Puerto Rico, or an employee of the US federal government) and if the case must be added to AIS by:
 - A. researching IRPTR;
 - B. reviewing the petition on PACER;
 - C. reviewing Schedule I; and/or
 - D. reading the statement of financial affairs.
4. **No Action Needed.** If research shows an individual debtor (and debtor spouse in the event of a joint bankruptcy) is not a US taxpayer, the CIO should not establish the case on AIS. The ENS notice can be deleted, or the paper 341 notice can be placed in classified waste. If the CIO receives notices other than 341 notices for cases not loaded on AIS, those should be forwarded to the Puerto Rico Insolvency office.

Note:
CIO caseworkers will not be able to pre-screen ENS 341 notices. These are automatically added to AIS unless there is a condition that needs to be resolved before the new case can be added to AIS.

5. **Incorrectly Added Cases.** If a case has been added to AIS even though the debtor is not a US taxpayer, the case should be closed "OT" and input **PUERTORICO** on the case classification screen.

Caution:
Once a case has been closed by Puerto Rico Insolvency with an "OT," the case is not to be reopened. Any questions about the "OT" closure must be directed to the FI office in Puerto Rico.

6. **Required CIO Actions.** If research confirms the debtor (and/or debtor spouse) is a US taxpayer, the case should be added to AIS if the debtor has liabilities on master file and/or non master file. If a debtor spouse is not a US taxpayer and has no social security number and if the bankruptcy is filed jointly, the case should be forwarded to FI in Puerto Rico. A joint bankruptcy must include two social security numbers when loaded on AIS to prevent an error from occurring.

Caution:
caseworkers *must not* load a non-taxpayer spouse with a fictitious SSN such as 000-00-0000.

7. **IIP Process C Errors.** Process C may generate a PIT report because lack of familiarity with the proper sequence of Hispanic names creates name control errors when cases are loaded on AIS. The CIO should force the SSNs. Then, the cases should be transferred to FI to complete research and take the necessary next actions.
8. **Unfiled Returns.** Although IRPTR, Schedule I and/or the statement of financial affairs indicate a debtor should be a US taxpayer, the debtor may not have filed all required returns or may not have an account established on master file. As with any case where an estimated claim is filed, the responsibility for ensuring a master file account is established for the debtor(s) and valid dummy modules are created rests with the FI caseworker assigned to the account.

Note:
Master file accounts are created by submitting Form 2363 to Centralized Case Processing.

**5.9.12.5 (03-15-2016)
Insolvency Interface Program (IIP)**

1. **IIP Processes.** IIP uses three programs to process Insolvency case information. These processes provide an automatic connection between AIS and the Integrated Data Retrieval System (IDRS). IIP Processes are:

Process	Action
C Taxpayer Identification Number (TIN) Validation	Validates the TIN. Verifies AIS data with IDRS master file. Provides information on related TINS and non-debtor spouse liabilities.
D Collection Determination	Initiated after Process C is completed. Process D actions: A. scans for balance due periods; B. inputs a TC 520 on all balance due periods for validated TINs; and C. posts a statistical indicator with TC 520 on TINs added to the Proof of Claim file.
J Case Closure	Identifies modules with TC 520 on closed cases and inputs TC 521 on appropriate modules. Inputs TC 137 on closed Chapter 11 and 13 cases with Employer Identification Numbers (EINs). Performs systemic MFT 31 mirroring.

2. **Generating Reports.** Users must be granted permissions and have specific IDRS command codes to generate these reports. See IRM 1.4.51.12, *Insolvency and IDRS*, for required command codes. To generate IIP reports, the user should:

STEP	Action
1	Access IIP Main Menu.
2	Select option 1, SINON IDRS (follow the prompts).
3	Select option 2, START/MONITOR IDRS PROCESSES. Select option A to start all processes (C, D, J).
4	Note: The user only has to SINON IDRS once, unless they are running the processes individually.

3. **Printing Reports.** CIO Technical Support should print reports immediately after the processes are completed. The caseworker must take the following actions:

A. Select option 3, *Print Reports*, from the IIP menu

Note:

It is not necessary to print a report that shows a 0 or 1 next to it. This indicates no reports are available for printing.

B. Select the corresponding number for the report to be printed:

Report #	Report Name	Printed for
1	POTENTIAL INVALID TINS	Each territory by CIO Technical Support and worked by CIO for all chapters (except Chapter 9)
2	EINS ADDED TO AIS	Not worked by CIO
3	X-REF TIN REPORT	Each territory
4	IMFOL/BMFOL REPORT (CFOL)	CIO only (See Note below.)
5	NO LIABILITY REPORT	FI only
6	IDRS DATA FOR CLOSING ACTION	Each territory
7	ERRORS FROM PROCESS C	Each territory by CIO Technical Support and worked by CIO/APC for all cases *
8	ERRORS FROM PROCESS D	Each territory by CIO Technical Support and worked by CIO/APC for all cases *
9	ERRORS FROM PROCESS J	Each territory by CIO Technical Support and worked by CIO/APC for all cases *
10	SI 520 ERRORS	Each territory by CIO Technical Support and worked by CIO/APC for all cases *

* Error reports involving cases assigned to FI that cannot be resolved by CIO will be forwarded to the appropriate Field office for resolution.

C. Select option 1 for the print menu.

D. Select the printer number for the appropriate printer.

E. Select 0 to exit.

F. Select the next report as needed and print.

Note:

The CIO prints and works the error reports for all chapters in each of the 8 territories. They work the PIT and IIP Status Notice reports for all chapters except Chapters 9 and 15. Those reports for Chapter 9 and Chapter 15 cases are sent to the appropriate FI office for handling.

4. **Sorting/Distributing IIP Reports by the CIO.** IIP reports should be sorted by type, distributed, and worked within the time frames as outlined below:

Report Name	Action	Must Be Worked Within:
PIT Report	CIO Technical Support works report for all chapters except Chapter 9 and 15. PIT reports for Chapters 9 and 15 must be forwarded to the assigned FI office by noon of the next business day after they are generated.	Two business days of generation.
Error Reports from Process C	CIO Technical Support will take corrective actions to resolve errors listed on the report. Instructions for resolving the errors are given on the report and must be followed.	Two business days of generation.
Status 60, 22, 24, 26 and 71 Reports	CIO Technical Support must prepare F3210, attach reports, and forward to the assigned technical unit. Status 22 notices for Chapter 11 cases will be forwarded to FI by noon of the next business day after they are generated.	(See chart in IRM 5.9.12.5.1(1), <i>Status Notices</i> , below.)
Error Report from Process D	CIO Technical Support will take corrective actions to resolve errors listed on the report. Instructions for resolving the errors are given on the report and must be followed.	Two business days of generation.
Error Report from Process J	CIO Technical Support will take corrective actions to resolve errors listed on the report. Instructions for resolving the errors are given on the report and must be followed.	Five business days of generation.

5. **Printing and Distributing Reports in the Field.** Local management should establish procedures for printing and distributing IIP reports to FI caseworkers.

**5.9.12.5.1 (03-15-2016)
IIP Status Reports**

1. **Status Notices.** The CIO technical units receive status (stat) notices for all chapters from the CIO technical support units with the exception of stat 22 notices for Chapter 11 cases. CIO caseworkers process these notices to prevent or correct violations of the automatic stay. The caseworkers receive and work IIP generated status notices for new bankruptcy cases that, prior to bankruptcy, were in the following collection statuses on IDRS:

IDRS MF Status	Collection Status	Must Be Worked within:
22	Account in the Automated Collection System (ACS).	Two business days of generation.
24	Account in the collection queue selected for the Federal Payment Levy Program (FPLP).	Two business days of generation.
26	Account assigned to a revenue officer (RO).	Two business days of generation.
60	Account in an installment agreement (IA).	Five business days of generation.
71	Account in the offer in compromise (OIC) program.	Five business days of generation.

Note: Refer to Document 6209 for additional information on collection status codes.

2. **Stay Variations.** For bankruptcies commencing on or after October 17, 2005, the possibility exists an automatic stay may not arise for individual filers of Chapter 7, 11, or 13 cases. (See IRM 5.9.5.7, *Serial Filers*.) If that is the case, NFTL actions or levy actions that have occurred after the petition date may not be stay violations. However, application of this aspect of BAPCPA has been subject to interpretation by differing court jurisdictions. Generally, the Service will err on the side of the debtor by releasing levies identified by LTS reports without further research.

3. **Advise of Open Bankruptcy.** Based on the type of notice received, the caseworker must contact the group or coordinator responsible for the account in its pre-bankruptcy status to avoid or resolve violations of the automatic stay. (See IRM 5.9.3.6.1, *Violations of the Automatic Stay*.)
4. **Stat 22 Notices.** These notice reports indicate accounts in collection in the Automated Collection System (ACS). The CIO has permissions from ACS to access bankruptcy accounts in status 22. The stat 22 IIP prints, except for Chapter 11 cases, will be given to a caseworker approved to access and work ACS cases. They will pull up the account on ACS and take the following actions.

STEP	ACTION
1	Enter the bankruptcy case number, court location, and the petition date in the ACS history.
2	Determine if levies are outstanding, and if so, release the levies systemically if time allows. If a systemic release will be processed too late to prevent the payment of a levy by the levy source, a manual levy release must be prepared and faxed or mailed to the levy source. Example: If a bank levy was issued 19 days previously, the levy payment could be sent in two days (bank levies are held for 21 days before being remitted to the Service), so a manual levy release should be faxed to the bank.
3	Update the ACS follow-up date for 45 days to allow time for the TC 520 to post to the system.
4	After the necessary actions are taken on ACS, the Tax Examiner Tech or TE will update AIS with the actions taken regarding the levy release on ACS.

Note:

FI offices will be notified of status 22 notices for Chapter 11 cases by fax, phone, secure email, or AIS mail.

5. **Stat 24 Notices.** Stat 24 notice reports indicate an account in the collection queue which may be subject to the Federal Payment Levy Program (FPLP). Posting of a TC 520 should resolve accounts selected for the FPLP where no levy action has been initiated. See IRM 5.9.4.4.4, *Federal Payment Levy Program (FPLP)*, for procedures to process an FPLP levy release request. After updating the AIS history with actions taken, a two day follow-up should be placed on the account.

IF by the expiration of the two day follow-up...	THEN...
the FPLP coordinator responds and has resolved the issue,	the caseworker must document the AIS history and close the follow-up screen.
the FPLP coordinator has <i>not</i> responded,	the lead must contact the FPLP coordinator to ensure the levy has been released.

6. **Stat 26 Notices.** These reports identify accounts assigned to revenue officers (ROs) prior to the input of the TC 520. Upon receipt of the stat 26 notice, the caseworker will contact the RO to stop collection actions, other than TFRP investigations, on the accounts covered by the bankruptcy. RO contact information is found on SERP under the "Who/Where" tab. Appropriate contact (with a request for a response if immediate contact is not made) may be by:

- fax
- ICS history
- secure email
- Voice Message System (VMS) for callback.

Note:

Sensitive but unclassified (SBU) information must not be left on VMS.

In addition to advising the RO to halt collection activity, other than TFRP investigations, the CIO caseworker will take the following steps:

STEP	ACTION
1	Chapter 13 and Chapter 7 No Asset Bankruptcies: Ask the RO to release outstanding levies issued on accounts. Determine if payments are expected from levies that may require future refund. If so input a 14 day follow-up on the case to check for posting of the payment(s). If payments have posted by the follow-up date, see the instructions in IRM 5.9.12.2.4, <i>All Other LTS</i> , for addressing Chapter 13 and Chapter 7 No Asset payments received in violation of the automatic stay. Chapter 7 Asset, Chapter 11, and Chapter 12 Bankruptcies: Ask the RO if levies are pending or if levy payments have been received in violation of the automatic stay. If the criteria in IRM 5.9.4.14.4, <i>Referral Tolerances</i> , for referral to Counsel are met, the CIO caseworker must forward the case to the CIO Technical Advisor to contact the FI liaison to advise the Field caseworker the case is being reassigned to FI to make a determination on a request for lift-stay or adequate protection. If the criteria are not met, the caseworker must prepare a manual refund for payments that have posted, or put a 14 day follow-up on the case to check for posting of the payment(s). When the payments have posted, the caseworker should prepare a manual refund.
2	From contact with the RO, determine if any filed but unrecorded liens exist for future lien withdrawal procedures. (See IRM 5.9.5.9.1, <i>NFTL Filing after Bankruptcy Filing</i> .)
3	Document AIS history.

7. **Stat 71 Notices.** Stat 71 notice reports indicate an account in the offer in compromise (OIC) program. Upon receipt of the stat 71 notice, the caseworker will take the following actions:

STEP	ACTION
1	Refer stat 71 notices for Chapter 11, 12, or 13 cases to the appropriate FI employee. Appropriate contact may be via: <ul style="list-style-type: none"> • fax • secure email • Voice Messaging System (VMS) <p>Caution:</p> <p>Sensitive but unclassified (SBU) information must not be left on VMS.</p>
2	For Chapter 7 cases, contact the Centralized Offer in Compromise (COIC) or the Compliance Campus Locations for the Monitoring of Accepted Offers. <ul style="list-style-type: none"> • If there is a 780 on the module you should email the appropriate contact found on SERP/Who Where/Offer-In-Compromise (OIC) Compliance Campus Locations for the Monitoring of Accepted Offers. • If the offer is pending (TC 480) unreversed. You should email: *SBSE COIC Brookhaven or *SBSE COIC Memphis. <p>Note:</p> <p>SERP indicates the proper Campus to contact based on the debtor's location.</p>
	Advise of the bankruptcy filing and provide: <ul style="list-style-type: none"> • name of the debtor,

3	<ul style="list-style-type: none"> TIN(s) of the debtor, bankruptcy case number, and petition date
4	From COIC contact, determine if any outstanding levies exist and if the OIC case is assigned to any RO or unit.
5	If necessary, contact the RO or unit to release outstanding levies.
6	Document AIS history.

8. **Stat 60 Notices.** A stat 60 report indicates an account in installment agreement (IA) or part-payment status. Upon receipt of the stat 60 notice, the caseworker must review AIS and IDRS to determine who is in bankruptcy (in the case of married taxpayers) and who is responsible for tax liabilities in an installment agreement prior to the input of the bankruptcy freeze. Continuous wage levy installment agreements require more actions from the Insolvency caseworker than voluntary installment agreements. The tables below explain necessary actions for both wage levy and non-wage levy installment agreements.

Note:

The IIP generated IADIS print displays the installment agreement locator number. If the 13th and 14th characters are 08, a continuous wage levy exists. IRM *Exhibit 5.19.1-8, IDRS Input of IAs, CC IAORG and 5.19.1-9, IDRS Inputs of IAs, CC IAREV*, provides information on installment agreement inputs.

If the IA is a non-wage levy agreement and the case is a Chapter 13, the caseworker must determine:	
IF...	THEN...
post-petition IA payments have been received and returns were filed jointly and the bankruptcy was filed individually,	determine if the payments are coming from the debtor or the non-debtor spouse. This may require sending a letter to the debtor.
IA payments are being made by non-debtor spouse,	the payments may be retained, but a year follow-up must be placed on the case to file an amended proof of claim or to send a credit letter to the trustee depending upon local practice.
IA payments are being made by the debtor(s),	<ul style="list-style-type: none"> a letter should be sent to the debtor(s) advising to cease the IA payments if it is probable more payments will be received. <p>Note:</p> <p>A letter should not be sent if the IA is a direct debit agreement or a continuous wage levy.</p> <ul style="list-style-type: none"> payments received after the petition date must be refunded to the debtor or trustee.
post-petition IA payments are refunded and the proof of claim has already been filed,	FI must be advised of the need for an amended claim.
actions are taken,	the AIS history must be updated accordingly. The history must include terms of the installment agreement and the type of agreement, such as IA for \$XX due on XX, Locator #XXXX.

If the IA is a non-wage levy agreement and the case is a Chapter 7, the caseworker must determine:	
IF...	THEN...
post-petition IA payments have been received and returns were filed jointly and the bankruptcy was filed individually,	determine if the payments are coming from the debtor or the non-debtor spouse. This may require sending a letter to the debtor.
IA payments are being made by non-debtor spouse,	the payments may be retained, but an amended proof of claim or a credit letter to the trustee may be required in a 7 Asset case.
IA payments are being made by the debtor and the payments can be applied to non-dischargeable periods,	the payments can be accepted.
IA payments are being made by the debtor and no non-dischargeable periods exist where the payments can be applied, if the payments have full paid the non-dischargeable periods, or if the payments have been applied to dischargeable periods and cannot be moved to a non-dischargeable period,	<p>any credit balances on the non-dischargeable periods resulting from the installment agreement or any payments applied to dischargeable periods that cannot be transferred to non-dischargeable periods should be refunded to the debtor. A letter should be sent to the debtor(s) advising to cease the IA payments if it is probable more payments will be received.</p> <p>Note:</p> <p>A letter should not be sent if the IA is a direct debit agreement or a continuous wage levy.</p>
actions are taken,	the AIS history must be updated accordingly. The history must include terms of the installment agreement and the type of agreement, such as IA for \$XX due on XX, Locator #XXXX.

Caution:

Installment agreements being paid in part or in full by non-debtor spouses may require referral to FI when the bankruptcy petition is filed in a community property state.

If the IA is a continuous wage levy, the caseworker must take the following actions:	
IF...	THEN...
post-petition IA payments have been received and returns were filed jointly and the bankruptcy was filed individually,	determine if the payments are coming from the debtor or the non-debtor spouse. This may require sending a letter to the debtor.
IA payments are being made by the non-debtor spouse,	a year follow-up must be placed on the case to file an amended proof of claim or send a credit letter to the trustee depending upon local procedure.
IA payments are being made by the debtor(s) in any Chapter 13 or an individual Chapter 7 No Asset bankruptcy, or IA payments are being made by the debtor(s) in any other chapter where the total amount of the payments received post-petition is less than the amount in the IRM (See IRM 5.9.4.14.4, <i>Referral Tolerances</i>) for requesting an offset,	<ul style="list-style-type: none"> call debtor's attorney for contact information to release the levy. prepare Form 668D, <i>Levy Release</i>, available on the intranet. fax/mail levy release signed by a delegated authority to the employer. mail copies to debtor and debtor's attorney. determine if pending, but not posted, levy payments exist requiring future manual refund. determine if post-petition continuous wage levy payments have posted and require manual refund. prepare any necessary manual refunds. update AIS history with actions taken. <p>Note:</p>

A release of levy may be considered a third party contact. See IRM 5.9.3.13.1, *Third Party Contacts*, and IRM 5.9.5.8, *Levies and Bankruptcy*, for additional information.

<p>IA payments are being made by the debtor(s) in a chapter other than Chapter 13 or an individual Chapter 7 No Asset bankruptcy, and the total amount of the payments received post-petition is equal to or greater than the IRM criteria (See IRM 5.9.4.14.4, <i>Referral Tolerances</i>) for requesting an offset,</p>	<ul style="list-style-type: none"> • call debtor's attorney for contact information to release the levy. • Prepare Form 668D, <i>Levy Release</i>, available on the intranet. • Fax/mail levy release signed by a delegated authority to the employer. • Mail copies to debtor and debtor's attorney. • Advise the appropriate FI office of the post-petition credits so consideration can be given to request adequate protection or a lift-stay to retain all or part of the money. • The Insolvency Field office will be responsible for the disposition of the payments received in violation of the stay, including preparation of a manual refund if the decision is made to refund the payments.
<p>post-petition IA payments are refunded and the proof of claim has already been filed, actions are taken,</p>	<p>FI must be advised of the need for an amended claim. AIS history must be updated accordingly.</p>

Caution:

Installment agreements being paid in part or in full by non-debtor spouses may require referral to FI when the bankruptcy petition is filed in a community property location.

Note:

An IA case classification must be input on the "Classification" screen on AIS for any Chapter 7 or Chapter 13 case where the installment agreement has been suspended. This identifies the need for a possible IA reinstatement upon case closure.

9. **Payroll Deduction Installment Agreements.** Payroll deduction installment agreements are voluntary. An employee under such an agreement can ask his employer to stop sending installment payments to the Service at the employee's discretion. However, Form 2159 instructs the employer to "continue to make payments unless the IRS notifies you that the liability has been satisfied." Consequently some employers mistake payroll deduction installment agreements for involuntary wage levies, and they refuse to halt payments to the Service at their employee's request. When this situation occurs and the taxpayer is in bankruptcy, the easiest solution is to send the employer a Form 668D, *Release of Levy*. This levy release may constitute a third party contact.

**5.9.12.5.2 (03-15-2016)
Potentially Invalid TIN (PIT) List**

1. **Overview of PIT Report.** The CIO Technical Support units work Potential Invalid TIN (PIT) reports for all chapters of bankruptcy (except Chapters 9 and 15). The PIT report, generated through IIP Process C, identifies AIS TINs that may be incorrect by verifying AIS TIN data against IDRS master file information. TINs on the PIT report do not pass master file validation and are *suspected* of being incorrect. These TINs are selected for manual review to decide the validity of the suspect TIN.
2. **Valid TIN.** A TIN is considered validated if:
 - A. the name controls of AIS and CFOL (Corporate Files On-Line) match via CC INOLES; or
 - B. the AIS SSN matches the secondary spouse SSN from CFOL.
3. **Forcing a Valid TIN.** If the reviewer determines the suspect TIN is correct, acceptance of the TIN can be forced to the IIP system by updating the IIP TIN file with a **F (Force)** in the IIP/IDRS process C/D field. Doing so enables IIP to add the secondary spouse SSN to the AIS TIN file or add an EIN to the AIS TIN file.
4. **Cumulative Listing.** Any TIN listed on the PIT report will prevent the TC 520 freeze code from posting to IDRS. IIP and all other initial case processing (including ALS research and CAG) is suspended until the TIN issue is resolved. The PIT report is a cumulative report (a potentially invalid TIN appears on each iteration of the report until it is resolved) and should be worked daily, but must be worked within two business days of generation. IDRS and court record research (through PACER, RACER, CM/ECF, or website www.uscourts.gov/allinks.html) may be required to resolve the discrepancies identified by the report.
5. **PIT Resolutions.** To work PIT report issues, the reviewer may be required to correct AIS information, **Force** the TIN through the IIP process, or **X (Exempt)** the TIN from IIP processing. Exempting a TIN from IIP Process C and D does not necessarily resolve the problem TIN, but allows the reviewer to continue IIP processing. Ultimately, some PIT report problem TINs will be assigned to bankruptcy caseworkers for final resolution.
6. **Resolution Steps.** The following table is provided to assist reviewers in working PIT reports.

IF....	THEN....
<p>the case is a Chapter 9 or 15,</p>	<p>prepare Fax cover sheet to Field Liaison stating "PIT" report attached for Chapter 9 or 15 account per IRM 5.9.12.5(3) and IRM 5.9.12.5(5). Transmit to Field Liaison. Document history to reflect report forwarded to field. Assign to the manager of the FI group designated by FI to work Chapter 15 cases. If Chapter 9, reassign case to field employee using the assignment tool for a Grade 12, Chapter 11 case. Remove IIP error (no other action needed).</p>
<p>For Chapter 7, 11, 12 or 13 research:</p> <ul style="list-style-type: none"> • IDRS • Pacer 	
<p>If valid TIN and/or name secured, update the information on AIS as noted below.</p>	
<p>TIN is correct, but name control on AIS and IDRS do not match due to taxpayer's name change (divorce/marriage and name not updated with Social Security Administration),</p>	<p>update the Name Control on the TIN Screen to reflect the information shown on IDRS. Update the IIP C/D field on the TIN screen with "Force Process C/D" . Document history to reflect action taken.</p>
<p>TIN is correct, but name is misspelled on AIS,</p>	<p>update the spelling of last name on AIS Taxpayer and TIN screens. Document history to reflect action taken.</p>
<p>TIN is correct, but name on AIS does not match the name control on INOLES. Name control on INOLES is/was a valid name control</p>	<p>update the Name Control on the TIN Screen to reflect the information shown on IDRS. Update the IIP C/D field on the TIN screen with "Force Process C/D" . Document history to reflect action taken.</p>

for taxpayer,	
TIN is incorrect, name control correct and correct TIN secured,	update the TIN field on the TIN screen with the correct TIN. Document history to reflect action taken.
TIN is incorrect and when TIN is corrected the name control does not match INOLES,	update the Name Control on the TIN Screen to reflect the information shown on IDRS. Update the IIP C/D field on the TIN screen with "Force Process C/D". Document history to reflect action taken.
case is IMF and PIT identified possible BMF cross reference TIN(s),	list TIN(s) and name listed on report in history. If name contains "Corporation, LLC or Incorporated" in the name line or filing requirements reflect 1120, designate TIN as "reference" on TIN Screen. If TINs belong to a sole proprietorship or partnership, "Force" TIN. Document history to reflect action taken.
case is BMF and PIT identified possible BMF cross reference TIN(s),	list TIN(s) in history along with name listed on report. Document history to reflect action taken.
none of the above and no valid TIN and/or name was found,	document history "Working PIT report, researched IDRS & PACER, but unable to secure valid TIN. Forwarded to Lead " APC Lead Action: " <ul style="list-style-type: none"> • Contact the debtor's attorney to try to secure a valid TIN. If the case is Pro Se, contact the debtor. • If TIN secured from debtor's attorney, update TIN on TIN screen. Document history to reflect action taken. • Debtor's attorney is unable to provide valid TIN. Update the history to reflect actions, "Exempt from C/D" the TIN and update the liability field on the TIN Screen to "No Liability (per USER)". If there is only one TIN present on the TIN screen and it is being exempted, assign case. If multiple TINs are present on the TIN screen and at least one of the TINs is not being exempted, do not assign the case as it will be systemically assigned. • If debtor's attorney states he/she will check records and call you back, document history and schedule follow-up for 3 days. • If no response from debtor's attorney after 3 days and case is a Chapter 7A, 11, 12 or 13, send email (Exhibit 5.9.12-2) to Field Liaison. Schedule follow-up for 10 days. • If no response from debtor's attorney after 3 days and case is a Chapter 7N: <ul style="list-style-type: none"> A. Issue letter to debtor and send a copy to the debtor's attorney and the trustee. Schedule a follow-up for 10 days. B. If 11 or more days after letter issued and no response, check AIS to determine when 341 meeting is scheduled ("FMC" on Taxpayer Screen). If 341 meeting date is in the future, send an email to Field Liaison. Schedule a follow-up for 2 days after the 341 meeting date. If following up and it's more than 2 days after the 341 meeting date and no response from Field Liaison, contact liaison to determine if valid SSN was secured. If Field provides a valid TIN, update the TIN field on the TIN screen with the correct TIN. If Field employee states they are unable to secure a valid TIN, exempt TIN from IIP processing, update the liability field to state "No Liability (per USER)" and if this is the only TIN, assign case on AIS. If not the only TIN present, take other actions, but do not assign the case. Remove IIP error after TIN corrected or exempted. C. If 341 meeting date is past, "Exempt from C/D" the TIN and update the liability field on the TIN Screen to "No Liability (per USER)". If there is only one TIN present and it is being exempted, assign case. If multiple TINs are present and at least one of the TINs is not being exempted, do not assign the case as it will be systemically assigned. D. Document history with action taken and state unable to secure valid TIN.

Note:

caseworkers working the PIT report must enter an AIS history item to that effect.

**5.9.12.5.3 (03-15-2016)
Process D Errors**

1. **Process D Errors.** Process D checks for balance due modules and inputs a TC 520. If a TC 520 cannot be input an error report is generated. The error states "Unable to post TC 520 because -V and/or -W freeze code is present. A TC 520 is already present on the module". If the TC 520 is resolved, but the liability field on the AIS TIN screen is not populated the error will state "An error occurred in the program that: (up_pro_cd.ec) updates tp_proc_cd".
2. **Unable to Post TC 520.** TC 520 is unable to post because -V and/or -W freeze code is present. A TC 520 is already present on the module. The following table is provided to assist reviewers in working the Process D errors where the TC 520 is already on the module.

If....	Then....
a TC 520 was manually input before case was added to AIS or IIP processing was initiated (could be due to trustee turnover),	pull SUMRY and INOLES on SSN or EIN listed on error report. Access Freeze table menu and add each tax period that has a balance due based on the SUMRY print. Access the TIN screen and update the liability indicator based on findings as follows: <ul style="list-style-type: none"> • Liability (per user) • No liability (per USER) • No liability and return delinquency (per USER) • No liability and Debt indicator "F" (per USER) • No liability and Spouse Debt indicator "F" (per USER) Access IIP "Utilities" . Remove error. Document history with actions taken.
a prior bankruptcy case has been dismissed or discharged and the TINs are in the process of being mirrored,	take action depending on type of chapter as follows: Chapter 7N: <ul style="list-style-type: none"> • Leave assigned to 9999. • Document history on both cases to reflect petition date, docket number and court key of other bankruptcy. Chapter 7A, 11, 12 or 13:

	<ul style="list-style-type: none"> • Send email to field liaison advising them new case (list case #) cannot be assigned due to mirroring of previous case (list case #) - action needed. • Update the history to reflect prior case has been dismissed/discharged and is being mirrored.
<p>a previous bankruptcy case is still open on AIS and a review of PACER reveals the prior case has been dismissed,</p>	<p>take these actions on the dismissed case:</p> <ul style="list-style-type: none"> • Update AIS Taxpayer Screen with court dismissal date and noticed on date. • Input closure method of "Regular Dismissal - D1" or "Dismissed for FMT - D2" as appropriate on taxpayer screen. • Document history to reflect action taken and include information about new case filed (case #, Chapter and petition date).
<p>a previous bankruptcy case is still open on AIS and a review of PACER reveals the prior case has been discharged,</p>	<p>take these actions on the discharged case:</p> <ul style="list-style-type: none"> • Update AIS Taxpayer Screen with court discharge date and noticed on date. • Note information about discharged case (case #, Chapter and petition date) on report. • Forward error report to the technical team. • Document history to reflect information about related case (prior case information on new case and new case information on prior case) and actions taken.
<p>a previous bankruptcy case is still open on AIS and the discharge field has been populated and the "Closure Method" reflects "Reg Dis Procsng - RA" or "Sup Dis Procsng - SA" ,</p>	<p>take these actions:</p> <ul style="list-style-type: none"> • Note on report "RA" or "SA" as appropriate, along with case # and chapter of previous bankruptcy case. • Forward error report to the technical team. • Document history to reflect information about related case (prior case information on new case and new case information on prior case) and actions taken.
<p>a previous bankruptcy case is still open on AIS and a review of PACER reveals the prior case has not been dismissed or discharged (this could be the result of a jointly filed tax return where only one debtor filed bankruptcy originally and now the spouse has filed a separate bankruptcy),</p>	<p>take action depending on the chapter type as follows:</p> <p>Chapter 7N:</p> <ul style="list-style-type: none"> • Assign case. • Document history on both cases to reflect case #, Chapter and petition date of the other bankruptcy. <p>Chapter 7A, 9, 11, 12 or 15:</p> <ul style="list-style-type: none"> • Leave assigned to 9999. • Update the history to reflect information about prior case on new case and new case information on prior case and case has not been dismissed/discharged. • Note on report a prior case is still open on PACER. • Forward report to Lead. <p>APC Lead:</p> <ul style="list-style-type: none"> • Issue email to the field liaison. • Depending on response from field, take appropriate action. • If no response in 3 days, refer to manager for contact to be made with the field manager to resolve. <p>APC Manager:</p> <ul style="list-style-type: none"> • Contact the field manager to request assistance with the issue. • Schedule follow-up for 2 business days. • If no response (or update to AIS by field employee) within 2 days, the APC manager will notify their Department Manager. The Department Manager will contact the Territory Manager to request assistance in getting issue resolved. <p>Chapter 13:</p> <ul style="list-style-type: none"> • Access Taxpayer screen on AIS and check for "Debtor Type" . • If "Debtor Type" on Taxpayer Screen on the prior case reflects individual, check IDRS to determine if the debtor files joint tax returns (FS2). • If joint returns were filed and the new bankruptcy case was filed by the spouse, APC will request the CIO Support Team to mirror modules with joint liabilities as follows: <p>A. APC employee should send an email to the manager of the CIO Support Team to include the prior case number and request mirroring due to a new bankruptcy filing (list new case number).</p> <p>B. APC employee will send an email to FI (FI) to alert them to the new case filed and mirroring request.</p>

- C. APC employee will document the AIS history with actions taken.
- D. The new case will remain assigned to 9999 unless FI determines they want the case assigned to them.
- E. After mirroring is complete, the case will be assigned systemically.

Once the up-front mirroring has been requested, no actions are needed by APC employees (including history documentation), unless 6 weeks have passed since the effective date associated with the MAN MIRROR classification on the AIS Classification Screen. If more than 6 weeks have passed since this date, the APC employee should review IDRS to ensure that the case is still mirroring. If not, the APC employee should contact the OST employee to review the case.

Note:

In Chapter 13, if the bar date is imminent (within 14 days): the new case should be manually assigned to FI. If the prior case is assigned to FI, the new case should go to the same employee assigned the prior case. History must reflect prior case # and state TC 520 should be input to IDRS on current case after reversal on prior case.

3. **Liability Field Error.** An error occurred in the program that: (up_pro_cd.ec) updates tp_proc_cd. This error occurs when the liability field on the AIS TIN Screen is not populated. Take the following actions:

- A. Pull SUMRY or IMFOLI/BMFOLI on valid SSN or EIN listed on error report.
- B. Access Freeze table menu and add each tax period that has a balance due based on SUMRY or IMFOLI/BMFOLI print.
- C. Access the TIN Screen and update the liability indicator.
- D. Document history to reflect actions taken.

Note:

If the TIN listed on the report has been exempted, select "No Liability" . Once the liability indicator is input you will no longer receive this error.

4. **Timeframe.** Action should be taken to correct the errors within two business days of issuance.

5. **Retention.** All error reports should be retained in accordance with established retention criteria.

**5.9.12.5.4 (03-15-2016)
Process J Error Report**

1. **Process J Error.** Process J automates dismissal processing on requested bankruptcy cases and completes closing actions by inputting TC 521 on IDRS. If a TC 521 cannot be input an error report is generated. If the TC 521 is unable to post, follow the instructions in the table below:

If....	Then....
case is a Chapter 11,	Automated Process Control (APC) caseworker will issue an email to field employee assigned the case, advising of error and request action be taken to resolve.
no TC 520 is present on module, CAG history entry reflects no liability and case has been dismissed or discharged,	no action needed. APC caseworker will remove error from IIP data file menu.
no TC 520 is present on module and CAG history entry reflects a balance,	APC caseworker will input TC 520 on all modules with balances. Add each period to freeze table. Document history to reflect action taken. Remove error from IIP data file menu.
no TC 520 is present on module and no CAG history entry,	APC caseworker will refer to technical team requesting review to determine if any violations of the stay occurred due to no TC 520 on module(s) and corrective action, if needed. If no review performed within 7 days, refer to APC Lead: APC Lead: Contact tech team lead requesting review be performed. If no action within 5 days after contacting lead, refer to manager for contact with tech team manager to resolve. APC Manager: <ul style="list-style-type: none"> • Contact the technical team manager to request assistance with the issue. • Schedule follow-up for 2 business days. • If no response (or update to AIS by tech employee) within 2 days, the APC manager will notify their Department Manager. The Department Manager will address the issue with the appropriate manager (team or department).
the last TC 520 date seen on all the modules with a -V or -W freeze, was not equal to the petition date and TC 520 was not present that matches the petition date of the case for which the TC 521 was requested,	APC caseworker will review AIS by TIN to determine if there is another bankruptcy case with a petition date and case number that is different from what is listed on the error report. If TC 520 with petition date as the one shown on IDRS is found on another case on AIS and no indication a dismissal or discharge has been received: <ul style="list-style-type: none"> • Review PACER to determine if case has been dismissed or discharged. Dismissal found: <ul style="list-style-type: none"> • Update dismissal and noticed on fields and input a Method of Closure of "Regular Dismissal - D1" or "Dismissed for FMT - D2" as appropriate. • Note report that dismissal found on case #. • Document history to reflect actions taken. Discharge found:

	<ul style="list-style-type: none"> • Input discharge and noticed on dates. • Refer report to technical team for further action. • Document history to reflect actions taken. <p>TC 520 is for most recent filed case and TC 521 was attempted for prior case:</p> <ul style="list-style-type: none"> • Refer to technical team. Action must be taken by technical team to reverse existing TC 520 and input TC 520 for 1st case, then after posting, process dismissal or discharge. After dismissal/discharge processed TC 520 for current case must be input. • Remove error from IIP data file menu.
message on report states: SP_SSN has an ** on a module that will be mirrored,	<p>APC caseworker will forward error report to Operation Support Team. Document history to reflect action taken.</p> <p>Operation Support Team: System cannot mirror the module due to an invalid SSN. SSN may need to be validated by Entity. Follow IRM 5.9.17.21.2(2), <i>Invalid Secondary SSN</i>, instructions to validate SSN. If Entity validates the SSN continue mirroring. If Entity cannot validate the SSN, follow instructions in IRM 5.9.17.21.2(3), <i>Procedures for Invalid Secondary SSNs, If/Then Chart</i>.</p>
message on report states: the Primary SSN and Secondary SSN have a NMCTRL Mismatch,	<p>APC will forward error report to Operation Support Team. Document history to reflect action taken.</p> <p>Operation Support Team:</p> <ol style="list-style-type: none"> Determine if IIP can mirror the module. Check IMF N/C & SSA/NC to see if they match on INOLES with the current IMF N/C. All 3 need to have the same name control present in order to mirror the case. If N/C matches, select Option 5 Utilities, select Option 5 Flag, ok to mirror and follow the prompts. If the name control does not match, send a request to Entity to have the name control corrected. Include supporting documentation (Pacer/accurint print) that validates the name change, prints showing the taxpayer has filed. Input a follow up on AIS. <p>Note: If balance due is below tolerance, no need for mirroring.</p>
message on report states: TC 604 is not present on IMFOLT for TIN XXX and 29 days has passed since the initial TC 971 AC=100 was input,	<p>APC will forward error report to Operation Support Team. Document history to reflect action taken.</p> <p>Operation Support Team: Check IDRS to see if mirroring went unpostable. If yes, research to see why it unposted. (Name control mismatch, invalid SSN, NDS is DECD, etc). If mirroring cannot be done, input 972/100, delete J error and process per IRM 5.9.17.21.2(3), <i>If/Then Chart</i>.</p>
message on report states: XREF TIN - No SP SSN	<p>APC will forward error report to Operation Support Team. Document history to reflect action taken.</p> <p>Operation Support Team: Check IMFOLT to see if the NDS SSN is missing. If missing, and available, add the TIN to the tax year in question using CC ENREQ.</p>
message on report states: -L freeze	<p>APC will forward error report to Operation Support Team. Document history to reflect action taken.</p> <p>Operation Support Team: The account cannot be mirrored. Send a secure email to Exam asking them to reverse the TC 420 so the account can be mirrored. Inform them the case is dismissed. Follow up to send email to Exam when mirroring is complete.</p>
message on report states -Z or Z- freeze	<p>APC will forward error report to Operation Support Team. Document history to reflect action taken.</p> <p>Operation Support Team: The account cannot be mirrored with these freeze codes. Contact Criminal Investigation (CI) to determine appropriate action. See IRM 5.9.4.12, <i>Criminal Investigation (CI) Controls on Tax Accounts</i>.</p>
message on report state ITIN is present	<p>APC will forward error report to Operation Support Team. Document history to reflect action taken.</p> <p>Operation Support Team: Determine if it is ok for IIP to mirror the module. Check IMF N/C and SSA N/C to see if they match on INOLES with the current valid IMF N/C.</p> <p>Note: All 3 need to have the same name control present in order to mirror the case. If the N/C matches, update IIP ok to mirror and follow the prompts. If the name control does not match, can not mirror. Input TC 521 and close AIS. Delete the Process J error.</p>
	<p>APC will forward error report to Operation Support Team. Document history to reflect action taken.</p>

<p>message on report states MFR for this account is an "8" . NDS is deceased.</p>	<p>Operation Support Team: Follow instructions in IRM 5.9.17.21.3, <i>Decedent Secondary Spouse</i>. Delete the J error.</p>
<p>message on the report includes the following:</p> <p>A. TC 521 cc=blank, B. a bankruptcy TC 520 (i.e., cc 81, 85-89); and C. a non-bankruptcy TC 520 (i.e., TC 520 cc7X or TC 520 cc 84)</p>	<p>APC caseworker will review all modules with a -V and/or -W freeze.</p> <p>Modules being mirrored:</p> <ul style="list-style-type: none"> Do not input TC 521. Note mirroring in process on report and forward to the Operation Support Team. Document history to reflect action taken. <p>TC 520 with closing code of 60 - 67, 81, 83 - 89 and no mirroring:</p> <ul style="list-style-type: none"> Input TC 521 with appropriate closing code. Exception: If cc 84 or 81 and the date of death shown on IDRS matches the petition date of the bankruptcy case, do not input a TC 521. Forward case to Technical Advisor to be forwarded to Advisory. <p>TC 520 with closing code of 84 and a TC 530 cc 07 was input after the TC 520 cc 84:</p> <ul style="list-style-type: none"> Input TC 521. Remove error from IIP data file menu. Document history to reflect module in which TC 521 was input and any other action taken.
<p>message on report states: CFOL012 - requested module does not exist on masterfile or RRR,</p>	<p>APC caseworker will review SUMRY and IMFOLI for module listed:</p> <p>Module not present on IDRS:</p> <ul style="list-style-type: none"> Remove error from IIP data file menu. Note on error report, no module on IDRS. <p>Module is present on IDRS, but no TC 520 exists:</p> <ul style="list-style-type: none"> Remove error from IIP data file menu. Document history to reflect no TC 520 present and no action needed. <p>Module is present on IDRS and TC 520 exists:</p> <ul style="list-style-type: none"> If the petition date is the same as the case the error report was issued for, check PACER to determine if the case has been dismissed or discharged. <p>Case Dismissed:</p> <ul style="list-style-type: none"> Update dismissal and noticed on fields and input a Method of Closure of "Regular Dismissal - D1" or "Dismissed for FMT - D2" as appropriate. Note report that dismissal found on case #. Document history to reflect actions taken. <p>Case Discharged:</p> <ul style="list-style-type: none"> Input discharge and noticed on dates. Refer report to technical team for further action. Document history to reflect actions taken.
<p>message on report states ACA, cannot mirror</p>	<p>APC will forward error report to Operation Support Team. Document history to reflect action taken.</p> <p>Operation Support Team: Will monitor the case until MFT 35 mirroring is implemented, then the MFT 35 module will be manually mirrored. Set follow-up date. Delete the J error. Document history to reflect action taken.</p> <p>Note: MFT 35 mirroring is scheduled to be implemented in January 2016.</p>

5.9.12.6 (03-15-2016)
Automated Discharge System

1. **Systemic Discharges.** The Automated Discharge System (ADS) automates discharge actions on Chapter 7 and Chapter 13 cases after a discharge method of closure and discharge date are annotated on AIS. ADS performs actions on all discharge types:

- General
- Hardship
- Super
- Partial

ADS has been updated to allow for changes in exceptions to discharge for Chapter 13 cases affecting bankruptcy petitions filed on or after October 17, 2005.

2. **Process K.** Process K interfaces AIS with IDRS by extracting the necessary information from both systems and taking systemic steps to complete the discharge process. Process K automates a discharge determination on requested bankruptcy cases and completes closing actions by inputting TC 971 and TC 521 on IDRS. It also inputs a date in the "On AIS" field on the AIS taxpayer screen.

3. **Generating Process K Reports.** To run Process K the user must take the following steps:

STEP	ACTION
1	From the ADS Main Menu, select option 1, <i>SINON IDRS</i>
2	Select I (Input Information) Enter the requested data in UPPER CASE to the second screen displayed.
3	<ul style="list-style-type: none"> • SSN • Last name • First initial • Password <p>The password does not echo on the screen. If the wrong data is mistakenly entered, pressing the DEL key erases the data field and returns to step 1.</p>
4	Press the ESC key to initiate CC SINON by IIP.
5	From the Main Menu, select option 2, <i>Start/Monitor IDRS</i> processes.
6	Select K - Start Process K (Dischargeability)
7	After K is entered the program returns to the Start/Monitor IDRS Processes menu. IIP runs in the background.

4. **Process L.** Process L updates the status of flagged modules that have been resolved and allows them to resume through the Process K discharge procedure. Process L registers the decisions made by the user by updating the status of the active ADS module.

5. **Generating Process L Reports.** To run Process L the user must:

STEP	ACTION
1	Select option 2, <i>Start/Monitor IDRS Processes</i> , from the ADS Main Menu.
2	Select L - Dischargeability - Change Module Status.
3	After L is entered the program remains in the Start/Monitor IDRS Processes menu. Typically Process L completes in a few minutes.

6. **Printing ADS Reports.** To print ADS reports, the user must select option 3, *Print Reports* from the IIP 2 Main Menu and follow the prompts.

7. **Distribution.** The assigned caseworkers must prepare Form 3210, *Document Transmittal*, and route the reports to the assigned technical units.

8. **Resolving Errors.** Types of error reports and the most common errors to be resolved are:

- TC 971 Error
- TC 521 Error
- Formatting Errors
- FETCH Error
- Discharge Date Is Null
- num_days(): mo<1or> 12 :month=0
- 50 Consecutive Errors (see paragraph (9) below)

Note:

The Automated Discharge System User Guide - Supplement for Working Errors provides instructions for resolving errors.

9. **Fatal Errors in Process K.** Fatal errors prevent a process from completing its tasks. Process K may experience a fatal error identified by "nd_interval." This particular fatal error can only be corrected by the ADS programmer. When the nd_interval error is displayed:

- A. the caseworker must email the CIO systems analyst (SA);
- B. the SA must contact the ADS programmer to remove the error from the file;
- C. the programmer will provide the SA with the docket number and TIN that caused the fatal error;
- D. the SA must input a **P** on the TIN in ADS and instruct the technical support unit to run process K again for the affected territory;
- E. the SA must email the docket number and TIN to the lead and manager of the assigned discharge unit so the lead can work the discharge manually; and
- F. when finished working the discharge, the lead must change the **P** on ADS to an **M**.

**5.9.12.7 (03-15-2016)
Electronic Noticing System**

1. **Automated Court Notices.** The Electronic Noticing System (ENS) downloads bankruptcy case information received through the Bankruptcy Noticing Center (BNC). Notifications (also known as transmissions) include new filings, chapter conversions and court closures (discharges and dismissals). The Automated Process Control (APC) teams are responsible for reviewing, perfecting and integrating actions on ENS downloads.

2. **ENS Processing.** ENS involves a progression of actions originating with the courts and culminating with the loading or updating of cases on AIS:

- A. The bankruptcy court transmits electronic notices of cases and docket entries to the IRS.
 - B. Transmitted files are processed into AIS ENS option 1, and the status line reflects the number of files received. (Multiple files may pertain to a single docket number.)
 - C. The data is systemically entered into option 1, Review/Update New Case Information, or option 2, Review Actions to Existing Cases.
 - D. The AIS program moves the cases or actions ready into the AIS taxpayer file.
3. **Option 1: Review/Update New Case Information.** Running this option, allows the designated user to review new case information and update incomplete cases not ready for processing. Incomplete record statuses may be caused by:
- taxpayer attorney or trustee not verified
 - invalid TIN A, invalid TIN B, invalid TIN C
 - cannot process: case already exists in AIS
4. **Mismatches in Option 1.** A mismatch may occur because the attorney or trustee changed to a hyphenated last name as from Smith to Smith-Jones or a telephone number is missing from the ENS information. Or the debtor's attorney provides an address or phone number for his practice on the petition that differs from his law firm's address and telephone number as listed on AIS. If in all other respects the data matches AIS records, these types of mismatches are acceptable. The record should be updated to **Keep/ENTER** the attorney information to ready the case for processing.
5. **Option 2: Review Actions to Existing Cases.** This option updates existing cases in AIS with new court events. The ENS menu status identifies the number of actions waiting to be processed and is composed of two screens:
- Court Actions File Screen
 - Court Events
6. **Cautions.** Instances occur when no corrections need to be made (e.g., a notice is for a conversion that has already been updated to AIS or the discharge date has already been updated to AIS), and these records may be removed. However, the caseworker must determine the discharge date is not for one spouse in a joint bankruptcy where the other spouse has been previously discharged, or the conversion data is not a reversion to the original chapter as in a 7N converted to 13 and converted back to 7N.
7. **Add New Cases to AIS.** The interim new case is processed from option 1, *Review/Update New Case Information*. A record is added to the AIS taxpayer file and history screen for each new case. ENS provides a status line of the number of new cases which are ready to be processed. Cases not ready to process will remain in option 1 until the error is resolved or the record is manually removed by the user.
8. **Update AIS Cases with New Actions.** The AIS history screen is updated automatically with the nature of the new action for each case. ENS provides a status line of the number of actions which are ready to be processed. Actions not ready to process remain in option 2 until the error is resolved or the record is manually removed by the user.
9. **Electronic Notice Retrieval System.** The Electronic Notice Retrieval System allows access of basic court information without using Public Access to Court Electronic Records (PACER). The Electronic Notice Retrieval System includes Taxpayer, Trustee and Attorney information.

5.9.12.7.1 (03-15-2016)

Electronic (ENS and BNC Mailbox) and Paper Notice Checklist

1. All new electronic (ENS and BNC Mailbox) and paper 341 notices received into AIS should be added, if not already on AIS.
2. Input an AIS history when an action is taken and/or information is updated.
3. Any ENS notice that needs to be removed or paper notice marked as classified waste (CW) must be given to the lead for review. All other work (except notices received via the BNC Mailbox) is to be placed in the quality review bins.
4. Only leads are allowed to remove ENS documents or place paper notices in CW.
5. The chart below is for processing 341 Notices when an open case ("On AIS" field in the closing info and dates area of the Taxpayer Screen is blank) exists on AIS.

IF...	THEN....
existing case and new case have the same Court Case Number and Court key and the document is not a duplicate of the original notice,	refer to FI to contact the Trustee.
FMC date and Bar Date not the same,	<ul style="list-style-type: none"> • If case is an open Chapter 7N - no action needed, give case to lead for review. • If case is an open Chapter 7A, 9, 11,12 or 13 - update AIS to reflect the correct dates, and then give the case to the lead for review.
a dismissal or discharge date is present on the Taxpayer Screen, but Closure Method is blank,	determine if case was reinstated by checking PACER.
case classification reflects open mirroring,	give case to lead to coordinate with the OST team to determine the status of the mirroring process and action needed, if any.
closure Method is: <ul style="list-style-type: none"> • REG DIS PROCSNG - RA • REG DIS COMPLTE - RC • SUP DIS PROCSNG - SA • SUP DIS COMPLTE - SC 	give to lead to coordinate with Technical Team.
case reflects dismissed, but PACER confirms case has been re-instated. Technical Team (See IRM 5.9.17.5.6, <i>Orders Vacating Dismissal (Reinstatements)</i>),	APC will refer to Technical Team Technical Team will: <ul style="list-style-type: none"> • Re-input TC 520 on IDRS (See IRM 5.9.17.5.6, for closing code(s) and date to use. • Add information to freeze screen on AIS, • Remove dates from dismissal field and noticed on AIS field in the Closing Info and Dates area of the Taxpayer screen,

	<ul style="list-style-type: none"> Remove Closure Method field, Input AIS history and Reassign to field employee if Chapter 7A, 9, 11, 12 or 13 or to CIO if Chapter 7N.
any other information is not the same,	correct the information.

6. If 341 Notice and closed case ("On AIS" field in the closing Info and Dates area of the Taxpayer Screen have a date present), follow instructions in chart below.

IF....	THEN....
closure method is No Liability or Other Closing Action,	no action needed, give case to lead for review.
closure method is Dismissed,	determine if case was reinstated by checking PACER.
closure method is: <ul style="list-style-type: none"> REG DIS PROCSNG - RA REG DIS COMPLTE - RC SUP DIS PROCSNG - SA SUP DIS COMPLTE - SC 	give to lead to coordinate with Technical Team.
closure method is other than No Liability, Other Closing Action, Dismissal or Discharge,	read AIS history to determine reason case was closed and check IDRS for liabilities: <ul style="list-style-type: none"> If no liabilities or case full paid - no action needed, give case to lead for review. If case was not closed because no liabilities or case full paid - reopen case following below procedures.
PACER confirms case has been re-instated. Technical Team (See IRM 5.9.17.5.6, <i>Orders Vacating Dismissal (Reinstatements)</i>),	APC will refer to Technical Team Technical Team will: <ul style="list-style-type: none"> Reopen case on AIS, Re-input TC 520 on IDRS (See IRM 5.9.17.5.6, for closing code(s) and date to use. Input information on freeze screen to reflect modules in which TC 520 was input, Remove Dismissal/Discharge and Noticed dates, Remove Closure Method, Input AIS history and Reassign to field employee if Chapter 7A, 9, 11, 12 or 13 or to CIO if Chapter 7N.
PACER confirms case has not been re-instated,	no action needed, give case to lead for review.

7. If Notice of Dismissal or Discharge, follow instructions in chart below.

IF....	THEN....
case number not found in AIS database,	pull PACER information; add case to AIS, and Input Dismissal / Discharge and Noticed date.
case already exists with same Court Case Number, Chapter, Court key, Taxpayer Name and TIN,	review "On AIS" field in the Closing Info & Dates area of the Taxpayer Screen to determine if case is open or closed. Follow procedures below.
case is open,	follow procedures to take appropriate closing actions, including updating AIS with the dismissal/discharge date and noticed on date.
case is closed and the Closure Method shows No Liability or Other Closing Action,	no action needed, give case to lead for review. No AIS history is needed.
case is closed, the Discharge dates do not match, PACER shows prior Discharge was Vacated, and Closure Method shows: <ul style="list-style-type: none"> REG DIS PROCSNG - RA REG DIS COMPLTE - RC SUP DIS PROCSNG - SA SUP DIS COMPLTE - SC 	give case to the lead to coordinate with the Technical Team.
case is closed, the Dismissal dates do not match, PACER shows prior Dismissal was Vacated, and IDRS shows no balance dues or unfiled returns,	no action needed, give case to lead for review. No AIS history is needed.
case is closed, the Dismissal dates do not match, PACER shows prior Dismissal was Vacated, and IDRS shows balance due or unfiled returns, Technical Team (See IRM 5.9.17.5.6, <i>Orders Vacating Dismissal (Reinstatements)</i>).	APC will refer to Technical Team Technical Team will: <ul style="list-style-type: none"> Reopen case on AIS, Re-input TC 520 on IDRS (See IRM 5.9.17.5.6, for closing code(s) and date to use. Add information to freeze screen on AIS, Remove dates from dismissal field & noticed on AIS field in the Closing Info & Dates area of the Taxpayer Screen, Remove Closure Method and

	<ul style="list-style-type: none"> Input AIS history.
case is closed, the Dismissal or Discharge dates match,	no action needed, give case to lead for review. No AIS history is needed.
case is closed and the Dismissal or Discharge dates do not match,	<p>pull PACER information and verify the correct dates.</p> <ul style="list-style-type: none"> If dates are correct on AIS, give case to lead for review. No AIS history is needed. If dates are incorrect on AIS, input AIS history showing dates found on PACER and that case is being sent to Technical Team for review. Give case to the lead to coordinate with the Technical Team.

8. If Notice of Conversion and case is open, follow instructions in chart below.

IF....	THEN....
case number not found in AIS database,	pull PACER information; add case to AIS with original Chapter, then update with conversion information.
case on AIS has Convert by Court Date and the notice information, Chapter, and Converted by Court dates match the AIS information,	no action needed, give case to lead for review. No AIS history is needed.
case open on AIS, no open TTEE RFND (Trustee Refund) on the Classification Screen, has Convert by Court Date and the notice information, Chapter, and Converted by Court dates do not match the AIS information,	<p>update with conversion information.</p> <ul style="list-style-type: none"> Input the conversion date, Update the FMC date, Correct the Bar date, Change the Chapter Update the Trustee information, if different and Reassign to the field if Chapter 7A, 9, 11, 12 or 13, or to CIO if Chapter 7N. <p>Note: If you can make the ENS notice ready for processing, update Trustee, Bar date, and reassign since ENS will update the Chapter.</p>
<p>case open on AIS with open TTEE RFND (Trustee Refund) on the Classification Screen and conversion from either:</p> <ul style="list-style-type: none"> Chapter 9, 11, 12, or 13 to Chapter 7A or 7N or Chapter 7A or 7N to Chapter 9, 11, 12, or 13 	<p>update with conversion information.</p> <ul style="list-style-type: none"> Input the conversion date, Update the FMC date, Correct the Bar date (unless converted to Chapter 7N), Change the Chapter, Update the Trustee information, if different, On Classification Screen, input Closed on date for TTEE RFND classification. Reassign to the field if Chapter 7A, 9, 11, 12 or 13, or to CIO if Chapter 7N.
<p>case open on AIS with open TTEE RFND (Trustee Refund) on the Classification Screen and conversion from either:</p> <ul style="list-style-type: none"> Chapter 7N to Chapter 7A or Chapter 7A to Chapter 7N 	<p>update with conversion information.</p> <ul style="list-style-type: none"> Input the conversion date, Update the FMC date, Correct the Bar date (unless Chapter converted to 7N), Change the Chapter and Reassign to the field if Chapter 7A or to CIO if Chapter 7N.

9. If Notice of Conversion and case is closed, follow instructions in chart below.

IF....	THEN....
case is closed, originally a Chapter 7N with a Closure Method of No Liability; and has same Court Case Number, Court key, Taxpayer name, and TIN,	<p>reopen case and update with conversion information.</p> <ul style="list-style-type: none"> Input the conversion date, Update the FMC date, Correct the Bar date, Change the Chapter, Update the Trustee information, if different and Reassign to the field if Chapter 7A, 9, 11, 12 or 13
case is closed, originally a Chapter 7A, 9, 11, 12 or 13 with a Closure Method of No Liability or Other; and has same Court Case Number, Court key, Taxpayer name, and TIN,	no action needed, give case to lead for review. No AIS history is needed.
	APC will refer to Technical Team

<p>case is closed as a dismissal and PACER shows dismissal was vacated,</p> <p>Technical Team (SeeIRM 5.9.17.5.6, <i>Orders Vacating Dismissal (Reinstatements)</i>).</p>	<p>Technical Team will: Reopen case, remove dismissal and notice on dates, remove Closure Method and update with conversion information.</p> <ul style="list-style-type: none"> • Input the conversion date, • Update the 341 FMC date, • Correct the Bar date, if applicable, • Change the Chapter, • Update the Trustee information, if different, • Input TC 520 directly to IDRS (SeeIRM 5.9.17.5.6, for closing code(s) and date to use) • Input AIS history, • Reassign to the field if Chapter 7A, 9, 11, 12 or 13 or to CIO if Chapter 7N
<p>case is closed as a discharge and originally Chapter 7N that converted to Chapter 7A or Chapter 13,</p>	<p>reopen case and update with conversion information.</p> <ul style="list-style-type: none"> • Input the conversion date, • Update the FMC date, • Correct the Bar date, • Change the Chapter, • Update the Trustee information, if different and • Reassign case to FI <p>Note: Do not remove the discharged date or re-input the TC 520 on IDRS. Include in AIS an additional history stating: "TC 520 was not re-input when processing the conversion. FI will need to review case to determine if TC 520 should be re-input."</p>
<p>case is closed as a discharge and originally Chapter 7A that converted to Chapter 7N,</p>	<p>no action needed, give case to lead for review. No AIS history is needed.</p>

5.9.12.7.2 (03-15-2016)
BNC Electronic Mail Procedures

1. **BNC Notices.** Notices are received electronically from the Bankruptcy Noticing Center (BNC) Monday through Friday between 5:30 p.m. and 3 a.m. To process documents in the mailbox: Ensure your AIS application is opened and open the *SBSE CIO BNC Mail mailbox or *SBSE CIO Mail 2.

2. **Folders in BNC Mailbox.** Access one of the BNC folders or In box.

- In box
- Add cases
- Chapter 11
- Confirmations
- Conversions
- Dismissals and Discharges
- FI
- Hearings
- Meeting Notices
- Plans
- Refund turnovers
- Unassigned

3. **Inbox** (worked daily). This category will include all documents not in one of the specific categories listed above. This folder will be processed by the Mail Team employees. Review the subject line in the email to determine the type of document transmitted, then follow instructions in chart below:

IF...	THEN...
<p>document is considered Classified Waste (CW) in accordance with Exhibit 5.9.11-2, <i>Mail Direct to Classified Waste</i>, (with the exception of all plans and confirmation orders),</p>	<p>no action needed. Place in CW folder.</p> <p>Exception: All plans and schedules received through this mailbox must be forwarded to FI unless otherwise stated in Plan Procedures.</p>
<p>case is not on AIS,</p>	<p>move email to "Add Cases" folder.</p>
<p>case is on AIS and Unassigned (9999) and a Chapter 7 Asset, 9, 11, 12 or 13,</p>	<p>move email to "Unassigned " folder.</p>
<p>case is on AIS and Unassigned (9999) and a Chapter 7 No Asset,</p>	<p>no action needed. Place in Classified Waste folder.</p>
	<ul style="list-style-type: none"> • Open the link in the email message to view the notice.

case is on AIS and assigned (other than 9999) and document should be handled by CIO,	<ul style="list-style-type: none"> Take the necessary actions to update the account on AIS, including documenting history to reflect actions taken. Move email to "Items Worked " folder.
case is on AIS and assigned to field employee and document should be routed to FI,	<ul style="list-style-type: none"> Identify the SEID of the person assigned the case. Right click in the body of the email and select "Edit Message" from the drop down menu options. Document email to state "SEID = XXXXX" . Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . Move email to the "FI" folder.
case is on AIS and assigned to CIO employee and document should be routed to FI,	<ul style="list-style-type: none"> Right click in the body of the email and select "Edit Message" from the drop down menu options. Document email to state "DN = Last name of debtor or Business Name if BMF" . Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . Move email to the "FI" folder. <p>Note: Do not reassign case to FI.</p>

4. **Add Cases.** Any email associated with a case that is not currently on AIS should be moved to the "Add Cases " folder. These notices will be processed by APC employees. APC should only process emails which are older than two days (determined by the emails's received date. **Note:** A waiting period of two days will provide an opportunity for cases to be systemically added to AIS. For emails older than two days, query AIS by docket number and court key to determine if the associated case has been added systemically. Based on findings, follow instructions in chart below.

IF....	THEN....
no case on AIS,	<p>access PACER, if needed, and secure information to establish case.</p> <ul style="list-style-type: none"> Follow normal procedures for creating a new case. Document history to reflect actions taken. Move email to the "Unassigned" folder.
case is on AIS, but Unassigned (9999),	move email to the "Unassigned" folder.
case is on AIS, assigned to FI and action is needed by field employee, i.e. notice of hearing, plan,	<p>identify the SEID of the person assigned the case.</p> <ul style="list-style-type: none"> Right click in the body of the email and select "Edit Message" from the drop down menu options. Document email to state "SEID = XXXXX" . Close email (click X in the upper right corner). When message appears asking if you want to save, select "yes" . Move the email to the "FI" folder. This is done by placing your cursor on the email you just closed, pressing left tab on mouse and move the email to the folder (in the left area of the mailbox).
case is on AIS, assigned to CIO and action is needed by field employee*, i.e. notice of hearing, plan, Note: A chapter 7N notice should only be forwarded to FI if the case is assigned to them.	<ul style="list-style-type: none"> Right click in the body of the email and select "Edit Message" from the drop down menu options. Document email to state "DN= Last name of debtor or Business Name if BMF" . Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . Move email to the "FI " folder. <p>Note: Do not reassign case to FI.</p>
case is on AIS and assigned to CIO, no further action needed,	move email to "Items Worked" folder.

5. **Chapter 11** (worked daily). This category will include all emails associated with Chapter 11 bankruptcy cases. This folder will be processed by Mail Team employees. Query AIS by case number and court, then follow instructions in chart below.

IF....	THEN....
no case is present on AIS,	move email to the "Add Cases" folder.
case is closed as No Liability (NL) on AIS,	no action is needed. Place email in classified waste folder.
case is open on AIS and assigned to a field caseworker,	<ul style="list-style-type: none"> Identify the SEID of the person assigned the case. Right click in the body of the email and select "Edit Message" from the drop down menu options. Document email to state "SEID = XXXXX" .

	<ul style="list-style-type: none"> • Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . • Move email to the "FI" folder.
case is open on AIS and assigned to CIO,	<ul style="list-style-type: none"> • Right click in the body of the email and select "Edit Message" from the drop down menu options. • Document email to state "DN = Last name of debtor or Business Name if BMF" . • Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . • Move email to the "FI" folder. <p>Note: Do not reassign case to FI.</p>
case is open on AIS and assigned to 9999,	move email to the "Unassigned" folder.
case is closed by any other method other than No Liability,	<ul style="list-style-type: none"> • Identify SEID of employee assigned the case. • Right click in the body of the email and select "Edit Message" from the drop down menu options. • Document email to state "SEID = XXXXX" if assigned to FI or "DN = Last name of debtor or Business Name if BMF" if assigned to CIO. • Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . • Move email to the "FI" folder.

6. **Confirmations** (worked daily). This category will include the orders confirming the Chapter 13 plans. This folder is processed by the Mail Team employees. Query AIS by case number and court, then follow instructions in chart below.

IF...	THEN....
no case is present on AIS,	move email to the "Add Cases" folder.
case exists on AIS and is closed,	no action is needed, place email in "Classified Waste" folder.
open case on AIS, Note: Confirmation date may be blank or populated, i.e. 2/2/2222.	<ul style="list-style-type: none"> A. Open the link in the email to view notice. B. Copy the confirmation date from the notice and paste it into the "Confirmed" date field on the Taxpayer Screen. C. Access the CPM Screen and place confirmation date in the "Effective" field, if data is on the CPM screen. D. If a date is shown in the Last Payment field on the CPM screen, select "Recompute Plan" . E. Add history "Received order confirming chapter 13 plan. Input confirmation date" to document your actions. F. Ensure all entries are saved. G. Place email in the "Items Worked" folder.

7. **Conversions** (worked daily). All notices of conversion from one chapter to another will be in this category. This folder will be processed by Mail team employees. Query AIS by case number and court, then follow instructions in chart below.

IF...	THEN....
no case on AIS,	move email to the "Add Cases" folder.
case is on AIS and Chapter 7A, 9, 11, 12 or 13 and closed NL,	no action is needed. Place email in Classified Waste folder.
case is on AIS and Chapter 7N and closed as NL,	<ul style="list-style-type: none"> • Re-open case. • Open the link in the email to view the notice. • Update the new case with the conversion information. • Document history to reflect actions taken. • Place email in "Items Worked" folder.
case is on AIS and closed by any method other than NL (see above for NL closure),	<ul style="list-style-type: none"> • Re-open case. • Open the link in the email to view the notice. • Update the new case with the conversion information. • Document history to reflect actions taken. • Place email in "Items Worked" folder.
case is open on AIS,	<ul style="list-style-type: none"> • Open the link in the email to view the notice. • Update the new case with the conversion information. • Document history to reflect actions taken. • Place email in "Items Worked" folder.

8. **Dismissal and Discharges** (worked daily). This category will include dismissals, discharges, closed without discharge, denial of discharge notices and vacated dismissals/discharges. This folder is worked by the Mail Team employees. Notices of dismissal/discharge should be printed and batched for processing by the technical team(s).

Note:

Not all notices in this folder are printed. Please see the chart below for processing procedures:

Document	Action
Closed without Discharge Discharge of Debtor Order denying Discharge Order Dismissing Case	<ul style="list-style-type: none"> • Open link within email to obtain notice. • Print document. • Batch with like documents. • Close email and move to "Items Worked" folder.
Dismissal/Discharge of One Debtor Order Reconsidering Dismissal Order to Set Aside Dismissal Order Vacating Discharge Waiver of Discharge	<ul style="list-style-type: none"> • Open link within email to obtain notice. • Print document. • Batch with like documents (Vacated dismissals). • Close email and move to "Items Worked" folder.
Notice of Debtor's Ineligibility for Discharge Order Extending Time to Object to Discharge Notice of Case Eligible to Close without Discharge Order Delaying Discharge	<ul style="list-style-type: none"> • Open link within email to obtain notice. • Print document. • Batch with like documents (Vacated dismissals). • Close email and move to "Items Worked" folder.
Order Discharging Trustee Trustee's Recommendation to Dismiss Debtor's Certification in Support of Discharge Order Closing Case Notice of Intent to Dismiss Order to Show Cause: Re Dismissal	Place in Classified Waste folder.

9. **FI** (processed daily by designated employees). When all emails requiring field action have been placed in the FI folder or you will not be processing any further emails in the BNC mailbox, prior to logging out of the mailbox, perform the actions in the chart below:

STEP	Action
1	Access the FI folder (place your cursor on the folder and click to open it).
2	Select "Tools" .
3	Select "Rules and Alerts" .
4	Select "Run Rules Now" (top right of box). Box will open to show rules.
5	Scroll down to locate and select (click box to the left of each rule to place check mark in box) the rules.
6	After all messages have been processed (disappear from the folder), log out of the BNC Mailbox. Note: It is imperative this process be completed to initiate the forwarding of the emails to the designated field liaisons/mailboxes.

10. **Hearings** (worked daily). All hearings will be included in this category. This folder will be processed by the Mail Team employees. Query AIS by case number and court, then follow instructions in chart below.

IF....	THEN....
no case on AIS,	move email to the "Add Cases" folder.
case is closed No Liability,	no action needed. Place email in Classified Waste folder.
case is open or closed on AIS (other than NL) and assigned to a field caseworker, applies to any chapter type),	<ul style="list-style-type: none"> • Identify the SEID of the person assigned the case. • Right click in the body of the email and select "Edit Message" from the drop down menu options. • Document email to state "SEID = XXXXX" . • Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . • Move email to the "FI" folder.
case is a Chapter 7 Asset, 9, 11, 12 or 13 and open or closed on AIS (other than NL) and assigned to CIO,	<ul style="list-style-type: none"> • Right click in the body of the email and select "Edit Message" from the drop down menu options. • Document email to state "DN = Last name of debtor or Business Name if BMF" . • Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . • Move email to the "FI" folder. <p>Note:</p>

	Do not reassign case to FI.
case is a Chapter 7 No Asset and open or closed on AIS and assigned to CIO,	no action is needed Place email in Classified Waste folder.
case is open on AIS and assigned to 9999,	move email to the "Unassigned " folder.

11. **Meeting Notices** (worked daily). This category will include the First Meeting of Creditors (FMC/341) notices, other notification of bankruptcy filing and changes in the 341 meeting dates/times. This folder is processed by Mail Team employees. Query AIS by case number and court, then follow instructions in chart below.

IF....	THEN....
FMC notice and case exists on AIS,	no action is needed, place email in "Classified Waste" folder.
FMC notice and no case is present on AIS,	move email to the "Add Cases" folder.
change of 341 meeting date/time, case exists on AIS and is closed as No Liability (NL),	no action is needed, place email in "Classified Waste" folder.
change of 341 meeting date/time and open case on AIS,	<ul style="list-style-type: none"> • Open the link in the email to view the notice. If the notice reflects a different FMC meeting date, update AIS to correct date. • Document history to reflect action taken. • Place email in the "Items Worked" folder.
change of 341 meeting date/time and no case is present on AIS,	move email to the "Add Cases" folder.

12. **Plans** (worked daily). This category will include all plans (original, amended and modified). This folder will be processed by the Mail Team employees. Only emails that are ten or more days old (determined by the date of the email) should be reviewed. This waiting period will allow time for the original notice of filing to be received and processed.

Example:

Email transmitted to IRS at 11:02 p.m. on 1/2/12 plus 10 day waiting period = review of email on 1/12/12.

Query AIS by case number and court, then follow instructions in chart below.

IF....	THEN....
no case is present on AIS,	move email to the "Add Cases" folder.
case is closed as NL on AIS,	no action is needed, place email in classified waste folder.
case is open on AIS and assigned to a field caseworker,	<ul style="list-style-type: none"> • Identify the SEID of the person assigned the case. • Right click in the body of the email and select "Edit Message" from the drop down menu options. • Document email to state "SEID = XXXXX" . • Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . • Move email to the "FI" folder.
case is open on AIS and assigned to CIO,	<ul style="list-style-type: none"> • Right click in the body of the email and select "Edit Message" from the drop down menu options. • Document email to state "DN = Last name of debtor or Business name if BMF" . • Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . • Move email to the "FI" folder. <p>Note: Do not reassign case to FI.</p>
case is open on AIS and assigned to 9999,	move email to the "Unassigned" folder.
case is closed by any method other than No Liability,	<ul style="list-style-type: none"> • Identify SEID of employee assigned the case. • Right click in the body of the email and select "Edit Message" from the drop down menu options. • Document email to state "SEID = XXXXX" if assigned to FI or "DN = Last name of debtor or Business Name if BMF" if assigned to CIO. • Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . • Move email to the "FI" folder.

13. **Refund Turnover** (worked daily). Orders directing IRS to turnover refunds to trustees and rescission of those orders will be in this folder. This folder is processed by the Mail Team employees. To Process:

- Open the link in the email message to view the turnover document.
- Print the notice and batch with like documents for processing by the technical team(s).
- Move email to "Items Worked " folder.

14. **Unassigned** (worked daily). This category will include all emails associated with cases which are awaiting assignment to the Field or CIO. No email should remain in the Unassigned folder longer than 10 calendar days (unless a weekend fell at the end of this time period). Query AIS by case number and court, then follow instructions in chart below.

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IF....	THEN....
case is now assigned and closed No Liability,	place email in classified waste folder.
case is open on AIS and now assigned to Field caseworker,	<ul style="list-style-type: none"> Identify the SEID of the person assigned the case. Right click in the body of the email and select "Edit Message" from the drop down menu options. Document email to state "SEID = XXXXX" . Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . Move email to the "FI" folder.
case is open on AIS and now assigned to CIO, but action required by FI,	<ul style="list-style-type: none"> Right click in the body of the email and select "Edit Message" from the drop down menu options. Document email to state "DN = Last name of debtor or Business name if BMF" . Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . Move email to the "FI" folder. <p>Note: Do not reassign case to FI.</p>
case is still assigned to 9999 and is less than 10 calendar days old,	no action required.
case is still assigned to 9999, is 10 or more calendar days old and a Chapter 7 Asset, 9, 11, 12 or 13,	<ul style="list-style-type: none"> Right click in the body of the email and select "Edit Message" from the drop down menu options. Document email to state "DN = Last name of debtor or Business name if BMF" . Close email (click X in upper right corner). When message appears asking if you want to save, select "yes" . Move email to the "FI" folder. <p>Note: Do not reassign case to FI.</p>
case is still assigned to 9999, is 10 or more calendar days old and a Chapter 7 No Asset,	no action is needed, place email in classified waste folder.

15. **Contact List.** The chart below contains referral information for problems and suggestions.

IF....	THEN....
links in emails are not working,	notify BNC at 1-877-837-3424 and tell them some notices received are "TP 2" and the links are not working. You will also need to provide the assistor with the email number (listed in the subject line).
no emails received within a 24 hour period and no information received from BNC that there is a transmission problem,	contact BNC at 1-877-837-3424. Advise the phone assistor you are with the IRS and tell them the date items were last received via electronic means. Ask if there is a problem/when the problem is expected to be corrected.
suggestions for adding new folders,	refer to your manager.
procedural updates,	refer to your manager.
routing rules (new or modification of existing ones),	refer to your manager.
other questions,	refer to your manager.

5.9.12.8 (03-15-2016) Litigation Account Management System

- Introduction.** The Litigation Accounts Management System (LAMS) interfaces account information from AIS with current downloaded master file (MF) data to allow a comparison of AIS information with master file data. Parameters can be established to permit generation of reports tailored to meet specific monitoring and inventory management needs.
- Unit Responsibilities.** The CIO support units will print and distribute reports available on LAMS for the CIO and FI will be responsible for printing their reports.
 - CIO LAMS Reports.** CIO tax examiners will work all Chapter 7 and Chapter 13 Closed Case Listing and Not Found on AIS Case Listing reports regardless of case assignment. Certain types of cases on the Not Found on AIS Case Listing will be referred to the Field and AI for action.
 - FI LAMS Reports.** Field caseworkers will be responsible for all Chapter 9, 11, 12, and 15 reports, as well as the Chapter 13 Post-petition Case Listing reports. The Field is also responsible for working the cases on the Not Found on AIS Case Listing that are referred from CIO.

Note:

Use of some LAMS reports is discretionary. IRM 1.4.51.7.3, *Case Management Tools*, lists mandatory reports.

5.9.12.8.1 (03-15-2016) LAMS Closed Case Listing

- Unreversed Bankruptcy Freeze.** The LAMS Closed Case Listing identifies tax modules with an unreversed TC 520 and the only case on AIS with that TIN is closed. Entries on the LAMS report meet the following criteria:
 - The TIN with the unreversed TC 520 was not found on any open AIS case.
 - The TIN was found in at least one AIS closed case.
 - The AIS closed date was at least 21 days before the creation of the LAMS tape.

Note:

If the TIN is found in more than one AIS case, the docket number with the most recent AIS closed date is selected.

2. **Determining the Stay Lift Date.** For cases filed before October 17, 2005, the date upon which the automatic stay is lifted is determined by:

- A. Chapters 7, 12 and 13: the earlier of the court dismiss date or the discharge date.
- B. Chapter 11: the earlier of the discharge date (which is the same as the confirmation date) or the court dismiss date.

The imposition of a stay may vary for certain bankruptcies filed by individuals on or after October 17, 2005. (See IRM 5.9.5.7, *Serial Filers*.)

3. **Generating and Printing.** To print the report, the caseworker must take the following steps:

- A. Sign onto AIS,
- B. Select reports from the menu on left side,
- C. Scroll down to, *LAMS*,
- D. Select *Closed Case Listing*,
- E. Enter Organization parameters for report,
- F. Enter **Begin date** and **Finish date**,
- G. Select order,
- H. Select report output format,
- I. Run Report.

4. **Working the LAMS Closed Case Listing.** Once the report has been printed and distributed, appropriate actions by the assigned caseworker may include:

- A. Researching AIS data base by querying the TIN on the TIN Screen (this option simultaneously searches all open and closed files) to determine if a case is present. Based on the results of the search, the appropriate action may be adding or correcting the TIN field on AIS, (See IRM 5.9.12.8.2 (1) for possible reasons for TIN correction) inputting a TC 521 with the proper closing code if the case is closed, or checking for prior bankruptcies to verify the correct TC 520s were reversed if the case is open; or
- B. Researching electronic court records (PACER, RACER, CM/EFC or <http://www.uscourts.gov/allinks.html>) to check case status.
- C. Researching tax periods on IDRS, if no open TC 520 is present, no action required. This could occur because a TC 521/522 was input after the listing was created, but before the case was reviewed.
- D. The chart below provides instructions for resolving issues.

IF...	THEN...
TC 520 on a period and systemic mirroring is incomplete (Example, unreversed 520 on MFT 31, there is a TC 400 on module but no TC 402),	<ul style="list-style-type: none"> • Re-open case on AIS • Transfer case to Operation Support Team (OST)
TC 520 on a period and account was transferred to NMF because the transaction section has exceeded maximum posting size, An overflow account is identified by a TC 400 with 999 in the DLN.	<p>you cannot reverse the open TC 520 on the MFT 30 account. The MFT 30 account has been transferred to NMF.</p> <p>The account is now on NMF, so you must order a NMF transcript and take appropriate action to process the dismissal or discharge, if not previously processed.</p>
a subsequent bankruptcy has been filed,	<p>review cases beginning with the most current case.</p> <ul style="list-style-type: none"> • If the unreversed 520 is for the most current bankruptcy and the case is still open on AIS, no action is needed. • If the unreversed 520 is for previous bankruptcy and case is closed on AIS, follow procedures below for appropriate action. <p>Note:</p> <p>Closing previous bankruptcy may close (reverse) all TC 520s. If so, you will have to reinput 520 for new bankruptcy.</p> <ul style="list-style-type: none"> • If the unreversed 520 is for previous bankruptcy and case is open on AIS, research PACER to see if the case is closed. If PACER shows case is closed, initiate closing action for dismissal or discharge. <p>Note:</p> <p>Need to ensure there is a posted 520 for the most current bankruptcy. If the 520 for the previous bankruptcy was not reversed the new 520 may not have posted to IDRS. An IIP error or unpostable may have generated.</p> <ul style="list-style-type: none"> • If most current bankruptcy is open on AIS and no posted 520 on IDRS, set follow-up to input 520 after previous 520 is closed. Document AIS history with action taken, including case number and petition date of previous bankruptcy. • If most current bankruptcy is closed on AIS and no posted 520 on IDRS for this bankruptcy petition date, reopen case, set follow-up to input 520 after previous bankruptcy case on AIS is closed. After 520 posts on previous filed case, need to process dismissal or discharge. Document AIS history with action taken, including case number and petition date of previous bankruptcy. • If all cases are closed, determine which 520s are unreversed on IDRS. For 520s that are unreversed follow instructions below for appropriate closure method. • Notate on listing action taken.
	<ul style="list-style-type: none"> • Input TC 521 to IDRS,

the case was <u>dismissed</u> ,	<ul style="list-style-type: none"> • Document AIS history and • Notate action taken on listing.
the case was <u>discharged</u> ,	<ul style="list-style-type: none"> • Review for stay violations (such as injunctions where post-petition refunds offset to dischargeable debts). If a violation is found, take corrective action(s). • Check for unresolved Discharge Determination Report (DDR). If found, take appropriate action(s). <p>Note:</p> <p>If appropriate action requires follow-up, reopen the case on AIS.</p> <ul style="list-style-type: none"> • Update the AIS history (ex: "LAMS Closed Case Listing, unreversed TC 520 ccXX on TY XXXXXXXX. Period addressed...") <ul style="list-style-type: none"> ◦ If stay violations are found, document corrective action(s) taken. ◦ If DDR resolved, document action(s) taken and notate on listing. <p>Note:</p> <p>If case is reopened on AIS for monitoring or follow-up, close the case after all corrective action(s) have been taken.</p>
the case was closed, No Liability (NL) with no balance due remaining,	request closure through IIP. See Exhibit 5.9.17-1, <i>Closing Dismissals</i> .)
the case was closed no liability (NL), but a prepetition balance due remains,	<ul style="list-style-type: none"> • CIO: transfer to the assigned CIO unit to take appropriate actions which may include abating the balance(s) due, inputting a TC 521, or transferring the case to FI; • FI: take appropriate actions to address balance(s) due which may include making a CNC determination, inputting TC 521 thus allowing the balance to enter the collection stream, or abating the balance.
the case was closed as Other, Full Paid or Administrative Court Closing,	<ul style="list-style-type: none"> • Input TC 521 to IDRS, using the current date. • Document AIS history, and notate on listing action taken.
the case was filed on or after October 17, 2005, and the stay was not imposed,	follow instructions in IRM 5.9.5.7, <i>Serial Filers</i> .

Note:

After completion, the report must be retained for six months according to CIO or local FI procedures.

5. **CSED Expirations.** If a CSED has expired, guidance in IRM 1.4.51.14.2(4), *Imminent and Expired CSEDs*, should be followed.

**5.9.12.8.2 (03-15-2016)
Lams Not Found on AIS Case Listing Report**

1. **No Corresponding TINs.** TINs for cases on this report cannot be matched with any TIN's in the AIS database. Cause for the TIN's not being found on AIS can include the following:

- The corresponding AIS case was removed from the system.
- The TIN listed in the AIS TIN field is different from the TIN on the LAMS file.

2. **Running the Lams Not Found on AIS Case Listing.** To print the report the assigned employee must:

- Sign onto AIS,
- Select *Reports* from menu on left side,
- Scroll down to *LAMS*,
- Select *Not Found on AIS Case Listing*,
- Select Universal Location Code **All**,
- Select report output format and
- Run report.

3. **Reviewing the Lams Not Found on AIS Case Listing.** To review this LAMS listing, the caseworker must check AIS by quering the TIN on the TIN Screen. The files may also be searched by last and first names in the debtor field of the taxpayer screen. If the case is found on AIS, follow the instructions in the charts below. If the case cannot be located on AIS and a balance due is found on IDRS, the tax examiner should research electronic court records (PACER, RACER, CM/EFC or <http://www.uscourts.gov/allinks.html>) for the current status of the bankruptcy. Additional research methods include:

- If TIN or related TIN on listing is not on AIS or PACER, check IDRS command code INOLES for cross reference.
- If cross reference TIN is found and case is not located on AIS under cross reference, then check PACER on cross reference number.
- If MFT 31, look for cross reference TIN on TXMOD, cross reference will show with TC 971 action code 100. If MFT 31 has no TC 402, refer to the Operation Support Team.
- If MFT 55 look for cross reference TIN on TXMOD.
- If MFT 55, and unable to locate IMF cross reference or name, check MFT 55 period for BMF cross reference. Check AIS and PACER for BMF cross reference TIN. If found under BMF number and it is a Chapter 7A, 7N or 11, follow the instructions in the IF/Then charts below.
- If EIN on listing, check IDRS for cross reference or name.
- If MFT 51, check IDRS with a V after TIN. If the 520 date is the same as petition date on AIS under regular TIN follow instructions below for open and closed cases. Refer to AI if not on AIS or PACER, notate state where TP lived.

Note:

If a module with an open TC 520 has a TC 400 (cycle is prior to 200501) and no TC 402, do not input TC 521 or 522. They will go unpostable. Notate TC 400 prior to 200501. If you see an Unpostable 311, on IDRS, close unpostable control base.

4. To resolve the TIN on the listing, follow the instructions in the charts below.

Chapter 11	
IF....	THEN....
<p>you locate a case and it is a Chapter 11 open, dismissed, discharged or terminated,</p>	<p>CIO: Notate listing with case #, including court key, chapter type, bankruptcy status and state the Taxpayer is located in. Do not add case to AIS. Lead will input cases on excel spreadsheet with above information and email Tech Advisor who will send one consolidated listing to Senior Analyst in AI.</p> <p>FI: Review the case. Reverse the TC 520 using a TC 522 if the TC 520 was input to IDRS in error. If input of the TC 520 was correct, add the TIN to the TIN screen on AIS. After the TIN is added to the TIN screen, add each module containing a TC 520 to the AIS Freeze Screen. Include the TC 520 closing code for the specific module on the AIS Freeze Screen. When TC 520s are input manually without adding the TIN to AIS, IIP will not pick up the TIN to reverse any TC 520 when the case is dismissed or discharged. If no case on AIS and one should be added, send case to CIO to add.</p> <p>Note: A TC 520 should not be input on the MFT 55 accounts of parties responsible for the Trust Fund Recovery Penalty (TFRP) when the business filed bankruptcy and the responsible parties are not in bankruptcy. When withholding collection of assessed TFRPs, and the responsible parties are not in bankruptcy, follow the instructions in IRM 5.9.8.10(7). Reverse the TC 520 using a TC 522 when the TC 520 was input erroneously to withhold collection from the responsible parties. The CSED is not suspended on the accounts of the responsible parties unless they are personally in bankruptcy. If the responsible party(ies) are in bankruptcy, the TC 520 on their MFT 55 account should not be reversed unless their case has been dismissed, discharged, discharge denied, etc. If the bankruptcy filed by the responsible parties is not on AIS, request that the CIO add the bankruptcy case of the responsible party to AIS.</p>
Non-Debtor Spouse (NDS)	
IF....	THEN....
SSN listed is for a NDS in an open bankruptcy case on AIS (Example: trustee turnover exists and the NDS filed a joint return with the debtor),	<ul style="list-style-type: none"> • Add the SSN to the TIN screen and select "Non-Petitioning Spouse" as the debtor type. • Document AIS history and notate on listing action taken.
SSN listed is for a NDS in a <u>closed</u> Trustee Turnover case on AIS ("TTEE RFND" on classification screen), no IDRS balance dues,	<p>if refund already issued (TC 840/846):</p> <ul style="list-style-type: none"> • Manually input TC 522.
SSN listed is a NDS for a <u>closed</u> bankruptcy case on AIS,	<ul style="list-style-type: none"> • Manually input TC 522.
SSN listed is a NDS for an <u>open</u> bankruptcy case on AIS, AUR or another function requested upfront mirroring and mirroring is complete,	<ul style="list-style-type: none"> • Manually input TC 522 on MFT 31 tax period for NDS. • Add MFT 31 to freeze table for debtor.
not on AIS and TIN listed is a NDS on a closed bankruptcy case for their spouse, and there are no unreversed TC 520s on the debtor's TIN and no balance due on the NDS,	<ul style="list-style-type: none"> • Manually input TC 522.
Open/Closed Case on AIS	
IF EIN/SSN listed is for....	THEN....
<p>an <u>Open</u> bankruptcy case on AIS,</p>	<ul style="list-style-type: none"> • Add the SSN to the TIN screen and select "correct file source" (if MFT 51, select TIN with a V file source). • Document history and notate on listing action taken. <p>Note: If EIN is a Corporation and open Bankruptcy is under SSN, refer to Field. They must determine if TC 520 should have been input on Corporation.</p>
<p>a <u>Closed</u> bankruptcy case on AIS,</p>	<ul style="list-style-type: none"> • Reopen case. • Add the SSN to the TIN screen and select "correct file source" (if MFT 51, select TIN with a V file source). • Assign case to CIO if Chapter 7A, 7N or 13, if not already in CIO's inventory. For all other Chapters assign to FI. • If dismissed, request input of TC 521 through IIP. • If discharged, remove the closed on AIS date. (Ensure no stay violations have occurred, including discharge injunctions where post petition refunds offset to dischargeable debts. If a violation is found, corrective action must be taken within two work days); check for DDR, determine if applicable actions not performed or if all actions needed were taken, take necessary action, manually input TC 521 and close case on AIS. • Document AIS history "LAMS NOT ON AIS LISTING, unreversed TC 520 XX (closing code) on XX (MFT) XXXX (period) that needs to be addressed" and notate on listing action taken.
Not on AIS, Found on PACER	
IF....	THEN....
TIN found on PACER and the case remains <u>open</u> ,	<ul style="list-style-type: none"> • Add case to AIS. • Document AIS history and notate on listing action taken.

<p>TIN found on PACER, the case has been <u>dismissed</u> or <u>discharged</u> and there are no CSED issues (any periods that are less than 10 years old).</p>	<ul style="list-style-type: none"> • Add case to AIS. • If dismissed, input dismissed and noticed dates. • Add TC 520 and closing code to the freeze screen for each module that has a TC 520. • Input method of closure on AIS Taxpayer Screen, and request input of TC 521 through IIP. • If Discharged, input the discharge date and noticed date on AIS Taxpayer Screen. Initiate ADS closing action by updating the method of closure with "CH7&HARDSHIPCH13 RI" or "13 PLAN COMPLETED SI" on the Taxpayer Screen. Ensure no stay violations have occurred, including discharge injunctions where post-petition refunds offset to dischargeable debts. If a violation is found, corrective action must be taken within two work days. • Document AIS history "LAMS NOT ON AIS LISTING, unreversed TC 520 XX (closing code) on XX (MFT) XXXX (period) addressed" and notate on listing action taken.
<p>TIN is found on PACER, the case has been <u>dismissed</u> or <u>discharged</u> and there are balance due and CSED issues (any periods that are 10 year old or older),</p>	<p>If DLN of TC 520 is other than 28 or if 28 and posting is prior to cycle 2006,</p> <ul style="list-style-type: none"> • Notate listing with the case # including court key, Chapter, status and state the Taxpayer is located in. • Refer to Field. <p>The Technical Advisor will forward one consolidated list to Senior Analyst in AI.</p> <ul style="list-style-type: none"> • Field: Review the case. If the CSED has expired, follow guidance in IRM 1.4.51.14.2, <i>CSED Accounts</i>. If the CSED has not expired, follow procedures above. <p>If DLN of TC 520 is 28 and the CSED expired, consult your lead. If the lead agrees that the CSED expired, follow guidance in IRM 1.4.51.14.2, <i>CSED Accounts</i>. If the CSED has not expired, follow procedures above.</p>
Not on AIS or PACER	
<p>IF....</p> <p>TIN is <u>not</u> found on PACER and TIN is not a cross reference or NDS for a bankruptcy case,</p>	<p>THEN....</p> <ul style="list-style-type: none"> • Check tax periods on IDRS with open TC 520 to see if there is a deleted unpostable TC 521 or 522. <ul style="list-style-type: none"> ◦ If there is a deleted unpostable 521/522 with date after TC 520 date and different closing code, reinput with same closing code as open TC 520. • Check other tax periods on IDRS to see if 520 closed out on another period, <ul style="list-style-type: none"> ◦ If 521/522 found on another period reversing TC 520 with the same date input TC 521/522 with the same date as 521/522 that posted on other tax period. ◦ If no 521/522 found on another tax period, input TC 522 via IDRS on all open TC 520 periods. <p>Note:</p> <p>If the closing code is 81 or 84, follow the instructions in the chart titled "Closing Code 81" or the chart titled "Closing Code 84" .</p>
Non Master File: MFT 17, 20, 28, 32, 50, 66, 74, 76 or 96	
<p>IF....</p> <p>EIN/SSN listed is found on AIS without the N file source on an <u>open</u> bankruptcy case,</p>	<p>THEN....</p> <ul style="list-style-type: none"> • Add the SSN to the TIN screen and select the "correct file source" (If MFT 17, 20, 28, 32, 50, 66, 74, 76 or 96, use N as file source). • Document AIS history and notate on listing action taken.
<p>EIN/SSN listed is found on AIS without the N file source on a <u>closed</u> bankruptcy case,</p>	<ul style="list-style-type: none"> • Reopen Case. • Add the SSN to the TIN screen and select the "correct file source" (If MFT 17, 20, 28, 32, 50, 66, 74, 76 or 96, use N as file source). • Assign case to CIO if Chapter 7A, 7N or 13, if not already in CIO's inventory. For all other Chapters assign to FI. <p>Note:</p> <p>Instructions below for CIO and Field.</p> <ul style="list-style-type: none"> • Order NMF transcripts to verify actions taken on NMF. • Ensure no stay violations have occurred, including discharge injunctions where post petition refunds offset to dischargeable debts. If a violation is found corrective action must be taken within two work days. • If dismissed and NMF transcripts show no TC 521 input, prepare Form 3177, Notice of Action for Entry on Master File, requesting input of TC 521 on NMF. • If discharged and NMF transcripts show no TC 521 and balance due, make discharge determination. <ul style="list-style-type: none"> ◦ If dischargeable, prepare Form 1331B, <i>Notice of Adjustment</i> (to adjust tax, penalty and/or interest). ◦ Prepare Form 3177, requesting input of TC 521 on NMF. • If discharged and NMF transcripts show no TC 521 and no balance due. <ul style="list-style-type: none"> ◦ Prepare Form 3177, requesting input of TC 521 on NMF.

	<ul style="list-style-type: none"> Document AIS history "LAMS Not On AIS Listing, unreversed TC 520 XX (closing code) on XX (MFT) XXXX (period) and action taken" and notate on listing action taken.
<p>EIN/TIN is not on AIS but found on PACER and the case remains <u>open</u>.</p>	<ul style="list-style-type: none"> Add case to AIS. Update AIS history and notate on listing action taken. <p>Note: Be sure to select the correct file source when you add SSN/EIN to TIN screen.</p>
<p>EIN/TIN is not on AIS but found on PACER and the case has been <u>dismissed</u> or <u>discharged</u>, and there are no CSED issues (any periods that are less than 10 years old),</p>	<ul style="list-style-type: none"> Add case to AIS. Add the SSN to the TIN screen and select the "correct file source" (If MFT 17, 20, 28, 32, 50, 66, 74, 76 or 96, use N as file source). Assign case to CIO if Chapter 7A, 7N or 13, if not already in CIO's inventory. For all other Chapters assign to FI. <p>Note: Instructions below for CIO and Field.</p> <ul style="list-style-type: none"> Order NMF transcripts to verify actions taken on NMF. Ensure no stay violations have occurred, including discharge injunctions where post petition refunds offset to dischargeable debts. If a violation is found corrective action must be taken within two work days. If dismissed and NMF transcripts show no TC 521 input, prepare Form 3177, Notice of Action for Entry on Master File, requesting input of TC 521 on NMF. If discharged and NMF transcripts show no TC 521 and balance due, make discharge determination. <ul style="list-style-type: none"> If dischargeable, prepare Form 1331B, Notice of Adjustment (to adjust tax, penalty and/or interest). Prepare Form 3177, requesting input of TC 521 on NMF. If discharged and NMF transcripts show no TC 521 and no balance due. <ul style="list-style-type: none"> Prepare Form 3177, requesting input of TC 521 on NMF. Document AIS history "LAMS Not On AIS Listing, unreversed TC 520 XX (closing code) on XX (MFT) XXXX (period) and action taken" and notate on listing action taken.
<p>EIN/TIN is not on AIS but found on PACER and the case has been dismissed or discharged, there are balance dues and CSED issues (any periods that are 10 years old or older),</p>	<p>If DLN of TC 520 is other than 28 or if 28 and posting is prior to cycle 2006,</p> <ul style="list-style-type: none"> Notate listing with the case # including court key, Chapter, status and state the Taxpayer is located in. Refer to Field. The Technical Advisor will forward one consolidated list to Senior Analyst in AI. Field: Review the case, if the CSED is expired follow guidance in IRM 1.4.51.14.2, <i>CSED Accounts</i>. If not expired, follow procedures above. <p>If DLN of TC 520 is 28 and the CSED is expired, consult your lead. If the lead concurs with the statute expiration, follow guidance in IRM 1.4.51.14.2, <i>CSED Accounts</i>. If not expired, follow procedures above.</p>

Closing Code 81

IF....	THEN....
<p>taxpayer is deceased and date of death is the same date as 520,</p>	<p>Notate, state where TP lived and refer to AI. One consolidated listing of deceased taxpayers should be sent to the Tech Advisor after the report is worked. The Tech Advisor will forward listing to AI.</p>
<p>case is located on PACER and petition date matches TC 520 date and Chapter 7A or 7N,</p>	<p>If DLN of 520 is 28,</p> <ul style="list-style-type: none"> Check IDRS to see if return filed and if refund issued. <ul style="list-style-type: none"> If no balance dues and refund issued to taxpayer, manually input TC 522. If return filed, refund is due, but refund not issued, <ul style="list-style-type: none"> Add case to AIS Input "TTEE RFND" in the Classification screen Prepare 5792 to have refund mailed to trustee. Input a 14 day follow up on the AIS letter screen to monitor refund posting (840). Document AIS history. If return not filed, <ul style="list-style-type: none"> Add case to AIS Input "TTEE RFND" in the Classification screen.

	<ul style="list-style-type: none"> • Input a 180 day follow up from the due date of the return or the received date of the Trustee Turnover (whichever is later). • Document AIS history. <p>If DLN of 520 is other than 28,</p> <ul style="list-style-type: none"> • Notate on list, state where TP lives. • Refer to Field • Do not add case to AIS <p>One consolidated list will be forwarded to FI Analyst.</p>
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<p>case is located on PACER and petition date matches TC 520 date and is Chapter 13,</p>	<ul style="list-style-type: none"> • If DLN of 520 is 28, <ul style="list-style-type: none"> ◦ Check IDRS to see if return filed and if refund issued. <ul style="list-style-type: none"> • If return filed, refund is due, but refund not issued. <ul style="list-style-type: none"> ◦ Add case to AIS. ◦ Input "TTEE RFND" in the classification screen. ◦ Prepare 5792 to have refund mailed to trustee. Input a 14 day follow up on the AIS Letter screen to monitor refund posting (840). ◦ Document AIS history. • If return not filed, <ul style="list-style-type: none"> ◦ Add case to AIS. ◦ Input "TTEE RFND" in the Classification screen. ◦ Input a 180 day follow up from the due date of the return or the received date of the Trustee Turnover (whichever is later). ◦ Document AIS history. • If DLN of 520 is other than 28, <ul style="list-style-type: none"> ◦ Notate on list, state where TP lives. ◦ Refer to Field. ◦ Do not add case to AIS. <p>One consolidated list will be forwarded to FI.</p>
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Closing Code 84

IF....	THEN....
<p>you locate the case on PACER and the case is a 7N that has been terminated and it is not on AIS or has been closed on AIS or PACER,</p>	<p>IMF</p> <ul style="list-style-type: none"> • TC 520 on IMF account because the individual is an officer, partner, etc. of the business that filed bankruptcy. Refer case to Field. They must determine if the TC 520 should have been input on the SSN. • Document AIS history and notate on listing action taken. <p>EIN is Corporation</p> <ul style="list-style-type: none"> • Check to see if the modules with open 520s have a TC 530 closing code 10 or 07. If yes, input TC 521 with terminated date. If no, follow instructions in IRM 5.9.17.11, <i>Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)</i>. <p>EIN is Partnership</p> <ul style="list-style-type: none"> • Input TC 521 with terminated date.
<p>you locate the case on PACER and the case is a 7N that has been terminated and it is open on AIS,</p>	<p>IMF</p> <ul style="list-style-type: none"> • TC 520 on IMF account because the individual is an officer, partner, etc. of the business that filed bankruptcy. Refer case to Field. They must determine if the TC 520 should have been input on the SSN. • Document AIS history and notate on listing action taken. <p>EIN is Corporation -Refer to IRM 5.9.17.11, <i>Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)</i>.</p> <ul style="list-style-type: none"> • Review Case Classification Screen to determine if there is an open item requiring action prior to closing. Based on findings address classification issue or proceed with closure. • If unresolved issues remain open, then case is kept open on IDRS and AIS for monitoring. Document history and do not take any further actions. • If no issues remain open, a TC 521 with a two cycle delay and a TC 530 cc 07 with jurisdiction code 3 (no cycle delay) must be input on all unpaid IDRS modules. • Document history to reflect actions taken.

	<ul style="list-style-type: none"> • Input Closure Method of "Other Closing Action" . • Populate on AIS field with the current date. <p>EIN is Partnership - Refer to IRM 5.9.17.10, <i>Closing Chapter 7 or Liquidating Chapter 11 Partnerships</i>.</p> <ul style="list-style-type: none"> • Review Case Classification Screen to determine if there is an open item requiring action prior to closing. Based on findings address classification issue or proceed with closure. • If unresolved issues remain open, then case is kept open on IDRS and AIS for monitoring. Document history and do not take any further actions. • If no issues remain open, a TC 521 must be input on all unpaid IDRS modules. • Document history to reflect action taken. • Input Closure Method of "Other Closing Action" . • Populate on AIS Field with the current date.
<p>you locate the case on PACER and the case is a 7A that has been terminated and it is not on AIS or has been closed.</p>	<p>IMF</p> <ul style="list-style-type: none"> • TC 520 on IMF account because the individual is an officer, partner, etc. of the business that filed bankruptcy. Refer case to Field. They must determine if the TC 520 should have been input on the SSN. • Document AIS history and notate on listing action taken. <p>EIN is Corporation</p> <ul style="list-style-type: none"> • Check to see if the modules with open 520s have a TC 530 closing code 10 or 07. If yes, input TC 521 with terminated date. If no, follow instructions in IRM 5.9.17.11, <i>Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)</i>. <p>EIN is Partnership</p> <ul style="list-style-type: none"> • Input TC 521 with terminated date.
<p>you locate the case on PACER and the case is a 7A that has been terminated and it is open on AIS.</p>	<p>IMF</p> <ul style="list-style-type: none"> • TC 520 on IMF account because the individual is an officer, partner, etc. of the business that filed bankruptcy. Refer case to Field. They must determine if the TC 520 should have been input on the SSN. • Document AIS history and notate on listing action taken. <p>EIN is Corporation</p> <ul style="list-style-type: none"> • Review AIS history to locate direction from field employee. History should state to input TC 530 cc 07 and TC 521. The filing requirements may be requested to be closed. There should also be a history entry to reflect managerial approval of the TC 530 cc 07. • Managerial approval documented, proceed with actions. <p>Note:</p> <p>Use a 2 cycle delay for TC 521.</p> <ul style="list-style-type: none"> • No managerial approval present, reassign the case to FI. Update history to reflect no managerial approval for TC 530 cc 07 present. <p>EIN is Partnership</p> <ul style="list-style-type: none"> • These cases should be closed by the field employee. Reassign to FI.
<p>you cannot locate the case on PACER and the taxpayer is deceased and the date of death is the same date as the TC 520,</p>	<ul style="list-style-type: none"> • Notate state where TP lived and refer to AI. <p>One consolidated listing of deceased taxpayers should be sent to the Tech Advisor after the report is worked. The Tech Advisor will forward listing to AI.</p>

Note:

Two of the columns in the LAMS Not Found on AIS Case Listing report are titled CC 1 and CC 2. If both closing code columns show "00" the tax period listed may not have an unreversed TC 520, but were in the LAMS data due to related periods with an unreversed TC 520. This can occur if the bankruptcy commenced prior to ADS/IIP processing.

**5.9.12.8.3 (03-15-2016)
LAMS Post-petition Case Listing**

1. **Post-petition Liabilities.** This report is printed and worked by FI offices for all chapters except Chapter 7.
2. **Running the Post-petition Case Listing.** To print the report the assigned employee must:
 - A. Sign onto AIS,
 - B. Select Reports from menu on left side,
 - C. Scroll down to LAMS,
 - D. Select *Post- Petition Case Listing*,

- E. Enter Organization parameters for report, *Sort by Chapter* or *Sort by Employee Number*,
 - F. Enter the Chapter and minimum dollar tolerance amount,
 - G. Select report output format and
 - H. Run report.
3. **Tolerance Amounts.** The tolerance amount for this report will be determined annually by the Insolvency Territory Managers based on resources.
 4. **Field Actions.** Field specialists must review each report and take appropriate actions based on local procedures for post-petition accruals, annotating the AIS history with the results of their review for each report received.

5.9.12.9 (03-15-2016) Unpostable Reports

1. **Generalized Unpostable Framework.** The Campuses provide Insolvency groups listings of IDRS unpostable transaction codes, returns, and adjustments relating to bankruptcy cases. The Insolvency function, FI or CIO, that entered the transaction(s) that went unpostable is responsible for resolution of the resulting unpostable condition(s).
2. **Examination List.** Centralized Insolvency may receive action lists of cases for which Examination has issued a statutory notice of deficiency and for which assessment is prohibited by IRC § 6213. CIO caseworkers will research the status of each Exam case and reply by the deadline set by Exam. (See IRM 5.9.4.3(2), *Exam's "Hold" File*.)
3. **Weekly Nullified Distribution Lists.** Unpostable transactions such as inputs of TC 520s are voided, and the originating unit is notified by the weekly Nullified Distribution Lists. (See IRM 5.9.12.9.2, *Nullified Distribution Lists*.)

5.9.12.9.1 (03-15-2016) Resolution of Unpostable/AIS Lists

1. **Local Controls/Monitoring.** Campuses usually provide unpostable listings on a weekly basis. Management should establish adequate controls to ensure unpostables are reviewed and follow-up actions are performed in a timely manner.
2. **Analyzing of Unpostables.** New unpostables should be analyzed to determine the following:
 - If a return or adjustment may be assessed
 - The type of corrective action required
 - If the unpostable relates to an open or a closed bankruptcy case
 - If a case can be located
3. **Campus Assistance.** If a specific case is not located, the (highlighted) list should be forwarded via Form 3210, *Document Transmittal*, to the originating Campus. That Campus will resolve the unpostable by locating the responsible work unit or by posting the action if no work unit is located. Document 6209, *IRS Processing Codes and Information*, lists the conditions causing unpostable transactions.
4. **Follow-up.** AIS users can select follow-up dates as a part of the unpostable processing. IRM Exhibit 5.9.4-1 gives instructions for establishing follow-up dates on AIS.
5. **ASED Protection.** The follow-up date should be selected to ensure that any ASEds do not expire prior to the next scheduled review of the unpostable list. Factors to consider in establishing the follow-up date are the:
 - chapter of the bankruptcy if a Notice of Deficiency has been issued (for example, the Chapter 13 stay may last as long as five years while the Chapter 7 stay for individuals generally lasts less than nine months)
 - date the bankruptcy was filed in relation to how much time remains on the original statute (imminent ASED)
 - type of unpostable (return or adjustment)
6. **Closing Unpostables.** Unpostables may be closed through IDRS using command codes UPRES and UPCASZ to notify Campus (non-Insolvency) employees to take corrective actions, or through paper notifications where the responsible Campus is located elsewhere. Where paper notification is used, Insolvency should annotate the unpostable list with instructions that a return or adjustment is to be assessed by making entries, *in red*, of:
 - the petition date in MM/DD/YY format
 - the date the stay was lifted (MM/DD/YY)
 - the date the TC 521 was input
 - any other pertinent information

The list should be sent to the affected Campus via Form 3210, fax, or per local procedures.

7. **ASED Imminent.** Any case in which the bankruptcy-extended ASED is within 60 days of expiration must be resolved by telephone with the Unpostable Unit in the Campus responsible for the unpostable. All actions must be documented accordingly, and management should be informed, as appropriate.
8. **Managerial Involvement.** Cases where the bankruptcy-extended ASED has expired must be referred to management for further direction.

5.9.12.9.2 (03-15-2016) Nullified Distribution List

1. **Non-Return/Non Adjustment.** The Nullified Distribution unpostable list typically consists of non-adjustment or non-return related transaction codes. These are frequently TCs 520, 521, 522, 550, 560, 971, etc., relating to bankruptcy case processing, input by Insolvency.
2. **Insolvency Control Base.** Nullified Distribution lists are forwarded to the Insolvency caseworkers who requested the inputs to resolve the errors. Along with these lists, IDRS systemically generates an open control base assigned to Insolvency.

5.9.12.10 (03-15-2016) Aged Case Reports

1. **Introduction.** CIO generates and works aged case reports for Chapter 7 and Chapter 13 cases in its inventory. FI will generate and work the aged case reports for accounts in its inventory. These reports identify cases that should have been converted to another chapter or closed by court discharge or dismissal orders.
2. **Definitions of "Aged" Cases.** A Chapter 7 No Asset case is considered aged if it has been open nine months or more since the petition date. Chapter 7 Asset cases become aged two years after the petition date. Chapter 11 cases are defined as aged if still open six years after the petition date. A Chapter 13 case is designated aged when it remains open on AIS more than six years after the petition date. Valid legal or processing reasons may keep cases open longer than the timeframes given above.

3. **Aged Case Report Actions.** The report is worked annually for all chapters. The following tables reflect the process steps to run and work these reports.

Generating the Report	
STEP	ACTION
1	Log on to AIS.
2	Select <i>Reports</i> , from the menu on the left side.
3	Select <i>Aged Cases</i> , from the inventory menu.
4	Enter Organization parameters for report.
5	Select a specific chapter type or all.
6	Select report output format.
7	Run report.

Researching Cases	
STEP	ACTION
1	Access the appropriate court electronic records (PACER, RACER, CM/ECF or http://www.uscourts.gov/allinks.html .)
2	If the case has been closed or converted, annotate the overage report with the date of the discharge, dismissal, or conversion. For conversions also annotate the new chapter to which the bankruptcy has converted. See the following tables for actions to be taken on AIS.
3	CIO: If the case is still open in the court, follow instructions given in paragraphs (4) and (5) below. FI: If the case is still open in the court, annotate the AIS history that the aged case report has been worked; include pertinent research findings, if any.

Note:

IRM Exhibit 5.9.17-1 provides Instructions for inputting dismissal dates

Entering the Discharge Date on AIS	
STEP	ACTION
1	Log on to AIS. (See Exhibit 5.9.11-1 steps 1 through 8.)
2	From the AIS Taxpayer Screen, select query and input the AIS case number and court key and select execute,
3	Verify the case selected on AIS matches the case from the report.
4	Update the discharge and noticed dates in the closing info and dates section, select Save.
5	For corporations appearing on the Chapter 7 No Asset, overaged list, input OT (her) in the Dismissed/Closed on AIS field as the method of closure.
6	Repeat above steps until all discharges on the aged case report have been worked.

Entering the Conversion Date on AIS	
STEP	ACTION
1	Refer to Step 1 in the table above.
2	From the aged case report, Q (uery) and enter the docket number on the report for any case where a conversion date was secured from court research.
3	Input the chapter to which the case has been converted (7N, 7A, 11, 12 or 13), and press SAVE . AIS automatically inputs the chapter the case converts from in the Converted on AIS field and generate the current date in the Converted on AIS date field. The user will input the Converted by Court date from data secured through court research. Input the new bar date for Chapters 7 and 13.
4	For Chapter 7 and 13 cases only, press ASSIGN (CAG) in order to reassign the case for the caseworker or unit to which the newly converted case is going. NOTE: If the case assignment does not change, omit this step.
5	Save the changes.
6	Access the history screen.
7	Input a history entry describing the actions taken and save the changes.

- No Closure or Conversion - Chapter 7 No Asset.** If research shows a Chapter 7 No Asset aged case is open and is less than one year old, the caseworker will input an AIS history. The history should state that the case was on the aged case report and research shows the case is open. If the case is over one year old and open, the caseworker will contact the trustee for a status update. Unless, a previous history provides an explanation for the delay in case closing..
- No Closure or Conversion - Chapter 13.** If research shows a Chapter 13 case is open and is less than seven years old, the caseworker must provide a short AIS history. The history should state the case was on the aged case report and research shows the case is open. If the case is over seven years old and open, the caseworker will forward the case to the appropriate Field caseworker for trustee contact. Unless, a previous history provides an explanation for the delay in case closing.
- Eureka Reports.** Eureka reports may be used in lieu of the AIS reports.
- Pacer Match** CIO may use the Pacer Match in conjunction with the Aged Case Reports.
- Retention.** Aged case reports must be retained for two years.

**5.9.12.11 (03-15-2016)
Integrated Automation Technologies (IAT)**

- IAT Tools.** CIO employees must use the Integrated Automation Technologies (IAT) tools shown in Exhibit 5.9.12-3 whenever possible. The use of some of the tools is mandatory when applicable for use. The IAT tools simplify processing by assisting the user with IDRS research and input. The tools reduce the chance of errors and improve productivity. They are desktop productivity enhancing tools. The IAT Website should be checked periodically for new tools that may assist in processing cases. Descriptions of each tool as well as job aids for each tool can be found on the IAT website.
- Mandated Tools.** If a mandated tool is not used because it was determined not to be appropriate due to a specific situation, those circumstances should be documented in the case file.
- IAT Tools not Available.** If an IAT tool is not available, or an employee has a problem with the IAT Task Manager, the case should be processed through IDRS following established procedures. Make a note in the case file if an IAT tool is not used.
- IAT Website.** IAT tool users can visit the IAT Website, where you can sign up to become a subscriber to the IAT newsletter. The iNews details all ongoing IAT activity with tool retirements and rollouts.

**Exhibit 5.9.12-1
Correcting a Case Number**

Step	Action
1	Go to Taxpayer screen on AIS.
2	Query the docket number as it currently exists on AIS.
3	Correct the Case Number using the Case Format Guide below . ENTER
4	For cases where a match is made in the case number entered at step 3 to an existing case in AIS, AIS returns the selected case number and taxpayer name to which the user must respond whether the returned information is the correct taxpayer being researched. • If the information returned is not the correct taxpayer, respond N(o) , hit the ENTER key, and return to step 3 to reinput the required data, supplying additional parts of the

	case number as necessary to secure the correct taxpayer • If the information returned reveals the correct taxpayer, respond Y (es), and hit the ENTER key.
5	The complete current docket number as it exists in AIS is revealed to which the user is prompted to enter the new (corrected) docket number, or 0 to exit.
6	The user enters the corrected docket number and hits the ENTER key .
7	The system provides the current docket number as well as the new docket number for the user to review and prompts the user to enter a Y to update AIS with new docket number. • If the new docket number is correct, the user will input Y and hit the ENTER key to accept the changes. The AIS system will search through all the files updating the docket number as necessary. A <i>Program Completed</i> response will be returned when finished. • If the new docket number is not correct, any keystroke other than Y will return a prompt asking the user to <i>Try Again Y or N</i> . Responding to the prompt with N and ENTER will return the user to the <i>Additional AIS Options</i> menu. Y and ENTER will return the user to step 6.
8	When the "Program Completed" response is received, the user hits the ENTER key to respond to the prompt, "Press <RETURN> to Continue." AIS returns the user to the <i>Additional AIS Options</i> menu.

**Exhibit 5.9.12-2
Potential Invalid TIN (PIT) Report**

Subject line: Request for assistance from FI on Potential Invalid TIN (PIT) Report – Response needed in 2 workdays.

Email message: Case #XX-XXXXX with Potential Invalid TIN of XXX-XX-XXXX (Insert SSN from PIT report) or XX- XXXXXXX (Insert EIN from PIT report).

IIP processing has been suspended on this case as a result of a PIT report. Research on IDRS, PACER and ACCURINT has been completed, but we have not been able to secure a valid TIN(s) for this case.

Per IRM 5.9.12.5.2(5), *PIT Resolutions*, we ask that you take additional steps to try to secure a valid TIN. Please provide us with a correct TIN or let us know you were not able to secure one. This will allow us to take the necessary action for IIP processing to be resumed. A response is requested by _____ (insert date of 2 workdays from today).

Please place an X next to the action you would like CIO to take:

____ Correct TIN is _____. (CIO will update/add this to the TIN screen and allow IIP to continue processing.)

____ Unable to secure TIN. (CIO will exempt TIN from IIP processing and remove IIP error.)

____ Field will need extra time to resolve this issue (attend 341 meeting, meet with debtor's attorney, request objection to plan confirmation, etc.); therefore they will respond to this email in ____ work days. (CIO will leave IIP error until response received from field.)

____ Other (please specify) _____

**Exhibit 5.9.12-3
Integrated Automation Technologies (IAT) Tools**

IAT Tool	Mandated/Suggested
Credit Transfer Tool - Used to move one or more payments from one module to another. Automates the transfer of credits from one module to another.	Mandated use.
CIO Tool - Suite of tools used for batch processing.	Mandated use for RFUNDR, Name Control, UP 168 and Null Dist Lst.
Refund Suite - The Refund Suite is a suite of tools that includes a variety of tools that resolve issues surrounding IDRS refunds. The functionality includes stopping scheduled refunds (CC NOREF), issuing manual refunds, reissuing returned refunds (CC CHK64), recovering erroneous refunds, and tracing missing refunds (CC CHKCL or Form 3911).	Mandated for all cases that cannot be ran through the CIO RFUNDR tool, example cases with restricted interest.
REQ77 - Assists with the automation of command code REQ77, used to input audit/action codes on IDRS.	Mandated use.
FRM49 - Assists the user with inputting closing actions on accounts using FRM49.	Mandated use.
Disclosure - Assists with completing disclosure process on incoming taxpayer calls; helps ensure authorized parties speaking before releasing sensitive information.	Mandated use.
ACT On - the ACT On tool will open or close a control base and input histories on multiple accounts, MFREQ an account not on IDRS and allow users to personalize and save particular features for future use.	Suggested use.
Name Search - Allows users to search NAP for BMF and IMF numbers.	Suggested use.
TC 520 Search - Research all TXMODs with TC 520.	Suggested use.
Code Lookup - Use to research the definition of an IDRS code (transaction, action, freeze, etc.)	Suggested use.
Quick CC tool - Initiate command codes on IDRS. Navigate through IDRS tax periods. Rage through command codes. You don't need to remember the entry formats and output can be dropped into a Windows file to view multiple screens at once and to make printing easier. Also, includes a find feature to highlight the transaction, DLN or money amount you are researching.	Suggested use.
Search 6209 tool - Tool used to determine what an IDRS indicator or transaction code means. When you are in IDRS, highlight the entry you need to know about, then click the tool to display the Doc. 6209 definition.	Suggested use.
Fill Forms - The tool automates and assists with the generation of various IRS forms.	Suggested use. Use to prepare forms to move credits to excess collections.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 13. Manual Proofs of Claim and Common Claim Issues

5.9.13 Manual Proofs of Claim and Common Claim Issues

- 5.9.13.1 [Overview](#)
- 5.9.13.2 [Claim Systems](#)
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- 5.9.13.16 [Criminal Investigation Involvement](#)
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- 5.9.13.19 [Classifying Claims](#)
- 5.9.13.20 [Claim Calculations](#)
- 5.9.13.21 [AIS Claim Screen](#)
- 5.9.13.22 [Printing Claims](#)
- 5.9.13.23 [Allowable Claims](#)
- 5.9.13.24 [Signatory](#)
- 5.9.13.25 [Sale of Claims](#)
- Exhibit 5.9.13-1 [Threshold for Claims](#)

Manual Transmittal

March 09, 2016

Purpose

(1) This transmits a revised 5.9.13, Bankruptcy and Other Insolvencies, *Manual Proofs of Claim and Common Claim Issues*.

Material Changes

- (1) Editorial changes have been made throughout the IRM, and citations have been updated.
- (2) Interim Guidance Memorandum SBSE 05-1015-0065, *Interim Guidance on Processing the MFT 65, Individual Shared Responsibility Payment (SRP) Mirror Assessment, in Bankruptcy Cases*, issued on October 6, 2015 was incorporated throughout the IRM.
- (3) 5.9.13.9 was updated to provide an additional citation and to provide clarity that the same general process should be followed to mirror MFT 35 as is used to mirror MFT 30 in decedent spouse cases.
- (4) IRM 5.9.13.18.4 was renamed to Duplicate and Mirror Assessments and NMF Periods. Additional information was included to explain handling MFT 65 mirrored assessments and duplicate Trust Fund Recovery Penalty (TFRP) assessments. Also, included a caution indicating that MFT 31 is also used for restitution based assessments which are not mirrored assessments.
- (5) IRM 5.9.13.18.5 was updated to include information that restitution based assessments can be identified as using MFT 31 and having TC 971 AC 102 on the module(s).
- (6) IRM 5.9.13.18.6 was updated to include information about MFT 65 as the mirror account for the Individual Shared Responsibility Payment assessments. Information was also included regarding processing duplicate spousal assessments for the SRP.
- (7) IRM 5.9.13.19.3 was updated to include information regarding assessments arising under IRC § 4971 for failure to meet minimum funding standards of a pension plan. This section was also updated to clarify the language of a priority claim under 11 USC § 507(a)(8)(A)(i).
- (8) IRM 5.9.13.20 was updated to clarify when interest is applicable on SRP accounts.
- (9) Throughout the IRM, references to Form B10 have been changed to B410 to reflect the new Proof of Claim form number.

Effect on Other Documents

This material supersedes IRM 5.9.13 dated May 5, 2015 and relevant portions of Interim Guidance Memorandum SBSE 05-1015-0065, *Interim Guidance on Processing the MFT 65, Individual Shared Responsibility Payment (SRP) Mirror Assessment, in Bankruptcy Cases*, issued on October 6, 2015.

Audience

Field Insolvency Groups and the Centralized Insolvency Operation.

Effective Date

Kristen Bailey, Director
Collection Policy

5.9.13.1 (09-10-2014)

Overview

1. **Claim Purpose.** Filing an allowable proof of claim (POC) with the bankruptcy court is the primary method creditors have of receiving funds in a bankruptcy case. A proof of claim is a statement filed with the bankruptcy court listing debts owed by the debtor to a particular creditor. This section explains the forms to file with the court, discusses eligible entities, time frames (bar dates), types of claims, and the criteria for filing amended claims. It provides additional guidance to Insolvency on the proof of claim process, including calculations, tolling, claim classification, reviews, late filed claims, refileing Notices of Federal Tax Lien, Section 1305 claims, Limited Liability Companies (LLCs), and trust fund considerations.

5.9.13.2 (09-10-2013)

Claim Systems

1. **Automated Proof of Claim (APOC).** Automated proofs of claim are generated by Field Insolvency offices through the APOC system. APOC notifies assigned caseworkers of its inability to complete a proof of claim. The APOC User Guide and IRM 5.9.14, *Automated Proofs of Claim*, provide detailed information on use of this system.
2. **Manual Reviews and Calculations.** At times Insolvency caseworkers may have to prepare entire claims without the aid of APOC. More often they will manually calculate a single claim period to insert into the APOC process so an automated claim can be completed systemically. Regardless of the reason for manual claim preparation, Field caseworkers must be proficient in calculating and classifying claims without reliance on APOC. (See *IRM 5.9.13.19, Classifying Claims*, for guidance in the manual classification of claims, and *IRM 5.9.13.20, Claim Calculations*, for basic details on calculating proofs of claims.)

5.9.13.3 (09-10-2014)

Filing Entities

1. **Who May File a Claim.** 11 USC § 501 provides any of the following persons may file a proof of claim for taxable periods considered to be pre-petition (accrued prior to the bankruptcy filing date):
 - Creditor
 - Debtor
 - Co-debtor
 - Trustee
 - Indenture trustee (trustee representing creditors)
 - Equity security holder
2. **Claims Filed on Behalf of IRS.** The debtor, co-debtor, or trustee may file a proof of claim on behalf of the IRS. Insolvency will, in most jurisdictions, subsequently prepare and file a claim (usually in the form of an amendment) to report the correct amount owing according to internal tax data.

Note:

Because the trustee may make payments on a claim filed by a third party, the easiest method for a caseworker to account for the payments on Automated Insolvency System (AIS) is to file an amended claim, even if the amount is less than the tolerance contained in *Exhibit 5.9.13-1*.

5.9.13.4 (09-10-2014)

Case Reviews

1. **Initial Review.** Excepting Chapter 7 No Asset (NA) filings, caseworkers must conduct an initial case review. Initial case reviews must include, at a minimum, items listed in IRM 5.9.6.9, *Opening a Chapter 7 Case*, IRM 5.9.8.4, *Initial Case Review for Chapter 11*, IRM 5.9.9.4, *Initial Case Processing for Chapter 12 cases*, and IRM 5.9.10.3, *Initial Case Review for Chapter 13 Bankruptcy*.
2. **Manual POC Review.** Prior to creating a manual proof of claim, the following issues (beyond the initial case review issues) must be considered:
 - A. Previous bankruptcy filings which may affect classification of the claim.
 - B. Cross referenced TIN(s) which may indicate liability.
 - C. Correspondence sent and responses received.
 - D. Bankruptcy freeze input to pre-petition balance due or other pre-petition periods, including creating dummy accounts, as necessary. (See IRM 5.9.15.5, *Unassessed Liability/No Open Modules*.)
 - E. Any changes noted between initial case processing and POC preparation.

Caution:

Caseworkers should remember that when a Chapter 7 NA case converts to Chapter 7 Asset (A) case after the discharge was entered, any liabilities that were abated must be added to the proof of claim manually, as previously abated periods will not be processed through APOC. For more information, caseworkers should review IRM 5.9.14.2.2(5), *Reopened Chapter 7 Cases*, and IRM 5.9.14.2.8(5)(f), *Discharged, Dismissed or Closed Date on AIS Flag*.

- F. Bankruptcy schedules and Statement of Financial Affairs (SOFA) when appropriate.
- G. Stay violations: new/unresolved/status.
- H. Current status on AIS (discharged, dismissed or converted) which may require processing by another unit prior to claim consideration and preparation.
- I. The Integrated Data Retrieval System (IDRS) Transaction Codes (TC) outlined in the table below:

TC	Indication
922	Underreporter Program (URP) case which may require contact with the URP bankruptcy coordinator to determine the proposed liability, if the account is not on Account Management Services (AMS).
420	Examination case requiring contact with the Exam bankruptcy coordinator to determine the proposed liability.
360/582	Notice of Federal Tax Lien (NFTL), noting the date and location of filing which is necessary to prepare a secured claim, determine if the NFTL was filed in violation of the automatic stay, or for Field Insolvency, consideration of adequate protection request. (See IRM 5.9.8.5, <i>Adequate Protection</i> .)
320	Fraud.
914	Criminal Investigation (CI) involvement requiring contact with CI to determine appropriate bankruptcy case actions which will not hinder the CI investigation.

3. **Review for Potential Liability from the Debtor's Business Entities.** When the bankruptcy schedules or the SOFA show that the debtor is or has been an officer of a corporation, a partner in a partnership, or a member of an LLC, the caseworker should research IDRS to determine if the debtor is liable for unpaid taxes of the entity which should be included on the proof of claim. These may include:

- Trust Fund Recovery Penalty (TFRP) assessments.
- Potential TFRP liability for unpaid employment taxes of a corporation or an LLC.

Note:

The debtor may also owe a TFRP liability that has not yet been assessed. Caseworkers should review the Automated Trust Fund Recovery Penalty program (ATFR), which shows TFRP liabilities that have been proposed but are not yet assessed on IDRS.

- Liability for employment taxes of an LLC treated as a disregarded entity for periods prior to January 1, 2009.
- Liability for employment taxes of a partnership in which the debtor was a general partner.

These liabilities may also be shown on a non-master file account, as explained in IRM 5.9.13.4.1(1), *Case Resource Materials*. Information on determining whether the debtor is liable for a business entity's taxes is contained in IRM 5.9.13.14, *Limited Liability Companies (LLC)*, and IRM 5.17.7, *Liability of Third Parties for Unpaid Employment Taxes*.

**5.9.13.4.1 (09-10-2014)
Case Resource Materials**

1. **Resource Gathering.** As part of any review and in preparation for working proof of claim issues, case resource materials should be gathered to perform a quality case analysis. Some of the materials that may be used include:

A. **IDRS Documents.** IDRS materials are necessary research tools used in the calculation and classification of a claim, in determining if the liability is assessed or unassessed, and in identifying freezes or controls on the account that may affect the tax liability computation or the need to file a POC. The caseworker must review command codes INOLE, IMFOL and/or BMFOL on IDRS.

Note:

Assistance with IDRS command codes is available on SERP by clicking the "Job Aids" button or at: http://serp.enterprise.irs.gov/databases/irm-sup.dr/job_aid.dr/command-code.dr/idrs_command_codes_job_aid.htm.

B. **Command Codes.** The table below identifies useful command codes and their purposes.

CC	Reference	Purpose
INOLE/ ENMOD	IRM 2.3.47, <i>Command Codes INOLE, EOGEN and SPARQ</i> , and IRM 2.3.15, <i>Command Code ENMOD</i>	Verify debtor's name, address and filing requirements. Identify cross reference (XREF) taxpayer identification numbers (TINs) for which research may be required.
IMFOL/ BMFOL	IRM 2.3.51, <i>Command Code IMFOL</i> , and IRM 2.3.59, <i>Command Codes BMFOL and BMFOR</i>	IMFOL (for Individual Master File) and BMFOL (for Business Master File). Verify if required returns have been filed. Give a complete history of returns required and filed. Note: These command codes do not reflect pending actions.
SUMRY/ TXMOD	IRM 2.3.11, <i>Command Codes TXMOD and SUMRY</i>	Depict current activity on an account summary or on individual modules reflecting such data as pending adjustments, notices, collection activity, revenue officer (RO) assignment, bankruptcy freezes, NFTL indicators, and Exam and CI controls.
INTST/ COMPA	IRM 2.3.29, <i>Command Codes INTST, ICOMP, and COMPA</i>	Calculate the tax, penalty and interest for claim preparation.
FFINQ	IRM 2.3.13, <i>Command Codes FFINQ, REINF, and REMFE</i>	Displays return fact-of-filing and refund information.
NAMEE/ NAMES	IRM 2.3.60, <i>Command Codes NAMES, NAMEE, NAMEI, NAMEB, FINDS, FINDE and TPIIP</i>	Search for potential IMF and BMF TINs when limited information is known.
IRPTR	IRM 2.3.35, <i>Command Code IRPTR</i>	Provides document data from the Information Returns Master file (IRMF). Used in preparation of estimated claims.
UNLCE	IRM 2.4.41, <i>Command Code UNLCE</i>	Identifies parties assessed a TFRP and periods covered by the assessment.
MFREQ	IRM 2.3.10, <i>Command Codes MFREQ and RECON</i>	Establishes a tax module on SUMRY. Used for an INTST calculation. Note: If the module is not on SUMRY, then INTST cannot be used. COMPA must be used instead to calculate penalty and interest. InterestNet/Automated Computation Tool (DMI/ACT) may also be used to compute interest and is preferred for more complex calculations.
AMDIS	IRM 2.8.3, <i>AIMS Command Code AMDIS</i>	Requests information on current audits.

C. **Non-Master File (NMF).** NMF research differs from IDRS research and is conducted through the Automated Non-Master File system (ANMF). (See IRM 4.4.22.2.1, *Automated Non-Master File Accounting*, and IRM 3.17.46, *Automated Non-Master File Accounting*.) NMF accounts are centralized at the Cincinnati Submission Processing Campus. Debtors may have accounts on ANMF when IRS is not able to make normal assessments on IDRS, such as Tax Court cases where one debtor to a joint return has agreed to assessment and the other debtor on the joint return is contesting the assessment.

D. **Bankruptcy Court Documents.** Court documents may be accessed through the electronic court records or can be requested directly from the court.

Note:

Depending on the court, electronic records may be accessed through Public Access to Court Electronic Records (PACER), Case Management/Electronic Case Files (CM/ECF), Remote Access to Court Electronic Records (RACER), or the website: https://pacer.login.uscourts.gov/cgi-bin/login.pl?court_id=00pcl.

They potentially provide, among other things, cross referenced business information, corporate officer information for TFRP investigations, income and expense information and asset information. They consist of:

Bankruptcy Court Document	Definition
Schedules	A - Real property B - Personal property C - Exempt property D - Secured creditor claims E - Priority unsecured creditor claims

	F - Unsecured general creditor claims G - Contracts and leases H - Co-debtors I - Current income of individual debtors J - Current expenses of individual debtors
Statement of Financial Affairs (SOFA)	The SOFA lists questions and answers about the debtor's finances and provides income information for the last two years, business interests and corporate officer information (for TFRP investigations).
Statement of Monthly Income and Means Test Calculation	This statement must be completed by all individual Chapter 7 debtors who file bankruptcy on or after October 17, 2005. It provides income and expense information in addition to information given in Schedules I and J.
Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income	This statement must be completed by Chapter 13 debtors who file bankruptcy after October 17, 2005. It provides income and expense information given in Schedules I and J.
Other Court Documents	These can include motions, pleadings and filings from other parties with an interest in the case and can yield information not previously disclosed in the SOFA or schedules, such as other income/expense items, issues concerning potentially fraudulent activities, or sale of assets.

E. Notices of Federal Tax Lien (NFTL). Notices of Federal Tax Lien reflect the secured claim of the IRS. Facsimiles may be used as attachments to the POC. To be used to secure a claim in bankruptcy, the Notice of Federal Tax Lien must have been properly recorded pre-petition. Lien facsimiles may be printed individually from the AIS POC menu (see AIS User's Guide) or the Automated Lien System (ALS) (see ALS User's Guide) for review. However, only the redacted Social Security Number (SSN) lien facsimiles that accompany the printed POC may be used as attachments to the claim.

F. Standardized Correspondence. The Service may send correspondence, either manually or systemically, to secure returns or information relative to the preparation of the claim or to establish liability. Written referrals may be sent to internal customers such as Exam, CI, and Area Counsel. Standardized letters may be sent to external customers such as trustees, attorneys for the debtors, or the debtors' accountants. Letters initiated by Insolvency may include AIS Letter 1714, *Request for Returns or Return Information*, to secure missing or unfiled returns, or other AIS letters as appropriate.

Note:

Caseworkers can generate and print AIS letters by going to the AIS Letter Tab and selecting the applicable AIS letter. In addition to AIS letters/memos, caseworkers may also generate documents by using any approved customized document in Microsoft Word, Integrated Collection System (ICS), IDRS, SERP, or available on the IRS intranet.

G. Ad Hoc Correspondence. If the suite of standardized letters does not fit a specific situation, caseworkers may write an ad hoc letter, with managerial approval, to a debtor or debtor's attorney. Counsel input should be sought if the nature of the ad hoc letter is technical.

H. Commercial Systems. Other information systems may be researched on an as-needed basis and may include "Accurint," an Internet based research tool for finding people, businesses and assets, and "Lexis-Nexis," an electronic tax law research tool.

Note:

Access to both "Accurint" and "Lexis-Nexis" require online Form 5081 approval.

2. **§ 341 Hearing Review**. The first meeting of creditors, also known as the 341 hearing, will usually occur soon after the commencement of the bankruptcy. Caseworkers should conduct a timely initial case review, allowing ample time to determine if an IRS presence is needed at the hearing. IRM 5.9.2.5, *First Meeting of Creditors*, provides more information on 341 hearings. The case history should address whether or not attending the 341 meeting is necessary, and include a discussion that clearly and fully documents any of the following that apply:

- Any case issue which needs to be addressed at the 341 meeting;
- Any case issue for which an objection to confirmation of the plan is being contemplated;
- Unfiled returns; and
- Problems with the plan or motions, including not recognizing the IRS secured or priority claims.

The following are examples of AIS case histories that satisfy the requirement to make a 341 determination:

Example:

"Unfiled returns, deposits not being made, TFRP not addressed by field, NFTL filed, possible adequate protection, schedules show personal property and accounts receivable, need to attend 341 meeting."

Example:

"All returns filed, deposits current; no other issues, no need to attend 341 meeting; will contact debtor regarding need to remain current with filing and depositing."

3. **Plan Review**. Field Insolvency specialists or advisors should evaluate bankruptcy plans or plan summaries prior to the confirmation date. Ample time should be allowed for a referral to Counsel should an objection to the plan be required. Area Counsel can advise Field Insolvency of lead time needed for effective referral preparation.

4. **Stay Violation Review**. When initially reviewing cases, caseworkers should access IDRS to determine if stay violations have occurred. Chapter 7 No Asset cases are excepted from initial case review. (See IRM 5.9.3.6, *Automatic Stay*.) For individual Chapter 7, 11, and 13 cases filed on or after October 17, 2005, this review should include checking for previously filed bankruptcies that may affect the imposition of the stay. (See IRM 5.9.5.7, *Serial Filers*.)

5. **Review for Nondischargeability**. If the requisite time between previous bankruptcy discharges and a current bankruptcy filed on or after October 17, 2005, has not elapsed, the debtor may not be allowed a discharge in the current proceeding. (See IRM Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings*, and IRM 5.9.5.7.1(5), *Discharge Limitations*.)

5.9.13.4.2 (09-10-2014)

Liens and Claims

1. **Lien Information**. IRM guidance regarding liens, NFTLs, and refiling for cases in bankruptcy is found in IRM 5.9.6.9, *Opening a Chapter 7 Case*, IRM 5.9.8.4, *Initial Case Review for Chapter 11*, IRM 5.9.10.3, *Initial Case Review for Chapter 13 Bankruptcy*, IRM 5.9.5.9.1, *NFTL Filing after Bankruptcy Filing*, IRM 5.9.5.9.2, *Refiling Notices of Federal Tax Lien (NFTLs)*, and IRM 5.9.17.17(10), *Lien Release Revocation and Refile*.

5.9.13.5 (03-09-2016)

Claims Forms

1. **Form B410**. Insolvency completes the AIS-generated Form B410, *Proof of Claim*, with an attachment (*Form B410, Attachment*) to provide detailed information on the tax liabilities claimed by the Service. The Form B410 attachment is known internally as AIS Form 6338 when adding the POC to AIS.

2. **Lien Attachment**. Depending on local court requirements, a facsimile NFTL generated by AIS may be included as an attachment to the proof of claim to support the Service's secured status. (See IRM 5.9.13.4.1(5), *Notices of Federal Tax Lien (NFTL)*.)

3. **"Admin" Claim/Gap Period Claims.** Form 6338A is used for filing any required claims for administrative (admin) and involuntary gap period taxes. Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) makes the filing of admin claims optional for cases filed on or after October 17, 2005. Caseworkers generally should still file a Form 6338A so the debtor, the trustee, and any other interested parties are aware that administrative expenses are being claimed. (See IRM 5.9.8.14.2(4), *Plan Provisions*, IRM 5.9.13.11, *Administrative Claims*, and IRM 5.9.13.12, *Gap Period Expenses in an Involuntary Bankruptcy*.)

5.9.13.6 (09-10-2014) Proof of Claim Retention

1. **Proof of Claim Data.** The Service may have to provide expert testimony in bankruptcy court regarding proof of claim data and computations. Whether the information is compiled automatically by APOC or manually by the caseworker, Insolvency's data showing the background work on the claim must be documented on AIS and retained where appropriate when:
- A. An objection to the Service's claim has been filed.
 - B. A referral is made to Counsel to object to a debtor's plan.
 - C. Contact from a debtor or debtor's attorney, the trustee, or another party indicates the potential for contested or adversary action.
 - D. A POC is amended or withdrawn.
2. **Destruction.** POC copies are maintained electronically on the AIS database for a period of 8 years from the date the case is closed. Offices are not required to maintain paper copies of proofs of claim, unless required by Area Counsel or local procedures. For those offices that maintain paper copies, with the exception of Chapter 11 claims, destruction of the claim copies should be scheduled one year after generation unless:
- The case has ongoing litigation.
 - Litigation is anticipated.
 - Otherwise directed by Area Counsel.

If paper copies of the claims in Chapter 11 cases are maintained, the claims should be associated with the case file and destroyed according to the retention schedule for the file.

5.9.13.7 (09-10-2014) Bar Dates

1. **Court Deadlines.** Proofs of claim must be filed by *bar dates*, deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the courts, for timely filing proofs of claim. To share in distribution from the bankruptcy estate or to receive payments under a plan, generally a creditor must file a timely proof of claim. Usually, Insolvency should file a proof of claim as soon as possible after a bankruptcy is filed and at least 30 calendar days prior to the general bar date in all asset cases where the unpaid tax liability exceeds the amount noted in *Exhibit 5.9.13-1*.
2. **Governmental Bar Dates.** Governmental entities have *180 days* from the petition date, or such later time as the Bankruptcy Rules may provide, to file timely proofs of claim. (See 11 USC § 502(b)(9).)
3. **General Bar Dates.** Bankruptcy Rules 3002(c) and 3003(c) define time limits for filing claims by non-governmental creditors. They are:
- A. Under BR 3002 - for Chapters 7, 12 and 13, the time limits are *within 90 days* of the first date set for the first meeting of creditors; and
 - B. Under BR 3003 - for Chapters 9 and 11, set by the court.
4. **AIS and Bar Dates.** AIS systemically displays a presumptive general bar date on the entity screen rather than the governmental bar date. When notice of the bankruptcy case is received electronically (through the Bankruptcy Noticing Center), AIS processing automatically sets the bar date using the bar date provided on the electronic notice. In the absence of a bar date, AIS defaults the bar date to *90 days* from the petition date unless a caseworker overrides the automatic date. In the event that the caseworker changes the date to reflect the governmental bar date or some other date, the caseworker should document the history with the original bar date and the reason for the change.
5. **Bar Date Extension.** Bankruptcy Rule 3002(c)(1) allows the government to file a request for an extension before the expiration of the governmental bar date (180-day period) for cause. Insolvency should consult with Area Counsel, if necessary, to determine if an extension is merited. The bankruptcy court has the discretion to grant or deny the extension.
6. **Chapter 13.** In Chapter 13 cases, the bar date for the Service to file a proof of claim in some jurisdictions is often *after* the confirmation date of the Chapter 13 plan. Whenever possible, in these jurisdictions, Insolvency should file Chapter 13 proofs of claim *prior* to confirmation. This allows the trustee access to as many claims as possible (including the IRS claim) by the confirmation hearing date to determine if the plan is feasible.
7. **Chapter 13 Bar Date Extensions.** For Chapter 13 cases, 11 USC § 502(b)(9) allows the Service to file a claim the later of 60 days after the debtor's filing of a pre-petition return or the governmental bar date. This provides the Service an opportunity to file claims where the return may not be filed until after the governmental bar date and where the Service may not have filed an estimated claim.
8. **Bar Dates and Conversions.** In the event of conversion, the court will often state the new bar date on the conversion notice or provide a special notice to indicate a bar date. If the bar date is not stated, Insolvency may establish the new bar date by *adding 90 days* to the new date of the first meeting of creditors.
9. **Bar Dates, Conversions, and Administrative Taxes.** In cases of conversion, where administrative taxes of the original case remain unpaid, interest and failure to pay penalty are claimed and allowed as an administrative expense only to the date of conversion.
10. **Reporting Expired Bar Dates.** If a bar date has expired, the person identifying the missed bar date will, within 10 days, complete Part A of Form 14167, *Bar Date Expiration Report*, and will enter a statement in the Automated Insolvency System (AIS) case history indicating that a preliminary Form 14167 has been prepared. If not prepared by the group manager, the completed Form 14167 should be forwarded to the group manager for review.

Note:

The report will not be required for expired bar dates in cases where the Service did not receive notification of the bankruptcy prior to the last day for filing a proof of claim as defined in Bankruptcy Rule 3002(c) or 3003(c), whichever is applicable.

5.9.13.7.1 (09-10-2014) Late Filed Claims

1. **Late Claim May Not Be Allowed or Paid.** Except in Chapter 7 cases, a late claim may be disallowed under 11 USC § 502(b)(9) and may not be paid. If the Service did not receive notice of the bankruptcy case in order to file a timely claim, caseworkers should follow the procedures outlined in paragraph (6) below.

Note:

For BAPCPA cases, 11 USC § 502(b)(9) allows additional time to file a claim for taxes with respect to a return required to be filed under 11 USC § 1308. Because some taxes are nondischargeable under 11 USC § 1328(a), the Service should consider filing a late claim to give the debtor an opportunity to pay those taxes under the plan.

A. If a liability is discovered after the bar date for filing claims has passed, and if the liability was not listed on a timely filed original or amended claim, an amendment may be warranted within certain constraints. (See paragraph (4) below.)

B. An untimely tax claim may be disallowed solely on the basis it was filed late (11 USC § 502).

2. **Chapter 7 Late Claim Allowed.** For Chapter 7 cases filed prior to October 17, 2005, if a claim was untimely filed, the IRS can still receive full payment of priority tax claims as long as the claim is filed *before* the trustee begins distribution (11 USC § 726). For Chapter 7 cases filed on or after October 17, 2005, late filed priority claims are to be paid with timely filed priority claims (11 USC § 726(a)(1)) if they are filed by the earlier of:

- The date that is ten days after the mailing to creditors of the summary of the trustee's final report, or
- The date on which the trustee commences final distribution.

Note:

In a Chapter 7 case, untimely claims should generally be filed because the IRS may be entitled to a share of the assets.

3. **Chapter 13 Caution.** When a liability is discovered after the governmental bar date in a Chapter 13 proceeding and Insolvency cannot cite special circumstances for its tardiness (for example, the IRS was not given timely notice of the bankruptcy filing), the late claim may be disallowed unless the Service can justify it as an amendment to a timely filed proof of claim.

Note:

IRM 5.9.13.7(7), *Chapter 13 Bar Date Extensions*, discusses special consideration given in Chapter 13 cases for tax claims based on returns filed after the government bar date.

4. **Considerations for Late Filing.** If a proof of claim is not filed prior to the bar date, Insolvency must decide if a late filed claim is warranted. *If a claim was not filed because the IRS did not receive sufficient notice for a timely claim to be filed, the procedures in paragraph (6) below should be followed.* A decision to file a proof of claim after the bar date has passed should be based on:

- Reasons the claim was not filed prior to the government's bar date
- Amount of the claim
- Type of taxes
- Chances that the claim will be paid by the trustee in a specific court jurisdiction
- Collection potential from a non-debtor spouse in a case where a joint income tax return was filed
- Favorable legal rulings on late filed claims in a specific jurisdiction
- Support of Area Counsel to file a late claim
- Likelihood the tax will not be discharged and therefore the debtor may be willing to modify a plan to pay the liability
- Likelihood of future collection (either through or outside of the case)
- If the claim meets the criteria noted in *Exhibit 5.9.13-1*

5. **Counsel Review.** Generally Counsel should be consulted after Insolvency determines a late claim should be filed to add a tax debt, exceptions being for claim-filing changes cited previously in this IRM section for cases commencing on or after October 17, 2005. Bankruptcy courts are more likely to consider late filed claims in some bankruptcy chapters and in some jurisdictions than in others.

Caution:

If the Service does not attempt to add a liability under the above circumstances, and a discharge is subsequently granted, the liability may be discharged. However, in Chapter 13, if the Service did not receive notice and the plan does not provide for the liability, the liability should not be discharged if a late claim is not filed.

6. **Notice Received with Insufficient Time to File A Timely Proof of Claim.** 11 USC § 523(a)(3) states that an *individual* debtor is not discharged of a debt if the creditor does not receive notice in time to file a timely proof of claim because the debtor failed to include the creditor on the schedules and statements. This provision does not apply if the creditor otherwise has timely notice or actual knowledge of the case.

Note:

This provision applies in Chapter 7 asset, Chapter 11, Chapter 12 and Chapter 13 cases. It does not apply to Chapter 7 no asset cases, as no proof of claim is filed.

The Bankruptcy Code does not give a minimum time period by which a debtor must give notice of the bankruptcy filing in order for the notice to be timely. Based on court decisions and the procedures used to create and file a proof of claim, notice received 30 calendar days or more before the expiration of the bar date will always be considered to be timely. Notice received less than 18 calendar days before the bar date will be considered to be untimely. Caseworkers should follow the procedures below when notice is received 18 days or more but less than 30 days before the bar date.

Exception:

If the bar date has not expired when notice is received, caseworkers should make every effort to file a proof of claim before the bar date passes, even when notice is received less than 18 calendar days before the bar date. Caseworkers should not refrain from filing a proof of claim in order to have the taxes treated as nondischargeable because the notice was not received timely.

A. When notice is received late based on the time periods above, the caseworker should first check to see if the Internal Revenue Service was listed as a creditor prior to receipt of the current notice. It will be necessary for caseworkers to check the creditor mailing matrix, the original Schedules D, E and F, any amendments to Schedules D, E and F, any documents stating an amendment has been made to the creditor mailing matrix, and any other pertinent documents on PACER to determine if the Internal Revenue Service was listed as a creditor prior to receipt of the current notice. Caseworkers should be aware that when the creditor mailing matrix is amended to show additional creditors, the creditors are added to the matrix but there is no indication to show when they were added. However, any amendments made to the creditor mailing matrix will be shown on the PACER docket report. The method of reflecting these amendments varies between courts. If notice was previously given to the correct address 30 calendar days or more before the expiration of the bar date, the notice should be treated as timely even if the Internal Revenue Service did not receive this notice. In this situation, caseworkers should note the details of the prior notice in the history and process the case without following the procedures below for a late notice.

Caution:

The bar date field on AIS generally displays a presumptive general bar date. Caseworkers should not rely on this as being the bar date, but should also compute whether the governmental bar date has expired, using the period of 180 days from the filing of the petition. Additionally, if the bar date has not expired because of some other procedure, such as when a new bar date is set after a case is converted, the bar date should also be considered to be open even if AIS shows it as

expired.

- B. If the bar date has expired when notice is received, but the proof of claim will still be allowed under provisions of the Bankruptcy Code or under local procedures, the proof of claim should still be filed.

Example:

The Internal Revenue Service can still receive payment for priority taxes on a proof of claim filed after the bar date in a Chapter 7 asset case if the proof of claim is filed on or before the earlier of: (1) the date that is 10 days after the mailing of the summary of the trustee's final report; or (2) the date on which the trustee commences final distribution of the estate.

Example:

In some jurisdictions, a proof of claim is considered to be timely in a Chapter 13 case even when filed after the bar date if the debtor failed to give timely notice of the bankruptcy to the affected creditor.

- C. If notice is received less than 18 calendar days before the bar date or after the bar date has expired, and a late proof of claim will not be allowed under the Bankruptcy Code or local procedures, no proof of claim is required to be filed where the caseworker determines the claim cannot be timely filed. The caseworker should obtain managerial approval for any decision not to file a proof of claim. The caseworker should document the history as to when and how the notice was received, and why it was not possible to file a timely proof of claim. The manager should document the history with a concurrence that a claim should not be filed. The case should then be processed as nondischargeable as set out below.

Note:

If the case was received 18 calendar days or more but less than 30 calendar days before the bar date, the caseworker should consider consulting Area Counsel on whether the courts in the jurisdiction where the case is pending have established a firm date by which notice will be considered to be untimely. The caseworker may also want to consult Counsel if notice was received during this time period and exceptional circumstances, such as a system outage, prevented the caseworker from filing a proof of claim before the expiration of the bar date. When notice is received less than 30 calendar days before the bar date or after the bar date expiration and the caseworker has determined that a proof of claim could not be timely filed, the caseworker should consider whether a suit referral should be made to Counsel. A referral should be made for a suit to determine dischargeability when it is questionable if the notice was untimely before treating the taxes as nondischargeable. Caseworkers should apply the tolerance amounts for referrals contained in IRM 5.9.4.14.4, *Referral Tolerances* absent exceptional circumstances.

- D. At the time the caseworker determines that a timely proof of claim cannot be filed, the "NoNotice" classification should be added to the case classification screen on AIS. Caseworkers should follow the procedures in IRM 5.9.5.4(6), *Classifications and Summary Histories*, for AIS history documentation, but should use the "NoNotice" classification rather than inputting "PDSC".
- E. When a caseworker makes a determination that a timely proof of claim cannot be filed and the manager concurs, the history should be documented to show: (1) when notice was received, (2) when the bar date expired, (3) if notice was received prior to the expiration of the bar date, a detailed explanation as to why a proof of claim could not be timely filed, (4) concurrence by the manager in any decision not to file a proof of claim when notice was received prior to the expiration of the bar date, (5) any opinion received from Counsel, and (6) a statement that the liabilities are nondischargeable due to lack of timely notice.

5.9.13.8 (09-10-2014)

Amended Claims

1. **Amendments.** If a proof of claim has been timely filed and situations warrant, an amended claim may be filed as necessary to claim the correct liability owed the Service. However, Insolvency should minimize, as much as possible, the number of amended claims filed. Generally, caseworkers should avoid amending a claim involving multiple unassessed (estimated) liabilities until:

- all returns are filed, and/or
- examinations are completed, and/or
- all liabilities are determined (for example, TFRP).

2. **Post-Audit Increase in Claim.** When the amount of a proof of claim may substantially increase upon the completion of an examination, IRS should inform the court and other interested parties through an amended claim so no reliance is placed on an earlier claim filed for a lesser amount.

• **Reminder:**

To protect the government's interests (for example in a pending TFRP assessment or audit/unfiled returns), Insolvency should promptly file an unassessed (estimated) proof of claim. Examination, underreporter, and field functions may not have tax information available for Insolvency *prior* to confirmation or bar date.

3. **Amendments after the Bar Date.** The standards vary for allowing amendments to proofs of claim after the bar date. Generally:

- A. Courts consider the *similarity* between the initial claim and the late-filed amendment;
- B. Courts generally require the additional *tax be of the same type* as that on the original proof of claim; and
- C. Courts consider if the *debtor and the other creditors will be prejudiced* by the amended claim.

Reminder:

For cases filed on or after October 17, 2005, courts must allow amendments for taxes under 11 USC 502(a)(9) where a return is filed under 11 USC § 1308 or for amendments under 11 USC § 726(a)(1).

4. **No Amendment Required for Court Payments.** No amendment or withdrawal of claim is required to reflect decreases in the amount of the claim as a result of payments received from the bankruptcy proceeding.

Note:

However, if any payments are received from sources other than the bankruptcy estate and the IRS is entitled to retain them, Insolvency must file an amendment or send a credit letter to the trustee to clarify for the trustee the correct amount (balance) of the Service's claim.

5. **Setoffs.** An amended claim or a credit letter, depending on local procedure, must be sent to the trustee when the IRS exercises its right to setoff a pre-petition income tax refund against a pre-petition income tax liability under 11 USC § 362(b)(26) for cases filed on or after October 17, 2005, or when the IRS exercises its right to setoff a pre-petition tax refund against a pre-petition tax liability when a court order lifts the automatic stay for that purpose.

6. **Amendments after Confirmation.** Some courts will not permit amended claims to list larger liabilities after confirmation. Also, some courts will not allow the classifications of the claim to be changed after the plan has been confirmed unless a motion for reconsideration is filed. If this is required in a given area and IRM 5.9.4.14.4, *Referral Tolerances*, criteria are met, Insolvency should send a request to Counsel to have such a motion prepared to protect the government's interests.

5.9.13.9 (03-09-2016)

Post-petition Mirroring and Claims

1. **Decedent Primary Taxpayer.** When a primary taxpayer on a joint return dies, the case is generally closed TC 530 cc 08. The CSED is not systemically suspended by the TC 520 on those tax modules if the surviving secondary spouse subsequently files bankruptcy. The tax modules will need to be mirrored or split for MFT 30 and mirrored for MFT 35. When appropriate, the same general process should be followed to mirror MFT 35 as is used to mirror MFT 30. IRM 5.9.17.21.3, **Decedent Secondary Spouse**, provides instructions when a module will be mirrored or will require split processing. (IRM 5.9.17.21.6, *MFT 31 Splits*, provides instructions on generating a manual MFT 31 split.) If this decedent condition is identified prior to filing a proof of claim, the claim and the AIS plan screen (excepting Chapter 7 Asset cases) must reflect the secondary spouse's SSN. If a claim has already been filed with the court under the decedent's SSN, an amended claim need not be filed, but the AIS plan screen (excepting Chapter 7 Asset cases) must be updated to reflect the proper MFT code (31) and the debtor's SSN. The TC 530 cc 08 must be reversed on the surviving spouse's MFT 31 module(s).
2. **Examination Adjustments.** Examination may request that the CIO generate an MFT 31 mirror for an innocent spouse situation or petitions to Tax Court. (See IRM 5.9.4.3.1, *Examination and MFT 31 Mirrors*.) If the proof of claim has been filed and the AIS plan screen loaded, the MFT on the AIS plan must be changed from 30 to 31. If the non-debtor primary spouse's liability has been abated in part or in full in the case of an innocent spouse claim, the SSN on the plan screen must be changed to reflect the secondary spouse. It is not necessary to amend the proof of claim unless the balance owed by the debtor spouse is adjusted by Examination. The CIO unit creating the MFT 31 mirrors must transfer the case to the Field Insolvency group responsible for the proof of claim after completion of the MFT 31 mirror if an amended claim is required. If only the plan screen needs to be updated, the assigned CIO unit will make the necessary corrections.

5.9.13.10 (09-10-2014) Section 1305 Claims

1. **Post-Petition Debts.** Because of the complexity of procedures and considerations relating to 1305 claims, the discussion of this type of claim is contained in IRM 5.9.10.9.2, *11 USC Section 1305 Claims*.

5.9.13.11 (09-10-2013) Administrative Claims

1. **"Admin" Claims.** Administrative tax claims (often referred to as "admin" claims) are filed for tax liabilities incurred post-petition by the bankruptcy estate. The date a tax liability is incurred, the date of the bankruptcy filing, and the entity incurring the tax are the primary factors determining if a tax is a pre-petition claim against the estate, a post-petition administrative expense of the estate, or a post-petition liability of the debtor. For cases filed on or after October 17, 2005, 11 USC § 503(b)(1)(D) provides that the Service does not have to file a request for payment of administrative expenses for the expenses to be allowed. However, an administrative expense claim generally should be filed because it puts the debtor and creditors on notice as to the amounts due. It also assists in the referral of the case to Counsel for dismissal or conversion and helps ensure the liabilities will be treated as an allowed administrative expense.

Note:

Excessive "quickie" tax refunds received by the estate after the petition date are also entitled to administrative claim priority status, pursuant to 11 USC § 503(b)(1)(B)(ii), whether or not the "quickie" tax refund relates to a year ending before or after the petition date. This type of tax refund frequently relates to a business filing an application for a net operating loss (NOL) or a business credit carryback from any pre-petition or post-petition taxable year. (See IRC § 6411 and IRM 5.9.8.8, *Quickie Refunds*.)

2. **Second Highest Priority.** Administrative expenses enjoy the second highest priority of payment under 11 USC § 507.

3. **Characteristics.** Administrative expenses have the following unique characteristics:

A. They accrue penalties and interest to the date of payment. In Chapter 11 cases, caseworkers should include the administrative taxes, interest and penalties on Form 6338A.

Reminder:

In a Chapter 11 case, the interest and penalties on an administrative claim are also an administrative expense, entitled to payment as second priority.

B. The debtor-in-possession or trustee may request relief under IRC § 6658 from any penalties based on the failure to pay Chapter 7 or Chapter 11 administrative taxes, if the debtor-in-possession or trustee obtained an order from the bankruptcy court finding that there was a probable insufficiency of funds available to pay the taxes. No relief may be granted if the taxes which were not paid were trust fund taxes. Application of IRC § 6658 is discussed in IRM 5.9.4.13, *Failure to Pay Tax Penalty and Failure to Pay Estimated Income Tax Penalty*.

C. In Chapter 11 cases, administrative claims are required to be paid in full on the effective date of the plan, unless the plan provides otherwise.

D. Upon conversion to Chapter 7, administrative claims of the previous chapter retain their administrative status but are paid after the administrative claims of the Chapter 7 estate (11 USC § 726(b)). Caseworkers should file a Form 6338A for the Chapter 11 administrative taxes in the Chapter 7 case, and include all interest and penalties accrued up to the date of the conversion.

Note:

After conversion, interest will continue to accrue on any administrative claims, including those incurred pre-conversion, but interest accruing postconversion is not entitled to payment as an administration expense. It is relegated to fifth priority in the Chapter 7 distribution scheme. Any penalties accruing after the conversion will be entitled to payment as a fourth priority claim. As a matter of policy, the failure to pay penalty does not continue to accrue postconversion with respect to trust fund taxes.

E. For cases filed on or after October 17, 2005, failure to pay administrative taxes is a specific reason for conversion or dismissal of a case under 11 USC §§ 1112(b)(4) (I) and 1116(6)(B) and 28 USC § 960.

F. According to the Supreme Court's decision in *United States v. Noland*, 517 U.S. 535 (1996), a bankruptcy court cannot subordinate administrative penalties incurred in a Chapter 11 case which converts to Chapter 7 unless there are facts justifying "equitable subordination." The courts have split on whether this requires the trustee to show that the creditor committed misconduct. If a Chapter 7 trustee requests equitable subordination of penalties incurred in a Chapter 11 case, caseworkers should consult Area Counsel.

4. **Conversion of a Chapter 11 Case After Confirmation.** Confirmation of a Chapter 11 plan reverts the property of the estate back in the debtor, unless the plan provides otherwise. When a Chapter 11 case converts to Chapter 7 after a plan is confirmed, there is no longer any property of the estate for the Chapter 7 trustee to administer. If a post-confirmation conversion occurs and the Chapter 7 case is classified by the debtor as an asset case, caseworkers should consult Area Counsel on how any outstanding liabilities should be treated on a proof of claim.

5.9.13.12 (03-01-2006) Gap Period Expenses in an Involuntary Bankruptcy

1. **The Gap Period.** In the "gap period" between the filing of an involuntary bankruptcy petition and the earlier of (1) the appointment of a trustee or (2) the court's order for relief, the taxes incurred during this period are classified as if the claim arose before the petition date.
2. **Priority Status.** Such a claim is entitled to priority status after payment of administrative expenses under 11 USC § 507(a)(3). Also see 11 USC §§ 303 and 502(f).
3. **Form.** Form 6338A can be used to file this type of claim.

5.9.13.13 (09-10-2013) TFRP Assessments - Priority Status

1. **Trust Fund Recovery Penalty.** TFRP assessments are entitled to *priority* status on the Service's claim, unless entitled to a secured position due to a valid Notice Federal Tax Lien (NFTL). (See 11 USC § 507(a)(8)(C) & (G).)
2. **Treated as Tax.** Even though the Trust Fund Recovery Penalty may be thought of as a penalty, it is not treated as one. Rather, the TFRP is treated as a tax and is never listed as an unsecured general claim, regardless of the date of the TFRP assessment.
3. **Multiple Persons Assessed the TFRP.** Problems may arise with proofs of claim involving TFRPs that have been assessed against more than one party. Counsel should be consulted as needed. The Service may need to enter into consent orders.
4. **Duplicate Spousal Trust Fund Assessments.** A proof of claim may list two identical TFRPs when a married couple files a joint bankruptcy, and each has been assessed a TFRP for the same module(s). The assessments may either be in the same or differing amounts. When AIS computes the total amount of a claim on Form B410, the sum equals the amounts of each module. That total amount computed by AIS cannot be systemically overridden, so when both spouses have duplicate trust fund assessments, the amount of the claim on Form B410 is overstated. Caseworkers should follow the procedures outlined in IRM 5.9.13.18.4, *Duplicate and Mirror Assessments and NMF Periods*, choosing the appropriate option based on local procedures.

Caution:

Caseworkers should not assume that assessments made against both a husband and wife for the same period are duplicates simply because they are for the same tax period. Before assessments are treated as duplicates, caseworkers should verify that the trust fund recovery penalties are for the same underlying business entity's liability, and are not for different entities.

5. **Collection of Proper Amount.** The IRS must not over-collect. The Service's policy is to collect the unpaid trust fund taxes only once.
6. **Nondischargeability in Individual Chapters 7, 11, 12 and 13.** As provided in 11 USC § 523(a)(1)(A), trust fund taxes are not discharged in individual Chapter 7, 11, and 12 cases. BAPCPA has amended 11 USC § 1328(a)(2) so trust fund taxes in Chapter 13 cases filed on or after October 17, 2005, are also not dischargeable even if the Service has not filed a claim.

5.9.13.14 (09-10-2014)

Limited Liability Companies (LLC)

1. **LLC Proofs of Claim.** When the Service receives notice an LLC has filed bankruptcy, Insolvency must determine how the LLC is classified for federal tax purposes before a proof of claim can be prepared. The classification of LLCs for federal tax purposes is determined by the provisions of Treas. Reg. § 301.7701-3. (See IRM 5.1.21.3, *Characteristics of a Limited Liability Company (LLC)*, and IRM 5.1.21.4, *Classifications Available to LLC Entities*.) For federal tax purposes, an LLC may be:

- Classified as an association taxable as a corporation,
- Classified as a partnership, or
- Disregarded as an entity separate from its owner, known as a "disregarded entity."

Caution:

An otherwise disregarded LLC is treated as a corporation for employment taxes on wages paid on or after January 1, 2009 and as a separate entity for certain excise tax liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.

Note:

When an LLC is wholly owned as community property by husband and wife and the income is reported on a Form 1040, the LLC is disregarded. If the income is reported on a Form 1065, the LLC is classified as a partnership.

2. **Income Taxes.** The income tax filing requirements for an LLC are determined by its classification.
 - An LLC that is classified as a partnership or as an association taxable as a corporation is required to report income in the name and EIN of the LLC.
 - An LLC that is a disregarded entity has no income tax filing requirement. The income and expenses pass through to the single member owner (SMO) and are reported on the SMO's income tax return. If the SMO is an individual, items of income or expense pass through to the SMO as if the business were a sole proprietorship. If the SMO is another entity type, items of income or expense pass through as if the business were a branch or division of the SMO's business.
3. **Employment Taxes on Wages Paid Prior to January 1, 2009.** Under applicable regulations, the liable taxpayer is determined by the classification of the LLC during each tax period. When the LLC is classified as a partnership or as an association taxable as a corporation, the LLC is liable for employment taxes. For tax periods ended before January 1, 2009, a disregarded LLC has no liability for employment taxes; the SMO of the LLC is the liable party.

Caution:

Notice 99-6 allowed the owner of a disregarded entity to report employment taxes on wages paid prior to January 1, 2009 in the name and EIN of the LLC, even though the SMO is ultimately liable for their payment. Therefore, it may appear that the LLC owes the liability, when in fact the SMO is the liable taxpayer. You must identify the classification of the LLC to determine the liable taxpayer when employment taxes are assessed in the name and EIN of the LLC. Notice 99-6 is obsolete as of January 1, 2009.

Note:

In community property states, when an LLC is wholly owned by a husband and wife as community property and the income from the LLC is reported on the spouses' Form 1040, the LLC is disregarded. The community of the husband and wife is the liable "taxpayer" for *employment* taxes on wages paid prior to January 1, 2009 that were reported in the name and EIN of the LLC. If the income was reported on a Form 1065, the LLC would be the liable taxpayer for employment tax purposes.

4. **Employment Taxes on Wages Paid on or After January 1, 2009.** Under applicable regulations, the LLC is always liable for these employment taxes, even when it is a disregarded entity for federal *income* tax purposes. Treas. Reg. § 301.7701-2(c)(2)(iv)(B). Caseworkers should consider whether it is necessary to assert the TFRP against the members and/or managers of the LLC, if a TFRP determination has not already been made.
5. **Excise Taxes.** When the LLC is classified as a partnership or as an association taxable as a corporation, the LLC is liable for excise taxes. For excise tax periods ended prior to January 1, 2008, when the LLC is a disregarded entity, the owner is liable for excise taxes. Under the applicable regulations, the LLC is liable for certain excise tax liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.

Reminder:

Excise taxes are reported in the name and EIN of the liable taxpayer; therefore, the taxpayer for excise taxes is identified in the assessment. When the assessment is made in the name and EIN of the LLC, the LLC is liable.

5.9.13.14.1 (09-10-2013)

Limited Liability Company as Debtor

1. **Proof of Claim.** Include the following liabilities on a proof of claim in the LLC's bankruptcy:
 - Income tax liabilities assessed in the name and EIN of the LLC.

- Excise tax liabilities assessed in the name and EIN of the LLC.
- Employment taxes reported in the name and EIN of an LLC that elected to be classified as an association taxable as a corporation or as a partnership.
- Employment taxes on wages paid on or after January 1, 2009, regardless of the classification of the LLC.

Reminder:

Employment taxes on wages for tax periods ended before January 1, 2009 where the LLC is a disregarded entity are not included on a proof of claim in the LLC's bankruptcy, as the SMO is liable for those taxes.

2. **Disregarded Entity Employment Taxes.** A proof of claim will generally not be filed in the LLC's bankruptcy when the LLC is a disregarded entity for employment tax periods ended before January 1, 2009. However, even if an LLC is presently a disregarded entity, it may still be liable for taxes that arose out of periods when it was not a disregarded entity or when an entity of which the LLC is the successor was not disregarded. When a disregarded LLC is liable for taxes that arose out of periods when it was not a disregarded entity or when an entity of which the LLC is the successor was not disregarded, a proof of claim should be filed.
3. **Collection Against SMO.** When a single member disregarded entity LLC files bankruptcy, but the SMO does not, collection action may continue for employment tax liabilities owed by the SMO that were reported in the name and EIN of the LLC for wages paid prior to January 1, 2009. The liability is owed by the SMO rather than by the LLC in bankruptcy. In this case a TC 520 cc 84 should be input on the applicable modules under the LLC EIN as an alert to field Collection to contact Insolvency before taking enforcement action. Upon contact, the revenue officer will be advised by Insolvency to pursue collection from the SMO and not the LLC.
4. **Protective Claim.** If the tax status of the LLC cannot be determined prior to the bar date, Insolvency should file a protective proof of claim with an annotation explaining the IRS has not been able to ascertain if the debtor is the entity liable for the tax. A protective proof of claim could also be filed when Insolvency is still investigating if the LLC is liable for taxes that arose out of periods when it was not a disregarded entity or when an entity of which the LLC is the successor was not disregarded.
5. **Counsel Guidance.** To ensure the government's interests are protected, Area Counsel may be consulted when issues arise related to claims against LLCs that cannot be easily resolved.

5.9.13.14.2 (09-10-2013)

Owner of Limited Liability Company as Debtor

1. **Proof of Claim.** Include the following liabilities on a proof of claim when the *owner* of an LLC files bankruptcy:
 - Income taxes reported in the name and TIN of the owner.
 - Excise taxes assessed in the name and EIN of the owner.
 - Employment taxes on wages paid before January 1, 2009 for a disregarded entity LLC reported in the name and EIN of the SMO or the name and EIN of the LLC.
 - Trust fund recovery penalty liability against the SMO, if applicable, for employment or excise tax periods where the LLC was the taxpayer.
2. **Determining Liable Party.** When a single member owner is the bankruptcy petitioner, Insolvency may not be aware of a liability arising from the activities of a disregarded LLC. IDRS and CFOL do not identify if LLCs are disregarded, nor do they cross-reference LLC EINs to the single member's SSN. The debtor's bankruptcy plan or schedules may identify the debtor's ownership of an LLC and if it is a disregarded entity for tax purposes. If the plan or schedules do not identify whether an LLC is a disregarded entity, and the LLC's classification cannot be determined by checking internal sources identified in IRM 5.1.21, *Collecting from Limited Liability Companies*, the caseworker should consider questioning the debtor at the 341 meeting or directing an OI to a revenue officer to obtain this information. If the caseworker cannot determine the status of the LLC by following these avenues, the caseworker may consider referring the case to Area Counsel to pursue a Bankruptcy Rule 2004 examination of the debtor to obtain this information.
3. **Protective Claim.** If the tax status of the LLC cannot be determined prior to the bar date, a protective proof of claim should be filed with an annotation explaining the IRS has not been able to ascertain if the debtor is the person liable for the tax.
4. **Counsel Guidance.** To ensure the government's interests are protected, Area Counsel may be consulted when issues arise in determining liabilities that cannot be easily resolved.

5.9.13.15 (09-10-2013)

Consolidated Chapter 11 Filings

1. **Group Income Tax Liabilities on Proofs of Claim.** Because every member of a consolidated group is severally liable for the group's *income tax liabilities*, the Service should generally file separate claims in each member's bankruptcy case and should list the entire group's *income tax liability*, even in a jointly administered case. Local rules or standing orders may specify filing of one proof of claim listing both separate and group liabilities for a jointly administered consolidated group.
 - A. In all cases, Area Counsel and Large Business and International (LB&I) should be consulted before filing a claim for the entire group liability.
 - B. Counsel is available to assist Insolvency with the preparation of the proofs of claim for the group's liabilities.
 - C. Language on the claim must clarify, while each member of the group is severally liable for the group liability, the Service seeks to collect the liability only once.
2. **Treatment of Employment Taxes.** Employment tax liabilities should be treated as belonging solely to the subsidiary that is shown as the employer of record. Claims for employment taxes can be filed only for the entity that incurred the employment tax liability.
3. **Excise Taxes.** Generally, excise taxes should be treated as belonging solely to the subsidiary that is liable for: (1) paying the tax itself; or (2) paying over the taxes it collected. But exceptions may apply. When claims for excise tax liabilities are being considered, Area Counsel must be consulted.

5.9.13.16 (03-01-2006)

Criminal Investigation Involvement

1. **CI Involvement on Cases.** If, at any time, research identifies Criminal Investigation's (CI) involvement on accounts assigned to Insolvency, even if the CI freeze code is input to only one of several tax modules, Insolvency must promptly contact CI to notify them of the bankruptcy proceeding.
2. **CI and the Filing of a Proof of Claim.** Insolvency must inform CI a proof of claim may be filed in all cases with a CI freeze code. If CI indicates the filing of a claim may be detrimental to CI's case, Insolvency should schedule a meeting with the Special Agent, the Special Agent in Charge (SAC), the Insolvency specialist and manager, and SBSE and Criminal Tax Counsel to discuss the coordination of the civil and criminal cases. (See IRM 5.9.4.11, *Bankruptcy Fraud*, and IRM 5.9.4.12, *Criminal Investigation (CI) Controls on Tax Accounts*.)

Reminder:

Insolvency employees must exercise caution and discretion when dealing with debtors who are under criminal investigation by CI.

5.9.13.17 (09-10-2014)

Below Tolerance - Non-Filing of a Proof of Claim

1. **Tolerance for Filing a Proof of Claim.** The tolerances listed in *Exhibit 5.9.13-1* allow for the non-filing of proofs of claim when criteria listed in the Exhibit are met.

Note:

APOC files systemic claims well under the required criteria.≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡≡

- 2. **Claim Considerations.** In cases where the outstanding balance is less than stated in *Exhibit 5.9.13-1(below tolerance)*, Insolvency's determination to file a manual claim should be based on various factors, including:
 - Cost of filing a claim in relation to what is owed.
 - Potential for collection.
 - Consideration of the potential for collection from exempt, excluded, or abandoned assets or other sources, such as a non-debtor spouse.
- 3. **Filing of Claim Optional.** The established tolerance amount does not preclude or prohibit Insolvency groups from filing a proof of claim in any case, or in every case, if local practice allows.

5.9.13.18 (09-10-2014) Claim Periods

- 1. **Determination of Categories/Liabilities.** When preparing a manual proof of claim, Insolvency determines the category of each liability listed on the claim. All tax liabilities accrued as of the petition date must be included on the claim.
- 2. **Pre-petition versus Post-petition Income Taxes.** During the proof of claim preparation, Insolvency must distinguish if a tax account is a pre-petition or a post-petition tax liability.
 - A. **When Income Tax Liabilities Arise.** Income tax liabilities arise at the end of the taxable period. However, see paragraph (c) below with respect to corporate income taxes.
Example:
The income tax liability for the calendar (tax) year 2003 arose on December 31, 2003, the date of the ending of that taxable period.
 - B. **Chapters 7 and 11 - Individuals.** Pursuant to IRC § 1398, individuals in Chapter 7 and 11 cases can elect to treat the taxable year in which the bankruptcy case was filed as two taxable years. The first year ends on the day before the commencement of the bankruptcy case. The liability for this year, therefore, becomes *pre-petition*. The second year begins on the day the bankruptcy petition is filed. The liability for this year is *post-petition*.
 - C. **Corporate Income Tax – "Split" Liability Pre-BAPCPA.** For cases in the 8th, 9th, and 11th Circuits filed before October 17, 2005, petition-year liabilities in corporate Chapter 7 and 11 cases could be split into pre-petition and post-petition portions, usually by prorating the liabilities based on the number of pre-petition and post-petition days. These authorities should be followed in their respective jurisdictions, but only with respect to income tax liabilities in corporate Chapters 7 and 11 cases. Counsel should be consulted to determine the rule for a particular jurisdiction.
 - D. **BAPCPA Provision.** For cases filed on or after October 17, 2005, in the case of priority income tax claims, there is no split liability as decided by the three Circuit Courts of Appeal. Pre-petition priority income tax claims are defined as taxes for taxable years ending on or before the petition date (11 USC § 507(a)(8)(A)). This change overrules the decisions of the three Circuit Courts of Appeal for bankruptcy cases filed on or after October 17, 2005.
- 3. **Pre-petition versus Post-petition Employment Taxes.** An employer's liability for employment taxes accrues when the wages in question are paid. For debtors who owe employment taxes and file bankruptcy during a quarter, the employment taxes attributable to wages paid pre-petition should be included on the proof of claim as a pre-petition priority tax. In addition, wages which do not exceed a certain amount (currently \$12,475) that were earned during the 180 days (90 days pre-BAPCPA) before the petition date or the cessation of the debtor's business, but have not been paid, are included on the proof of claim as a pre-petition priority tax. 11 USC 507(a)(4). The amount may need to be estimated until the employment tax return is actually filed. The employment taxes for the remainder of the quarter will be claimed as an administrative expense.
- 4. **Post-petition Claims.** Administrative claims and 11 USC § 1305 claims for *post-petition* liabilities may be filed by the Service during the pendency of a bankruptcy. (See *IRM 5.9.13.11, Administrative Claims, and IRM 5.9.13.10, Section 1305 Claims*.)

5.9.13.18.1 (09-10-2014) Unassessed Claims

- 1. **Protecting the Government's Interests.** By meeting the bar date time frame, an "unassessed" (estimated) proof of claim protects the government's interests before the exact liability is determined.
 - A. An unassessed claim should be followed as soon as possible by an amended or a supplemental proof of claim stating the correct tax liability once a debtor files a return, or Examination determines the amount of a tax liability or tax deficiency.
 - B. An unassessed claim may also be filed when Exam has determined a proposed tax amount, but an assessment is prohibited because the debtor's time for filing a Tax Court petition has not expired due to the automatic stay, or Tax Court proceedings are pending.
 - C. APOC will estimate claims when return information is available. However, if no return information is available for a period from which to compute an estimate, APOC will annotate "Not Filed" next to the period, and the tax due column will default to "\$100.00."
- 2. **Combining Assessed and Unassessed Amounts.** One proof of claim form can include both assessed (i.e., the exact amount owing has been determined) and unassessed amounts.
- 3. **Factual Basis.** The Service's unassessed claim must have a factual basis and cannot be inflated. The unassessed tax liability must be based on as much information as possible.

Caution:

Insolvency employees should not expend unnecessary resources if evidence indicates the probability a refund or a no tax due situation exists.

- 4. **Base on Resources Available.** The resources Insolvency may use to obtain a factual tax basis include, but are not limited to:

- IDRS data using command codes such as IRPTR, PMFOL, RTVUE, and BRTVU
- Last filed return information
- Income or expense schedules
- Statement of financial affairs
- Information available from revenue officers (from RO's files and/or oral communication)
- Examination ("admin") files or information from Examination functions
- Underreporter information

- Information from debtor or debtor's attorney

Note:

Recent bankruptcy filings (e.g., dismissals) may also provide information to use in the current case, especially if prior RO field involvement or prior litigation has taken place. Insolvency should review AIS, ICS, and paper files as available.

5. **Liability on Last Filed Return (LFR) for IMF.** In preparing a manual proof of claim, if the caseworker is relying on the LFR as a basis for estimating unfiled returns, the caseworker should use the LFR total of assessed tax transaction codes (TC 150, 290, 300, etc.) less any credits (TC 640, 650, 660, 670, etc.) appearing on the tax module being estimated in calculating the total tax due. To the LFR figure, the caseworker must increase the total tax due 5% on an annual basis to allow for inflation.

Example:

The LFR is 2009, and the unfiled returns are for 2010 and 2011. The total tax due on the 2009 period is \$50,000. Using the 5% increase for 2010, the estimated tax due is \$52,500 (\$50,000 X 1.05) less any credits showing on the 2010 tax module. The estimated tax for 2011 is \$55,125 (\$52,500 X 1.05) less any credits appearing on the tax module for 2011.

6. **Liability on LFR for BMF.** Business tax returns are based on quarterly filings (such as Form 941), calendar year filings (such as Form 940 or Form 944), or fiscal year filings (some Forms 1120). As such, manual calculations of estimated BMF tax are more involved than IMF calculations.

- A. **Quarterly Returns.** For estimating quarterly returns such as Forms 941, the caseworker should calculate the tax on the LFR period in the same calendar year and subtract credits shown on the unfiled period. For each subsequent unfiled quarterly period of that calendar year, the unassessed claim is based on the LFR for that calendar year. However, if an unfiled quarterly return occurs in the next calendar year when the LFR was received for the prior year, 5% is added to the tax liability for the LFR. That dollar amount, less any credits, is used for all four quarters of the subsequent calendar year.

Example:

The second quarter Form 941 for tax year 2010 is the LFR and has a tax liability of \$10,000. Unfiled returns for the third and fourth quarters of 2010 are estimated at \$10,000. Forms 941 for the first and second quarters of tax year 2011 also have not been filed. The estimated amount for each of those periods is \$10,500 (\$10,000 X 1.05).

- B. **Annual Returns/Fiscal Year Returns.** For estimating unfiled annual or fiscal year returns such as Forms 940, 944, or 1120, the estimated tax is calculated by adding 5% to the tax liability from the LFR and deducting any prepaid credits.
- C. **Sporadic Filings.** If unfiled returns are mingled between filed returns, the LFR period is based on the most recent LFR prior to the unassessed period.

Example:

For tax year 2010, the second quarter Form 941 is the LFR with a liability of \$5,000. A Form 941 return has not been filed for the third quarter of that tax year. A return has been received for the fourth quarter of tax year 2010 with a liability of \$6,000, but no return has been received for the first quarter of tax year 2011. Following the instructions above, the unassessed claim for the third quarter of tax year 2010 is \$5,000. The estimated liability for the first quarter of tax year 2011 is \$6,300 (\$6,000 X 1.05).

7. **Penalties and Interest.** All applicable pre-petition penalties and interest for *filed* returns with pending assessments should be computed and claimed. If unassessed liabilities are listed for *unfiled returns*, penalties and/or interest do not have to be computed unless required by local guidelines.
8. **IRC § 6020(b) Returns.** Periods for which tax returns are prepared by the Service under authority of IRC § 6020(b) should be considered to be unassessed (estimated) liabilities *if the 30-day period for the taxpayer to respond to a proposed assessment is still open, and the taxpayer has yet to respond.*

Note:

Delegation Order 5-2 (Rev. 1) gives designated Field Insolvency caseworkers the authority to prepare and execute IRC § 6020(b) returns.

9. **Tax Subject to Deficiency Procedures.** Taxes subject to deficiency procedures remain estimates unless the taxpayer signs a consent to assessment or the liability is determined by the Tax Court. If the taxpayer disagrees with the proposed assessment or fails to respond within the 30 day period, the Service must then issue a statutory notice of deficiency which allows the taxpayer to file a Tax Court petition. The automatic stay does not prevent the Service from issuing the notice of deficiency. However, the stay prevents the individual taxpayer from filing a petition with the Tax Court during bankruptcy for pre-petition deficiencies. The stay prevents a corporate debtor from petitioning the Tax Court for a taxable period the bankruptcy court may determine, which includes pre-petition and post-petition periods.
10. **Closing Codes (cc).** When an estimated claim is filed, the closing code assigned to the TC 520 freeze on the estimated period should be cc 60 or cc 61 to prevent erroneous refunds. IRM 5.9.5.6.1, *Closing Codes*, explains the conditions for each closing code.
11. **AIS Statements.** The proof of claim should include a statement identifying the reason for the unassessed liability. A support file in AIS contains allowable standardized statements.
12. **Liability Not Pursued.** After a proof of claim has been filed with unassessed (estimated) amounts, and a determination is made the estimated liability has no factual basis and will not be pursued (for example, by examination process or underreporter unit) or a return is filed showing little or no tax due, the proof of claim should be amended or withdrawn, as appropriate. If a claim is withdrawn, any trustee payments received must be refunded to the trustee. If trustee payments have been applied to periods that are no longer being pursued, the payments need to be moved to other balance due periods, or refunded to the trustee, whichever action is appropriate.
13. **Zero Amendment.** The Electronic Proofs of Claim (EPOC) system does not allow for electronic withdrawal of claims. Because of this, for most courts a claim is withdrawn by filing an amended claim for \$0.00. A few courts do not accept this method as a withdrawal of the claim, and require the Service to send a letter instructing the court to remove a specific claim from the claims register. For those courts, caseworkers can generate Letter 3931, Request to Withdraw Administrative Proof Claim, on AIS for mailing to the court.

**5.9.13.18.2 (09-10-2014)
Addressing Unfiled Returns**

1. **Delinquent Return Limits.** Standard IRS practice usually limits the pursuit of unfiled returns to the prior six years. In certain instances the Service may find it advantageous to require filing of delinquent returns going back eight years. (See IRM 5.9.14.2.10, *Case Compliance*.) Pursuit of unfiled returns for periods preceding the prior six years requires managerial approval. (See IRM 5.1.11.6.1, *Enforcement Determination*.)
2. **Publication 1.** If a debtor has unfiled returns, but has no current assessed tax liabilities, the Insolvency caseworker must provide him/her with a copy of IRS Publication 1 upon initial contact to secure those returns whether that contact is made by phone, letter, or attendance at a 341 hearing or other in-person meeting.
3. **1714 Letters.** When a caseworker's initial review or APOC processing indicates a debtor is responsible for unfiled returns with tax potential, the caseworker usually should send AIS Letter 1714, *Request for Returns or Return Information*, to the debtor with a courtesy copy to the debtor's attorney. Caseworkers may follow local practice in sending courtesy copies to the trustee, and may choose not to send them where the trustee has indicated they are not of assistance. While most AIS letters do not require previous actions, a caseworker cannot generate and print AIS Letter 1714 unless a claim has been prepared which reflects an unassessed liability. This liability will be shown on the claim as estimated condition #1, Unassessed - No Return. Letter 1714 is generated systemically when APOC computes a claim for an unassessed pre-petition liability. The letter is then available on AIS for printing.

Note:

If APOC is unavailable for a protracted length of time, manual proofs of claim along with manual 1714 letters should be prepared.

4. **Letter 1714 Follow-up.** There is no need to set follow-up dates for Letters 1714 sent to individual debtors. Follow-up dates should be set for Letters 1714 sent to debtors which are corporations, partnerships or LLCs. A 15 day AIS follow-up date should be established on AIS to coincide with the debtor's response deadline as stated in Letter 1714. (See IRM Exhibit 5.9.4-1, *Inputting Follow-up Dates*, for steps in setting a follow-up date.) Upon follow-up, the caseworker must review the case to verify if the requested returns have been filed or if the debtor has provided pertinent information regarding the filing or non-filing of the delinquent returns.
5. **Reply to Letter 1714.** Responses to the 1714 letter may be written or telephonic. Written replies may contain copies of returns or original returns. The following table explains actions required for potential replies to Letter 1714.

IF...	THEN...
the debtor indicates the date and place the return was filed and the provided facts cannot be confirmed,	an unassessed claim may be considered, and the AIS history must be documented.
the debtor explains why filing is not required and the facts provided conflict with other case resource materials,	an unassessed claim may be considered, and the AIS history must be documented.
the debtor estimates the tax due, gives reasons the return has not been filed, and provides an estimated filing date,	the caseworker should compare the estimate of tax due provided by the debtor against the case resource materials, and prepare an unassessed claim as necessary, documenting actions in the AIS history.
the debtor replies to Letter 1714 and provides original returns,	the caseworker must: <ul style="list-style-type: none"> • ensure the return has been date stamped legibly on the first page; • prepare Form 3210 to transmit return; • forward return to Submission Processing in the appropriate Campus; and • document AIS history with return MFT/period, tax liability and any estimated penalty for future claim consideration or preparation.
the debtor replies to Letter 1714 and provides copies of returns,	the caseworker must document the AIS history with return MFT/period, tax liability and any estimated penalty for future claim consideration or preparation.

6. **No Reply to Letter 1714.** In some cases, the debtor will not respond to Letter 1714. In those cases, the caseworker should consider the appropriate next action which may include:

- A. Attendance at 341 hearing to secure the return(s);
- B. Creating an OI for a revenue officer to collect the return(s);
- C. Preparation of an IRC 6020(b) return;

Note:

Delegation Order 5-2 (Rev. 1) gives specified bankruptcy advisors and specialists the authority to prepare and execute IRC 6020(b) returns. IRM 5.1.11.6.7, *IRC 6020(b) Authority*, IRM 5.1.11.6.7.1, *Taxpayer Contact*, and IRM 5.1.11.6.7.2, *Preparation and Approval of 6020(b) Returns*, provide guidance and instructions on IRC 6020(b) procedures.

- D. Contacting the debtor or debtor's attorney by phone to secure returns or return information;
- E. Referral to Counsel to dismiss; or
- F. Preparation of an estimated claim or allowing an existing estimated claim to stand.

All actions taken to secure delinquent returns, must be documented in the AIS history.

7. **Securing Unfiled Returns at the § 341 Hearing.** For cases filed on or after October 17, 2005:
 - A. 11 USC § 521(e)(2) requires the debtor to provide the trustee with a copy of the federal income tax return for the last tax year ending before the petition date before the § 341 hearing;
 - B. 11 USC § 521(f) requires the debtor to file copies of selected income tax returns with the court at the same time it files the return(s) with the IRS at the request of the court, the trustee, or a party in interest; and
 - C. 11 USC § 1308(a) requires Chapter 13 debtors to file all required returns for tax periods ending during the four-year period ending on the petition date.
8. **Unfiled Returns below the Required Criteria.** Where returns are due and yet remain unfiled, and the caseworker has determined the aggregate liability of unfiled returns and assessed liability does not exceed the amount noted within *Exhibit 5.9.13-1* criteria, no proof of claim need be prepared. The case worker will:
 - A. Update the "case class" field to indicate the case is below the required criteria for proof of claim processing; and
 - B. Document the AIS History.
9. **No Claims Required Below Tolerance Criteria.** If completion of the initial review reveals all required pre-petition returns are filed and the liability does not exceed the claim tolerance criteria outlined in *Exhibit 5.9.13-1*, no claim is required. However, Insolvency must maintain the bankruptcy freeze on the account. The caseworker will take the following steps:

STEP	ACTION
1	Access case on AIS. (See IRM Exhibit 5.9.11-1, <i>Accessing a Case on AIS</i> .)
2	If a check mark appears in the "Proof Req'd" field, click the field to remove the check mark, and click "N" in the drop down list found to the right of the "Proof Req'd" field.
3	Click "Save" on the AIS tool bar.
4	Click the "History" button on the tool bar to access the History Screen.
5	Click the "Insert" button on the tool bar and type a history entry describing the actions taken.
6	Click "Save" on the History Screen tool bar to save the new history entry.

10. **Delinquent Returns Not Filed.** If the debtor does not respond to the Service's request for unfiled returns and potential liabilities exist, the caseworker should take the actions in the table below.

IF returns remain unfiled and...	THEN...
the total liability of the unfiled periods exceeds the aggregate total in <i>Exhibit 5.9.13-1</i> ,	the caseworker will file a proof of claim for all periods with liabilities, both actual and estimated.
the total liability of the unfiled periods, even though below the required tolerance, when added to the assessed liability exceeds the tolerance,	

11. **Insolvency Responsibilities.** Although the trustee can move for dismissal or conversion if tax returns remain unfiled, Field Insolvency must assume the responsibility for filing a motion to dismiss on the grounds of non-compliance. If missing tax returns are not filed or the debtor does not give a credible explanation as to why the debtor is not liable for those returns by the deadline given on the 1714 letter, Insolvency caseworkers should consult *Exhibit 5.9.13-1* and IRM 5.9.4.14.4, *Referral Tolerances*, to determine if the Service should move for dismissal or conversion. Appropriate administrative actions (see paragraph (6) above) must be pursued, time permitting, before making a referral to Counsel for dismissal based on unfiled returns.

Note:

If the aggregate (the sum total of) potential tax due is less than the amount stated in *Exhibit 5.9.13-1* further resources need not be expended to refer for dismissal or conversion.

5.9.13.18.3 (09-10-2014)

Federal Unemployment Tax Act Tax Claims

1. **State Credit Adjustment.** IRC § 3302 reduces the federal credit taken on a Federal Unemployment Tax Return (FUTA) return if the employer has made late payments to the state unemployment fund. Although it might be presumed the Service can include this reduction in the FUTA credit on its proof of claim, 11 USC § 502(b)(8) alters the ability of the Service to file claims for these credits. In short, state credit adjustments to pre-petition FUTA accounts (MFT 10) that result in an additional liability to the debtor generally cannot be included on the Service's proof of claim.
2. **Exceptions.** The disallowance of claims under 502(b)(8) for the reduction of the FUTA credit for state unemployment payments only applies to pre-petition payments of wages, salaries or commissions. If a trustee fails to make timely payment of state unemployment taxes, the Service may assert an administrative claim for the reduction in the FUTA credit. If, however, the trustee is without fault for the failure to make a FUTA tax payment by the required date, the full state credit may be allowed to the debtor (IRC § 3302(a)(5)).
3. **Identifying State Adjustments.** A FUTA adjustment resulting from a state's reduction of the FUTA credit can be identified on an IDRS tax mod for tax form 940 by a TC 290 which is not preceded by an amended tax return identifier (usually TC 97X). Along with an extract number and the dollar amount a "T" (for "tax") will appear followed by the two letter state abbreviation, e.g., TFL. The amount of this TC 290 cannot be included on the Service's proof of claim.

Caution:

If a TC 290 appears with a transaction code denoting receipt of an amended return or contains a W (for wages) followed by the two letter state abbreviation, e.g., WFL, that dollar amount should be included in the Service's proof of claim.

4. **APOC Update.** At this time APOC is not programmed to omit TC 290 assessments resulting from a reduction of a state credit on FUTA returns. Therefore, MFT 10 claims must be reviewed manually and adjusted if necessary prior to mailing or electronically transmitting the claims to the court.

5.9.13.18.4 (03-09-2016)

Duplicate and Mirror Assessments and NMF Periods

1. **Mirror Modules (MFT 31 and MFT 65) and NMF Modules.** All of a debtor's tax liabilities accrued as of the petition date should be included on the proof of claim. This includes MFT 31 and MFT 65 mirror modules and modules on the non master file (NMF). The claim procedures for an MFT 31 or MFT 65 mirror or NMF module are the same as for an MFT 30 module. The caseworker must determine:

- If the tax liability is pre-petition or post-petition,
- The correct classification of the mirror module, and
- The accurate claim amount.

Note:

Claim calculations for NMF modules must be computed manually.

Caution:

MFT 31 is also used for restitution based assessments which are not mirrored assessments. Restitution based assessments can be identified as using MFT 31 and having TC 971 AC 102 on the module(s). (See IRM 5.9.13.18.5 below for information on processing restitution assessments)

2. **Duplicate Spousal MFT 31, MFT 65, and Trust Fund Recovery Penalty (TFRP) Assessments.** A proof of claim may list two MFT 31, two MFT 65, or two TFRP modules for the same period when a married couple files a joint bankruptcy. The amounts of the assessments for the same period may be identical, or one may be larger than the other. When AIS computes the total amount of a claim on Form B410, the sum includes the amounts of each module. The total amount computed by AIS cannot be systemically overridden, so when both spouses have duplicate MFT 31, MFT 65, and/or TFRP assessments, the amount of the claim on Form B410 is overstated. Caseworkers should determine whether the assessments are for the same liabilities. If so, the claim should be filed according to local procedures in one of two ways.

Note:

The Proof of Claim Statements on AIS contain several options for each procedure. The statement chosen by the caseworker may vary depending on local practice.

- A. The caseworker may omit one spouse's MFT 31, MFT 65, and/or TFRP assessment(s) from the claim and provide a clarifying statement on the proof of claim that both debtors are liable, but that only one assessment is being shown on the proof of claim to prevent overpayment. If the assessments are in differing amounts, the caseworker should determine which assessment should be included on the proof of claim. In most cases, this will be the higher assessment, but in some situations, the lower assessment should be used. For example, when payments have been made on one account, but have not yet been cross-referenced to the other account, the lower assessment should be included on the proof of claim to prevent overpayment.

Example:

Proof of Claim Statement 20 is one option for providing this information. It states: "Separate assmts, one assmt is being claimed to avoid overpayment." There are other options available in the Proof of Claim statements on AIS.

- B. The caseworker may include both spouses' MFT 31, MFT 65 and/or TFRP assessments and provide a suitable clarifying statement on the proof of claim that both assessments are included, but the amount is to be paid only once.

Example:

Proof of Claim Statement 30 is one option for providing this information. It states: "Separate Assmts. Both are shown, but the amt. is to be collected once." There are other options available in the Proof of Claim statements on AIS.

Caution:

Because the Confirmed Plan Monitoring (CPM) screen populates systemically from the proof of claim, with this option the duplicate assessments will both populate to the CPM screen. Caseworkers must remember to delete the duplicate assessment from the CPM so the assessment is not being paid twice through the plan. If the assessments are in different amounts, the caseworker will need to determine which assessment should be included on the proof of claim, as discussed above.

5.9.13.18.5 (03-09-2016) Restitution Assessments

1. **Restitution Assessments on APOC.** Restitution based assessments can be identified as using MFT 31 and having TC 971 AC 102 on the module(s). For purposes of a bankruptcy case, a restitution assessment is classified in the same manner as the tax module to which it relates. The Automated Proof of Claim system (APOC) will recognize the assessment and classify it based on the tax module. No flag will be raised solely due to the fact that the assessment is for restitution.

Example:

The Judgment and Commitment (J&C) Order directs the taxpayer to pay restitution for income tax the taxpayer evaded for the tax year 2005. The amount of restitution is assessed on September 12, 2011. On September 12, 2012, the taxpayer files a Chapter 13 bankruptcy case. The restitution assessment is not classified as priority, as the return was due more than three years prior to the filing of the bankruptcy petition, and the restitution assessment was more than 240 days prior to the bankruptcy petition. Because the restitution assessment does not fall within any of the reasons for classifying it as priority, APOC will classify the restitution assessment and the related interest as general unsecured on the proof of claim.

Note:

An APOC flag will be issued if a Notice of Federal Tax Lien (NFTL) was filed for the period. If the NFTL was filed with respect to the restitution assessment, the NFTL will carry an "R" and the form number of the underlying tax source, such as "R1040." The flag should be cleared in accordance with the instructions in IRM 5.9.14.2.9(5)j, *Secured Period Flag*.

2. **Manual Proof of Claim Preparation.** If it is necessary for a caseworker to create a proof of claim manually, caseworkers should follow the regular classification rules for the type of tax for which restitution is to be made. Interest on the restitution assessment will have the same classification as the tax assessment. If the failure to pay penalty accrued on the restitution assessment, it will either be secured or general unsecured.

3. **Mirror Assessments.** A mirror assessment of the restitution-based assessment for the same type of tax is created based on a return filed, an assessment made after an audit, or the creation of a 6020(b) return. The caseworker must determine:

- If the tax liability is pre-petition or post-petition,
- The correct classification of the mirror module, and
- The accurate claim amount.

Example:

The taxpayer is convicted of income tax evasion for the 2006 tax year. In the J&C Order, the court directs the taxpayer to pay restitution of the evaded income tax in the amount of \$10,000. The IRS conducts a civil exam of the taxpayer after his conviction and determines that the deficiency for the 2006 tax year was \$15,000. There will be two assessments made: the first one for \$10,000 based on the restitution order and a second, separate assessment will be made pursuant to a civil exam in the amount of \$15,000.

As the above example illustrates, the proof of claim may list two modules (MFT 30 and MFT 31) for the same period when a restitution assessment is made. The amounts of the assessments for the same period may be identical, or one may be larger than the other.

The same duplicate assessment shall be made for restitution arising from taxes other than income taxes, such as employment taxes.

Example:

If restitution is ordered against an individual defendant for failure to pay business employment taxes, the restitution is actually based on the employment tax liability of the business, not the individual's personal liability. Nonetheless, business tax liability ordered as restitution can be assessed against the individual.

When AIS computes the total amount of a claim on Form B410, the sum includes the amounts of each module. The total amount computed by AIS cannot be systemically overridden, so when both the civil tax assessment and restitution assessment are on the claim, the amount of the claim on Form B410 is overstated. The civil tax assessment should always be included on the proof of claim. Caseworkers will need to determine whether the civil tax assessment and the restitution-based assessment are for the same liabilities and taxpayer.

- A. **Assessments are for the same liabilities.** The claim should be filed in one of two ways as listed below:

- If the civil tax assessment is greater than the amount of the restitution-based assessment, then the restitution-based assessment should be omitted, but the caseworker should provide a clarifying statement that the restitution-based assessment is omitted to avoid overpayment.

Example:

Proof of Claim Statement 20 is one option for providing this information. It states: "Separate assmts, one assmt is being claimed to avoid overpayment." There are other options available in the Proof of Claim statements on AIS.

- If the restitution-based assessment is greater than the civil tax assessment, then BOTH assessments should be included on the proof of claim and a clarifying statement should be included to provide that both assessments are included but the amount should only be paid once.

Example:

Proof of Claim Statement 30 is one option for providing this information. It states: "Separate Assmts. Both are shown, but the amt. is to be collected once." There are other options available in the Proof of Claim statements on AIS.

Caution:

Because the Confirmed Plan Monitoring (CPM) screen populates systemically from the proof of claim, with this option the duplicate assessments will both populate to the CPM screen. Caseworkers must remember to delete one of the assessments from the CPM so the assessment is not being paid twice through the plan. If the assessments are in different amounts, the caseworker will need to determine which assessment should be included on the proof of claim and CPM, as discussed above.

- B. **Assessments are NOT for the same liabilities.** No clarifying statements are needed.

Any payments made towards the restitution-based assessment shall be applied towards the tax liability assessed pursuant to the civil exam to avoid double collection of the assessment. Any payments made towards the individual defendant's restitution-based assessment for failure to pay business employment taxes shall be applied towards the employment tax liability assessed against the business pursuant to the civil exam to avoid double collection of the assessment against the business. The IRS cannot collect in full both the restitution-based assessment and the business employment tax liabilities of that separate business. The prohibition against double collection will come into play. The caseworker must adjust the unpaid tax liability of the corresponding business entity to account for any payments made through restitution or the restitution-based assessment against the individual defendant. The prohibition against double collection would not apply, however, with respect to the collection of both the individual defendant's restitution-based assessment based on the employment tax and his personal civil tax liabilities for the same periods.

5.9.13.18.6 (03-09-2016) Affordable Care Act Provisions

1. IRC 5000A - Individual Shared Responsibility Provision.

A. **Assessment and Treatment under Bankruptcy.** When applicable, the Individual Shared Responsibility Payment (SRP) liability will be assessed under MFT 35 or for mirrored accounts, MFT 65. Even though the SRP may be thought of as a penalty, it is not treated as one when filing a proof of claim. Rather, for bankruptcy purposes, the SRP will be treated as an excise tax under 11 USC § 507 (a)(8)(E). See IRM 5.9.13.19.3, *Classifying Claims-Unsecured Priority* for additional information.

Note:

The SRP follows the tax year Form 1040, 1040A or 1040EZ information from which it arose. Since there is no 'tax return' on the SRP module, the caseworker must use the Form 1040, 1040A or 1040EZ from the same year as the SRP assessment for all information needed in order to correctly classify the liability.

B. **Including the SRP on a Proof of Claim.** APOC will calculate and classify assessed balances due for the Shared Responsibility payment; however, it will NOT compute unassessed claims or issue a flag. Caseworkers will not file estimated claims for an unassessed SRP .

Caution:

If the taxpayer incurs a pre-petition SRP liability prior to the bar date it should be included on the Proof of Claim. If the IRS discovers a pre-petition SRP after the bar date, please see IRM 5.9.13.7.1 , *Late Filed Claims*, or IRM 5.9.13.8, *Amended Claims*, for guidance.

Note:

If needed, IRM 5.9.13.20

, *Claim Calculations*, explains how to manually calculate an assessed SRP liability.

C. **Multiple Persons Assessed the SRP.** Problems may arise with proofs of claim involving SRPs that have been assessed against both spouses under MFT 65 mirrored accounts.

D. **Duplicate Spousal SRP Assessments.** A proof of claim may list two identical SRPs when a married couple files a joint bankruptcy, and each has been assessed a SRP for the same module(s). The assessments may either be in the same or differing amounts. When AIS computes the total amount of a claim on Form B410, the sum equals the amounts of each module. That total amount computed by AIS cannot be systemically overridden, so when both spouses have duplicate SRP assessments, the amount of the claim on Form B410 is overstated. Caseworkers should follow the procedures outlined in IRM 5.9.13.18.4, *Duplicate and Mirror Assessments and NMF Periods*, choosing the appropriate option based on local procedures.

Caution:

Caseworkers should not assume that assessments made against both a husband and wife for the same period are duplicates simply because they are for the same tax period. Before assessments are treated as duplicates, caseworkers should verify that the shared responsibility payment assessments are for the same underlying liability (jointly filed Form 1040), and are not for separately filed Forms 1040.

E. **Collection of Proper Amount.** The IRS must not over-collect. The Service's policy is to collect the unpaid SRP only once.

F. **Post-Petition SRP assessments in Chapter 13.** An 11 USC § 1305 claim may be filed for taxes that become payable while the case is pending. This includes any amounts due for the SRP . If the Form 1040, 1040A or 1040EZ is a post-petition module (see IRM 5.9.10.9(1), *Post-Petition Tax Liabilities*), the SRP is also post-petition.

2. ACA Provision Section 9008 - Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers (Branded Prescription Drug Fee or BPD Fee)

A. **General Information.** The Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers (Branded Prescription Drug Fee or BPD Fee), imposes an annual fee on manufacturers and importers of branded prescription drugs (BPDs) with gross sales to specified government programs exceeding \$5 million. See IRM 25.21.1, *Branded Prescription Drug Fee* for further information.

Note:

An entity that owes a BPD fee may be a debtor in a bankruptcy case.

B. **Assessment and Treatment under Bankruptcy.**When applicable, the Branded Prescription Drug (BPD) liability will be assessed under MFT 03, however it will have a period ending in 08 to distinguish it from all other assessments under the same MFT. For bankruptcy purposes, it will be treated as an excise tax under USC § 507 (a)(8)(E). See IRM 5.9.13.19.3 *Classifying Claims-Unsecured Priority*, for additional information.

Note:

Since no return is required to report the BPD fee, the BPD fee is considered to be incurred in the year that is two years before the fee year, at the time the entity sales to the Government programs exceed \$5 million. The bankruptcy three-year priority period would begin when the tax is incurred.

C. **Including the BPD on a Proof of Claim.** APOC will not calculate and/or classify assessed balances due for the BPD. Caseworkers will be required to calculate and classify the period manually. APOC will not compute unassessed claims or issue a flag for unassessed periods; however, caseworkers should file estimated claims for an unassessed BPD, where necessary. If the sales were made in the year in which the petition was filed, the portion of the fee based on pre-petition sales would be a pre-petition claim, and the portion based on post-petition sales would be a post-petition administrative expense. The pre-petition portion could be estimated based on the ratio of pre-petition sales to total sales by the taxpayer for that year. In order to prepare an accurate estimate and file a protective claim, the caseworker would have to request the amount of pre-petition sales from the debtor, since the debtor is the only entity that may have that information. If that information can not be obtained, the Service could either file a protective claim based on the information it has from the last year that it has data for (noting that it's an estimate), or refer the case to Counsel for a BR 2004 exam/request.

Note:

Since the treatment of the BPD fee presents novel legal issues, Insolvency should work with Local Counsel in any bankruptcy case where the debtor owes, or may owe, the BPD fee.

5.9.13.19 (09-10-2014) Classifying Claims

1. **Claim Steps.** Although the APOC system prepares most claims, Insolvency caseworkers must understand the steps in classifying claims and calculating dollar amounts. Amended claims or APOC flags may require manual computations by assigned caseworkers. This involves separately identifying tax, interest on tax, penalty and interest on penalty. Locally designed worksheets may be used to record these computations before inputting them into the AIS proof of claim database or the APOC claim record. The steps for preparing a proof of claim are listed below and in the following subsections.

A. Identification of claimable liability.

B. Determination of debt type.

C. Determination of claim classification.

- D. Calculation of tax, penalty and interest.
- E. Loading claim amounts to the AIS database or APOC claim record.
- F. Printing the claim (in courts without the Electronic Proof of Claim system (EPOC)).
- G. Signing the claim (in courts without EPOC).
- H. Mailing the claim or transmitting it electronically through the EPOC system.

2. **Claimable Liability.** The date of the bankruptcy petition and dates of the taxable period determine if a liability is *pre-petition* or *post-petition* and if the Service should include it on its proof of claim.

Liability	Definition
Pre-petition	Regardless of whether taxes are assessed, all tax liabilities incurred <i>before</i> the petition date are determined to be <i>pre-petition</i> periods and, if above the aggregate criteria noted within <i>Exhibit 5.9.13-1</i> , should be included on a proof of claim. NOTE: The due date of a return does not determine if a claim is classified as pre-petition.
Post-petition	All tax liabilities incurred <i>after</i> the petition date, whether or not assessed, are considered post-petition. Administrative claims and § 1305 claims may be filed by the Service during the pendency of a bankruptcy.
Split-period	An income tax liability (both IMF/BMF) arises at the end of the taxable period. However, returns for certain taxes, such as employment taxes, may be split between pre-petition and post-petition periods on a proof of claim where the bankruptcy petition date falls within the taxable period.
Divisible Taxes	Some BMF returns are filed on a quarterly basis, such as Form 941. If at least one period or quarter of the same tax year is on the original, timely-filed proof of claim, then additional periods or quarters of the same year may be added in an amended claim. Note: Although many courts allow additional taxes of the same type as on the original, timely-filed claim to be claimed in an amended claim on the grounds that the claims are the same or similar, some courts may disallow the amended claim as an untimely claim for a different tax period on the grounds that the claims are not sufficiently similar. (See IRM 5.9.13.8(3), <i>Amendments after Bar Date.</i>)
IRC § 1398 Election of "Short Year" Return	Pursuant to IRC § 1398, individuals in Chapters 7 and 11 cases can elect to treat the taxable year in which the bankruptcy case is filed as two taxable years. The first year ends on the day before the commencement of the bankruptcy case. The liability for this year, therefore, becomes <i>pre-petition</i> . The second year begins on the day the bankruptcy petition is filed. The liability for this year is <i>post-petition</i> .
Corporate Income Tax	See IRM 5.9.13.18(2)(c), <i>Corporate Income Tax "Split" Liability Pre-BAPCPA</i> , and IRM 5.9.13.18(2)(d), <i>BAPCPA Provision</i> .

5.9.13.19.1 (09-10-2013) Determining Debt Type

1. **Three Categories.** The three basic types of debt are *secured*, *priority*, and *unsecured general*. Tax debts on a proof of claim are designated as being within one of these three categories. A claim is secured when a valid NFTL was filed prior to the bankruptcy and there is equity to secure the lien, or there is an amount subject to setoff. A priority claim is not secured, but is entitled to priority treatment in the bankruptcy case before certain other creditors according to the payment schemes set out in the Bankruptcy Code. An unsecured general claim is not secured and is not entitled to priority treatment. Absent APOC, the caseworker must determine if the debt is to be claimed as secured, unsecured priority, or unsecured general. Balances due on a module may be split among these categories on a proof of claim.
2. **Counsel Guidance.** If the claim classification of a tax liability cannot be easily determined, Counsel can offer advice. Exceptions and special circumstances may govern how taxes are classified from one judicial district to another.

5.9.13.19.2 (05-05-2015) Secured Claim

1. **Secured.** The Service may assert a secured claim for taxes, penalties, and interest under IRC § 6321. A tax debt is secured by an NFTL or by setoff.
2. **Notice of Federal Tax Lien.** A valid pre-petition NFTL attaches to debtor's property, whether real or personal, and includes exempt/abandoned property listed in the debtor's schedules filed with the court.

Note:

The proper place(s) for the NFTL to be filed to reach the debtor's real and personal property is discussed in IRM 5.12.7.10, *Filing*, and IRM 5.17.2.3.2, *Place of Filing*. In some jurisdictions, the NFTL must also be indexed before it is considered filed. This is discussed in IRM 5.17.2.3.1, *Purpose and Effect of Filing Notice*, and the State Law Guides on the My SBSE website. Discussions of the property to which the federal tax lien attaches and determining the priority of the federal tax lien can be found in IRM 5.17.2, *Federal Tax Liens*.

The IRS's secured status is limited to the debtor's equity under 11 USC § 506(a). Property excluded from the bankruptcy estate under § 541(c)(2), such as a pension plan that contains an enforceable anti-alienation clause under nonbankruptcy law, cannot be included in determining the amount of the Service's secured claim. Questions regarding particular retirement plans should be addressed to Counsel.

Note:

Under 11 USC § 506(a)(2) for Chapter 7 or 13 individual bankruptcies filed on or after October 17, 2005, the value of personal property securing the claim is determined based on the replacement value of the property as of the petition date without deduction for costs of sale or marketing.

3. **Tenancy by the Entirety.** The Supreme Court has ruled state law cannot preclude the attachment of a federal tax lien to property held as tenancy by the entirety in states permitting this form of ownership. When determining the value of the Service's secured interest on a proof of claim when only one spouse has filed bankruptcy, 50% of the equity in property held as tenancy by the entirety generally can be used.
4. **Secured Setoffs.** A pre-petition setoff exists when the IRS holds a pre-petition credit for a debtor who owes the IRS a pre-petition debt. The POC is secured to the extent of the amount subject to setoff. Both the credit due to the debtor and the debit due to the IRS are considered mutual debts. The Bankruptcy Code preserves the right of setoff of mutual debts (11 USC § 553). It is not necessary for the Service to have filed a NFTL to be secured for the amount of the setoff.
5. **Setoffs under BAPCPA.** For cases filed on or after October 17, 2005, 11 USC § 362(b)(26) allows the Service to setoff a pre-petition *income* tax refund to a pre-petition *income* tax liability without a lift of the automatic stay. This section applies to pre-petition income taxes only. It does not apply to:
 - Non-income taxes such as Form 941 employment taxes or TFRP assessments.
 - Pre- to post-setoffs.
 - Post - to pre-setoffs.
 - Post- to post- setoffs.

6. **Setoffs in the Government's Best Interest.** The Service has the right to allocate the secured status from setoffs in its own interest.

Example:

The Service's Chapter 13 claim is for \$10,000 in priority tax, \$2,000 in unsecured general tax with \$4,000 on penalties and interest on penalties. The debtor files a pre-petition return resulting in a \$5,000 refund credit. The \$4,000 of penalty and interest on penalty plus \$1,000 of the unsecured general period can be secured by the refund credit.

- 7. **Oversecured.** When equity in a debtor's property exceeds the amount of the IRS claim, the IRS is fully secured (oversecured) and is entitled to post-petition interest. (See 11 USC § 506(b).) For cases filed on or after October 17, 2005, the interest rate equals the statutory IRS rate effective during the calendar month of confirmation. In cases where the Service is entitled to post-petition interest, the Insolvency specialist must annotate the AIS plan screen accordingly.
- 8. **Undersecured.** If the IRS is undersecured, the claim amount not covered by equity in the debtor's property may be reclassified as a priority claim if it qualifies. Otherwise, it must be relegated to unsecured general claim status.
- 9. **Unsecured.** Tax debts that cannot be secured by a pre-petition NFTL attaching to equity in assets or those debts that cannot be secured by setoff are determined to be unsecured debt. The unsecured debt is therefore classified and claimed as either unsecured priority debt or unsecured general debt.
- 10. **Unable to Determine Value of Secured Claim.** On rare occasions, caseworkers may not be able to determine the equity in the debtor's property, either because it is not possible to determine the extent of the property owned by the debtor, or the value of the property cannot be estimated. In these situations, it may be necessary to file the claim showing the periods for which NFTLs have been filed as fully secured until a determination of the debtor's property is made by the bankruptcy court. Caseworkers should consult Area Counsel in these situations.
 - For the IRS to preserve its rights to claim any unsecured portion of its claim as either priority or unsecured general, caseworkers should add a statement to the proof of claim. Proof of claim statements 90 and 91 can be used for this purpose. This statement will provide: "If any portion of the secured claim is unsecured, the IRS claims this portion as priority and/or unsecured general, as appropriate."

Note:

Proof of claim statements 90 and 91 can be selected from the Claim Statement drop down menu on the Proof of Claim screen on AIS. Both statements must be selected for the entire statement to print on the proof of claim.

- Once an equity determination is made, if an amended proof of claim is filed showing the correct amount of the secured claim and reclassifying the remainder as priority and/or unsecured general, proof of claim statements 90 and 91 should be removed.

11. **Creditor's Option.** The existence of a valid NFTL does not obligate the Service to file a secured claim if the government's interest can best be served by filing a priority claim.

Example:

In certain jurisdictions courts allow for confirmation of debtors' plans even though the plans do not provide for the Service's secured claim. If the probability of collecting on the secured period(s) outside of bankruptcy is questionable, filing a priority claim rather than a secured claim may be warranted.

12. **Converted Cases.** It is not uncommon for a case to convert from one chapter to another, and caseworkers frequently review converted cases to see if an amended claim is needed. Regardless of the status of the NFTL at the time of the review of the converted case, caseworkers should continue to treat a claim as secured when IRS was secured on the petition date.

**5.9.13.19.3 (03-09-2016)
Unsecured Priority**

1. **Priority Classification.** USC 11 § 507(a)(8) defines pre-petition taxes entitled to priority status. See the following table.

11 USC §	Description
507(a)(8)(A)(i)	Income tax for a return due, including extensions (TC) 460, after three years before the filing of a petition . ("Three Year Rule") (See paragraph (3) below.)
507(a)(8)(A)(ii)	Income tax assessed <i>within 240 days before the petition date</i> . ("240 Day Rule"): •Pre-BAPCPA: The 240 day period is suspended when an offer in compromise (OIC) is pending for any time after the assessment is made. To compute the 240 day period, do not include the time period in which the OIC is pending. Add 30 days to the 240 day period when an OIC was pending within the 240 days. An OIC is pending when it is accepted for processing. This date will be reflected by a TC 480. An OIC ceases to be pending when the OIC is returned, rejected, withdrawn, or accepted. •BAPCPA: The 240 day period is suspended when an OIC is pending or is in effect. To compute the 240 day period, do not include the time period in which the OIC is pending or in effect. Add 30 days to the 240 day period when an OIC is pending or is in effect within the 240 days. An OIC is pending as outlined above. An OIC is in effect once it has been accepted. It remains in effect until the offer is defaulted, or the compromised amount is paid in full <i>and</i> the future compliance period has ended. Acceptance of an OIC is shown on IDRS by the existence of a TC 780. The completion of the OIC, including the future compliance period, is reflected by the existence of a TC 788. If the taxpayer defaults on the OIC before completion, this will be shown by the existence of a TC 781. If TC 788 is not shown on the module(s), and the OIC has not been defaulted, it is still in effect.
507(a)(8)(A)(iii)	Income tax not yet assessed but is assessable because the ASED is still open due to an audit or other extension of the ASED. Exception: Fraud by the debtor, unfiled returns and returns filed late (within two years of the petition date), do not fall within the category of assessable, but not yet assessed liability. These taxes will be unsecured general. However, if the ASED is open because of fraud committed by the debtor's spouse on a joint return, or by a return preparer, and the debtor was not involved in the fraud, the tax will be priority.
507(a)(8)(C)	Trust fund tax including withheld FICA and employment taxes, the Trust Fund Recovery Penalty (IRC § 6672) and collected excise taxes.
507(a)(8)(D)	Employment taxes, for a return due within three years prior to the petition date.
507(a)(8)(E)	Excise taxes, for a return due within three years prior to the petition date. Exception: Assessments arising under IRC § 4971 for failure to meet minimum funding standards of a pension plan are considered a "tax" in the IRC. However, the Supreme Court has ruled that the liability assessed under IRC § 4971 is a penalty. For USBC proof of claim classification purposes, unsecured IRC § 4971 liabilities are general unsecured claims. IRC § 4971 liabilities may be a secured priority claim when the liability is secured by a NFTL or right of setoff. See U.S. versus Reorganized CF&I Fabricators of Utah, Inc., 518 U.S. 213 (1996).
507(c)	Claims arising from erroneous refunds or credits have the same priority as the claim for tax to which they relate.

Reminder:

Accrued pre-petition interest on tax is given the same classification status as the underlying tax.

2. **The Concept of Tolling.** Tolling interrupts the running of a statute of limitations in certain situations. Tolling can occur due to statutory provisions providing for tolling or equitable tolling created by the courts. In bankruptcy cases, tolling applies to the periods used to determine priority and dischargeability of taxes. Tolling in bankruptcy occurs as a result of Bankruptcy Code provisions and Supreme Court decision in the case of *Young v. United States*, 535 U.S. 43, 122 S. Ct. 1036 (2002).
3. **Pre-BAPCPA Tolling.** The Supreme Court confirmed the three-year lookback period of 11 USC § 507(a)(8)(A)(i) is a limitations period subject to traditional notions of equitable tolling with their decision in *Young v. US*, 535 US 43, 122 S. Ct. 1036 (2002). In light of the rationale used by the Court in *Young*, the Service no longer takes the position that it is entitled to an additional six months based upon IRC § 6503(h).
4. **BAPCPA Tolling.** For cases filed on or after October 17, 2005, BAPCPA tolls the "look back" priority periods in 11 USC § 507(a)(8):
 - While the automatic stay is in effect in a prior bankruptcy case.
 - During a Collection Due Process (CDP) hearing for a proposed levy action and any related appeals.
 - While collection is precluded because of the existence of a confirmed plan in a prior bankruptcy case.

The Service's position is that an additional 90 days is added to each situation noted above. Tolling suspends all the "look back" priority periods in 11 USC § 507(a)(8), including:

- Income taxes due within 3 years.
- Income taxes assessed within 240 days, including extensions of the 240 day period during which an offer in compromise is pending or in effect.
- Employment taxes due within 3 years.
- Excise taxes due within 3 years.

Example:

An assessment for tax year 2003 is made against the taxpayer on January 10, 2008. The taxpayer submits an offer-in-compromise which becomes pending on February 10, 2008, and is rejected on February 15, 2009. On March 10, 2009, the taxpayer files a Chapter 13 bankruptcy, which is dismissed on March 10, 2011. On April 10, 2011, the taxpayer files a Chapter 7 bankruptcy. At the time the taxpayer filed the first bankruptcy, only 31 days of the 240-day lookback period had run (January 10, 2008 to February 10, 2008), because the 240-day period had stopped running when the offer was submitted for the time the offer was pending, plus up to 30 days after rejection. The 240-day period continued to be tolled while the automatic stay was in effect in the first bankruptcy, plus up to 90 days thereafter. The second bankruptcy was filed while the 240-day period was still tolled by the first bankruptcy. When the second bankruptcy was filed, therefore, only 31 days of the 240-day period had run, and the claim for the 2003 liability should be classified as priority.

Note:

Since applicable law provides that the 240-day period is tolled while an OIC is pending, plus 30 days, and during a prior bankruptcy, plus 90 days, the running of the 240-day period in this example continued to be tolled (i) between the time the OIC was rejected and the filing of the first bankruptcy, and (ii) between the dismissal of the first bankruptcy and the filing of the second bankruptcy. When add-on periods overlap with a later tolling event, the overlapping period cannot be counted twice when determining the number of days for which tolling applied.

**5.9.13.19.4 (09-10-2014)
Unsecured General**

1. **Unsecured General Claims.** The term "unsecured general" does not appear in the Bankruptcy Code. Liabilities classified as unsecured general claims do not fall into either secured or priority status. These include all penalties where the IRS did not suffer an actual loss (also referred to as "non-pecuniary loss" penalties) and any interest associated with that penalty. The following chart can aid in determining claim status.

STEP	DETERMINE IF ...	BY...
1	claim is secured	<ul style="list-style-type: none"> • reviewing for NFTL • reviewing for setoff of pre-petition credit
2	claim is unsecured priority	reviewing 11 USC § 507(a)
3	claim is unsecured general	not being secured or unsecured priority

2. **Failure to Pay Penalties.** IRM 5.9.4.13, *Failure to Pay Tax Penalty and Failure to Pay Estimated Income Tax Penalty*, discusses when failure to pay penalties are included on a proof of claim for pre-petition tax liabilities.

**5.9.13.20 (03-09-2016)
Claim Calculations**

1. **Tax, Penalty, and Interest.** Absent APOC, the caseworker can calculate the tax, penalty and interest for the claim using IDRS command codes:
 - INTSTB
 - TXMOD
 - IMFOLT
 - BMFOLT
 - COMPAF (if necessary)
 - COMPA (if necessary)

Note:

ACT/DMI is a new program which also computes interest, and is preferred for more complex interest computations, as discussed in IRM 20.2.6.4, *Interest Computation Tools*. Information on ACT/DMI and information on how to obtain the software is located at <http://sbseservicewide.web.irs.gov/interest/act/default.aspx>

2. **INTSTB.** Command code INTSTB shows the tax, the assessed failure to pay penalty (FTP), the assessed interest, and assessed penalties other than FTP. These amounts comprise the "Assessed Total." INTSTB also reflects the accrued interest, accrued FTP and total accruals. Finally, it gives the total FTP (assessed and accrued), and the total interest (assessed and accrued) for a "Total Balance Due " (assessed total and accrued total). (See the discussion in the Using INTSTB in Preparing Proof of Claim job aid.)
3. **COMPA and COMPAF.** If INTSTB is not available, command codes COMPA and COMPAF are used to calculate interest and failure to pay (FTP) penalty. Refer to the tables in IRM 5.9.13.20 below when performing specific calculations using COMPA. Refer to IRM 2.3.29, *Command Codes INTST, ICOMP and COMPA* for further guidance on using COMPA and COMPAF.

4. **Manual Calculations.** Claim calculations are based on the classification of each tax assessment on each tax module. If there is more than one tax assessment on a single tax module, in order to appropriately claim the amounts owed, the caseworker must calculate each assessment separately. Claims not fully secured by a debtor's equity require additional steps. Also, employment tax returns which are not treated as priority under the three-year lookback rule will require additional steps in order to correctly calculate the trust fund and non-trust fund taxes separately. The trust fund portion of the tax and any accrued interest will be classified as priority, while the remainder of the employment taxes will be classified as unsecured general. (See IRM 5.9.13.19.3, *Unsecured Priority* and IRM 5.9.13.20(5), *Alternative Manual Calculations*.)

A. **Secured and Unsecured General Claims.** The steps to calculate tax, penalty and interest in a fully secured claim and an unsecured general claim are identical. The following table demonstrates the calculation of a basic secured or unsecured general claim.

STEP	ACTION	RESULTS
1	Using TXMOD, locate the appropriate tax assessment (ex: TC 150, 290 or 240 RC618) and subtract pre-petition adjustments to tax.	Total assessed tax to be used in calculating claim. Caution: Unagreed deficiency assessments on pre-petition periods which are assessed post-petition are violations of IRC § 6213(f) if the period to petition the Tax Court did not expire before the bankruptcy petition was filed. In these cases, the assessment must be reversed. The amount should be included on the proof of claim as an unassessed priority or unsecured general claim.
2	Total all unreversed pre-petition payments.	Amount of payment credits to be applied toward the tax liability.
3	Subtract the total in step 2 payments from the total in step 1 tax. Note: If pre-petition payments satisfy tax liability and credits still exist, subtract the remaining step 2 payments from penalties until they are zeroed out, then subtract any remaining payments from interest.	Tax due is computed. This is the amount of tax that will be listed on the claim. Note: INTSTB, can be used to replace steps 1, 2, and 3.
4	Using INTSTB, add TAX & ASSESSED OTHER PENALTY amounts to TOTAL FTP.	Tax and all penalties are computed.
5	Subtract tax (step 3) from tax and all penalty (step 4).	Penalty only computed. This is the amount of penalty that will be listed on the claim.
6	Identify amount of TOTAL INT on INTST.	Interest computed. This is the amount of interest that will be listed on the claim.
7	Add results from lines 3, 5, and 6.	Total claimable liability for module.

B. **Priority Claims.** The following table demonstrates the calculation of a basic priority claim.

Caution:

Unless otherwise secured by a NFTL, the penalty will be classified as unsecured general. Therefore, it is necessary to separately calculate the amount of interest attributable to the tax and the amount of interest attributable to the penalty.

STEP	ACTION	RESULTS
1	Using TXMOD, locate the appropriate tax assessment (ex: TC 150, 290 or 240 RC618) and subtract pre-petition adjustments to tax.	Total assessed tax to be used in calculating claim. Caution: Unagreed deficiency assessments on pre-petition periods which are assessed post-petition are violations of IRC § 6213(f) if the period to petition the Tax Court did not expire before the bankruptcy petition was filed. In these cases, the assessment must be reversed. The amount should be included on the proof of claim as an unassessed priority or unsecured general claim.
2	Total all unreversed pre-petition payments.	Amount of payment credits to be applied toward the tax liability.
3	Subtract the total payments from step 2 from the total tax from step 1. Note: If pre-petition payments satisfy tax liability and credits still exist, subtract the remaining step 2 payments from penalties until they are zeroed out, then subtract any remaining payments from interest.	Tax due is computed. This is the amount that will be listed as tax on the claim.
4	Using INTSTB, add TAX & ASSESSED OTHER PENALTY amounts to TOTAL FTP.	Tax and all penalties are computed.
5	Subtract tax (step 3) from tax and all penalty (step 4).	Penalty only computed.
6	Input CC COMPA from due date of return to petition date on amount of tax (from step 3). Refer to IRM 2.3.29, <i>Command Codes INTST, ICOMP and COMPA</i> . Note: For TXMODs where payments have posted after the return due date, a new COMPA is required each time the balance of tax changes. The determination of interest on tax may require multiple COMPA calculations, starting from the return due date and ending on the petition date, with interim payment dates in the "from" and "to" fields.	Interest on tax is computed. This amount will be listed as the interest amount on the claim.
7	Subtract step 6 from TOTAL INT on INTST.	Interest on penalties is computed. This type of interest is always classified as an unsecured general claim.
8	Add interest on penalties (from Step 7) to the penalty amount (from Step 5).	This is the amount of penalties and interest on penalties. It will be listed as penalty on the claim.

Note:

Verification of calculations can be obtained by adding Steps 3, 5, 6 and 7, which should equal the balance due on INTSTB.

5. **Alternative Manual Calculations.** There may be situations in which it would be appropriate to calculate tax, penalty and interest manually (i.e. multiple unpaid tax assessments on the tax module, or modules with trust fund tax that is required to be listed as a priority claim).

A. Tax. The following chart shows the basic steps to calculate tax.

STEP	ACTION
1	For balance due periods, secure INTSTB to the petition date.
2	Reviewing IMFOLT/BMFOLT/TXMODA, identify tax assessed, adjusted, credited, or paid, by noting TC 150, 29X, 30X, 610, 640, 650, 670, 768, 806 and any other TC indicating an adjustment to tax along with the corresponding amounts.
3	Arrive at a tax balance by starting at TC 150 and adding any tax assessment or debit amounts and subtracting any tax abatement or credit amounts. Note: The tax balance amount should equal the amount shown as tax on INTSTB.
4	When multiple assessments exist, each assessment is treated separately. Credits are applied to multiple unpaid assessments in the following order. Starting at TC 150, subtract any tax abatement or credit amounts until the balance is zero or until all credits are exhausted. Apply remaining credits to TC 290 or TC 300 assessments. If no credits are available, the additional tax is the amount of the TC 290 or TC 300.

B. Penalty. The following chart shows the basic steps to calculate penalty.

STEP	ACTION	RESULT
1	Using IMFOLT/BMFOLT/TXMODA, identify penalty assessed, adjusted, paid by noting the transaction codes and amounts. Some penalty TCs are 16X, 18X, 27X, 32X (fraud), 35X, however this list is not inclusive.	Penalty identified.
2	For each different penalty, arrive at the penalty balance independently of any other penalty by adding and subtracting assessments or debits and abatements or credits. Example: For failure to pay penalty (FTP), TC 276, related transaction codes are 270 manual assessment of FTP, 271 manual abatement of FTP, computer generated assessment of FTP - 276, computer abatement of FTP - 277. Each of these TCs in an account would be considered at arriving at the FTP balance.	Each penalty balance calculated.
3	Total the assessed penalty (as opposed to accrued penalty from INTSTB) less the FTP penalty.	
4	Verify the penalty amounts with INTSTB comparing the assessed FTP from INTSTB to the amounts computed, and verifying the totals of the ASSESSED OTHER PENALTY from INTSTB to the amounts computed.	
5	Add the ACCRUED FTP penalty from INTSTB to the total FTP computed from IMFOLT/BMFOLT/TXMODA.	
6	Add the total ASSESSED OTHER PENALTY to the amounts in step 4.	Total penalty owed.

Note:

A pre-petition non-pecuniary loss penalty will never be classified as priority. It will be classified as unsecured general if it is not secured.

C. Interest. The following chart shows the basic steps to calculate interest.

STEP	ACTION	RESULT
1	From IMFOLT/BMFOLT/TXMODA, identify interest assessed, adjusted, or paid, by noting the transaction codes and amounts. Some interest TCs are 19X, 34X, 77X; however, this list is not all inclusive.	
2	Arrive at the interest "assessed" balance by adding assessments or debits and subtracting abatements or credits.	Assessed Interest calculated.
3	Verify the interest amounts with INTSTB comparing the interest computed in step 2 to the amounts of interest shown as assessed on INTSTB.	
4	Add the accrued interest from INTSTB to the total interest computed from IMFOLT/BMFOLT/TXMODA.	Amount of total interest computed.

Note:

Pre-petition interest on penalty from a priority claim is classified as unsecured general, the same as the penalty.

The following table demonstrates the steps for separately computing interest on tax and interest on penalty.

STEP	ACTION
1	Compute the interest on tax using CC COMPA. The interest on penalty is computed after the interest on tax is determined. Reminder: Where payments are received after the return due date, a new COMPA is required each time the balance of tax changes. The determination of interest on tax may require multiple COMPA calculations starting from the return due date and ending on the petition date with interim payment dates in the "From" and "To" fields. Refer to IRM 2.3.29, <i>Command Codes INTST, ICOMP and COMPA</i> .
2	Determine the total interest using INTSTB.
3	Subtract the amount of interest on tax from the total amount of interest on the INTSTB print.
4	The remaining amount is the interest on penalty.

6. **Manually Calculating the TFRP and Individual Shared Responsibility Payment (SRP) Assessments.** Since these assessments are made as penalties on IDRS, but treated as Tax amounts for the purposes of bankruptcy claim filings, standard claim calculation methods can not be used. Pull TXMOD & INTSTB on each applicable assessment and follow the instructions below:

A. *TFRP assessments.*

1. Set Tax on claim = Assessed Other Penalty + Tax (from INTSTB)
2. Set Penalty on the claim = 0
3. Set Interest on the claim = Total INT (from INTSTB)

Caution:

If the calculated Tax amount from step 1 above is <=0 then set Tax on claim = zero and set the Interest on the claim = Bal Due (from INTSTB).

Caution:

If there is an unpaid TC 360 present on TXMOD, the caseworker will subtract the amount of the TC 360 from Tax and add to penalty for claim amounts.

B. *SRP assessments.*

1. Set Tax on the claim = Assessed Other Penalty + Tax (from INTSTB)
2. Set Penalty on the claim = 0
3. Set Interest on the claim = Total INT (from INTSTB)

Caution:

If the calculated Tax amount from step 1 above is <=0 then set Tax on the claim = zero and set the Interest on the claim = Bal Due (from INTSTB).

Reminder:

Under section 6601(e)(2), the Service may not charge interest on an assessable penalty, additional amount or addition to tax (except for the failure-to-file penalty, failure to pay stamp tax, and accuracy-related and fraud penalties) if the taxpayer pays the penalty within 21 calendar days (10 business days if the amount of the penalty is \$100,000 or more) after the first notice and demand. If the taxpayer does not pay the penalty in full, interest will accrue from the notice date. Therefore, interest is applicable on any SRP where the Petition Date > the date of Notice and Demand for payment and the assessment has gone unpaid for more than 21 days. If interest is applicable, and the interest on INTSTB is zero, use command code COMPA to compute an interest amount.

**5.9.13.21 (09-10-2013)
AIS Claim Screen**

- 1. Loading Claim Information to AIS.** Once the liability calculations are determined, the information is input to AIS through the Proof of Claim screen, usually from a POC worksheet the caseworker has prepared. Caseworkers should consult the AIS User's Guide for instructions on how to load a claim or an amended claim.
- 2. Identification of Right of Setoff.** Where Insolvency personnel have the right under 11 USC § 362(b)(26) (effective October 17, 2005, pursuant to BAPCPA) to complete setoffs, they will do so without annotating the proof of claim. However, an amended claim or a credit letter to the trustee may be required depending upon local procedure. When setoffs cannot be effected under § 362(b)(26), Insolvency must identify claims secured by the right of setoff by the input of the dollar amount of the funds claimed for setoff in the "Offset" fill-in field on the Proof of Claim screen.
- 3. Language for Insertion on Claim.** When the dollar amount of the setoff has been input to the Proof of Claim screen "Offset" field, the setoff amount is automatically filled in next to the "\$" sign and the following language will appear on the claim:
"The United States has the right of setoff or counterclaim(s), in the amount of \$_____. The identification of any sums subject to setoff is based on available data and is not intended to waive any other right to set off, against this claim, debts owed to this debtor by this or any other Federal agency that have not been identified. All rights of setoff are preserved and will be asserted to the extent lawful."

Reminder:

The Service should not hold a refund indefinitely. Within 30 calendar days of the Service's becoming aware of a refund being retained, a decision must be made to make a referral, issue the refund, or, in cases filed on or after October 17, 2005, complete any setoff allowed per 11 USC § 362(b)(26). If the Service is allowed to exercise its right of setoff for any credits not of the type as listed in § 362(b)(26) and as preserved for setoff on its claim, a credit letter must be sent to the trustee or the claim will be amended or withdrawn according to local procedures.

**5.9.13.22 (09-10-2013)
Printing Claims**

- 1. Printing Proofs of Claim.** The Generate POC section of the Proof of Claim Tab on AIS provides several options for viewing and/or printing a proof of claim.
 - "Draft" prints a copy of the current claim, including a watermark. This option does not change the "Original Prepared" or "Amended Prepared" dates, or update the "Amendment" number. It does not update the "Proof Req'd" field.
 - "Official Filing Copy" prints a claim for filing and updates either the "Original Prepared" or "Amended Prepared" date. It also updates the "Proof Req'd" field. It is not intended to produce copies of a claim because it updates the "Prepared" fields with a new date. **Use of this option should be limited to generating, printing and mailing the current claim to the court for filing.**

Reminder:

Use of this option should be rare due to the widespread use of EPOC for filing claims.

- "Reference Copy" prints a copy of the current claim, without a watermark. It does not update the "Original Prepared" or "Amended Prepared" fields or update the "Proof Req'd" field. **If caseworkers need a copy of the current claim to send to Area Counsel, the trustee or other parties, they should use this option to produce a copy.**
- "Previously Filed Claims" accesses any previous versions of the claim that were filed within the last 90 days. Claims can be viewed and/or printed. This option does not update any fields on AIS.

**5.9.13.23 (09-10-2014)
Allowable Claims**

- 1. Establishing Claim Validity.** Upon filing a proof of claim, the government becomes a party in interest in the bankruptcy. A properly filed proof of claim is deemed allowed unless objected to by a party in interest (11 USC § 502(a)). Officers and employees of the Service may be required to appear as witnesses or to produce evidence in court to establish the validity of the IRS's proof of claim.

Note:

The caseworker does not need to obtain an express authorization from the Commissioner of Internal Revenue so long as the caseworker is appearing and producing evidence at the request of the attorney representing the Service for the purpose of establishing the rights of the government.

- 2. Providing Transcripts to Debtors and Trustees.** Bankruptcy Rule 3001 provides that if a claim includes pre-petition interest, fees or other expenses, an itemized statement of the amounts must be filed with the claim. The IRS' form B410 attachment should satisfy this requirement. However, if the debtor, debtor's representative or the trustee request such a statement for the liabilities shown on a proof of claim, caseworkers should provide a transcript of all outstanding pre-petition liabilities as soon as possible. The caseworker should document the AIS history with the date the request was made, the information given to the debtor, debtor's representative or trustee, and the date the information was given.

Note:

If the person requesting the information is not the debtor, information should only be provided to the person if disclosure is authorized. Consult IRM 5.9.19-1, *Disclosure Chart*, for guidance on disclosure to third parties.

**5.9.13.24 (05-20-2008)
Signatory**

- 1. Authorization.** Bankruptcy Rule 3001(b) provides the proof of claim must be executed by the creditor or the creditor's authorized agent. This requirement is satisfied by obtaining signatory approval as authorized in Delegation Order No. 51. Bankruptcy proofs of claim are not required to be notarized or executed under oath. All type 6338 and 6338A claims are signed electronically via AIS.

IF...	THEN...
the assigned employee is Grade 9 or higher,	the employee will sign the claim.
the employee is Grade 7,	the claim will be signed by the employee's lead or manager.
the employee grade is null or blank,	as a default, the claim will be signed by the employee's manager. Managers should verify the employee grade information in the employee table.



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 14. Automated Proofs of Claim (APOC)

5.9.14 Automated Proofs of Claim (APOC)

- 5.9.14.1 [Overview](#)
- 5.9.14.2 [Automated Proof of Claim \(APOC\)](#)
- 5.9.14.3 [Amended Automated Proofs of Claim \(AAPOC\)](#)

Manual Transmittal

August 06, 2015

Purpose

(1) This transmits revised IRM 5.9.14, *Bankruptcy and Other Insolvencies*, Automated Proofs of Claim (APOC).

Material Changes

- (1) Editorial changes have been made throughout the IRM, and citations have been updated.
- (2) 5.9.14.2.1.1(1) - A statement was added that directs APOC Operators to the APOC Operators User Guide for more information on running APOC.
- (3) 5.9.14.2.9(5) – Period Flag definitions were updated to reflect information about APOC Error Condition Flags and to add additional guidance on when to remove a period from APOC. Also, information on a new APOC flag, Possible Error in Interest Calculation, was included.
- (4) 5.9.14.2.11(1) - A reminder was added to explain that when a period is removed from APOC and there are no other liabilities or open flags on a case, APOC will close the case as no liability on AIS after the next APOC run. However, APOC will not close Chapter 11 or Chapter 12 cases as no liability.
- (5) 5.9.14.2.13(1) - A reminder was added which explains that caseworkers should determine whether removing periods or terminating a case is the appropriate case action. When a period is removed from APOC and there are no other liabilities or open flags on a case, APOC will close the case as no liability on AIS after the next APOC run. However, APOC will not close Chapter 11 or Chapter 12 cases as no liability. Caseworkers will need to manually address closure of cases terminated in APOC.

Effect on Other Documents

This material supersedes IRM 5.9.14, dated July 01, 2014.

Audience

Field Insolvency Groups.

Effective Date

(08-06-2015)

Kristen Bailey, Acting Director, Collection Policy

5.9.14.1 (08-06-2015) Overview

1. **Purpose.** This Internal Revenue Manual (IRM) section describes the process and procedures for operating the Automated Proofs of Claim (APOC) system application.
2. **Audience.** This IRM is designed for use by Field Insolvency (FI) personnel responsible for generating proofs of claim using the APOC system.
3. **Process Owner.** SBSE Headquarters Collection, Collection Policy, Insolvency provides enterprise guidance and centralized oversight for the APOC program.

5.9.14.2 (07-01-2014) Automated Proof of Claim (APOC)

1. **Overview.** The APOC system resides as a subsystem within the Automated Insolvency System (AIS) Oracle environment and interfaces with the AIS. APOC is an automated process that standardizes how and when proofs of claim processing occurs. APOC uses data from the AIS, Integrated Data Retrieval System (IDRS), Litigation Transcript System (LTS) and the Automated Lien System (ALS) to determine, select, calculate and classify liabilities for Chapters 11, 12, and 13 cases and Chapter 7 asset cases. It does not compute or classify liabilities for Receiverships, Chapter 9 or Chapter 15 cases. All cases meeting the APOC selection criteria will be brought into the system and processed through the program. Once APOC has completed its tasks, it populates the relevant fields in AIS so a claim can be produced.

Note:

APOC does not create claims. It simply provides the refined data so AIS can formulate a usable claim on Form B10 and the Form 10 Attachment in either hard copy or electronic format.

2. **AIS Freeze Screen.** APOC examines all primary TINs and cross reference TINs for processing. APOC selects balance due periods from the AIS freeze table and identifies periods with no returns filed based upon IDRS information. If a period has a balance due, but is not listed in the freeze table, APOC recognizes that liability as a "Missed BAL Due". The liability will not have a TC 520 input until after the caseworker has added the module to the proof of claim and filed the claim with the bankruptcy court or input the TC 520 to IDRS manually. The AIS freeze table may be accessed from the Taxpayer Screen by clicking on the **Freeze** button.

Reminder:

When a manual TC 520 is input to IDRS, the same information must be added manually to the Transaction Code Data file in AIS.

3. **Tolerance.** APOC currently operates with a dollar tolerance less than the tolerances listed in IRM Exhibit 5.9.13-1, Threshold for Claims for manually computed proofs of claim. =====. The APOC tolerance may be adjusted as necessary by Collection Policy, Insolvency. When an adjustment is anticipated, Insolvency caseworkers will receive advance notification.
4. **ALS.** ALS must be run and the "Lien Research" field on the AIS TIN screen must be "Completed" prior to APOC's selecting the case for processing. This is an automatic process and requires no manual intervention.

**5.9.14.2.1 (08-06-2015)
APOC Operators**

1. **Overview.** An APOC operator is an Insolvency employee designated in APOC to initiate and run the APOC processes. There is one operator from each Insolvency Territory. Operators must have an APOC User ID and the proper command codes in their profiles to connect to IDRS through APOC.
2. **APOC Operator Back-up.** APOC operators are the only Specialty Collection Insolvency (SCI) employees with access to the "APOC Batch Program" and therefore the only employees capable of running APOC nationwide. These operators will be each others' back-up.
3. **APOC User ID.** APOC operators are required to have two User IDs and passwords:
 - The AIS 4 login and password for access to AIS, and
 - The APOC User ID and password for access to the "APOC Initiation" processes.

Both can be obtained by submitting requests through the Online (OL) 5081 system.

4. **IDRS Command Codes.** APOC operators must have the following IDRS command codes in their profile to initiate the APOC processes. APOC operators will receive a "Security Violation" without these command codes in their profile:
 - AMDISA
 - BMFOLI
 - BMFOLL
 - BMFOLT
 - COMPA
 - IMFOLI
 - IMFOLT
 - INOLES_BMF
 - INOLES_IMF
 - INOLEX
 - INTSTA
 - INTSTB
 - IRPTRL
 - MFREQ
 - MFREQC
 - RECON
 - SINON
 - SINOF
 - TXMODA

**5.9.14.2.1.1 (08-06-2015)
APOC Initiation Process**

1. **Daily Processing.** Operators should run APOC daily. The operators run APOC by Insolvency Territory, then further processing can be selected by date or group ID. However, by pressing enter and bypassing the dates, APOC will select every case available. It is recommended to run all available cases. Basic information about the initiation process is described below; however, operators should access the APOC Operator User Guide for more detailed guidance.
2. **APOC Main Menu.** To begin the APOC process, APOC operators must select **Option 1 - Initiate APOC Process** from the APOC Main Menu.
3. **Case Selection.** Cases may be selected for APOC processing by entering a specific case number or by processing all available cases at the same time. The options are:
 - A. Run specific docket ID(s).
 - B. Run *ALL* available dockets.
 - C. ABORT this APOC run.

Operators should normally choose option 2, to run all qualifying cases through APOC.
4. **Case Verification.** After an option has been selected, the operator will be asked to verify the selection by inputting "Y" to start the system.
5. **IDRS SINON.** The APOC operator will be required to SINON to IDRS each time APOC is run. Once the operator has signed on to IDRS, APOC will show the number and list of cases it will run.
6. **APOC Initiation Status.** APOC will display all the cases, as they are processing. The screen process will appear as follows:
 - ***** Commit < database changes for docket: XX-XXXXXXX
 - Phase 1 Complete

- Phase 2 Complete
- Phase 3 Complete
- Phase 4 Complete

7. **IDRS SINOF.** After completion of the run, APOC will automatically SINOF the operator from IDRS.

5.9.14.2.2 (12-23-2013)

APOC Processing

1. **Processing Flow.** The following steps demonstrate the order in which cases are handled on AIS:

- The case is opened on AIS;
- Insolvency Interface Program (IIP) is initiated;
- Process C validates TINs;
- Process D inputs TC 520s and creates status reports;
- Case Assignment Guide (CAG) program assigns case to a caseworker;
- ALS runs on all TINs;
- APOC selects case for processing; and
- A caseworker accesses APOC records to work the case.

2. **Case Requirement.** The following conditions must be met before a case will qualify for APOC processing:

- The case does not have a closed date on AIS.
- The case is a Chapter 7A, 11, 12 or 13.
- The "Proof Req'd" field on AIS is "Y" meaning a claim has not already been filed.

Note:

If there are any claim records on AIS, the case will not qualify for processing.

- All TINs on the docket are validated.
- The case is assigned to a caseworker.
- ALS has run on all TINs.
- The "APOC Status" on the AIS Taxpayer screen is "blank" .

3. **Processing Delays.** Problems that will delay the processing flow include:

- An invalid TIN
- Name control mismatch
- ALS NFTL research not completed due to TIN not being validated
- Prior bankruptcy error (-V or -W freeze already on account)
- IDRS Dead Cycles
- Case not assigned to an employee

Note:

The problems shown above will be reported on a Potentially Invalid TIN (PIT) report, Error report or CAG report.

4. **"APOC Status" Field.** The AIS Taxpayer screen has a field specifically for APOC. This field must be "blank" or the case will not be selected for the APOC process. The "APOC Status" field is updated when a case has been processed by APOC and will display an alpha code denoting one of the codes below:

- @ - Completed amends case
- A - Automatically processed through APOC (no flags exist)
- B - Below tolerance
- D - No liability case with debtor indicator
- H - Amends case on Hold
- M - Manually processed through APOC (flags have been resolved)
- N - No liability

Note:

APOC does not close No Liability (NL) Chapters 11 and 12 cases on AIS.

- Null - Case not processed by APOC
- O - Open Referral on Chapters 11/12 only (NL)
- P - Case is pending in APOC because of unresolved flags
- R - Terminated case
- T - Terminated Amends case

- X - Case selected for APOC processing, but process is not complete
- Z - Duplicate period (Period has the same TIN, Assessment Date, Classification)

5. **Reopened Chapter 7 Cases.** Chapter 7 cases that are reopened because assets have been identified will not be processed by APOC if a closed on AIS date is on the AIS entity screen. APOC Amends will not process cases if a discharge or dismissal date is on the AIS Taxpayer screen. Cases falling beyond the governmental bar date will generate a flag advising the user of an attempt to work a late filed claim. Chapter 7 cases may have periods that were abated because they met the requirements for dischargeability. These abated periods must be computed manually and included on the proof of claim. When APOC is utilized users may include these periods by inserting or creating new periods.

5.9.14.2.3 (07-01-2014)

APOC Access

1. **APOC Access.** Select the **APOC** tab from the AIS Home Page to access APOC and review the results of APOC case processing.

2. **Query Options.** The APOC Case Query/Report Menu offers the following case query options:

- Case Type
- Query Criteria
- Query By Case Flags
- Reports Menu
- Restore Cases (Manager's only)

3. **Case Types.** The APOC program is built around the following case types:

A. **Open Cases.** Includes all cases that have been selected by the APOC process but have not completed the process. Open Cases are cases that encounter flag conditions that require interaction by the assigned employee. Additional actions will be required on these cases by the employee. Select the **Open Cases** button from the APOC Case Query/Report screen to access APOC Open Cases. Caseworkers can generate the Flagged Cases Report (F) from the APOC Report Menu to identify which cases have unresolved flags.

B. **Completed Cases.** Includes all cases that have completed the APOC process. The list includes cases that went through the APOC process and did not require manual intervention. It also includes cases that were originally flagged in APOC and were resolved by the caseworker. Select the **Completed Cases** button from the APOC Case Query/Report screen to access APOC Completed Cases. To identify which cases have completed the APOC processes caseworkers can generate:

- The Cleared Flag Case Report (E) which identifies cases that had flags which were resolved.
- The No Liability Report (H) which identifies cases with no balances due, and no unfiled returns. It also identifies if there is a debtor (DMF) indicator on the case.

Note:

APOC closes these as no liability for all chapters except Chapters 11 and 12, and for cases of all chapters that have a DMF indicator on the case.

- The Non-Flagged Case Report (I) lists all cases processed through APOC that did not encounter a flag condition.
- The Terminated Cases Report (J) which identifies cases terminated in APOC.

C. **Amended Cases.** Includes cases where the original POC contained an estimated delinquent period and the tax return for this period is now filed and assessed. APOC Amends processes the new assessment periods where an estimate exists.

4. **Query Criteria.** The following query options are provided to further define a case query:

A. **My Cases.** By selecting this option, the user will query only cases assigned to the user.

B. **Filtered.** When this option is selected, the user is provided additional options. Users can filter data by a specific "case" number, "court," "SEID," "Group," "Organizational level 1" or "2", or by entering a specific date in the "From Date" or "To Date" fields.

C. **Unfiltered.** By selecting this option, the user will query all cases for all users in the database. This option produces no more than 250 cases.

5. **Query By Case Flags.** The "Query By Case Flags" option allows users to query by specific case flag conditions. Flagged cases are considered "Open" requiring manual intervention to address and update the flags before the case can be exported to AIS.

6. **Reports Menu.** The "Reports Menu" query option allows users to query cases by a specific APOC report.

7. **Restore Cases.** The **Restore Cases** button allows the user to restore cases. Cases that were selected for APOC processing but did not make it through the APOC process will have an APOC status of X and may need to be restored to AIS. AIS permission levels determine access to this Menu Option.

5.9.14.2.4 (12-23-2013)

Navigating APOC

1. **Toggle Function.** The Toggle Function allows users to access the AIS Taxpayer Screen, AIS History Screen, or the AIS Manual Refund Screen while in APOC. **Right Click** on any APOC Screen and a "POP UP Window" will appear with the option to select the AIS Taxpayer Screen, the AIS History Screen, or the AIS Manual Refund Screen. To return to APOC from the AIS History Screen or the AIS Taxpayer Screen, the user should click on the **Exit** tab.

2. **Moving from Field to Field in APOC.** When a user moves from field to field that specific field will appear highlighted. Users may choose one of the following methods to move from field to field:

- Enter Key
- Left Click
- Scroll Bar
- Keyboard Tab
- Arrow Key

5.9.14.2.5 (07-01-2014)

APOC Report Access

1. **Report Access.** Select the **Reports Menu** button from the APOC Case Query/Report screen to access the APOC Reports. APOC reports are generated in an Adobe PDF format utilizing the full capability of the Windows environment, where reports can be saved, printed to any accessible windows printer or sent via email. The APOC Reports screen is separated into two sections, Parameters and APOC Reports.

2. **Parameters.** The Organization information in the "Parameters" section sets the selection criteria for creating reports. The "SEID," "Group," "Site," "Org1," and "Org2" fields default to the user information. Use the "From" and "To" date fields to generate the report(s) for a specific time period. Depending on your "Permissions Level" you may be able to change the "Organization" information in this section. A specific report must be selected before trying to submit changes in the "Parameters" section.
3. **APOC Reports.** To generate a specific APOC report, users must select a button next to the report title and select the **Run Report** button or the **Execute** button. The APOC reports options are:
 - A. **AGI Report.** The Adjusted Gross Income Report identifies individuals with large incomes who file Chapter 7 cases.
 - B. **All Cases Report.** The All Cases Report lists all cases assigned to a specific caseworker, for a specific date or date range and were processed by APOC.
 - C. **Below Tolerance Report.** The Below Tolerance Report identifies cases where the total claim balance is below the minimum amount established for filing proofs of claim.
 - D. **Cash Collateral Report.** The Cash Collateral Report identifies all Chapter 11 cases with secured claims. A manual case review is needed to determine if adequate protection or a cash collateral agreement is needed.
 - E. **Cleared Flagged Cases Report.** The Cleared Flagged Cases Report lists all cases that have had the flag(s) resolved.
 - F. **Flagged Cases Report.** The Flagged Cases Report lists all cases that have encountered a flag which has not yet been resolved. These cases require manual intervention by the user.
 - G. **\$ Limitation to File Bankruptcy Report.** The \$ Limitation to File Bankruptcy Report identifies cases where the secured or unsecured claim amount exceeds the statute limitations as provided in the Bankruptcy Code.
 - H. **No Liability Report.** The No Liability Report identifies cases with no balances due, and no unfiled returns. It also identifies if there is a debtor indicator on the case. APOC closes all no liability cases except all Chapter 11 and 12 cases, and cases of all chapters with a debtor (DMF) indicator.

Note:

Caseworkers should follow guidance in IRM 5.9.8.12, *Chapter 11 No Liability Cases* and IRM 5.9.9.10, *Monitoring Compliance* to address no liability Chapter 11 and 12 cases. Caseworkers should follow local procedures to dispose of cases with a DMF indicator.

- I. **Non-Flagged Cases Report.** The Non-Flagged Cases Report lists all cases processed through APOC that did not encounter a flag condition. Since APOC processes are initiated on a daily basis, plans and schedules may not be available when this report is generated. Caseworkers should use the Non-Flagged Cases Report to conduct initial case reviews and plan reviews, and to set follow-up dates to load or update plan information to the confirmed plan payment screen in AIS.
- J. **Terminated Cases Report.** The Terminated Cases Report lists all cases that were terminated in APOC.
- K. **X/Z Cases Report.** The X Cases are those cases that were APOC ready but did not make it through the APOC process. The Z Cases are those cases where there is a problem with the APOC records which is not allowing the claim records to move to the AIS Proof of Claim screen.
- L. **Estimated Return Report.** The Estimated Return Report lists all cases that have periods with estimates.
- M. **Open Amend Report.** The Open Amend Report lists all cases with an amended period that has not yet been resolved. These cases require manual intervention by the user.
- N. **Completed Amend Report.** The Completed Amend Report lists all cases processed through APOC Amends. Caseworkers should use the Completed Amend Report to conduct a review of the claim filed dates to ensure the amended proofs of claim are filed "after" they have been amended.
- O. **Terminated Amend Report.** The Terminated Amend Report lists all cases that were terminated in APOC Amends.
- P. **Case Detail Flag Report.** The Case Detail Flag Report identifies issues at the "Case" level. When the Case Detail Flag Report is selected a "Pop Up Window" will appear to the right with the option to select one of the Case Flag Conditions listed.
- Q. **Period Detail Flag Report.** The Period Detail Flag Report identifies issues at the "Period" level. When the Period Detail Flag Report is selected a "Pop Up Window" will appear to the right with the option to select one of the Period Flag Conditions listed.
- R. **Summary Report.** The Summary Report lists different statistics for the user's specific territories. This a "Managers Only" report.

5.9.14.2.6 (07-01-2014)

APOC Flag Information

1. **Flag Conditions.** When APOC encounters a condition that can not be resolved without human interaction, a flag will be issued. The flags are separated into Case and Period flags. The caseworker can resolve the flags on the Case Detail or Period Detail screens. APOC selects flags and sorts them by SEID, TIN, Period and MFT within a case and presents them to the employee for resolution. APOC enables employees to update the case records for each flag condition. When all flag conditions for a specific case have been updated, APOC will be able to export the data to update the AIS proof of claim. Some flags are set to alert the employee to some existing circumstance and may not require any action aside from updating the flag itself. For each flag condition, a history record is added to AIS denoting its occurrence.
2. **Identifying Flags.** The APOC Case List screen separates the Flag information into three categories and five columns. The three categories include Case Flags, Number of Periods, and Period Flags.
 - A. Case Flag information is separated into two columns. The first column lists the total number of case flags on the case. The second column lists the number of case flags that have been updated.
 - B. Number of Periods column lists the number of period records created by APOC.
 - C. Period Flag information is separated into two columns. The first column lists the total number of period flags on the case. The second column lists the number of period flags that have been updated.
3. **Flag History Documentation.** Each flag condition encountered during the APOC batch process generates an automated AIS history record. The history message will indicate it was created by APOC and will include a brief description of each flag condition.
 - A. The AIS taxpayer table "APOC Status" field is set to "P," *Pending*, for cases containing flags.
 - B. When all Flags are updated by the user, the taxpayer "APOC Status" field is set to "M," *Manual*.

5.9.14.2.7 (12-23-2013)

APOC Flag Condition Time Frame Requirements

1. **Time Frame Requirements.** APOC flags should be worked at least **five** calendar days before the 341 meeting, with the exception of the **Credits Posted after the Petition Date** flag, the **Lien Recorded Date Blank or Greater Than the Petition Date** flag, and the **Secured Period** flag.

- A. APOC flags that identify a potential violation of the stay should be worked within **five** calendar days of APOC identifying the flagged condition:
 - The **Credits Posted after Petition Date** flag may identify a payment that may have posted in violation of the stay.
 - The **Lien Recorded Date Blank** flag may identify a NFTL that was issued or filed after the petition date in violation of the stay.
- B. The **Secured Period** flag should be worked within **10** calendar days of APOC identifying the flagged condition for all chapters other than chapter 7. The Secured Flag indicates the Service may have a pre-petition NFTL on file and may be entitled to an adequate protection or cash collateral agreement.

5.9.14.2.8 (07-01-2014)

Case Flags

1. **Case Flag Information.** Case flags affect the entire case and alert the user of the need for additional review.

- A. Flagged cases are considered "Open" requiring manual intervention to address (i.e., take appropriate action) and/or update the flags before the APOC case is exported to AIS. The APOC User Interface enables employees to add and/or update claim and history records for each flag condition.
- B. Once flags are updated on a case, the case will move to "Completed" the next time the APOC process runs, or when the user chooses to use the **Process APOC** button. The APOC claim information is transferred to the AIS Proof of Claim tables and APOC adds a record to the AIS history screen that summarizes the claim information.

2. **Identify Case Flags.** The name of each **Case Flag** can be found at the bottom of the APOC Case Detail screen. The APOC Case Detail screen contains a list of specific case flag conditions. Caseworkers must determine the proper action to follow to resolve the case flag issue so processing can continue. To access a case for purposes of updating case flag conditions, the caseworker should highlight the case on the APOC Case List screen and select the **Case Detail** button.

3. **Update Case Flags.** When all required actions to resolve the **Case Flag** are completed, go to the APOC Case Detail screen and select the flag, select the **Update Flag** button and select **Save**. This action alerts APOC the flag has been updated and the case can continue the processing cycle. The current date is automatically populated in the column to the right of the flag title.

4. **Reopen a Case Flag.** If the flag was updated in error, highlight the date again, select the **Delete Key or Spacebar** and select Save. The caseworker may use the arrow key to access the next flag at the bottom of the screen.

5. **Case Flag Conditions and Resolutions.** A brief description of each case flag condition and resolution is listed below:

- A. **Debtor TIN with an Asterisk Flag.** This flag is issued when the debtor TIN ends with an asterisk. APOC processes the TIN as if the asterisk is not present. Review APOC determinations on this TIN, make any additions or deletions to the records and then update the flag.
- B. **Amended IRPTRL Flag.** This flag is issued when the IRPTRL information on IDRS has been amended. APOC alerts the caseworker of additional IRPTRL pages which APOC can not read. Review IRPTRO and other sources to determine if an estimated liability is necessary. If an estimated tax liability is necessary, then create the period, compute the estimate, input the estimate and update the flag. If an estimate is not necessary, close the filing requirements on IDRS and update the flag.
- C. **Available Credit Flag.** This flag is issued when APOC identifies an available credit greater than \$25. Follow local procedures to resolve the credit and update the flag.
- D. **BMF Compliance Flag.** This flag is issued when APOC identifies an EIN (cross-referenced on INOLES), but does not locate a record on BMFOLI. Users must determine if the Entity should have a BMF estimate. If the BMF estimate is not necessary, then update the flag. If the BMF estimate is necessary and IMF Period Detail records do not exist, then compute the estimate, create a period detail record, input the estimate and update the flag. If the BMF estimate is necessary and IMF Period Detail records exist, then compute the estimate(s), insert a Period Detail Record, input the estimate, and update the flag.
- E. **CID Freeze Flag.** This flag is issued when a -Z freeze exists on a period on the TIN. Contact Criminal Investigation (CI) before proceeding with the filing of a proof of claim. APOC will include all liabilities on the claim but gives the caseworker an opportunity to change the claim as needed. If CI states a claim can be filed, update the flag. If CI states a claim should not be filed, terminate the case and follow the procedures outlined in IRM 5.9.13.16, *Criminal Investigation Involvement*. If a specific period should not be on a claim, remove the period and update the flag.
- F. **Discharged, Dismissed, or Closed Date on AIS Flag.** This flag is issued when there is a date in the "dismissed", "discharged", or "closed" fields on the AIS Taxpayer screen. Review IDRS for abated liabilities. If there is no liability, update the flag. If the case was originally filed as a Chapter 7 No Asset and converted to a Chapter 7 Asset, then identify the discharged liabilities and include them on the claim. If a case was originally filed as a Chapter 7 No Asset and converted to a Chapter 7 Asset and liabilities were not abated, update the flag. If it appears a discharged Chapter 7 No Asset was converted to a Chapter 13 proceeding, then check the court's electronic records to verify the discharge was vacated. Remove the discharge date on AIS, if necessary. Identify all periods to be included on the claim. Calculate, classify and insert each period and update the flag.

Note:

For cases filed on or after October 17, 2005, a debtor will not be granted a discharge in a Chapter 13 case if such debtor previously received a discharge in a Chapter 7 case filed less than four years before the filing of the Chapter 13 case. (See IRM 5.9.5.7.1(5), *Discharge Limitations*, IRM Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges* and Bankruptcy Code § 1328(f).)

- G. **Estimate with -L Freeze Flag.** This flag is issued when APOC identifies an open TC 420 on the TXMODA indicating a Substitute for Return (SFR) has been initiated on a period that has not been filed and an assessment has not posted. Follow local procedures to determine the tax, interest and penalty amounts as needed and update the flag.
- H. **Late Filed Claim Flag.** A late filed claim flag is issued on a case that has an APOC processing date which is more than 180 days from the petition date. Determine if a claim should be filed. See IRM 5.9.13.7.1, *Late Filed Claims*. If a claim should be filed, then calculate and classify each period, create or insert periods as needed, ensure all periods needed on the claim have been added to APOC and update the flag. If the claim should not be filed, then terminate the case.

Note:

APOC recognizes all liabilities and adds them to the claim, not distinguishing between pre-petition and post-petition liabilities. Consequently post-petition periods may appear on the claim. Local procedures should be followed in dealing with those post-petition liabilities.

- I. **LLC Flag.** This flag is issued when an entity has "LLC" in any name line field on the AIS Taxpayer record. Manual intervention is required to determine the basis of the liability and accuracy of the claim. IRM 5.9.13.14, *Limited Liability Companies*, provides guidance on proper preparation of LLC claims. Counsel input may also be required. If a claim is not necessary, then terminate the case. If the claim is necessary, then ensure all appropriate periods are included on the claim, create, insert or remove periods as needed and update the flag.
- J. **MFT = 14 or 60 Flag.** This flag is issued when APOC identifies an open filing requirement on INOLES for MFT 60, Form 2290, *Heavy Highway Vehicle Use Tax Return*, or for MFT 14, Form 944, *Employer's ANNUAL Federal Tax Return*. APOC cannot do a compliance check on these MFTs. Review bankruptcy schedules and other sources to determine if an estimated liability is necessary. If an estimate is not necessary, then update the flag. If an estimate is necessary, then calculate and classify each period, create a period detail for each estimate and then update the flag.

Note:

APOC will process balance due periods but can not conduct a compliance check for MFT 60, or MFT 14.

- K. **Pending Additional Assessment on a TXMOD Flag.** This flag is issued when APOC identifies the existence of a pending tax assessment on TXMODA that has not posted to IMFOL or BMFOL. Create a period, calculate and classify the liability and update the flag.

- L. **Potential Missed BAL Due Flag.** This flag is issued when a balance due period, greater than \$25 is on IDRS but the period is not present in the AIS freeze tables. Decide if the period should be included on the proof of claim. If the period should not be included on the claim, then update the flag. If the period should be included on the claim, then calculate and classify each period, create a period detail for each estimate and update the flag. If this is a pre-petition module and a decision is made to not include this liability on the proof of claim, then manually input the TC 520 on this module and add the TC 520 to the Freeze screen on AIS.
- M. **TFRP for Multiple SSNs in the Same Period.** This flag is issued to alert the caseworker that the AIS freeze table contains an MFT 55 assessment on the same period for both debtors of a joint bankruptcy. Review the liabilities to determine if they are for the same corporate debt. APOC will list the liability under both debtors but will allow the caseworker to delete one of the assessments, if appropriate. See IRM 5.9.13.13(4) , *Duplicate Spousal Trust Fund Assessments*, for guidance and then insert the proper proof of claim statement on the claim to protect the government's interests. If the TFRP is for the same corporate debt for both husband and wife, remove one of the MFT 55 periods, insert the proper clarifying statement, and update the flag. If the TFRP is for different corporate debts, then update the flag.
6. **Case Documentation.** Caseworkers must document the actions they take to resolve APOC case flags and period flags. (See IRM 5.9.5.4, *AIS Documentation*). AIS histories generated by APOC alone are not sufficient case documentation.

5.9.14.2.9 (08-06-2015) Period Flags

1. **Period Flag Information.** Period flags impact a specific TIN, MFT and period. Flagged cases are considered "Open" requiring manual intervention to address and/or update the flags before the APOC case is exported to AIS. Caseworkers must determine the proper action to follow to resolve the flag issue so processing can continue.
2. **Identifying Period Flags.** Specific period flags can be found on the APOC Period List screen. The flag information is separated into two columns. The left column indicates the number of flag conditions on a specific period. The right column indicates the number of flag conditions that have been updated. The lower section of the APOC Period Detail screen provides the number of flags for that specific period as well as the name of each period flag. Each flag must be updated before the case processing can complete.
3. **Update Period Flags.** Each time a period flag is encountered, the caseworker must take additional steps to determine the appropriate action to be taken. Once those steps have been taken, the caseworker should go to the APOC Period Detail screen and select the flag to be updated, select the **Update Period Flag** button and select **Save**. This action alerts APOC the flag has been resolved, and the case can continue the processing cycle. The current date is automatically populated in the column to the right of the flag title.
4. **Reopen Period Flag.** If the flag was updated in error, highlight the date again, select the **Delete** key or **Spacebar** and select **Save**. The caseworker may use the arrow key to access the next flag at the bottom of the screen.
5. **Period Flag Conditions and Resolutions.** A brief description of each period flag condition and resolution is listed below:
 - A. **Credits Posted After Petition Date Flag.** This flag is issued when APOC identifies a credit that may have been received after the petition date in violation of the stay. This flag should be worked within **five** calendar days of APOC identifying the flagged condition. APOC has created a claim record for this MFT and Period with amounts for Tax, Penalty or Interest. Determine if the credit is in violation of the automatic stay. If the credit is NOT in violation of the automatic stay, then update the flag. If the credit is in violation of the automatic stay and cannot be kept, then manually calculate the period without including the credit, update the APOC record with the new figures, update the flag and prepare a manual refund or credit transfer. If the tax period should not be included on the claim, then remove the period.
 - B. **Exam Freeze Flag.** This flag is issued when APOC identifies the existence of a "-L Freeze" on IDRS for an MFT and Period which has a balance due or which was for one of the periods within the time frame checked for compliance (TC 420 on a TXMODA). APOC creates a claim record for this MFT and Period with no amounts for the tax, penalty or interest. Refer to AMDISA on IDRS and contact the appropriate Examination unit to determine if an additional assessment will be proposed. If Exam indicates an additional assessment will be proposed, then ask for the amount of the proposed assessment and compute interest on that amount from the due date of the return to the petition date. If Exam proposes a failure to file penalty, then compute interest on that penalty from the due date of the return to the petition date and add that amount to the penalty. Update the APOC record with the proposed tax, interest on tax, and any penalty amount(s) Exam may give and update the flag. If Exam is not going to make an additional assessment and the period is otherwise full paid, then remove the period and update the flag. If Exam is not going to make an additional assessment but the period still has a liability, the flag should be updated.
 - C. **IRPTR Not Filed Flag.** This flag is issued when APOC attempts to calculate an estimate using IRPTRL information, however that information results in a balance due of equal to or less than zero. APOC will input a \$100 estimate and issue the flag. Change the amount, if information warrants, and update the flag. If no change to the estimate is warranted, then update the flag. If the tax period should not be included on the claim, then remove the period.

Exception:

APOC does not issue \$100 dollar estimate flags on Chapter 7 cases, or on all General periods on Chapter 11, 12, or 13 cases.

 - D. **IRPTRL Greater than One Million Flag.** This flag is issued when APOC identifies an IRPTRL entry that is equal to \$999,999*. This flag alerts the user that an entry is actually greater than one million. (The maximum value of the field is six-characters). Review IRPTRO, update the period with the estimated tax calculated using the actual amounts and update the flag. If the tax period should not be included on the claim, then remove the period.
 - E. **Last Return Not Filed Flag.** This flag is issued when APOC attempts to calculate an estimate using Last Filed Return (LFR) information; however, that information results in a balance due of equal to or less than zero. APOC will input a \$100 estimate and issue the flag. Change the amount, if information warrants, and update the flag. If no change to the estimate is warranted, then update the flag. If the tax period should not be included on the claim, then remove the period.

Exception:

APOC does not issue \$100 dollar estimate flags on Chapter 7 cases, or on all General periods on Chapter 11, 12, or 13 cases.

 - F. **Lien Recorded Date Blank or Greater Than The Petition Date Flag.** This flag is issued when the recording date of the NFTL is not on AIS, or the date recorded is greater than the petition date. This flag should be worked within **five** calendar days of APOC identifying the flagged condition. If the petition date is within 30 days of the TC 582 date, then call the recorder where the NFTL was filed and ask for the recorded date to determine if the NFTL was filed prior to the petition date. If the NFTL was recorded prior to the petition date, then verify the period has the correct assessment date, update the APOC record with the NFTL date and update the flag. If the NFTL was recorded after the petition date (in violation of the automatic stay), then reclassify the period as appropriate, update the flag, and request a withdrawal of the NFTL. Managerial approval is required for a NFTL withdrawal. If the NFTL has been received but not recorded, then schedule a follow-up to re-contact the recorder prior to the earliest of: 341 Hearing, Confirmation Date or Bar Date. If the recorder has not received the NFTL request, then reclassify the period as appropriate and update the flag. If the petition date is more than 30 days from the TC 582 date, then update the APOC record with the TC 582 date and update the flag. If the tax period should not be included on the claim, then remove the period.
 - G. **Mortgage Interest Greater Than 50% of Income Flag.** This flag is issued when APOC identifies that the mortgage interest field on IRPTRL is greater than 50% of the total amount of the taxable income. Review IDRS and other sources to determine if an estimate is necessary for this period. If an estimate is NOT necessary, then update the flag, remove the period and close the filing requirements on IDRS. If an estimate is necessary, then update the period and update the flag.
 - H. **Negative Tax, Interest, or Penalty Flag.** This flag is issued when APOC identifies a credit balance on the tax, penalty, or interest. The total balance due on the Period Detail Screen will be correct. Pull TXMODA and INTSTB to correct the tax, penalty and interest figures, update the APOC record to reflect the correct figures and update the flag. If the period should be removed from the claim, then remove the period.
 - I. **Restricted Interest or FTP Flag.** This flag is issued when APOC identifies a TC 270 or a TC 340 with a TC amount greater than zero. APOC creates a record for this MFT and Period with amounts for tax, penalty or interest. Review INTSTB to determine if the message "Computation Hold on Interest/FTP" appears at the bottom of the screen. If that statement does not appear, then update the flag. If the statement does appear, then calculate the period manually, update the APOC record and update the flag. If the tax period should not be included on the claim, then remove the period.

Caution:

Often interest or penalty appears to be restricted, but is not.

Note:

If penalties were abated in a prior bankruptcy, there may not be any penalties to be computed or claimed on the Proof of Claim for the current bankruptcy.

- J. **Secured Period Flag.** APOC issues this flag when it identifies that a Notice of Federal Tax Lien was recorded on a specific period. This flag should be worked within 10 calendar days of APOC identifying the flagged condition for all chapters other than chapter 7. The Secured Period flag indicates the Service may be entitled to an adequate protection or cash collateral agreement. APOC calculates the period as fully secured by default. Determine, by reviewing the NFTL, schedules, or other sources if the period should remain fully secured. If the entire amount of the period should remain secured, then update the flag. If the period should be partially secured, then determine the correct secured amount, update the APOC record, insert a period for the remaining amount, reclassify the period and update the flag. If the period should not be secured, then reclassify the period and update the flag. If the tax period should not be included on the claim, then remove the period.

Note:

If the NFTL was filed with respect to the restitution assessment, the NFTL will carry an "R" and the form number of the underlying tax source, such as "R1040". The flag should be updated in accordance with the instructions above.

- K. **TC 922 Flag.** This flag is issued when APOC identifies a TC 922 on IDRS for an MFT and period which has a balance due or which was for one of the periods within the time frame for compliance. APOC creates a claim record for this MFT and Period with NO amounts for tax, penalty or interest. Check AMS for the CP2000. If one is available, then update the record with the amounts shown on the CP2000 and update the flag. If there is no CP2000 on AMS, then contact the appropriate Campus Automated Underreporter Unit to determine if a proposed additional assessment is planned. If an additional tax assessment is planned, then compute the liability, update the APOC record with the proposed tax, interest and any penalty and update the flag. If AUR proposes a failure to file penalty, then compute interest on that penalty from the due date of the return to the petition date and add that amount to the penalty. If no additional assessment is planned, then remove the period..
- L. **TF/NTF with Multiple Assessments Flag.** This flag is issued when APOC identifies multiple assessments on a single tax period where the due date of the return is more than three years prior to the petition date. The tax assessment will need to have a split classification (unsecured priority and general). Follow procedures outlined in IRM 5.9.13.20, *Claim Calculations*. Update the period for the unsecured general amount, insert period if necessary, with priority classification and amount and update the flag. If the tax period should not be included on the claim, then remove the period.
- M. **TXMODA ST 10/12 Credit Flag.** This flag is issued when APOC identifies a credit balance on a period that is identified as Status 10 or 12 on TXMODA Master File History Section. APOC will process the proof of claim calculations as if the credit does not exist. Review INTSTB to determine if the claim calculations are correct. If the calculations are correct, then update the flag. If the calculations are not correct, then recompute the liability, update the APOC record and update the flag. If this assessment should not remain on the claim, then remove the period.
- N. **Wrong Tax Assessment Date on Lien Flag.** This flag is issued when the assessment date on the NFTL record on AIS does not exactly match the assessment date on IDRS. APOC creates a claim record and classifies it as secured. Determine if the NFTL applies to the assessment in question, and if the assessment should remain as secured. If the assessment date on the AIS NFTL record does not match the assessment date for this assessment, then update the "AIS Assessed" field and follow the instructions in item (j), Secured Period, above.

Caution:

An amended NFTL should NOT be requested during the time the taxpayer is in bankruptcy.

If the NFTL in question does not apply to this assessment, and is not secured by any other NFTL, then change the classification to priority or general, add a history record to document the activity, and update the flag. If the tax period should not be included on the claim, then remove the period.

- O. **Unable to Determine PBE Flag.** APOC issues this flag when the system cannot calculate the prior bankruptcy extension (PBE) for a specific tax period. If the period should remain on the claim, then pull TXMOD, calculate the extension and determine the correct claim classification, update the APOC record and update the flag. If the period should not be on the claim, then remove the period.
- P. **Not Filed Flag.** This flag is issued when APOC is unable to compute an estimate after trying to utilize both IRP and LFR information. APOC will input a \$100 estimate and issue the flag. Change the amount, if information warrants and update the flag. If no change to the estimate is warranted, then update the flag. If the tax period should not be included on the claim, then remove the period.

Exception:

APOC does not issue \$100 dollar estimate flags on Chapter 7 cases, or on all General periods on Chapter 11, 12, or 13 cases.

- Q. **Split Period Flag.** This flag is issued when APOC identifies an assessed balance due on MFT of 01, 03, 04, 09, 11, 16 and a period where the Return Due Date > Petition Date. A claim record will have been created for this MFT and Period by APOC with no amounts for tax, penalty and interest. Decide if there are any pre-petition amounts that should be included on the proof of claim. Calculate the pre-petition and post-petition liability for tax, penalty and interest. If there is pre-petition liability, then update the period record with the pre-petition tax, penalty and interest amounts and update the flag. If there is no pre-petition liability and the tax period should not be included on the claim, then remove the period.
- R. **Unagreed Assessment Flag.** This flag is issued when an unagreed assessment posted with a date that is after the petition date. Determine if this assessment should remain or needs to be abated, and whether or not the assessment can be included on the proof of claim.

Example:

Post-petition assessments of unagreed deficiencies on pre-petition periods for which the statutory response time to file a Tax Court petition has not expired (or been waived) are violations of IRC § 6213 and must be reversed. See IRM 5.9.4.3(8), **Unagreed Deficiency Assessments**.

Contact Exam or AUR, provide them with the petition date and request they determine if the assessment was made in violation of IRC § 6213. If the assessment was not made in violation of IRC § 6213 and the period should remain on the claim, then update the flag. If the assessment was made in violation of IRC § 6213, but the amounts should remain on the claim, then tell Exam/AUR they need to abate the liability, monitor the case and reassess after dismissal or discharge. Update the APOC record to reflect the correct estimated paragraph, remove the assessment date and update the flag. If the period should not be included on the claim, then remove the period.

- S. **Potential Missed BAL Due Flag.** This flag is issued when a balance due period, greater than \$25 is on IDRS but the period is not present in the AIS freeze tables. Decide if the period should be included on the proof of claim. APOC calculates the amount owed. If the period should be included on the claim, then update the flag. If the period should not be included on the claim, then remove the period.
- T. **Possible Error in Interest Calculation.** This flag is issued when APOC attempts calculation of a balance due, but encounters an error. APOC may or may not provide dollar amounts in the Tax, Penalty or Interest field. The APOC calculation provided cannot be relied upon. If the period should remain on the claim, then calculate the assessment manually, update the APOC record as necessary and update the flag. If the period should not remain on the claim, then remove the period.

- U. **Error Condition - APOC Program Problem.** One of the three flag conditions below is issued when APOC encounters a processing problem on a specific tax period, but is still able to continue processing the case. The conditions are displayed as individual Period Flags within APOC; however, they are all lumped together under the title of Error Condition - APOC Program Problem for purposes of the individual Period Detail Flag reports.
1. **TXMODA Fault Flag.** This flag is issued when APOC encounters a dummy module, for example cases in status 23, 53, etc. If the period should remain on the claim, then use cc MFREQ or RECON to bring the period to IDRS and request INTSTB. If a TXMOD has a dummy module or no module, then enter MFREQC. If an item of information is posted to IMFOLT but not to TXMOD, then request RECON. With this information in hand, calculate and classify the period manually, update the APOC record and update the flag. If the period should not remain on the claim, then remove the period.
 2. **Potential Reversed Credit with MF-ST5 10 or 12 Flag.** This flag is issued when APOC attempts calculation of a balance due, but encounters an error. APOC may or may not provide dollar amounts in the Tax, Penalty or Interest field. The APOC calculation provided cannot be relied upon. If the period should remain on the claim, then calculate the assessment manually, update the APOC record as necessary and update the flag. If the period should not remain on the claim, then remove the period.
 3. **Calculation Error: Credits Paid Off All Assessmts Flag.** This flag is issued when APOC attempts calculation of a balance due, but encounters an error with the application of credits. APOC may or may not provide dollar amounts in the Tax, Penalty or Interest field. The APOC calculation provided cannot be relied upon. If the period should remain on the claim, then calculate the assessment manually, update the APOC record as necessary and update the flag. If the period should not remain on the claim, then remove the period.

**5.9.14.2.10 (07-01-2014)
Case Compliance**

1. **Compliance Review.** The caseworker should conduct a compliance review on cases with and without flags after all of the case flags have been updated. The Case Compliance screen displays all compliance periods for a specific case.
2. **APOC Compliance Screen.** This screen is for compliance information only. No processing is done on this screen.
 - A. Each debtor IMF TIN is shown separately with compliance records for the past six years.

Exception:

If debtors in a joint bankruptcy filed a joint return and that period was moved to retention, APOC will not determine if both debtors are on the return for the period in retention. A cross-reference IMF TIN (X-TIN) is displayed when a joint return was filed with the debtor. The X-TIN is the primary TIN filed for that year. If the X-TIN is not listed in the "TIN" field, it is a non-debtor spouse.

- B. BMF compliance is conducted for open filing requirements for six years prior to the petition date. If the establishment date for the entity is less than six years prior to the petition date, APOC will only address compliance starting with the establishment date. If the filing requirements have been closed pre-petition, APOC will do a compliance check to the closure period instead of to the petition date.

Note:

For both IMF and BMF cases with a prior bankruptcy extension (PBE), a compliance check is conducted for unfiled returns for eight years prior to the petition date. Previous bankruptcy(cies) conceivably could move an eight year old unfiled return from a general claim to a priority claim. If the debtor has no previous bankruptcy filing(s), or if periods more than six years prior to the petition date will be classified as general, the compliance check for unfiled returns is systemically limited to the usual six years. Per IRM 5.1.11.6.1(5), *Enforcement Determination*, pursuing unfiled returns for periods more than six years prior requires manager approval.

- C. The Compliance Screen displays each debtor TIN listed and the six years of tax periods for which compliance has been checked. If a filed return is found, a "Y" appears under the data column entitled Compliance. If APOC has not identified a filed return, the annotation in the Compliance column will be "NO *".
- D. If a TDI has been closed using TC 59(X), a "Y" will be displayed for this period, and APOC will not prepare an estimated claim.

3. **IMF Compliance Record Review.** Each debtor IMF TIN is listed separately with compliance records for the past six years.

IF	THEN
the case is filed prior to October 17, 2005,	compliance is checked for six years.
the case is filed on or after October 17, 2005,	compliance is checked for six years, unless the case has a prior bankruptcy extension (PBE). A compliance check is then conducted for unfiled returns for eight years prior to the petition date.
the debtors have previously filed joint returns and a tax year has moved to the IDRS retention register,	APOC is unable to check the tax year and will create and estimated period for the secondary TIN.
the estimated period is not necessary,	remove the period.
a joint return was filed with the debtor and the X-TIN is not present,	the debtor's TIN is the primary for that year.
a joint return was filed with the debtor and the X-TIN (Non Petitioning Spouse (NPS) TIN) is primary on IDRS	the X-Ref TIN (NPS TIN) will be displayed.

4. **BMF Compliance Record Review.** BMF compliance is conducted on each MFT with an open filing requirement. APOC will research the past 24 periods for quarterly returns and the past six periods for annual returns.

IF	THEN
the case is filed prior to October 17, 2005,	compliance is checked for 24 periods for quarterly returns and 6 periods for annual returns.
the case is filed on or after October 17, 2005,	compliance is checked for 24 periods for quarterly returns and 6 periods for annual returns unless the case has a prior bankruptcy extension (PBE). A compliance check is then conducted for unfiled returns for 8 years prior to the petition date.
the established date for the BMF entity is less than eight years prior to the petition date,	APOC will only address compliance starting with the established date.
the filing requirements have been closed prior to the petition date,	APOC will do a compliance check to the closure period instead of to the petition date.

5. **Prior Bankruptcy Extension (PBE) Period Review.** Cases with a PBE must have a compliance check conducted for unfiled returns for the past "eight" years prior to the petition date. Previous bankruptcies could move an eight year old unfiled return from a general claim to a priority claim.
6. **Delinquent or Filed Return.** If a return is found, a "Y" appears under the data column entitled Compliance. The "Y" indicator only confirms a tax return was filed. It does not establish that the period is fully paid, or has a debit or credit balance. If APOC has not identified a filed return, the annotation in the Compliance column will be "*NO*" .

Note:

If a Return Delinquency period has been closed using TC 59(X), {e.g. TC 590, TC 591 or TC 594}, a "Y" will be displayed for this period and APOC will not prepare an estimated claim record.

**5.9.14.2.11 (08-06-2015)
Claim Record**

1. **Removing a Claim Record from APOC.** Should a caseworker choose to remove a claim record from APOC for a specific period, (s)he should select the period from the APOC Period List, select the **Remove Period** button from the APOC Period Detail screen and select the **Save** button. This will remove the record. A message will appear on the claim record stating PERIOD REMOVED.

Reminder:

When a period or multiple periods are removed from APOC and there are no other liabilities or open flags on a case, APOC will close the case as no liability on AIS after the next APOC processing. (APOC will not close Chapter 11 or Chapter 12 cases as no liability.)

Once a period has been removed, the **Remove Period** button changes to **Restore Period**. By selecting the **Restore Period** button and selecting the **Save** button, the removed period will be restored.

2. **Insert New Period.** When a caseworker chooses to select the **Insert New Period** button available from the APOC Period Detail screen an exact copy of the claim record previously chosen is created. The caseworker must update all areas that need to be changed. Select the **Save** button to save the record.

Caution:

The TIN field on the newly created record defaults to the first TIN in the drop down box. To ensure the claim is filed with the correct information, the user must validate that the correct TIN is placed into the field.

3. **Create Period.** When a caseworker chooses to select the **Create Period** button available from the APOC Case Detail screen a claim record will appear with the case number, last name and TIN options. The caseworker must choose the appropriate TIN from the Drop Down TIN Options and update all blank areas with the appropriate information. Select the **Save** button to save the record.
4. **Split Period.** If an existing claim record must be split (usually when a secured period should be partially priority or general), the caseworker must use **Insert New Period** button available from the APOC Period Detail screen which creates an exact copy of the claim record previously chosen. The caseworker must update all areas that need to be changed. Select the **Save** button to save the record.

5.9.14.2.12 (07-01-2014)

Printing, Generating or Transmitting APOC Claims

1. **Claims Available for Printing.** After cases have completed the APOC process, their claims are available for printing by selecting Bulk Forms under the Miscellaneous Options from the AIS Home Page.

Note:

As discussed in IRM 5.9.14.2.12, *Printing, Generating or Transmitting APOC Claims*, proofs of claim are NOT generated or printed from the APOC system. Once APOC has completed its tasks, it populates the relevant fields in AIS so a claim can be produced in hard copy or electronic format. The electronic signature of the specialist assigned the case will appear on the front of the claim.

2. **Process APOC Button.** Both APOC and APOC Amends systems now allow users to Electronic Proofs of Claim (EPOC) their claims **AFTER** all required actions have been completed. The **Process APOC** button is located on the lower left side of the Case Detail screen. If caseworkers choose to move the claim to AIS without EPOCing the claim, then they will still be able to process EPOC from the AIS POC screen. Caseworkers should utilize the **Submit Claim for EPOC** button in the EPOC area of the AIS Proof of Claim screen, for this purpose.

5.9.14.2.13 (08-06-2015)

Terminating a Case

1. **Terminating a Claim.** If a claim no longer should be filed (e.g., a case has been dismissed or converted to Chapter 7 No Asset), the case can be terminated in APOC to prevent the data from being written over to AIS. The **Terminate Case** button is located on the APOC Case Detail screen. The caseworker must select **Terminate Case** button and select **Save**. A message will appear "Do you want to terminate this case?" The caseworker must select **Yes** or **No** and select **Save**.

Reminder:

Caseworkers should determine whether removing periods or terminating a case is the appropriate case action. When a period or multiple periods are removed from APOC and there are no other liabilities or open flags on the case, APOC will close the case as no liability on AIS after the next APOC processing. (APOC will not close Chapter 11 and 12 cases no liability.) Caseworkers will need to manually address closure of cases terminated in APOC.

2. **Identifying Terminated Cases.** When a case has been terminated, the caseworker will not be able to resolve any of the flag conditions. The case is immediately terminated and updated in APOC and AIS after the caseworker exits the Case Detail screen. The case automatically moves to "Completed Cases". APOC will input:

- A. An "R" (Terminated original APOC case) in the "APOC Status" field on the AIS Taxpayer screen.
- B. A "T" (Terminated Amends case) in the POC statement on the APOC Case Detail screen.

3. **Terminated Cases Report.** Cases terminated in APOC will appear on the **Terminated Cases Report** located on the APOC Reports Menu.

Note:

A terminated case can not be run through APOC again. If a claim is later deemed necessary, it should be prepared manually.

5.9.14.2.14 (07-01-2014)

Estimated Return Process

1. **Estimated Return Information.** APOC processes periods for Debtor TINs found to be non-compliant. Estimates are created for any period where:

- There is 'NONE' on the B/IMFOLI for the Debtor TIN and no more information is available from cross reference SSNs, or
- The period is completely missing from Debtor TIN's B/IMFOLI and no more information is available from cross reference SSNs.

APOC will then investigate IRPTRL.

- If IRPTRL information exists for a TIN and period, APOC will compute the tax based on the total taxable reported income.
- If IRPTRL information does not exist for this TIN and period or if MFT is not 30, APOC develops a tax estimate using information from the last filed return (LFR).
- If there is no IRPTR or LFR then APOC estimates the tax period at \$100.

A claim record is created using this estimate as the tax amount.

2. **IMF Estimated Process.** APOC computes an estimate using the following process for IMF periods:

- IRPTRL is used for the unfiled tax year and an estimate is computed based on all reported income.
- Self-employment tax is computed when non-employee compensation is identified and adds it to the tax estimate.
- Penalties are not computed on an estimated period.
- APOC will reduce the estimate when there are credits available on a period.

3. **Non-Employee Compensation.**=====

Step	Action
1	Take total NEC x .9235 = Net Earnings from Self employment
2	Net Earnings from Self employment x .153 = SE tax
3	SE tax x 50% = 1/2 SE tax
4	Add all other taxable income to the NEC income = Total taxable income
5	Total taxable income - 1/2 SE tax = Adjusted Gross Income
6	Adjusted gross income - \$5000 (standard deduction) - \$3000 (personal exemption) = Taxable income
7	Taxable income x .2 (tax rate) = Income tax

4. **IMF Reference Tables.** IMF reference table requirements are as follows:

IF	Then
IRPTRL is available and Mortgage Interest is more than 50% of the total income,	APOC: <ul style="list-style-type: none"> • Issues a period flag, • Creates a claim record, and • Classifies this claim record.
IRPTRL is not available,	APOC goes to LFR to compute an estimate: <ul style="list-style-type: none"> • The tax on the LFR is increased by 5% per year to the year being estimated. • The withholding figure on the current year credits (credit elect or estimated tax payments) are deducted from the estimated amount. • The resulting amount is used to create a claim record.
IRPTRL and LFR do not exist for that period and there is a prior estimated tax period based on IRPTRL	APOC: <ul style="list-style-type: none"> • Deducts the withholding figure on the current year credits (credit elect or estimated tax payment) from the estimated amount. • Creates a claim record.
IRPTRL and LFR do not exist for that period and there is not a prior estimated tax period based on IRPTRL	APOC: <ul style="list-style-type: none"> • Creates a claim record, • Inputs a \$100.00 estimate, and • Issues a flag. <p>Exception:</p> <p>APOC does not issue this flag in Chapter 7 cases, or for unsecured general periods in Chapters 11, 12 or 13 cases.</p>

5. **BMF Estimated Process.** APOC computes estimates for BMF periods using the following process:

- BMF periods are based on LFR information.
- The tax amount is calculated from the period liability using all TC 150s, 290s or 300s.
- APOC will reduce the estimate when there are credits available on a period.
- The tax amount is input to the APOC claims record.
- No penalty is computed for the estimate.

Note:

APOC does not do compliance on returns such as tax form 2290 or 944, thus it will not compute estimates for those returns.

6. **BMF Reference Tables.** BMF reference table requirements are as follows:

IF	THEN
An estimate cannot be computed and the MFT is 01, 03, 11, 16 or 19,	APOC: <ul style="list-style-type: none"> • Creates a claim record, • Inputs a \$100.00 estimate, • Classifies the record as P (Priority), and • Issues a flag. <p>Exception:</p> <p>APOC does not issue this flag in Chapter 7 cases.</p>

7. **BMF Split Period Estimates.** APOC computes an estimate for "Split Periods" using the liability incurred after the period beginning date and before the petition date (pre-petition). It is computed as follows:

- A prorated estimate is computed using 91 days for quarterly returns and 365 days for annual returns.
- The tax amount for the last filed return is divided by the number of days for a daily rate.
- The number of days is computed from quarter or year beginning date to the petition date for the total of pre-petition days.
- The pre-petition days are multiplied by the daily rate for the prorated estimate.

Example:

- Last Filed return had tax of \$455.00.
- $455.00 / 91 = 5.00$ per day.
- Beginning of quarter to petition date is 50 days.
- $50 \text{ days} \times 5.00 = 250.00$ for the prorated estimate.

5.9.14.3 (07-01-2014)

Amended Automated Proofs of Claim (AAPOC)

1. **APOC Amends Information.** When a proof of claim has been timely filed and situations warrant, an amended claim may be filed as necessary to claim the correct liability owed the Service. Amended claims processed through APOC are not limited to initial proofs of claim created by APOC, thus all cases shall be candidates for the APOC Amends process.
2. **Source for Amended Claims.** The basis for APOC Amends process is the existing "Litigation Transcript System" (LTS) process, a subsystem of AIS. LTS matches "Master File" (MF) data with a **-V** and/or **-W** freeze codes with the TIN records on the AIS. The MF data is extracted weekly to a file that is sorted and transmitted to the AIS database. LTS transcripts are retained for six weeks, after that time, the transcripts are deleted from AIS. The litigation transcript data that is available to the APOC Amends process is the source for triggering an automated amended proof of claim.

5.9.14.3.1 (12-23-2013)

Amends Process

1. **Amends Case Selection.** The following must be met before a case will be eligible for APOC Amends processing.
 - The case is a chapter 7A, 11, 12 or 13.
 - The Employee Org1 level is NOT 85000 (CIO).
 - "Discharged", "Dismissed", "Noticed" and "On AIS" fields are Null.
 - Proof Required is F.
 - Proof Filed is NOT Null.
2. **Litigation Transcript Criteria.** The following must be met before a transcript will be eligible for APOC Amends processing:
 - The transcript type is "NEW ASSMTS -----Transaction Code 150 Found".
 - The TC 150 has posted to IDRS (TXMODA) with an assessment date.
 - Period Ending date on Litigation transcript is determined to be "Pre-Petition".

Note:

APOC Amends does not process "Post-Petition or Split Periods".

3. **Estimated Paragraph Criteria.** APOC Amends will process the litigation transcript if the tax period was included on the proof of claim with an "Estimated Paragraph" equal to one of the following:
 - 1 (UNASSESSED - NO RETURN) or,
 - c (UNASSESSED LIABILITY) or,
 - d (NOT FILED) or,
 - I (UNASSESSED - NO RETURN).
Occasionally employees will choose to amend a proof of claim after receiving the **original tax return**. Employees must remember to change the **estimated paragraph** number/alpha for the manually amended period to something other than **1, c, d or I** to prevent APOC Amends from processing the Litigation Transcript when the return posts to IDRS.
4. **Processing Delays.** APOC may encounter processing delays caused by any of the following:
 - Problems with IP Address connections to IDRS,
 - IDRS Dead Cycles,
 - LTS unavailable, or
 - TC 150 assessed on LTS but not found on TXMODA.
5. **TC 150 Not Found on TXMODA.** When a "TC 150 New Assessment" transcript is selected for Amends processing but the TC 150 does not appear on the TXMODA, APOC will abort the transcript and select it again during the next Amends process.
6. **MFREQ.** The Amends program has added the ability to run MFREQ. Occasionally there are times when the amends program is unable to retrieve INTSTB for a pending TXMODA. When this occurs APOC will abort the transcript and select it again during the next Amends process.
7. **"APOC Review" Field.** The "APOC Review" field located on the Litigation Transcript screen will automatically be populated with the date APOC Amends selected the transcript for processing.

5.9.14.3.2 (07-01-2014)

Amends Status

1. **"APOC Status" Field.** The "APOC Status" field is located on the APOC Case Detail screen. This field will be populated with one of the following APOC Amends status codes:
 - H – Amends case on Hold
 - T – Terminated Amends case
 - @ - Completed Amends case
2. **H Status.** All cases selected for amendment will be in "H (Hold)" status. When a caseworker removes the "H" from the "APOC Status" field, APOC will process the case during the next APOC run. The case will then move to AIS and update the AIS POC. All periods selected for amendment should be reviewed prior to removing the "H".

3. **T Status.** A caseworker may choose to terminate the case from the Amends process by selecting the **Terminate Amend** button located on the lower portion of the APOC Case Detail (Amends) screen. The case is immediately terminated and updated in APOC and AIS after the caseworker exits the APOC Case Detail (Amends) screen. The case automatically moves to "Completed Cases" .
4. **@ Status.** When a caseworker removes the "H (Hold)" from the "APOC Status" field, APOC will select the case during the next APOC Initiation Process and process the amendment. The case will then move to AIS and update the AIS POC. The "@" sign will appear in the "APOC Status" field on the APOC Case Detail Screen and in the "APOC Status" field on the AIS Taxpayer screen when a case has been amended by APOC Amends.

Note:

Caseworkers must remember to submit the case to be EPOC'd or generate the claim for printing.

5.9.14.3.3 (11-19-2010)

Amends Access

1. **APOC Amends Access.** Select the **APOC** tab from the AIS Home Page to access APOC and review the results of APOC Amends case processing.
2. **Case Type.** Select the **Amended Cases** Case Type from the APOC Case Query/Report screen.
3. When the Case Type selection is Amended Cases, the options automatically change to allow caseworkers the option to choose between "Open Amends" or "Completed Amends" . The screen defaults to "Open Amends" .

5.9.14.3.4 (12-23-2013)

Open Amends

1. Open Amends cases are those cases that have not successfully completed the APOC Amends process. Open Amends cases are those with a date in the "Amend Beg Date" field and without a date in the "Amend End Date" field on the APOC Case Detail (Amends) screen. These cases are currently in "H (Hold)" in the Amend status, awaiting processing determination by the caseworker.
 - A. **Amends Case List (Open).** This screen provides a list of all cases with a transcript selected for the amendment process. When the **Case List** tab is selected the system automatically defaults to the first case on the list.
 - B. **Amend Beg Date.** This column reflects the date APOC Amends selected the case for processing.
 - C. **Amd.** This column will always reflect a "YES" which indicates APOC Amends selected the case for processing.
 - D. **Amend Status.** This column reflects the current APOC Amend status. The Open Amends cases will always reflect a status of "blank" which reflects the user has removed the "H" and the case is awaiting further processing, or "H" if it has not been worked.

5.9.14.3.5 (12-23-2013)

Amends Time Frame Requirements

1. **Field Insolvency.** AI Field Insolvency groups generate and work Litigation Transcript System (LTS) reports on cases currently assigned to the Field.
2. **Weekly Extractions.** MF data are sorted and transmitted to the AIS database once a week. The APOC system will process the "Bal Due" TC 150 New Assessment transcripts for cases assigned to the Field and meet the "Case Selection" criteria.
3. **Time Frame.** Caseworkers must review "Open Amends" cases within 30 calendar days of the Amend Begin Date.

5.9.14.3.6 (12-23-2013)

APOC Amends Flag Conditions and Resolutions

1. **TC 150 Flags.** Flags will be issued for the following TC 150 transcripts processed through the APOC Amends system:
 - A. **TC 150 Zero Module Balance – Possible Offset.** APOC Amends will select a New TC 150 Zero Balance transcript where the original POC contained an estimated delinquent period and the tax return for this period is now filed and assessed. APOC processes new assessment periods with a zero balance. APOC provides a zero dollar calculation of the period based on the filed return. The caseworker will need to review the Litigation Transcript for this particular period flag to determine if an offset occurred and to which period the offset was applied. If an offset occurred, the caseworker will process the offset on the appropriate APOC record and then update the flag. If there was no offset, but the claim still needs amending to reflect the filing of the return, the caseworker can update the claim. If the claim no longer needs amendment, the caseworker can terminate the amends process.

Reminder:

If the bankruptcy is joint and separate estimates were done by APOC, and then the taxpayers file a joint return, the caseworker will need to remove or zero the estimate for the other TIN.

- B. **TC 150 LT Credit Module Balance.** APOC Amends will select a TC 150 Credit Module Balance transcript where the original POC contained an estimated delinquent period and the tax return for this period is now filed and assessed. APOC processes new assessment periods with a credit balance. APOC provides a zero dollar calculation of the period based on the filed return. The caseworker will need to review the Litigation Transcript for this particular period flag to determine if an offset should take place and to which period the offset should be applied. If an offset is required, the caseworker will process the offset on the appropriate APOC record and then update the flag.

Note:

APOC does NOT move the credit on IDRS. The caseworker will need to ensure that credit systemically offsets to the correct period or request a credit transfer.

If there is no need for offset, but the claim still needs amending to reflect the filing of the return, the caseworker can update the claim. If the claim no longer needs amending, the caseworker can terminate the amends process.

Reminder:

If the bankruptcy is joint and separate estimates were done by APOC and then the taxpayers file a joint return, the caseworker will need to remove or zero the estimate for the other TIN.

- C. **TC 150 LT Balance Due.** APOC Amends will select a New Assessment Transaction Code 150 Found transcript where the original POC contained an estimated delinquent period and the tax return for this period is now filed and assessed. APOC processes new assessment periods with a balance due and issues this flag. Users must decide if the period that was previously estimated should be amended to reflect the new balance due. APOC calculates the new amount owed. If the period should be amended the caseworker can update the flag. If the period should not be included on the claim, the caseworker can terminate the amends process.

Reminder:

If the bankruptcy is joint and separate estimates were done by APOC and then the taxpayers file a joint return, the caseworker will need to remove or zero the estimate for the other TIN.

These flags are located in the "Period Flag" section on the APOC Period Detail screen. Flags must be resolved prior to case completion. A case will appear on the Open Amends Report and the Flagged Amends Report until all flags have been resolved. A case with an open flag cannot be submitted for processing through EPOC until after flags have been resolved.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 15. Payments in Bankruptcy

5.9.15 Payments in Bankruptcy

- 5.9.15.1 [Payment Addresses](#)
- 5.9.15.2 [Applying Payments in Bankruptcy](#)
- 5.9.15.3 [Plan Interest Rates](#)
- 5.9.15.4 [Non-Pecuniary Loss Penalty Payments](#)
- 5.9.15.5 [Unassessed Liability/No Open Modules](#)
- 5.9.15.6 [Proper Application of Payments](#)
- 5.9.15.7 [Balancing Payments](#)
- 5.9.15.8 [Time Frames for Processing of Payments](#)
- 5.9.15.9 [Chapter 7 Asset Trustee Checks](#)
- 5.9.15.10 [Payment Posting Responsibility](#)
- 5.9.15.11 [Chapter 13 Trustee Payments](#)
- 5.9.15.12 [Processing CIO Payments in the Mail Room](#)
- 5.9.15.13 [Receipt of Bulk Payments](#)
- 5.9.15.14 [Payment Posting Steps](#)
- 5.9.15.15 [Common Payment Posting Errors](#)
- 5.9.15.16 [Dishonored Checks](#)
- 5.9.15.17 [Removing Trustee Payments](#)
- 5.9.15.18 [Non-Insolvency Checks](#)
- Exhibit 5.9.15-1 [Virus Scanning](#)
- Exhibit 5.9.15-2 [Posting Non-Plan Payments](#)
- Exhibit 5.9.15-3 [Accessing the AIS Claim Screen](#)
- Exhibit 5.9.15-4 [Preparing Letter 549-C](#)
- Exhibit 5.9.15-5 [Plan Recomputation](#)
- Exhibit 5.9.15-6 [AIS Automatic Allocation](#)
- Exhibit 5.9.15-7 [Posting Payments on a Closed Case](#)

Manual Transmittal

August 06, 2015

Purpose

(1) This transmits a revised IRM 5.9.15, *Bankruptcy and Other Insolvencies - Payments in Bankruptcy*.

Material Changes

- (1) Throughout IRM 5.9.15, references to the position of "technician", "specialist", or "advisor" have been changed to "caseworker".
- (2) 5.9.15.2 clarifies payment application order.
- (3) 5.9.15.2(5) was added to advise caseworkers that no lien, levy, or seizure payments may be applied to an individual MFT 35 liability.
- (4) 5.9.15.2.2 has been revised for clarity. Paragraphs (3) and (4) have been added to provide additional information on payments received for unfiled periods. The paragraphs following are renumbered. Time frames for transferring credits to the URF or XSF are updated. Instructions for preparing Form 8758 are clarified.
- (5) 5.9.15.2.4(11)b contains a note regarding G- and -I freezes.
- (6) 5.9.15.2.6 was renamed Payment Resulting from Litigation, as this subsection now includes content on restitution assessment payments
- (7) 5.9.15.2.6(2) was added to address handling of payments received on restitution assessments.
- (8) 5.9.15.3(1) Note regarding corporate under payments was removed.
- (9) 5.9.15.6.2 has been retitled "Multiple Refunds". Mentions of the DUPREF report have been removed as the report was discontinued with the implementation of CADE2 programming.
- (10) 5.9.15.14.1(3) contains a note on adding the interest rate on a case with a confirmed plan.
- (11) 5.9.15.18(2) has been updated to remove content regarding installment agreements as they should not be granted for post-petition liabilities.
- (12) 5.9.15.18(3) b) Note has been removed as post-petition installment agreements should no longer be granted.
- (13) Exhibit 5.9.15-5 has been updated with a caution for caseworkers when recomputing a plan.
- (14) Exhibit 5.9.15-6 was updated to clarify that payments should be applied to the earliest assessed periods. Information regarding allocation of payments on or before June 19, 2000 has been removed.
- (15) Reviewed and updated website addresses, legal references, and IRM references as necessary. Changes made for clarity.

Effect on Other Documents

This material supersedes IRM 5.9.15, dated April 5, 2011.

Audience

Field Insolvency Groups and the Centralized Insolvency Operation.

Effective Date

(08-06-2015)

Kristen Bailey, Acting Director
Collection Policy

5.9.15.1 (04-05-2011)

Payment Addresses

1. **Chapter 7 and Chapter 13.** Trustees have been instructed to send all Chapter 7 and Chapter 13 payments to the Centralized Insolvency Operation (CIO). The proper mailing address for these checks is: Insolvency Remittance, Post Office Box 7317, Philadelphia, PA 19101-7317.
2. **Chapters 11, 12, and 15.** Payments for Chapter 11 and Chapter 12 cases should be sent to the local Field Insolvency (FI) offices assigned to the cases. If a Chapter 11, 12, or 15 check is inadvertently mailed to the CIO, the CIO Payment Processing Unit must post the check as required by Campus procedures.

5.9.15.2 (08-06-2015)

Applying Payments in Bankruptcy

1. **Automated Insolvency System (AIS) Processing.** AIS processing is available for most bankruptcy and bankruptcy-related payments. Step-by-step instructions for posting payments are provided in this IRM section. Payment posting vouchers are prepared by Field Insolvency and routed with the accompanying payments to the delegated Campus for posting. Bankruptcy payments remitted by the bankruptcy estate and received by the CIO are processed at the Philadelphia Campus. (Only Chapter 7 and Chapter 13 trustee checks should be going to the CIO.) Bankruptcy-related payments not being paid by the bankruptcy estate (payments with a designated payment code (DPC) other than 03 or 11) received by the CIO will be processed by the CIO. CIO will route the payment posting voucher(s) and the accompanying payment(s) to the Philadelphia Campus Support function for posting. If, for some reason, payments cannot be scanned, the remittance will be processed in accordance with Campus Support guidelines. IRM 3.8.44.4.2, *Remittance Not Payable to United States Treasury*, outlines acceptable payee names and payee names that require overstriking.

Note:

To resolve payment posting problems, Insolvency employees must familiarize themselves with all aspects of AIS, including the AIS User's Guide, AIS Message of the Day, and AIS enhancements.

2. **Bankruptcy – Involuntary Payments.** Payments received through the bankruptcy proceeding are considered *involuntary payments*. Absent court orders or confirmed plan designations to the contrary, bankruptcy payments are applied as follows:

- A. First to earliest assessed secured liabilities;
- B. Then to earliest assessed unsecured priority; and
- C. Lastly, to the claim's earliest assessed unsecured general class.
See *Exhibit 5.9.15-6, AIS Automatic Allocation*, for details of automatic allocation.

3. **Dischargeable Liabilities.** While payments should usually be applied to the earliest assessment, in some cases it may be in the government's best interest to apply the payment first to the later dischargeable assessments if earlier assessments are nondischargeable. Payments should be applied to dischargeable liabilities in the same manner as above (earliest assessments first).

Note:

If a dischargeable liability has been adjusted at the time the payment is received, Insolvency should readjust the account and apply the payment to the discharged liability before applying it to the non-discharged liability on the proof of claim or according to local guidelines.

4. **Court Designation.** If a confirmed plan or a court order defines payment designation, the payment will be manually applied as directed. (See *IRM 5.9.15.14.4, Partially Designated, Semi Automatic and Manual Payments*.)
5. **Individual MFT 35 Liabilities.** Beginning in 2015, individuals may be assessed a Shared Responsibility Payment (SRP), under MFT 35. Any payments resulting from lien, levy, or seizure action cannot be applied to the SRP.
6. **Counsel Guidance.** When complex or unusual concerns arise, Counsel should be consulted.

5.9.15.2.1 (03-01-2006)

MFT 31 Payments

1. **MFT 31 Payment and Credit Applications.** Once MFT 31 mirror modules have been created, both modules carry a TC 971 AC 110 which causes certain payments and credits to cross reference from one spouse to the other. When credits are posted to one of the accounts, IMF will cross reference the other module with TC 290 for .00 and TC 766 ref # 337. This credit will reduce the unpaid balance on the module, but is a nonrefundable credit.

The credits that will cross reference are:

TC 610 TC 64X TC 66X TC 67X TC 68X TC 69X
TC 79X TC 72X TC 73X TC 76X TC 80X TC 82X

Note:

When master file cross-references these credits, it bypasses unpostable reviews for freeze conditions related to bankruptcy, offers in compromise, innocent spouse, Taxpayer Assistance Orders, and Examination.

2. **Non-Transferable MFT 31 Credits.** Credits with a DPC 31 on an MFT 31 mirror module will not cross-reference to the spouse's MFT 31 module.

Note:

DPC 31 is used only on MFT 31 mirror modules to prevent credits from cross-referencing.

3. **MFT 31 Refunds.** If a refund is issued on a module with a posted TC 766 reference number 337, a REFMFT 31 transcript generates. These transcripts are worked by Accounts Management. Insolvency will continue to receive litigation transcripts cases with open -V freezes.

5.9.15.2.2 (08-06-2015)

Payments on Unfiled Returns

1. **Trustee Payments on Unfiled Returns or Unassessed Deficiencies.** During a bankruptcy proceeding, the Service may file an unassessed (estimated) proof of claim to protect the government's interests. (See IRM 5.9.13.18.1, *Unassessed Claims*.) The trustee sends payments to the IRS on the proposed liability based on the Service's claim when:

- A. The debtor has failed to file a tax return, or
- B. An assessment based on an unfiled return is present, or an assessment for a tax deficiency has been proposed.

2. **Payment Retention - Exception Allowed for Bankruptcy.** Because of the bankruptcy, the Service is allowed to retain trustee payments based on the IRS's unassessed claims even though the case has unmatched payments (e.g. unresolved credits) if:

- A. The Service's claim has been estimated, and the debtor has not filed an original return or a proposed assessment is present; or
- B. There is an open Examination or Automated Under Reporter (AUR) indicator for the unassessed claim; or
- C. Examination or AUR does not pursue the assessment of a proposed deficiency, but other balance due periods exist.

3. **Assessment Proposed or No Return Filed.** In situations where the Service has an estimated proof of claim because a proposed assessment is present, or the debtor has not filed an original return, the Service may apply the payment(s) to other tax periods with balances due, provided they are of the same claim type (secured, priority, or general). If there are no other balances due of the same claim type, the payment should be deposited to the Unidentified Remittance File (URF) or Excess Collections File (XSF). See IRM 5.9.15.2.2 (5) below.

4. **Open Exam or AUR Indicators.** In situations where the Service has an estimated proof of claim and:

- There is an open Examination or AUR indicator, follow the guidance in IRM 5.9.18.2(2), *Technician Actions*, and IRM 5.9.18.6(2), *Initial Credit Balance and Unresolved Credit Balance*.
- An Examination or AUR assessment will not be pursued, the Service may apply the payment(s) to other tax periods with balances due of the same claim type, if they exist, with any remaining balance refunded to the trustee.
- A proposed deficiency assessment is rescinded because the debtor has provided adequate documentation to Examination, the Service may apply the payment(s) to other tax periods with balances due of the same claim type, if they exist, with any remaining balance refunded to the trustee.

5. **Deposit to URF or XSF.** If the Service's rights to payment retention apply as described in 5.9.15.2.2(3) above, the payment(s) should be deposited by the Service, posted through AIS, and credited to either the Unidentified Remittance File (URF) or to the Excess Collections File (XSF). *The determining factor is the age of the payment.*

6. **URF Guidelines.** If the IRS received date of the credit is *less than 12 months* from the date Insolvency prepares the form for processing the credit, the payment goes to URF accompanied by Form 2424, *Account Adjustment Voucher*.

- Form 2424 must be prepared indicating the credit side to the URF account.
- A separate form must be completed for *each* credit being moved.
- Verification (Integrated Data Retrieval System (IDRS) or Corporate Files On Line (CFOL) prints) must be attached to prove the current status of the credit and to show the date of payment.
- The form must be annotated, *"This credit is a bankruptcy payment and should not be refunded or applied."* Also, the form must indicate, *"No follow-up action with taxpayer is required"*, so the Service will not attempt to contact the debtor.
- Accounting will add the credit to the URF.
- When the payment reaches 12 months of age, it automatically rolls over to the XSF.

7. **XSF Guidelines.** If the IRS received date of the credit is *12 months or more* from the date Insolvency prepares the form for processing the credit, the payment is forwarded to XSF using Form 8758, *Excess Collections File Addition*.

- Form 8758 must be completed to move the credit to the Excess Collections File.
- A separate form is required for *each* credit being transferred.
- The form must be annotated, *"This credit is a bankruptcy payment and should not be refunded or applied."* The form must also state *"No follow-up action with the taxpayer is required"*, so the Service will not try to contact the debtor.
- A TXMOD screen print highlighting the credit to be transferred must be attached to prove the existence of the credit, and to show the date of payment. (See IRM 21.2.4.3.10.1, *Excess Collection File (XSF)*.)

8. **Credit Resolution.** When an unresolved credit appears on a tax module for a bankruptcy account, Insolvency employees must exhaust all efforts to resolve the credit prior to its transfer to either URF or XSF.

Note:

If a payment has been transferred to the Excess Collections File, and a return is subsequently filed by the debtor, the payment can usually be retrieved from the XSF and applied to the account.

**5.9.15.2.3 (04-05-2011)
Payments on Claims Filed on Behalf of IRS**

1. **No Plan Loaded.** When the Service does not file a claim in a bankruptcy proceeding, and the debtor or trustee files a claim on behalf of the IRS without the Service's knowledge (see IRM 5.9.13.3(2), *Claims Filed on Behalf of IRS*), neither the AIS claim screen nor the plan payment screen is loaded before payments are received by CIO Payment Posting unit. The following steps explain the actions necessary to post payments on these claims.

- A. When the first payment is received on a claim filed by the debtor or trustee on behalf of the IRS, the caseworker posting the payment must apply the payment to the non-plan screen so the payment can be processed.

Note:

If the case is not on AIS, the caseworker must retrieve case information from the court's electronic records (usually Public Access to Court Electronic Records (PACER)) and load the case onto AIS prior to applying the payment.

- B. The Payment Posting Unit must advise the assigned FI caseworker of the payment so a claim can be prepared and filed by the IRS, should that be the local practice.
- C. Regardless of whether the FI caseworker files a claim, (s)he will be responsible for establishing a plan payment screen on AIS and moving the payment from the non plan screen to the plan payment screen within fifteen business days of notification by the CIO.

D. If a plan payment screen has not been opened by FI by the time a second payment is received, the CIO caseworker will open a dummy plan screen using the total IDRS balance due up to the petition date for each period as the claim amount. Each period will be listed as "priority" tax. The plan payment amount will be \$0.50 to identify this as a claim filed on behalf of the Service.

5.9.15.2.4 (08-06-2015) Surplus Payments from Trustee

1. **Trustee Overpayments.** When the dollar amount on the AIS plan screen has been overpaid, AIS generates an overpayment message on the payment voucher advising the user of the overpayment. (This message does not necessarily indicate the *IDRS balance due* has been overpaid.) Overpayments cannot always be identified by AIS. If a trustee remits a payment that is more than the unpaid balance of a claim against a debtor, the surplus payment amount, or the entire check, if appropriate, should be returned promptly to the trustee.

Note:

The overpayment is payable to the debtor and sent in care of the trustee.

- A. If a check from a trustee is for a single debtor and the claim has previously been full paid, the check should be returned to the trustee accompanied by IDRS letter 549-C, *Balance Due on Account is Paid*, explaining the reason for the check's being returned.
- B. If a check from a trustee is for a single debtor and only a portion of the remittance is needed to full pay the claim, the payment should be applied to the account and the overpayment refunded to the trustee.
- C. If an overpayment of a claim (either full or partial) has been received from a trustee on a check for multiple debtors, the actions in paragraph (2) below must be followed. The CIO Payment Processing Unit is responsible for determining the cause of the overpayment and posting the payment accompanied by a request for input of TC 570 to prevent the overpayment from being refunded to the debtor.
- D. Correcting the underlying cause of an overpayment, such as an incorrect plan screen or lack of an amended claim or credit letter, is the responsibility of the applicable Field Insolvency office. If the payment identified by AIS as an overpayment is not to be refunded to the trustee because it is not a true overpayment, Field Insolvency must ensure the payment is posted to the correct module. This may require a credit transfer and/or moving the payment from the AIS non plan screen to the plan screen and adjusting the dollar amount on the "overpayment" field on the master plan screen.

2. **Working Overpayment Errors.** Not every overpayment error identified by AIS is a true overpayment. IDRS, AIS, and PACER research may be required. The following check list can help in determining if the overpayment is genuine and requires a manual refund be sent payable to the debtor and in care of the trustee. The caseworker should compare the AIS claim screen to the AIS plan screen. If the dollar amount of the claim does not equal or exceed the dollar amount of the plan screen, the caseworker should, as necessary:

- A. Check the first page of the claim screen to determine if a dollar amount has been input in the offset field. This amount should not be included on the plan, because this is money the trustee will not be sending the Service;
- B. Determine if the claim has been amended, but the plan screen has not been updated accordingly;
- C. Look for the presence of an administrative claim;
- D. Determine if general unsecured plans have been correctly loaded;
- E. Determine if post-petition accrued interest is allowed on the Service's claim;
- F. Research for duplicate check postings;
- G. Research PACER for a claim filed on behalf of the IRS (See *IRM 5.9.15.2.3, Payments on Claims Filed on Behalf of IRS*); and/or
- H. Review prior AIS history for indication of BMF liabilities being paid through the plan.

Caution:

The "Over Paid Amt" field on the AIS master plan screen does not necessarily reflect the true amount of an overpayment and may require manual adjustment.

3. **Amended Claims.** If a claim has been amended, a number appears in the amended claim field with a date below the number on the AIS master claim screen. The caseworker should compare the amended claim amount and the plan amount. If the amount on the amended claim screen is larger than the plan screen, the caseworker should compare the detail screens of both to determine where to post the overpayment. Then the case must be transferred to the appropriate Field Insolvency group to update the plan screen. Field Insolvency must correct the plan, move the payment from the non-plan screen to the appropriate period, and then remove the payment from the non-plan screen within 15 business days of notification by the CIO.

4. **Loading General Unsecured Plans.** Unsecured general plans must be loaded *for the full amount of the unsecured general liability, not just the dollar amount provided in the plan*. This will prevent trustee overpayment errors resulting from estates that generate more money than expected. If the Payment Posting Unit identifies a case where the unsecured general plan is not loaded correctly, the caseworker should post the payment to the non-plan screen and transfer the case to Field Insolvency for correction. Field Insolvency must correct the plan, move the payment from the non-plan screen to the appropriate period, and then remove the payment from the non-plan screen.

5. **Interest Not Shown on the Plan.** If the claim screen and the plan screen match, the caseworker should determine if any periods have been classified as secured on the claim. The Service may be entitled to interest on a secured claim.

Note:

In some instances, BAPCPA allows accrued interest to be paid on priority as well as secured claims. In addition, some plans are providing for accrued interest to be paid on unsecured general claims. The actions provided in this paragraph apply to any claim designation where accrued interest will be collected.

The AIS master plan screen should indicate if the plan detail screen was loaded correctly to allow for accrued interest as either "Simple", "IDRS Compounded", or "Daily Compounded". If the debtor's plan provides for interest, an interest rate should appear in the "Optional" interest field to indicate the interest rate the trustee is paying on the secured claim. An interest amount should appear in the "13 Priority" field if the Chapter 13 plan provides for interest on the Service's priority claim. If the "Optional" and "13 Priority" interest fields are blank and a potential trustee overpayment has been identified, the caseworker should check the AIS history for documentation indicating any interest amounts being paid. If none is found, the case must be transferred to the appropriate Field Insolvency office for further research and follow-up actions.

Note:

Interest on unsecured general periods will not be calculated on AIS. Refer to *IRM 5.9.15.3 (1), Excess Interest*, for TC 340 information.

6. **Duplicate Postings.** Sometimes, a trustee payment may be posted on AIS more than once. When this occurs, the duplicate posting(s) must be removed so only one posting remains on the AIS system. Duplicate posting can be identified through the Plan Monitoring Payment Record report. To generate this report for a specific docket number, the caseworker must take the following steps.

Step	Actions
1	Access the case on AIS. (See IRM Exhibit 5.9.11-1, <i>Accessing a Case on AIS</i> , steps 1 through 4.)
2	Click on the "CPM" tab.
3	From the Plan Screen, select the "Payment Record" tab.
4	View the Payment Record report that appears on the screen or print a copy of the report to identify duplicate payments.
5	Analyze the report for duplicate payments by looking for two or more identical check numbers, identical dates, and/or identical dollar amounts. Also, consider possible typographical errors (e.g., check 083115, versus check 0831115).

Note:

This report must accompany any manual refunds originating at the CIO to return trustee overpayments. If a duplicate posting is for a check processed by Field Insolvency, the case must be referred to the appropriate Field Insolvency group for correction.

7. **Payments Posted on the Non Plan Screen.** Payments that have posted to the non plan screen and subsequently moved to the plan screen must be removed from the non plan screen. Instructions for removing a payment can be found in *IRM 5.9.15.17 (2), Removing Non Plan Payments*. The caseworker who copies a payment from the non plan screen onto the plan screen must also remove it from the non plan screen.
8. **Administrative Plan.** If the claim screen and the plan screen reflect identical amounts and no periods have been classified as secured, the caseworker should determine if an "Administrative plan" has been loaded. The step list below provides guidance for identifying an administrative claim and correctly posting administrative payments.
 - A. From the AIS Taxpayer Screen, query the docket number in question.
 - B. When the case is accessed, select the "Proof of Claim" folder from the Taxpayer Screen.
 - C. To determine if more than one type of claim has been filed, click on "Next" on the navigation tool bar at the top of the proof of claim screen. If there is only one type of claim present, a message stating "End of List" will pop up. The claim will be identified by Form Type "Regular", "Administrative" or "Probate".
 - D. If two types of claim are present, one for a "Regular" claim and one for an "Administrative" claim, determine which plan has a remaining balance due. From the Proof Screen for the "Regular" form type, select the "CPM" tab and view the balance of the plan in the "Plan Totals" field on the Plan Screen. Repeat the process for the "Administrative" claim type.
 - E. If the balance is on the administrative plan, from the Taxpayer Screen, select "Payments" from the "Misc Options" menu. The Payment Monitoring Menu will appear.
 - F. Select "Post Automatic Payments" on the Payment Monitoring Menu.
 - G. Add the case number to the "AIS Case #" or "Court Case #" field and click on the "Load" button. The taxpayer information will populate.
 - H. Complete the fields for the date received, check #, amount, and select the radio button for "Administrative".
 - I. Click on the "Save" button. Record is saved.
 - J. Select "Exit" to return to the Payment Monitoring Menu.
 - K. When all payments have been added, allocate payments by selecting the "Allocate (User's Name) Payments" button.
 - L. If the confirmed plan is full paid, enter the current date in the closed plan date field.

If only the original regular claim exists on the Proof Screen and an amended claim has not been filed, the caseworker must read the AIS history to determine if a reason can be found for the overpayment. Research of the court's electronic records (usually PACER) may be required to determine if more than one claim has been filed for the Service or if the claim filed with the court matches the dollar amount on the AIS plan screen.

9. **Posting Overpayments.** Procedures for trustee overpayments received on single checks should be handled according to *IRM 5.9.15.2.4, Surplus Payments from Trustee*. Overpayments identified on bulk checks should be posted on periods found on the plan. (See *IRM 5.9.15.6, Proper Application of Payments*.) To view the plan periods, the caseworker should follow the steps in *Exhibit 5.9.15-3, Accessing the AIS Claim Screen*. From the plan screen, a period can be selected and the payment posted to it. If a case is open on AIS, a TC 520 with closing code (CC) 60 or 61 should be posted to the case before the payment is posted. If the overpayment is for a case that has been full paid, dismissed or discharged, a request for a TC 570 must accompany the payment. This will prevent the overpayment from systemically refunding to the debtor.
10. **Monitoring for Overpayment Posting at the CIO.** The caseworker must input an AIS history explaining where the payment was posted, along with an annotation that the payment might have to be refunded payable to the debtor and sent in care of the trustee. An ACTON control base must be opened on the IDRS module where the overpayment will be applied, so posting of the payment can be monitored when the check can not be returned to the trustee because the check lists multiple taxpayers. CIO caseworkers must complete a "Monitoring for Payment Posting" follow up sheet and attach a copy of the posting voucher indicating the overpayment amount. The sheet must be placed in the designated follow-up folder.

Note:

There is no need to input an ACTON to open a control base on IDRS when the overpayment issue will be resolved the same day it is identified.

11. **Working Follow-ups.** After a true overpayment from a bulk trustee check has posted, it must be refunded. A CIO caseworker will be assigned to work the overpayment follow-up folder weekly. IDRS must be accessed to determine if the payment has posted. If not, the caseworker will set the follow up for one additional week. Once the payment has posted, AIS must be checked for case disposition and the following actions should be taken:
 - A. **Discharged Cases.** The caseworker should call the trustee before refunding the payment. Because the trustee may have to reopen the case to distribute the money, (s)he may ask the Service to refund the overpayment to the debtor.
 - B. **Dismissed Cases.** Once the bankruptcy freeze is released on a dismissed case, any credit balance remaining on the dismissed modules will systemically offset to any debit modules or be systemically refunded to the debtor. No manual actions are required unless a TC 570 has frozen the overpayment. In that case, a TC 571 must be input.

Note:

The account will not offset if either a G- or -I freeze exists on the account.

- C. **Open Cases.** If a determination is made to refund a payment to the trustee, the caseworker must send Letter 549-C to the trustee explaining why the payment is being returned. Because of the logistics of sending the refund check and the letter together, Letter 549-C should explain the refund will be sent "under separate cover".

12. **Recomputing the Plan.** After all payments which were refunded have been reversed, the plan must be recomputed. See *Exhibit 5.9.15-5, Plan Recomputation*, for step-by-step instructions on plan recomputation.

13. **Request for Return of Payment.** A trustee may send the Service a payment in error and ask for its return. The Service will honor the trustee's request. Once the payment has posted to the debtor's account, a manual refund must be prepared for the trustee and the payment backed out of the AIS plan payment screen.

Note:

The payment is refunded payable to the debtor in care of the trustee.

14. **No Interest Computation.** If a payment is sent by a trustee in error (e.g., the Service is not entitled to any payment on the distribution scheme, or the Service has been paid out of turn), the trustee will not receive interest on the refund. However, if a trustee's payment is in excess of the Service's claim, the amount of the excess may be an overpayment, and the trustee may be entitled to interest if the refund is not made within 45 days of receipt of the overpayment.

5.9.15.2.5 (04-05-2011)

Payments Received After AIS Discharge Closure

1. **Chapter 13 Final Distribution.** Some Chapter 13 trustees hold the final distribution of funds to creditors until the case has been closed by the court. Generally, the IRM requires closing actions on a case be initiated within 30 calendar days of notification of a discharge, dismissal, or non-discharge. (See IRM 5.9.17.3, *Time Frames for Required Actions*.) However, in cases where trustees send final distribution after the discharge, closing actions need not be initiated until the final payment is posted on AIS. Nonetheless, a case may be closed on AIS before final distribution is received. If the case is closed on AIS and an abatement has been completed on IDRS, the abatement should be reversed, and the trustee payment(s) should be applied to the debtor's account.
2. **Chapter 7 Asset Final Distribution.** Chapter 7 trustees may remit final distributions months or years after a case has closed. IRM 5.9.17.11, *Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)*, gives instructions on how to process corporate Chapter 7 Asset cases. Non-corporate Chapter 7 Asset cases cannot be closed as currently not collectible while the Service awaits a possible distribution from the trustee. See IRM 5.9.17.9(5), *Asset Discharge for Individual Debtor*, for procedures for processing final distributions to non-corporate Chapter 7 cases.

5.9.15.2.6 (08-06-2015)

Payments Resulting from Litigation

1. **Negotiated Settlement.** When Insolvency requests a referral for an objection to a plan, the Department of Justice (DOJ) files the objection on behalf of the Service. DOJ and the trustee or debtor-in-possession may arrive at a negotiated settlement of the tax claim. If a settlement is reached, DOJ sends the check to the IRS lockbox for the payment to post to the debtor's account on IDRS with a designated payment code of 99. The amount received in the settlement should be posted through the debtor's account on AIS, so Insolvency can receive the credit for collecting the funds.
2. **Restitution Assessments.** A taxpayer who has been ordered to pay restitution as a result of conviction for a tax related offense may file bankruptcy. Payments made pursuant to a plan for restitution must be applied to the restitution assessment. If it is necessary to determine how any restitution-designated payment(s) received in bankruptcy should be applied, the Insolvency caseworker should contact the assigned Advisor for guidance.

5.9.15.2.7 (03-01-2006)

Designated Payment Code

1. **Payment Codes.** DPC 03 should be used for most bankruptcy payments. When a confirmed plan provides for designation to trust fund taxes, DPC 11 must be used. Document 6209 provides information on designated payment codes.

5.9.15.2.8 (03-01-2006)

Taxes Owed by Bankruptcy Estate

1. **Admin Expenses.** Taxes paid by a trustee or a debtor-in-possession as an administrative (admin) expense are credited *only* against the taxes incurred by the bankruptcy estate. Non-pecuniary loss penalties that relate to taxes paid by the trustee are also an administrative expense. Penalties that do not relate to any tax but which were incurred post-petition during the normal operation of the business may be entitled to administrative expense status.

5.9.15.3 (08-06-2015)

Plan Interest Rates

1. **Excess Interest.** For cases with petition dates prior to October 17, 2005, the interest rate of the plan may exceed the usual rate of interest charged by the government (as prescribed in IRC § 6621). This excess interest may result in a credit balance on the account. These credits *must not* be refunded to the debtor or transferred to any other modules. To resolve the excess interest payment, Insolvency must input TC 340, restricted interest, in the same amount as the excess interest payment. (See IRM 5.9.15.2.4, *Surplus Payments from Trustee*.)
2. **Post BAPCPA Interest.** The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) amends 11 USC § 511(a) to establish a uniform interest rate on Chapter 11, 12 and 13 tax claims, or administrative expense taxes, using the interest rate being charged by the IRS as determined by IRC § 6621. For taxes being paid through a confirmed plan, the rate of interest is determined as of the calendar month the plan is confirmed.

Note:

For large corporate underpayments, the interest rate is two percentage points greater than the normal underpayment rate.

3. **Post-Petition Interest.** For cases filed on or after October 17, 2005, 11 USC §§ 1222(b)(11) and 1322(b)(10) specifically allow post-petition interest on claims that are not dischargeable under 11 USC §§ 1228(a) and 1328(a). The Service may be able to obtain interest on those taxes to the extent they are provided for in the plan, *but only if the debtor has sufficient disposable income to pay the interest after full payment of all allowed claims*. This provision does not affect the Service's right to interest under the "best interest of creditor's test" set forth in 11 USC § 1325(a)(4).

5.9.15.4 (03-01-2006)

Non-Pecuniary Loss Penalty Payments

1. **Punitive Penalty Rule.** A non-pecuniary loss penalty is a punitive penalty, or fine; such as a failure to file or failure to pay penalty. The priority of payments made in a Chapter 7 case is set forth in 11 USC § 726. Because general unsecured claims are paid ahead of any claims for non-pecuniary loss penalties, *payments should not be applied to non-pecuniary loss penalties until all other general unsecured claims are paid*.

5.9.15.5 (04-05-2011)

Unassessed Liability/No Open Modules

1. **Establishing Modules for Pending Assessments.** Insolvency sometimes receives payments on a bankruptcy case when the Service's proof of claim reflects a liability not yet assessed, and no modules or filing requirements are open on IDRS. Dummy modules must be established on IDRS when the proof of claim is prepared, so payments are held until assessments have posted.

Example:

A tax module is set up on IDRS in preparation for a pending assessment of a Trust Fund Recovery Penalty (a pecuniary loss penalty assessment), or for a secondary (debtor) spousal situation, the spouse having now filed a separate return after filing jointly for prior year(s).

2. **Procedures for Creating New (Dummy) Modules.** Payments received on an estimated claim cannot post unless a valid entity has been established on master file and a corresponding module appears on IDRS. If the estimated claim covers a period currently appearing on IDRS, such as a TDI, IIP will input a systemic TC 520 on the period allowing payments to post. However, if a module does not appear on IDRS, a new module (sometimes referred to as a "dummy" module) must be created prior to receipt of the trustee's first payment. In jurisdictions where trustees routinely remit payments prior to confirmation, dummy modules should be created upon initial case review. In all events dummy modules must be created prior to transferring cases with estimated claims to the CIO. Three scenarios must be considered in creating dummy modules:

A. **Entity with Valid Established Date.** If the entity on master file was established prior to the estimated claim period, a dummy module is created by inputting a TC 520 with the appropriate closing code on IDRS for the estimated period. CC REQ77 is used for this action.

Example:

The entity was established on master file in 2009 and the estimated period is for 201112.

B. **Entity with No Valid Established Date.** If the entity on master file was established after the date of the estimated period, the entity establishment date must be post dated to include the estimated period. Without this master file change, payments to the estimated period will go unpostable. The CIO will complete the necessary actions on-line using CC ENREQ for cases initially in their inventory. (See IRM Exhibit 2.4.9-2, *Command Code ENREQ*.) Field Insolvency will prepare Form 2363 directing Centralized Case Processing (CCP) to move the entity establishment date to an earlier period for cases initially in their inventory.

Example:

The entity was established on master file in 2011 and the estimated period is for 200912.

This adjustment usually takes three to four cycles, so the caseworker must follow up to monitor the completion of the entity assessment. Once the entity establishment date has been changed, the caseworker must create a dummy module by using CC REQ77 to input TC 520 for the estimated period. The caseworker will know the establishment date has been changed when the "Name Line Yr" on ENMOD reflects the requested date.

Caution:

Attempting to input the TC 520 with a posting delay before the entity has been changed will cause the TC 520 to unpost.

C. **Entity Not Established on Master File.** If the debtor has never filed a return or has always filed as a secondary taxpayer with a primary spouse (for joint returns filed prior to January, 2001), the debtor will not have an entity established on master file. (For joint returns filed on or after January, 2001, entities are established systemically for secondary spouses.) Without an established entity, payments made toward an estimated claim will go unpostable. The CIO will complete the on-line actions necessary to establish the entity using CC ENREQ for cases initially in their inventory. (See IRM Exhibit 2.4.9-2.) Field Insolvency must prepare Form 2363 directing CCP to establish the entity on master file for cases initially in their inventory. Once the entity has been established, the Field Insolvency caseworker must create a dummy module by using CC REQ77 to input TC 520 for the estimated period.

Note:

When ENMOD updates and a new module is created with the input of TC 520 through CC REQ77, the new module will not be identified on IDRS as "dummy".

3. **Field Prevention of Unwarranted Refunds.** To avoid systemic refunds when trustee payments are received on unassessed claims:

- A. Field Insolvency must ensure TC 520s with appropriate closing codes are entered on all tax modules for which unassessed claims are filed, and
- B. Field Insolvency caseworkers must establish the module on IDRS prior to receipt of the first payment to allow the CIO Payment Processing Unit to post the payment on AIS automatically, avoiding the need for manual application.

Note:

When the Insolvency Interface Program (IIP) inputs the statistical indicator on a proof of claim period identified as unassessed due to certain proof of claim statements, a TC 520 CC 60 or 61 is systemically input to freeze pre-petition credits from systemically refunding to the taxpayer.

4. **CIO Prevention of Unwarranted Refunds.** When trustee payments are received on unassessed claims or on cases that have closed as no liability (NL), the CIO must:

- Reopen the case, if the case was previously closed;
- Input a TC 520 on pre-petition periods;
- Request input of a TC 570 when posting a payment;
- Post the payment as non-plan; and
- Refer the case to Field Insolvency for correction.

**5.9.15.6 (03-01-2006)
Proper Application of Payments**

1. **Plan Guidelines.** Insolvency must apply payments appropriately and in accordance with the terms and conditions of a plan or court order. Payments received must be applied *only* to the tax periods covered under the bankruptcy.
2. **Avoiding Improper Application.** Payments received from the bankruptcy for pre-petition taxes must *not* be applied to any part of a tax period for which a proof of claim has not been filed, or any component of a tax liability that is not allowed or not payable under the particular provisions of the bankruptcy chapter (for example, post-petition penalty). BAPCPA adds 11 USC § 524(i), stating that a willful failure to credit payments received under a confirmed plan in a manner required by the plan that causes material injury to the debtor is a violation of the discharge injunction and may subject the Service to damages and attorney's fees under IRC § 7433(e). Insolvency should correct any misapplication of payments as soon as the error is brought to the Service's attention.

Note:

If a case is dismissed, the order confirming the plan is revoked, the plan is defaulted, or the Service has not received payments required under the plan, 11 USC § 524(i) does not apply.

**5.9.15.6.1 (04-05-2011)
Campus Support Error Reports**

1. **Correcting Payment Posting Errors.** Using payment posting vouchers generated by AIS or the Trustee Plan Payment Log, the IRS Campus Support function posts payments processed by the CIO to IDRS. When the period on the payment voucher does not reflect any open module on IDRS, the Campus Support workers post the payment to any balance due on the account or on a cross reference account without regard to the bankruptcy status of that module. Generally, these posting errors result from incorrectly loaded AIS plan payment screens. CIO payment posting caseworkers must take the following actions to resolve posting errors identified by the Campus Support function.

IF...	THEN...
the name control on the plan payment screen is incorrect,	the CIO will update the name control on the TIN screen.
the TIN on the plan payment screen is obviously incorrect,	the CIO will: <ul style="list-style-type: none"> • Correct the TIN on the plan payment screen. • Add non-debtor spouse SSN on AIS entity screen if necessary. • Complete credit transfer if necessary.
	the CIO will:

the primary taxpayer on IDRS is deceased, but the secondary taxpayer on IDRS is the debtor, and the CSED has expired,	<ul style="list-style-type: none"> • Take actions to ensure the payment is not systemically refunded. • Create an MFT 31 mirror for the account if the criteria for mirroring are met. • Remove the payment from the decedent's MFT 31 account if appropriate. • Correct the AIS plan screen to show the correct MFT and the debtor's SSN.
the tax period is obviously incorrect per IDRS, Example: 30 200204	the CIO will correct the tax period on the plan payment screen.
an unassessed period is <ul style="list-style-type: none"> • on the plan payment screen; • no dummy module has been created; and • the entity has not been established on master file, 	the CIO will transfer the case to Field Insolvency to <ul style="list-style-type: none"> • Request CCP establish the entity on master file through ENREQ; • Create a dummy module; and • Input a confirmed plan on the plan payment screen.
an unassessed period <ul style="list-style-type: none"> • is on the plan payment screen; • no dummy module has been created; and • the unassessed module is for a period falling prior to the establishment of an entity on master file, 	using CC ENREQ, the CIO will establish the entity name line for the earliest unassessed period on the POC. This action will appear as a TC 013 on ENMOD. See the Exhibit in IRM 2.4.9-10, <i>IMF - Establishment of an Account on the Master File</i> , for additional information.
an unassessed period <ul style="list-style-type: none"> • is on the plan payment screen, • no dummy module has been created, and • the unassessed module is for a period falling after the entity for the taxpayer was established on master file, 	the CIO will create a dummy module for the unassessed period on IDRS by inputting a TC 520 through REQ77.
the case does not have a confirmed plan loaded,	the CIO will transfer the case to Field Insolvency to input a confirmed plan on the plan payment screen. See <i>Exhibit 5.9.15-2, Posting Non Plan Payments</i> , for additional information relating to posting payments to a case with no confirmed plan present on AIS. Note: This includes when a claim has been filed by the debtor or trustee on behalf of the Service.
Campus Support posts the payment to a pre-petition period,	the Payment Posting unit will leave the payment where it has been posted. Note: Payments incorrectly posted to pre-petition periods will be worked by exception. Incorrectly posted payments resulting from Field Insolvency errors in loading the plan will be corrected by the appropriate Field Insolvency office. Example: Payments will be moved to comply with the plan if the debtor needs exact payoff amount for lien release.
Campus Support posts the payment to a post-petition period,	the Payment Posting Unit will move the payment to comply with the plan.

Reminder:

The AIS history must be updated to reflect any corrective actions.

**5.9.15.6.2 (08-06-2015)
Multiple Refunds**

1. **Caseworker Actions.** Cases may be identified where more than one systemic refund (TC 846) appears on a specific module. Not all cases identified are a result of bankruptcy or bankruptcy processes. The caseworker must first determine if bankruptcy is a factor in the issuance of multiple refunds.

IF...	THEN...
the multiple refunds on a TIN are not a result of bankruptcy actions or the bankruptcy freeze code,	advise the initiator of the notification that bankruptcy is not a factor in the issuance of the refunds.
the multiple refunds on a TIN result from bankruptcy actions or the bankruptcy freeze code,	determine the underlying cause of the systemic refunds: <ul style="list-style-type: none"> • Payments received in violation of the stay • Adjustment of balance due (TC 291, TC 301, TC 766, TC 768) • Payments received from non-debtor source, such as non-debtor spouse • Claim filed on behalf of IRS by debtor or trustee • Estimated claim • Trustee overpayments due to trustee error
the refunds are due to payments received in violation of the stay, not previously refunded to the debtor and result from trustee payments (DPC 03),	1) Compute the dollar amount of the systemic refunds and deduct that amount from the total of the payments received in violation of the stay. 2) If the dollar amount of the payments received is greater than the amount of the systemic refunds to the debtor, prepare a manual refund for the difference to go to the debtor. Note: The dollar amount of the systemic refunds should not exceed the dollar amount of the payments received in violation of the stay. If it does, a secondary reason exists for the multiple systemic refunds.
the refunds are due to an adjustment of the balance due or payments received from a non-debtor source and result from trustee payments (DPC 03),	1) Input TC 520 CC 60 or 61 on the module to prevent further systemic refunds (See IRM 5.9.5.6.1(7), <i>6x Series Closing Codes</i>). 2) Transfer the case to Field Insolvency to prepare an amended claim, send a credit letter to the trustee, or withdraw the claim; and 3) Send Letter 549-C to the trustee explaining \$X.XX has been systemically refunded to the debtor.
the refunds are due to a claim filed on behalf of IRS by debtor or trustee that exceeds the true balance due or an estimated claim filed by the Service that exceeds the balance due of a return subsequently filed by the debtor, and the refunds result from trustee payments (DPC 03),	1) Input TC 520 CC 60 or 61 on the module to prevent further systemic refunds; 2) Transfer the case to Field Insolvency to prepare an amended claim, send a credit letter to the trustee, or withdraw the claim; and 3) Send Letter 549-C to the trustee explaining \$X.XX has been systemically refunded to the debtor .
the refunds are due to trustee error and result from trustee payments (DPC 03), Example: IRS filed an amended claim but the trustee is still paying on the original claim.	1) Input TC 520 CC 60 or 61 on the module to prevent further systemic refunds; and 2) Send Letter 549-C to the trustee explaining \$X.XX has been systemically refunded to the debtor.
the trustee is paying on the original IRM claim and payments refund in error due to the TC 520 closing code,	1) Input TC 520 CC 60 or 61 on the module to prevent further systemic refunds; 2) Check IDRS for current cycle pending refunds (TC 846) and intercept via NOREF if necessary; and 3) Follow erroneous refund procedures for previously issued refunds.

2. **TC 971 AC 663 Input to IDRS.** When an employee becomes aware that an erroneous refund has been issued, the employee must input a TC 971 AC 663 to the module on IDRS that contains the erroneous refund. (See IRM Exhibit 21.4.5-1, *TC 971 AC 663 - Identifying Erroneous Refunds*.) Generally, employees will use Erroneous Refund "Category D" and Responsible Function "Oth" (Other) for erroneous refunds on cases assigned to Insolvency. See IRM 21.4.5, *Erroneous Refunds*, for additional information.

5.9.15.7 (04-05-2011)

Balancing Payments

1. **Discrepancies.** Payment amounts and posting vouchers or the trustee plan payment log must balance exactly to the amount of the check. Discrepancies discovered after payments have been received by Insolvency must be handled and resolved by Insolvency.
2. **Insolvency Responsibility.** Prior to forwarding bankruptcy payments and vouchers or the trustee plan payment log to remittance processing, Insolvency employees must be precise in preparing checks for final posting. *When they leave Insolvency, all payments must be ready for immediate processing and, if appropriate, immediate deposit by the Service.*

5.9.15.8 (03-01-2006)

Time Frames for Processing of Payments

1. **Field Processing of Payments.** Insolvency payments must be processed timely and efficiently under strict time frames. Field Insolvency payments and related documents, such as tax returns, must be prepared for shipment to the processing Campus site *by close of business on the date of receipt from the debtor, or as soon as possible the next business day.*
2. **Campus Processing of Payments.** Because bulk trustee checks are deposited upon receipt, the CIO has up to 10 business days to post payments on bulk checks and forward the vouchers to the Campus Support unit. Individual checks must be processed within 48 hours.

5.9.15.9 (04-05-2011)

Chapter 7 Asset Trustee Checks

1. **Chapter 7 Asset Checks.** The Chapter 7 trustee sends payments based on properly filed proofs of claim after the trustee liquidates the debtor's assets. Some claimants may not receive a distribution in a Chapter 7 Asset filing. IRM 5.9.17.9(5), *Asset Discharge for Individual Debtor*, gives instructions for handling individual Chapter 7 Asset cases while awaiting distribution, and IRM 5.9.17.11, *Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies*, explains approved procedures for corporate cases in 7 Asset proceedings.
2. **Payment Application.** When the distribution payment from the Chapter 7 trustee is received, the payment is applied based on the trustee's instructions, or:

IF...	THEN...
the trustee does not specify how the payment is to be applied,	follow IRM 5.9.15.2 (2), <i>Bankruptcy - Involuntary Payments.</i>
the liability has been adjusted,	follow IRM 5.9.15.2 (3), <i>Dischargeable Liabilities.</i>

Once the tax period has been identified, the caseworker should follow the posting procedures in IRM 5.9.15.14.5, *Non-Plan Payments*. Voucher(s) and check(s) must be sent to the Campus Support function.

5.9.15.10 (03-01-2006)

Payment Posting Responsibility

1. **Field Payments.** AIS systemically inputs the office address of the assigned Insolvency caseworker in the proof of claim box directing where payments for Chapter 11 and Chapter 12 plans should be mailed. If FI caseworkers find Chapter 11 or 12 payments for their cases are being mailed to the CIO, they should contact the payor and ask that future payments be sent directly to them and not to the CIO.
2. **CIO Actions.** Centralized Insolvency must process all bankruptcy checks received at the Campus regardless of which Insolvency function is assigned the case, FI or CIO. When a Chapter 7, Chapter 11, or Chapter 12 check is processed for a case assigned to Field Insolvency, the CIO caseworker must advise the FI caseworker assigned the account of the payment receipt by fax, phone, or secure email.

5.9.15.11 (04-05-2011)

Chapter 13 Trustee Payments

1. **Bulk Checks.** These trustee payments, usually dispersed monthly, cover multiple debtors with one check. The dollar amounts and frequency of payments are based on the Service's proofs of claim and provisions in the confirmed Chapter 13 plans.
2. **Individual Checks.** Some trustees send individual checks, meaning one check for one debtor. Or, a trustee may have neglected to include a debtor's plan payment on a bulk check, so a supplemental check is remitted as an individual check.
3. The different posting methods on AIS for Chapter 13 payments are:
 - Automatic
 - Semi-Automatic
 - Partial Designated
 - Manual
 - Non-plan

See IRM 5.9.15.14, *Payment Posting Steps*, for instructions on posting methods.

5.9.15.12 (04-05-2011)

Processing CIO Payments in the Mail Room

1. **Embedded CIO Caseworkers.** CIO bankruptcy caseworkers are embedded in the Philadelphia Campus mail room to review Insolvency remittance mail and separate single payments from bulk payments. Payments are generally processed by the CIO by one of three ways:
 - **Electronic Federal Tax Payment System (EFTPS).** Funds are transmitted to the Service by the Chapter 13 trustees through a high speed internet connection. The information is downloaded to AIS to create posting vouchers;
 - **Paper Check Conversion (PCC).** The trustee submits one check for multiple taxpayers and funds are deposited to a "suspense" account. Payment vouchers are created on AIS and credited to a taxpayer's account on IDRS. Funds are then moved from the "suspense" account to proper Treasury accounts; or,
 - **Remittance Strategy-Paper Check Conversion (RS-PCC).** Individual checks for a single taxpayer are scanned and posted to a taxpayer's account on IDRS at the same time. This is possible because the CIO has employees embedded in Campus Support that can determine posting information immediately.
2. **Single Payments.** Payments with one check for one debtor must be posted on AIS without leaving the mail room. Caseworkers scan the trustee checks through the paper check conversion (PCC) system that enters an electronic deposit into Treasury's account. They then load the payments on AIS and generate payment vouchers for processing. The voucher(s) for the one check must add up to the total amount of the check. Checks and vouchers are batched in packets of up to 20 payments to be handed off to the Campus Support unit on an hourly basis for paper check conversion and posting onto IDRS. IRM 5.9.15.14.3, *Posting Individual Trustee Checks*, gives step-by-step instructions for posting individual checks on AIS.

3. **Multiple Payments.** When a Chapter 13 trustee submits one check for multiple debtors, the payments are generally submitted through EFTPS or PCC. After payments from the trustee checks are loaded to AIS, the CIO caseworker generates the Trustee Plan Payment Log. This log is used in lieu of payment posting vouchers. This eliminates the need for CIO employees to batch payments and manually balance the vouchers. The steps in this process are as follows:

- A. Payments from the trustee check are loaded to AIS.
- B. The caseworker generates the "My Eureka" report titled Trustee Plan Payment Log.
- C. The caseworker prints the Trustee Plan Payment Log.
- D. If the total of the check matches the total on the Trustee Plan Payment Log, a copy of the check is placed with the report and forwarded to Campus Support using local procedures.
- E. If the totals do not match, the employee must match entries on the report with the voucher listing submitted by the trustee to resolve the error.
- F. Once errors are resolved, the report is regenerated and the check is forwarded to Campus Support.

Note:

For additional information on the methods used by the CIO to process checks, see IRM 21.1.7.5.6, *Centralized Insolvency Operation (CIO) Payment Processing*.

5.9.15.13 (04-05-2011)

Receipt of Bulk Payments

1. **Deposit Ticket.** Payments covering multiple debtors will be routed via Form 3210, *Document Transmittal*, to Campus Support. The Campus Support unit will prepare a deposit ticket containing all payments to go into that day's deposit to Insolvency Suspense Account 4625. Form 784, *Recapitulation of Remittances*, will list each individual check.
2. **Distribution Copies.** The deposit clerk will make copies of the deposit ticket, Form 784, and copies of the check for Insolvency, Accounting, and for the file.
3. **CIO Pick Up.** Insolvency caseworkers will pick up a copy of the deposit ticket, bulk trustee check, Form 784, and the paper listing or disk, at least once daily.

5.9.15.14 (03-01-2006)

Payment Posting Steps

1. **Bankruptcy Payments and AIS.** As previously noted in this IRM section, AIS is capable of processing bankruptcy payments through several methods. This subsection deals with differing check scenarios and the proper handling and posting of those payments.

5.9.15.14.1 (08-06-2015)

Chapter 13 Payments on Disk

1. **Payments Received on Disk.** Some Chapter 13 trustees use an automated download program. The trustee download program systemically posts multiple payments from one trustee check to various cases using a floppy disk. Using the trustee download disk feature allows large volumes of payments to be processed efficiently. AIS applies these payments per IRM 5.9.15.2 (2), *Bankruptcy - Involuntary Payments*. However, if the order confirming the plan or a court order specifies a specific tax period where the payments are to be applied, the Service must abide by the plan or order. These payments must be applied using the Post Semi-Automatic Payment selection on AIS.
2. **Uploading Chapter 13 Payments from Disk.** The following actions should be followed for uploading payments to AIS from disk:
 - A. Receive disk and copy of trustee check.
 - B. Sign onto AIS (see IRM Exhibit 5.9.11-1, *Accessing a Case on AIS*, steps 1 through 9) and minimize the screen.
 - C. Insert disk and scan for viruses (see Exhibit 5.9.15-1, *Virus Scanning*).
 - D. Select the "Payments" button from the AIS Home Page.
 - E. Select the "Trustee Download Options" from the AIS Payment Monitoring Menu.
 - F. Select "Load Payment File" on the Trustee Payments screen to retrieve the trustee data from the diskette. AIS creates a file named "*dsbser*" when the data is retrieved from the diskette. The "*dsbser*" extension consists of the current date and the user's processing number.
 - G. Click on the "Upload Trustee File" on the Trustee File Processing screen. The Upload Trustee screen will pop-up.
 - H. From the Upload Trustee screen, select "Browse" and open the file.
 - I. Confirm the file found is the file that should be downloaded, and select the "Send" button.
 - J. The response from the Trustee File Processing Screen will appear, and the trustee download should appear with the check in one of the boxes.
 - K. Select Option 2a, "Refresh List" .
 - L. Highlight/Select "User and Date Upload" file.
 - M. Select Option 2b, "Select Payment File" . The current check information should automatically populate with the current check information. Verify the information is correct.
 - N. Select Option 3, "Received on* date" and fill in the date to reflect the IRS received date.
 - O. Select Option 4, "Save Payments" , which returns the screen to the Trustee Payments. The check information is listed on the top of the screen.
 - P. To generate an error report, select "Check Summary Report" .
 - Q. The Trustee Payment report can be generated to identify either "Invalid Payments" , "Valid Payments" , or "All Payments" . After selecting "Run Report" , the employee can either print the report or view it electronically.
 - R. Work the error report. (See IRM 5.9.15.15, *Common Payment Posting Errors*.)
 - S. When all errors are corrected, click the "Move Payments" button.

Note:

A message box will appear explaining the consequences of failing to make all corrections.

- T. Select the "YES" button.

- U. Click on the button showing the user's name to allocate payments.
- V. A window will appear stating the number of payments that have posted and unposted.
- W. Print the unpostable listing.
- X. A Partial Overpayment Summary report is generated if any errors are identified.
- Y. Print the Partial Overpayment Summary, if generated, and correct all errors.
- Z. Generate the "Balancing Report" to verify it balances with the check payment amount.

Note:

If the message "interest rate not current" appears, the interest rate must be updated on AIS. Each quarter (April 1, July 1, October 1, and January 1), the interest rate is updated on AIS by a user with appropriate access levels.

3. Updating the Interest Rate. The IRC fluctuating interest rate is updated on AIS quarterly, and only by AIS users with the appropriate access levels; usually Collection Policy personnel. To update the IRC interest rate, the user must:

- A. Select the "Payments" button from the "Misc. Options" list on the AIS Home Page.
- B. On the "Payment Monitoring Menu" , select "Interest Rates" under the Support Options to display the interest rates for each interest period. Beginning and ending dates will appear with corresponding interest rates.
- C. Select the "Insert" button on the navigation tool bar to bring up the next sequential interest period. The interest rate field will be blank.
- D. Input the number signifying the current interest rate in the missing field following the interest period.
- E. Select "Save" to add the interest rate to AIS.

Note:

To update the interest rate for a case with a confirmed plan, see IRM Exhibit 5.9.8-1, *Adding the Confirmed Plan to AIS*.

5.9.15.14.2 (04-05-2011)

Trustee Checks with Paper Rosters

1. Bulk Checks Not on Disk. Trustees who do not send electronic (disk) payment rosters for bulk checks may send a hardcopy listing of debtors and payment amounts. These payments must be individually added to the AIS payment posting screen. To do so, the CIO caseworker must take the following steps:

- A. Select the "Payments" tab from the AIS home page.
- B. Select "Post Automatic Payments" from the Payment Monitoring Menu.
- C. Click on the "Insert" button on the tool bar and input the docket number in the "AIS Case #" field or input the "Court Case #" .
- D. Select the "Load" button to populate debtor information.
- E. Verify that the case that has been loaded is for the correct debtor.
- F. Complete the required information in the "Payment" field:
 - The "Date Received"
 - The "Check #"
 - The "Amount"
 - The "Plan Type" (Select the appropriate radio button.)
 - The "TRC" (transaction code)
- G. Select the "Save" button on the tool bar.
- H. If the payment has been successfully saved, "Record Saved" will appear in the bottom left hand corner of the screen.
- I. If the payment was not successfully saved, error messages will appear in the bottom left hand corner of the screen. Resolve the error(s) using the information in the following table:

IF an error message appears stating....	THEN...
"No Confirmed Plan"	Determine if another kind of plan exists (Administrative or Probate). If so, apply the payment to that plan by selecting the respective radio button for the plan type. If no plan exists: <ul style="list-style-type: none"> A. Determine the most appropriate tax period to credit following the posting priority listed in <i>IRM 5.9.15.2, Applying Payments in Bankruptcy</i>; B. Post the payment on the non plan screen using the directions in <i>Exhibit 5.9.15-2, Posting Non Plan Payments</i>; C. Update the AIS history; and D. Send a secure email to the Field liaison to update the "CPM" Screen on the debtor's case.
"Case/Plan Closed"	<ul style="list-style-type: none"> A. Reopen the case and/or the plan; B. Apply the payment using steps 2 through 7 above; C. Determine if the case and/or plan is truly closed; <ul style="list-style-type: none"> • If so, close the case/plan on AIS. • If not, leave the case/plan open.
"No Confirmation Date"	<ul style="list-style-type: none"> A. Input the petition date in the "Confirmed" field on the Taxpayer Screen; and B. Post the payment following steps 2 through 7 in <i>IRM 5.9.15.14.2 (1)</i> above.

J. Once all errors have been resolved and corrections saved successfully, continue posting the payments for the remaining cases listed on the check.

K. Repeat steps 2 through 7 to post more than one payment, before selecting the "Save" button.

L. Continue until every docket number and payment amount has been added.

Note:

Striking keyboard keys "Shift" and "f5" simultaneously in the date and check number fields will repeat the information in the previous entry.

M. Follow the steps in *Exhibit 5.9.15-6, AIS Automatic Allocation*, to allocate payments.

5.9.15.14.3 (04-05-2011)

Posting Individual Trustee Checks

1. **Single Checks.** Some Chapter 13 trustees send an individual check for each debtor. Chapter 7, 11, and 12 bankruptcy payments are always received as individual checks. When individual checks are received at the CIO, they are input by Insolvency caseworkers embedded in the mail room. (See *IRM 5.9.15.12, Processing CIO Payments in the Mail Room*.) If a single check is received for an individual debtor, the caseworker must take the following steps:

A. Select the "Payments" tab from the "Misc Options" menu on the AIS main screen.

B. Select "Post Automatic Payments" from the Payment Monitoring Menu.

C. Select the "Insert" tab on the AIS tool bar and input the docket number in the "AIS Case #" field, or input the "Court Case #" .

D. Click on the "Load" button to download the debtor information.

E. Verify the account accessed on AIS is for the correct debtor.

F. Enter the "Date Received" , "Check #" , "Amount" , "Plan Type" (select the appropriate radio button), and "TRC" (transaction code) in the Payment Information area.

G. Select "Save" on the AIS tool bar to save the payment. If the payment has been saved successfully, "Record Saved" will appear in the bottom left hand corner of the screen.

Note:

If the payment does not successfully save, an error message will appear at the bottom of the screen. To resolve common error messages, follow the guidance in the **If/Then** table in *IRM 5.9.15.14.2 (1)*.

H. Continue this process until each individual check has been added.

I. Allocate payments by following the procedures in *Exhibit 5.9.15-6, AIS Automatic Allocation*.

5.9.15.14.4 (04-05-2011)

Partially Designated, Semi Automatic and Manual Payments

1. **Partially Designated Payments.** The Partially Designated Payment option is normally used in Chapter 11 cases when the payment is to be applied to:

A. Non-trust fund taxes;

B. Trust fund taxes; or

C. Accrued interest.

2. **Semi Automatic Payments.** The Semi Automatic Payment option can be used on any type of bankruptcy case when the payment has been designated for application according to the claim classification, such as a designated payment to a secured claim.

3. **Manual Payments.** Payments requiring manual posting are usually Chapter 13 remittances designated for trust fund taxes. A shortcut exists for posting these payments. See paragraph 5 below for procedures.

4. **Posting Steps.** To post partially designated payments, manual payments, and semi automatic payments, take the following actions:

A. From the Taxpayer Screen, select the "CPM" tab.

B. Click on the "Post Payment(s)" tab on the Plan Screen.

C. Select the "Insert" option on "Post Payments" pop-up screen.

D. Select the payment type "Semi Automatic" , "Partial Designated" , or "Manual" by clicking the radio button for the payment type.

E. Complete the "Payment Data" information including the following:

- Date (date payment received by the Service)
- Amount (the amount to be posted)
- Check #
- TRC (payment transaction code selected from the drop down list)

F. For semi automatic and manual claims only, select the "Claim Code" from the drop down menu to select "General" , "Priority" , "Secured" , "Over Secured" or "Manual" claim type.

G. For partial and manual payments only, fill in the following fields as appropriate:

- Non-Trust Fund
- Trust Fund
- Pre-Petition Penalty
- Pre-Petition Interest
- Post-Petition Penalty
- Accrued Interest

H. For manual payments only, complete the fields in the box titled "Manual Pymt Information Only" , including:

- MFT Code
- Tax Period
- Assessed
- TIN
- Check "Designated" if the payment is designated.

I. Once all the required information has been entered, select the "Save" button and close the screen.

J. Return to the Payment Monitoring Menu by selecting "Payments" under the "Misc Options" menu.

K. Select "Allocate (*User's Name*) Payments" to allocate the payment(s).

L. After allocation, the system will prompt the user to print the vouchers.

5. **Manual Payment Shortcut.** AIS allows the user to post manual payments simply by clicking on the "CPM" tab on the Taxpayer Screen, selecting the proper tax period from the "Tax Period" section on the Plan Screen, and selecting the "Post Manual Payment" button. The "Manual Payment" screen that appears will be partially completed. The user must complete the "Payment" and "Designated Amounts" fields as appropriate, click the "Save" button, and close the screen. Then the user will go to the payment screen and allocate the payments. After the allocation, the system will prompt the user to print the vouchers.

5.9.15.14.5 (04-05-2011)

Non-Plan Payments

1. **Purposes of the Non-Plan Payment Feature.** Non-plan payments can be submitted by an individual debtor for a Chapter 13 post-petition liability, or a Chapter 7 pre-petition, non-dischargeable liability. A non-plan payment can also be a final distribution from a Chapter 7A trustee. Occasionally, a mis-routed Chapter 11 payment must be processed through this posting option when the payment is misdirected to the CIO and must be posted, or when a posting error message appears on a Chapter 13 payment being posted by the CIO stating that the case has "No Confirmed Plan".
2. **Chapter 11 Cases or "No Confirmed Plan" Cases.** When a Chapter 11 check is received at the CIO, or when a message appears while posting a Chapter 13 payment stating "No Confirmed Plan", the CIO caseworker should:
 - A. Send a secure email to the Field liaison to advise him/her of the posting problem;
 - B. Determine the appropriate tax period to credit, following the posting priority described in *IRM 5.9.15.2, Applying Payments in Bankruptcy*;
 - C. Annotate on the check that it is to be applied via the "Non-Plan Payment" screen; and
 - D. Update the AIS history.
3. **Non-Plan Payment Posting Actions.** To post a payment to the Non-Plan screen, take the following actions:
 - A. Click on the "Post Non-Plan Payments" button on the Payment Monitoring Menu;
 - B. Input the "AIS Case #" and click the "Load" button on the "Non-Plan Payment" screen;
 - C. Verify the account that has been loaded is the correct case; and
 - D. Complete the "Payment" fields with the following information:
 - "Date Received"
 - "Check #" (this field is optional)
 - "TRC 1" (transaction code 670 will appear systemically)
 - "Amount 1"
 - "TRC 2" (if the payment is being split)
 - "Amount 2" (if the payment is being split)
 - "Designation Code" (click on the appropriate radio button)
 - E. Complete the "Period" fields with the following information, if appropriate:
 - "Tin"
 - "Name Control"
 - "MFT Code"
 - "Claim Code" (selected from the drop down list)
 - "Tax Period"
 - "Assessment" date (optional)
 - "Comments" field (optional)
 - F. Select "Save" to update the payment record.
4. **Limitations of Non Plan Posting.** The Non Plan Payment posting does not:
 - A. Use the allocate routine;
 - B. Access the plan modules;
 - C. Retain totals; or
 - D. Verify the TIN exists in the AIS TIN table.

5.9.15.15 (04-05-2011)

Common Payment Posting Errors

1. **Correcting Errors.** Some payment posting errors can be easily remedied as the payments are being posted; others require intervention from Field Insolvency. Field Insolvency has 15 business days from the date the CIO notifies them of a payment issue to correct the problem. When the CIO experiences simple posting problems, having CIO caseworkers correct the errors themselves without relying on FI caseworkers can accelerate the bulk processing of trustee payments. The following paragraphs offer instructions on resolving some posting errors.
2. **Missing Plan.** This error is generated when a payment is received and one of the following conditions occurs:
 - A. The plan has not been loaded.
 - B. The plan has been loaded, but all periods have not been verified.

Reminder:

When loading confirmed plans, Field caseworkers should ensure all periods are verified.

 - C. A proof of claim has not been filed by the Service, but has been filed by the debtor or trustee on behalf of the Service.
 - D. A pre-petition "Regular" proof of claim has not been filed by the Service, but an "Administrative" claim has been filed by the Service under § 1305 for post-petition liabilities.

Note:

Proofs of Claim filed for post-petition taxes under § 1305 should generally be filed on Form 10, or the "Regular" claim (see *IRM 5.9.10.9.2, 11 USC Section 1305 Claims*). The liability should be added to the CPM screen as a priority tax.

When the CIO caseworker cannot resolve the payment posting issue expeditiously, the caseworker should follow the guidance in *IRM 5.9.15.14.5, Non-Plan Payments*, and load the payment on the Non Plan screen.

3. **No Case Found.** Querying the TIN on the AIS "TIN Screen" can sometimes identify cases marked "No Matching Records Found" on AIS. This error may result from one of the two following scenarios:

A. A case may have erroneously been closed as no liability (NL) when a tax is owed but the balance due falls below the LEM criteria for claim filing. The Service receives payment because the debtor has filed a claim on behalf of the Service. If the case has been moved to the index for closed cases, the case should be reopened by removing the closure date from the "On AIS" field in the "Closing Info & Dates" area on the Taxpayer Screen. After the changes have been saved, the payment can be input as a non-plan payment. After the payment has been posted, the case must be transferred to the Field to add the claim information to the Plan Monitoring screen.

B. The TIN on AIS differs from the TIN provided by the trustee. The CIO should alert the Field to call the trustee to correct the TIN in his/her database.

4. **Case Closed.** Insolvency sometimes does not receive notice from the court that a dismissed case has been reinstated. If a payment is received on a case that has been closed as "dismissed", the CIO caseworker should check the court's electronic records to determine if the bankruptcy has been reinstated. If the error states "Case Closed", and the bankruptcy has been dismissed and not reinstated, the payment should be posted to the earliest assessed liability. If the dismissal has been vacated and the case reinstated, the case should be reopened on AIS so the payment can be posted through AIS. If the case was dismissed before the confirmation date, the case must be transferred back to the appropriate Field Insolvency caseworker to complete pre-confirmation work.

5. **Multiple Cases.** Errors for multiple cases occur because the system looks for TINs instead of case numbers. Every case associated with the TIN on the payment will be identified. The error will be corrected by the CIO caseworker clicking on "Set Button#" and selecting the correct case number and appropriate radio button for the plan type:

- Confirmed Plan Payment (Y)
- Non-Plan Payment (M)

6. **Plan Closed.** The "Plan Closed" error message is usually generated for one of the two following reasons:

A. The case has been discharged and processed through ADS, but closure was prevented by a Discharge Determination Report (DDR) flag. (The case has SA or RA in the method of closure field on the AIS entity screen.) The plan must be reopened and the payment posted. The CIO technical unit processing discharges is responsible for resolving the DDR condition if the case is assigned to it. If the case is assigned to Field Insolvency, the FI caseworker must resolve the DDR.

B. The plans have been closed because of dismissal notice.

When this error appears, the technician should select the "Confirmed" plan type radio button.

7. **Taxpayer Entity Record Closed.** This error is identified when the AIS entity screen has "REG DIS COMPLTE" or "SUP DIS COMPLTE" in the "Closure Method" field and an AIS closing date.

A. If the payment is received 30 days or less after the AIS closing date, the assumption will be made that the payment represents the final installment from the bankruptcy estate, and should be posted following instructions in *Exhibit 5.9.15-7, Posting Payments on a Closed Case*.

B. If the payment is received more than 30 days after the AIS closing date, PACER research is required to determine if the case has been reopened, if the TIN or debtor name is incorrect, or if the discharge was entered on AIS erroneously. If research determines the payment should be posted, the instructions in *Exhibit 5.9.15-7* should be followed. If the propriety of the payment is in question, contact with the trustee is necessary.

C. If PACER indicates a discharge was entered on AIS in error and the case was erroneously closed, the caseworker must:

1. Input TC 520 with the petition date;
2. Remove the closed date on the AIS Taxpayer Screen;
3. Remove the information in the "Closure Method" field; and
4. Follow normal payment posting procedures.

D. If the trustee has submitted a payment after the valid entry of a discharge, and the payment is received more than 30 days after the AIS closing date, the caseworker must remove the closed date on the AIS Taxpayer Screen and follow payment posting procedures in *Exhibit 5.9.15-7* if there were dischargeable liabilities. If there were no dischargeable liabilities, follow normal payment posting procedures and close the case using the present closing date.

**5.9.15.15.1 (04-05-2011)
Resolving Payment Posting Errors**

1. **Unpostable Payment Report.** An error message may appear on the "Allocate" screen, or a list will appear when printing the posting vouchers. Payments that cannot be resolved by the Payment Posting Unit will be applied manually using the "Post Non Plan Payment" screen. The CIO will email the Field Insolvency liaison advising them of the posting problem. A TC 570 request will be added to the posting voucher/balancing report.

2. **For All Errors Except "Admin Plan Found"** . The error report identifies payments that AIS is unable to allocate to the bankruptcy plan. Payment errors listed on the Unpostable Payment Report must be corrected and reallocated.

3. **Errors.** Types of errors and the function responsible for correction of Chapter 13 payments are shown in the table below. Field Insolvency is responsible for correcting all payment errors on cases other than Chapter 13.

Error	Action	Function Responsible
No Confirmed Plan	CIO caseworker contacts the Field liaison by secure email to advise payment has been applied as a non-plan payment.	Field loads confirmed plan ensuring money is properly allocated. Actions may include but are not limited to: <ul style="list-style-type: none"> • Loading payment to the Confirmed Plan Monitoring (CPM) screen and removing it from the non plan screen. • Preparing credit transfer based on AIS allocation. Reminder: When loading a plan, ensure all periods are verified and any secured issues are addressed. Caution: There should be no administrative plan for a Chapter 13 case. All claims filed under USC § 1305 for post-petition taxes should be added to the CPM screen as a priority liability by selecting plan type "Confirmed" from the drop down menu.
		A. Field contacts the trustee to correct the TIN in their database, and

No Valid Case Found (when the trustee has not redacted the SSN)	CIO caseworker contacts the Field liaison by secure email to advise payment has been applied as a non-plan payment.	<p>B. Updates the AIS history.</p> <p>Actions may include but are not limited to:</p> <ul style="list-style-type: none"> • Loading payment to the CPM screen and removing it from the Non-Plan screen. • Preparing credit transfer based on AIS allocation. <p>Reminder:</p> <p>When loading a plan, ensure all periods are verified and any secured issues are addressed.</p>
No Valid Case Found (when trustee has redacted TIN)	CIO caseworkers must locate the case on AIS using the redacted SSN and case number.	CIO
Case Closed	See <i>IRM 5.9.15.15 (4), Case Closed.</i>	CIO
Multiple Cases	See <i>IRM 5.9.15.15 (5), Multiple Cases.</i>	CIO
Plan Closed	See <i>IRM 5.9.15.15 (6), Plan Closed.</i>	CIO
Admin Plan Found	No action	not worked
Manually Designated-Amount too large	See <i>IRM 5.9.15.2.4, Surplus Payments from Trustee.</i>	CIO
Partially Designated-Amount too large	See <i>IRM 5.9.15.2.4, Surplus Payments from Trustee.</i>	CIO
Tax modules for case # plan type XX are not all verified	Review the Detail Record for each tax period to ensure plan is verified. Click the "Verified Period" box to verify the period.	<p>CIO</p> <p>Note:</p> <p>CIO must advise Field Insolvency of action taken by telephone, fax or secure email.</p>
Unable to find master record _plan type	CIO caseworker contacts the Field liaison by secure email to advise payment has been applied as a non-plan payment.	Field Insolvency reviews the CPM screen to ensure all plans are input. Inputs any missing plan information, loads payment to the CPM screen and removes it from the Non Plan screen.
Error in the field / Field contains invalid data	Input correct data in the highlighted field	CIO
Payment date input is after today's date	Correct payment date	CIO
Manual payment posting required	Post manual payment	CIO
This field requires an entered value	Input the appropriate data in the cursor field	CIO
Semi-Automatic payment amount too large.	See <i>IRM 5.9.15.2.4, Surplus Payments from Trustee.</i>	CIO
Missing Confirmation date	<p>Input the petition date as the confirmation date; then, contact the Field liaison by secure email to advise that the payment has been received.</p> <p>Note:</p> <p>If a second payment is received and the confirmation date has not been updated, the case should be reassigned from the CIO to the appropriate Field Insolvency caseworker.</p>	<ul style="list-style-type: none"> • CIO uses the petition date as the confirmation date so the payment can be processed expeditiously. • Field Insolvency must secure the confirmation date and update the Taxpayer Screen with the date found on PACER.

4. **Valid Payment Field.** The cases on the error report will have a bullet next to the invalid payment. This bullet should appear next to the "Confirmed Plan" line or the "Manual Payment" line when the payment has posted correctly. To work the error report, the caseworker should print the "Check Summary Report" and take the following actions:

- A. On the AIS home page, select the "Payments" button.
 - B. On the Payment Screen, select the "Trustee Download Options" button to access the "Trustee Payments" screen.
 - C. Click on the "Query" tab from the toolbar; input the check number in the "Check Number" field; and click on the "Invalid Payment (N)" radio button found in the lower right quadrant of the screen.
 - D. Clicking on the "Execute" button will display all of the corrections that need to be made. If there are multiple results returned, select the "Next" button to move through them sequentially.
- Note:**
- After each correction is made, the "Save" button must be selected before going to the next error.
- E. To allocate the payments, select the "Payments" button to access the "Payment Monitoring Menu".
 - F. On the Payment Monitoring Menu, select the "Allocate (User's Name) Payments" button.
 - G. Non-plan payments must be updated with a MFT code, claim code (O, S, SP or G) and tax period. Select "Save" so the payment will allocate to the non-plan screen.

Common unpostable conditions can be corrected by following the **If/Then** table below:

If the error message is ...	Then the caseworker should...
Missing Plan	Add the claim to Plan Monitoring.
Manually Designated - Amounts too large	Review the Payoff Report for correct amount and input the correct amount.
Partially Designated payment amount too large	Review the Payoff Report and input the correct amount.

The tax modules for case # Plan type XX are not all verified	Review the Detail Record for each tax period to ensure plan is verified. Select the "Verified Plan" box.
Unable to find master record __ plan type __	Review the Plan Monitoring File to ensure all plans are input. All plans must be input before payments can allocate.
Error in field, field contains invalid data	Review the invalid data in the cursor field and input the correct data.
Payment date input is <i>after</i> today's date	The payment date must be <i>prior or equal to</i> the date of input.
No Case Found	Add the claim information to the Plan Monitoring screen.
Manual Payment posting required	Review the code input to the Payment Monitoring Screen and input the DPC.
This field requires an entered value	Review each screen field for required data and input the appropriate data in the cursor field.
Invalid Choice	Review each case number to ensure data is correct. When case numbers do not match an AIS Taxpayer Data File, input the correct case number and research for missing record if the case number is correct.
Data doesn't match	Review the Payment Monitoring Detail Record to correct payment information.
Semi-Automatic Payment amount too large	Review the Payoff Status Report and input the correct amount.
Missing Confirmation Date	Review the Taxpayer Detail File and input the confirmation date. If not present, enter the petition date.
Missing Petition date	Review the Taxpayer Screen for the petition date and input the petition date.

5.9.15.16 (03-01-2007)

Dishonored Checks

1. **Prior to Posting on AIS.** If Insolvency is advised a payor has stopped payment on a trustee check, or if Accounting advises Insolvency a check has been dishonored before payment has been posted to AIS, the check is not to be posted. If the payments have been posted but the vouchers have not been sent to Campus Support, the payments must be removed from the AIS payment screen and a short AIS history input.

Example:

The history may state, "Payment on check # XXXXX removed from plan screen due to dishonored check."

2. **After Posting on AIS.** If Insolvency is advised a check has been dishonored after the payment has been posted to AIS and sent to Campus Support, the payments must be removed from the AIS payment screen and a short AIS history input. Accounting must fax the Insolvency office processing the check copies of the front and back of the dishonored check.

Note:

Reversed payments from third parties with a bankruptcy DPC are not assessed a dishonored check penalty. However, reversed payments from a debtor-in-possession remain subject to the dishonored check penalty.

5.9.15.17 (04-05-2011)

Removing Trustee Payments

1. **Removing Plan Payments.** Occasions will occur when it is necessary to delete payments from the AIS payment record, for example, in the case of dishonored checks or lost checks. When trustee payments are reversed, confirmed plan payments and non-plan payments are removed, and the trustee check record is removed. Specific payments may be reversed for an individual debtor, or all payments covered by a bulk trustee check can be reversed at one time.

Reversing a Bulk Payment Check from AIS	
Step	Action
1	Select the "Payments" button on the AIS Home Page.
2	From the Payment Monitoring Menu that appears, select the "Trustee Download Options" button.
3	Complete the fields in the Trustee Check Information section of the screen and click on the "Reverse Posted Payments" button.
4	Type "Y" (yes) to complete reversal of the trustee check.
5	Remove the check record.
Reversing Individual Payments from AIS	
Step	Action
1	From the Taxpayer Screen click on the CPM tab.
2	From the Plan Screen that appears, click on the "Applied Payments" Button.
3	Click on the "Next" button until the payment to be reversed appears.
4	Click on the "Reverse this Payment" button.
5	A prompt will appear asking if the user wants to continue with the reversal. Click on "Yes" .

Note:

The assigned Field Insolvency caseworker must recompute the plan on AIS. Recomputing the plan does not bring the overpayment amount to zero.

2. **Removing Non-Plan Payments.** When trustee payments have been posted to the non-plan screen because a plan has not been loaded or has been improperly loaded, the CIO should forward the case to FI for plan correction. Upon correcting the plan screen, the FI caseworker must move the payment in question from the non-plan screen to the Confirmed Plan Monitoring screen. To prevent an overpayment error in the future, the caseworker must also delete the payment from the non-plan screen following the steps below.

Reversing Non Plan Payments	
Step	Action
1	From the AIS Home Page, click on the "Payments" button.
2	From the Payment Monitoring Menu, click on the "Post Non Plan Payments" button.
3	Query the docket number to access the case in question.
4	Select the applicable payment voucher. This can be done by querying the check number, the dollar amount or posting date.
5	Click on the "Remove" button on the tool bar to delete the payment.
6	Click "Save" to confirm removal of the payment.

Note:

The Field caseworker must then recompute the plan on AIS. (See *Exhibit 5.9.15-5, Plan Recomputation.*)

5.9.15.18 (08-06-2015)
Non-Insolvency Checks

1. **Non-Debtor Spouse or Third Party.** Checks from parties other than the trustee may be applied toward a period covered by the bankruptcy stay. A non-debtor spouse may make a payment toward a joint tax liability owed by a debtor, or a third party such as a family member may elect to help a debtor pay a tax liability. When it is evident the check is meant to be applied toward a tax debt covered by the bankruptcy proceeding, the caseworker must post the payment through AIS as designated, or if no designation is made, as is outlined in *IRM 5.9.15.2 (2), Bankruptcy - Involuntary Payments*.
2. **Debtor Payments.** Debtors may submit voluntary payments for post-petition taxes, or in some instances, for non-dischargeable taxes, during the pendency of their bankruptcy. *IRM 5.9.4.4.2, Post-Petition Payments and Credits*, and *5.9.4.19, Installment Agreements and Bankruptcy*, give guidance on determining when the Service is allowed to retain voluntary payments.
3. **Posting Responsibilities.** Vouchers for the non-Insolvency checks discussed in paragraphs (1) and (2) above must be posted on AIS by the Insolvency function (Field or CIO) receiving the checks.
 - A. **CIO Processing.** Payments related to accounts in bankruptcy that are not remitted by a trustee or debtor-in-possession will be loaded to the AIS Non Plan Screen and a voucher printed. AIS will only allow a DPC of "03" or "11" to be printed on the payment vouchers it generates. The caseworker must cross out the "03" and replace it with "99". The check and the payment posting voucher will be forwarded to the Philadelphia Campus Support unit for the check to be scanned and the payment credited to the taxpayer's account on master file. An AIS history item must be created explaining the nature of the payment (e.g., "payment rcvd from NDS" or "payment rcvd for post-petition 30 2007").
 - B. **Field Insolvency Processing.** Field Insolvency will load these payments to the AIS Non-Plan Screen and print a voucher. AIS will only allow a DPC of "03" or "11" to be printed on the payment vouchers it generates. The caseworker must cross out the "03" and replace it with "99". Field Insolvency will overnight their payments and vouchers to the Campus assigned to their geographical location. An AIS history item must be created explaining the nature of the payment (e.g., "payment rcvd from NDS" or "payment rcvd for post-petition 30 2007").
4. **Estimated Tax Payments.** Some plans include the requirement debtors make estimated tax payments on future periods so they do not continue to accrue liabilities post-petition. These payments cannot be processed through AIS. Field Insolvency must prepare Form 3244, *Payment Posting Voucher*, to be sent along with the payment to the appropriate Campus remittance unit by overnight delivery. Estimated tax payments received erroneously at the CIO will be scanned and loaded on IDRS by Campus Support.

Note:

Field Insolvency must advise debtors to send estimated tax payments to the Field Insolvency office address.

Exhibit 5.9.15-1
Virus Scanning

When working with a diskette provided by a source outside of the Service, such as a bulk payment disk sent with a bankruptcy trustee check, the user must scan the disk for viruses through the following steps:

- A. Access Windows Explorer by right clicking the start button at the bottom left of the computer screen.
- B. Select "Explore" with a left mouse click.
- C. Open the 3 1/2 Floppy (A) drive with a left mouse click.
- D. Highlight the file name.
- E. Right click "Scan for Virus".

IF...	THEN...
no virus is found, proceed with processing.	
a virus is found, contact Information Technology.	

Exhibit 5.9.15-2
Posting Non-Plan Payments

The steps for manually inputting data for non-plan payments and payments for which an error message of "no confirmed plan" appears are as follows:

- A. Verify the debtor account showing on AIS matches the debtor name given by the trustee.
- B. Click the "Payment" button on the Taxpayer Screen. The Payment Monitoring Menu will appear.
- C. Click on the "Post Non Plan Payments" button to access the Non Plan Payment screen.
- D. Input the AIS case number and click the "Load" button immediately following the case number.

Note:

The AIS Case Number is a required field. If the record exists on AIS the name and address information is populated systemically, or a list of possible names will drop down so the correct case can be selected. If the account does not exist on AIS, the case must be added in order to post the payment.

E. In the "Payment" section of the Non-Plan Payment screen, complete the fields for:

- Payment date
- Check number
- Transaction code (defaults to 670)
- Amount
- DPC (defaults to 3)
- TIN
- MFT
- Tax Period
- Assessment date (optional)
- Comments (optional)

- F. Click on the "Save" button.
- G. Go to the main payment menu and select "Allocate (User's Name) payments".
- H. Select the "Print Voucher" button.

**Exhibit 5.9.15-3
Accessing the AIS Claim Screen**

To view the claim(s) filed by the Service in a particular case, the caseworker should take the following steps.

- A. From the AIS Main Screen, select "Case Files".
- B. Select "Query" from the navigation tool bar.
- C. Enter the case number in the "AIS Case Number" field.
- D. Select "Execute" on the navigation tool bar.
- E. Click on "Next" on the tool bar until the desired case appears.
- F. Select the "Proof of Claim" folder tab and the Proof Screen will appear.
- G. From the Proof Screen select "Next" to see if there is more than one type of claim filed in a case. Claim types are:
 - Regular
 - Administrative
 - Probate

Note:

All claim information for a specific type of claim, such as original claims and amendments, will be with the file for the specific claim type.

- H. The original claim number and filing information will be shown in the field for the "Original" claim. The amended claim number, prepared date, and acknowledgement date for the last amended claim filed will be shown in the "Amended" field.
- I. A copy of the proof of claim can be viewed or printed by selecting "Reference Copy" or the "Previously Filed Claim" when more than one claim has been filed.

**Exhibit 5.9.15-4
Preparing Letter 549-C**

Returning a Trustee Check. When an individual check is received from a trustee for a claim that is full paid, the check must be returned to the trustee with IDRS Letter 549-C, *Balance Due on Account Is Paid*. To generate an LPAGE screen on IDRS without a taxpayer name or address (since the letter is going to a trustee):

Step	Action
1	Access the proper letter on IDRS by inputting LETER 549-C KM
2	Type in the trustee's name and address using all upper case letters.
3	In paragraph G (fill-in #19), enter: "The Internal Revenue Service is returning your payment of \$[dollar amount] because the claim for John Doe, case number XX-XXXX, has been full paid. This refund is being sent under separate cover." or "The Internal Revenue Service is returning your payment of \$[dollar amount] because no pre-petition tax liability is owed by John Doe, case number XX-XXXX. This refund is being sent under separate cover." Note: If an amended claim should be filed (for example to amend an estimated claim to \$0.00), the case must be transferred to the FI office or the CIO unit responsible for claim amendments.

**Exhibit 5.9.15-5
Plan Recomputation**

The following steps will reallocate all payments after a payment on the AIS plan screen has been successfully reversed.

1	From the Taxpayer Screen, select the "CPM" tab.
2	Select "Next" until the plan type to be recomputed appears.
3	Verify that the tax periods included in the Plan Screen are correct by using the scroll bar in the "Tax Periods" section of the Plan Screen to view them.
4	Click on "Recompute Plan". A pop-up warning will appear, asking if the user wishes to continue.
5	Select "Yes" to continue.
6	Choose the File Menu and select "Print Review" to view the posting vouchers for possible unpostable payments.
7	Resolve any posting errors using the instructions in <i>IRM 5.9.15.15.1, Resolving Payment Posting Errors</i> .
8	Print the vouchers.

Caution:

- Caseworkers should take care not to confuse the "Recompute Plan" and "Reset Plan to Zero" options on AIS.
- The **Recompute Plan** option should be used when there are changes to the plan; e.g. the confirmation date, the plan effective date, interest options, etc. These changes impact the entire plan, so this option applies the new parameters and automatically re-allocates the payments.
- The **Reset Plan to Zero** option should be used when there are changes to *individual periods or payments* on a plan; e.g., to take out payments and apply them another way, to modify the plan by adding or deleting a tax period, to adjust tax amounts, etc.

For detailed information on these functions in AIS, see Document 13219, *AIS User Guide*.

Overpayments Caused by Recomputing the Plan. A mismatch or overpayment condition can exist when payments are reallocated. Plan payments may not match the reallocated payments on AIS. This can occur when a proof of claim is amended or an Administrative Claim is updated. To correct the mismatch in IDRS and AIS, take the following actions:

Step	Action
1	Select a transcript of the account(s) from IDRS.
2	Print an AIS Payment Record from the "Applied Payments" button from the CPM Menu.

3	Match the two records.
4	Prepare appropriate form or input a credit transfer to move the payments on IDRS to match the payment reallocation on the Payment Record.
5	Verify both IDRS and AIS payment records match for the applicable periods.

Exhibit 5.9.15-6
AIS Automatic Allocation

Secured Periods. AIS payment allocation is based upon the Service's claim and how the plan screen is loaded. Beginning with the earliest assessed secured period, allocation is made by AIS in the following order: 1) non trust fund taxes, 2) trust fund taxes, 3) pre-petition interest, 4) pre-petition penalty, 5) the next oldest secured period following the order just stated, 6) then all accrued penalties for secured periods starting with the oldest period, and 7) finally all accrued interest for secured periods starting with the oldest period.

Unsecured Priority Payments. Beginning with the earliest assessed unsecured priority period, allocation is made by AIS in the following order: 1) non trust fund taxes, 2) trust fund taxes, 3) pre-petition interest, 4) the next oldest unsecured priority period, and 5) finally all accrued interest for unsecured priority periods starting with the oldest unsecured priority period.

Unsecured General Payments. Beginning with the earliest assessed unsecured general period regardless of payment date, allocation is made by AIS in the following order: 1) non trust fund taxes, 2) pre-petition interest, 3) then the next oldest period in the order just stated, and 4) all priority pre-petition penalty periods starting with the oldest period, and 5) finally all other pre-petition penalty periods, starting with the oldest period.

Exhibit 5.9.15-7
Posting Payments on a Closed Case

If both AIS and PACER confirm a case has been discharged, the TC 604 transaction date (23C date) governs the proper actions to be taken by the Insolvency caseworker.

IF...	THEN...
the case has been closed on AIS,	remove the closure date from the "On AIS" field on the Taxpayer Screen.
the payment 23C date is <i>prior</i> to the TC 604 23C date,	IDRS will generate a systemic TC 605 allowing the caseworker to post the payment by following normal payment posting procedures.
the payment 23C date is <i>after</i> the TC 604 23C date,	the caseworker must reverse the abatement manually on IDRS by inputting: 1) TC 520 CC 81 with the petition date; 2) TC 972 AC 031; 3) TC 971 AC 031 (3 cycle posting delay); and 4) TC 521 CC 81 (4 cycle posting delay). Then follow normal payment posting procedures.

Note:

After the payment posts, the caseworker must input a follow-up to re-input the abatement. The case should be closed on AIS once the payment and all adjustments have posted to IDRS.



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 16. Insolvency Case Monitoring

5.9.16 Insolvency Case Monitoring

- 5.9.16.1 [Field Insolvency](#)
- 5.9.16.2 [CIO Case Monitoring](#)
- 5.9.16.3 [Litigation Transcript System](#)
- 5.9.16.4 [Manual Refunds](#)
- Exhibit 5.9.16-1 [Instructions for Preparing Form 5792](#)

5.9.16.1 (02-01-2011) Field Insolvency

1. **Report Guidelines.** Field Insolvency retains responsibility for working most reports on cases assigned to its inventories. The Centralized Insolvency Operation (CIO) may refer certain cases appearing on their assigned reports to Field Insolvency offices for resolution. Reports routinely handled by Field Insolvency are:
 - courtesy investigations
 - bar date follow-up
 - proof of claim follow-up
 - technician review follow-up
 - court closure follow-up
 - referral to Counsel
 - Litigation Transcript System reports

2. **Chapter 11 Monitoring.** Field Insolvency monitors Chapter 11 cases. IRM 5.9.8.11, *Postpetition/Preconfirmation BMF Monitoring*, and IRM 5.9.8.16.2, *Monitoring the Plan and Reviewing for Lien Refile*, outline Chapter 11 monitoring requirements.

5.9.16.2 (03-01-2007) CIO Case Monitoring

1. **Case Monitoring Responsibilities.** Technicians at the CIO monitor postpetition IDRS actions affecting bankruptcy cases in their assigned inventories by processing Litigation Transcript System (LTS) reports.

5.9.16.3 (02-01-2011) Litigation Transcript System

1. **Litigation Transcript System (LTS).** The Litigation Transcript System (LTS) program matches electronic litigation transcripts from master file with the TIN records of the open AIS database. This automated program allows Insolvency caseworkers to manage their inventories based on necessary actions rather than on periodic general reviews of all cases assigned to them.
 - A. **Centralized Insolvency Operation.** CIO units generate and work LTS reports for cases assigned to their inventory and forward specific reports, such as new assessments, to Field Insolvency when appropriate.
 - B. **Field Insolvency.** Field groups generate and work LTS reports on cases currently assigned to the Field. They also work transcripts and reports for cases transferred to them from Centralized Insolvency because of complex issues.
 - C. **Weekly Extractions.** MF data are sorted and transmitted to the AIS database once a week. After the data are matched and sorted by employee case assignment number, the transcripts can be printed.
 - D. **Timeframe.** Caseworkers must review their assigned transcripts within five workdays of receipt with two exceptions for the CIO. The CIO must review New Assessment and Closed Case transcripts within 15 calendar days of generation.
 - E. **Identification and Prevention of 11 USC Violations.** LTS reports assist Insolvency employees to identify and to resolve violations of the Bankruptcy Code. Correction of actions taken in violation of the automatic stay must be initiated *within two workdays* of the date a violation is detected.
 - F. **Pending Refunds.** LTS generates a Manual Refunds Pending for Review Report (with cases sorted by employee number) to identify possible refund issues that may require immediate handling. The report can be accessed by selecting "Reports" on the AIS Main Menu, scrolling down to the "Manual Refund" list and selecting "Pending Refunds". LTS loads the MF and AIS refund data automatically to the AIS manual refund screen.
 - G. **Refunds Generated by LTS.** For each debtor's TIN, LTS generates a weekly Report of Refunds when a docket is open on AIS, a module has a current -V or -W freeze condition, or a TIN is added to the Manual Refund data screen for possible refund. IDRS overpayment information is added weekly to AIS. The report can be accessed by selecting "Reports" on the AIS Main Menu, scrolling down to the "Litigation Transcripts" list and selecting "Refunds Generated by LTS". (See IRM 5.9.16.4, *Manual Refunds*.)
2. **Working Transcripts.** LTS reports identify stay violations, new assessments, and module credits in part to meet the requirements of the Bankruptcy Code Compliance Program (BCCP) regarding correction of violations of the automatic stay. LTS matches master file (MF) data from IDRS with the TINs on AIS. CIO caseworkers only work LTS reports for cases assigned to them. Field Insolvency generates and works LTS reports for those cases assigned to its specialists. CIO technical units receive litigation transcripts from CIO clerical units via Form 3210, *Document Transmittal*. The transcripts can be viewed or printed at the option of the requestor. Reports can be generated by organization code, group number or specific employee. The transcripts are identified by five categories:
 - Credit Balance with New Transaction

- Other Credit Balance
- Case Closed on AIS
- New Assessments
- All Other (optional for the CIO)

5.9.16.3.1 (02-01-2011)

"Credit Balance" and "Other Credit Balance" Reports

1. **Prepetition Credit and Prepetition Liability.** If a credit and liability are both prepetition, the caseworker must determine if the credit is a true module overpayment. Based on local rules or standing orders, the credit balance may be resolved by:

- A. manual refund to the debtor;
- B. manual refund mailed to the trustee;
- C. transfer of the credit to another period; or
- D. partial refund to the taxpayer or mailed to the trustee.

When a true module credit exists:	
IF...	THEN...
standing orders or local rules allow offsets,	<p>CIO Action: input a credit transfer on line. (See IRM 21.5.8.4.1, <i>IDRS Guidelines for Credit Transfers</i> and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i>.) If an amended proof of claim is required, reassign the case to the appropriate Field Insolvency caseworker, documenting the AIS history with the reason for the reassignment. The Field Insolvency caseworker will be advised of the potential need for case action via an E-mail sent by AIS to their Outlook E-mail address.</p> <p>Field Insolvency Action: Prepare Form 2424, and forward it to Centralized Case Processing (CCP). The document may be sent electronically by secure E-mail to *SBSE ccpinslv or mailed via Form 3210 to CCP at Internal Revenue Service, 2970 Market St., Mail Stop 5-E04.114, Philadelphia, PA 19104.</p> <p>Note:</p> <p>When preparing a credit transfer that will absorb the entire credit, caseworkers must access the Refund File on AIS to update the "Issue to" field to a "Never Process" value to prevent the case from appearing on the Pending Manual Refund report.</p>
standing orders or local rules do not allow offsets, and the dollar amount meets the LEM criteria for referral to Counsel to request a lift stay for offset,	<p>CIO Action: document the AIS history, noting the research results and the basis for transferring the case to the Field. Reassign the case to the appropriate Field specialist. The Field Insolvency caseworker will be advised of the potential need for case action via an E-mail sent by AIS to their Outlook E-mail address.</p> <p>Field Insolvency Action: depending on local agreement with Area Counsel, make a determination about requesting a lift of the stay for offset.</p>
the credit cannot be offset and does not meet the IRM criteria for referral to Counsel,	<p>prepare Form 5792, <i>Request for Manual Refund</i>, to refund the overpayment to the debtor or to send the credit to the debtor c/o the trustee.</p> <p>NOTE: If the overpayment came from the trustee, the overpayment should be sent back to the trustee, unless otherwise directed by the trustee. If the overpayment came from the debtor or third party, the refund of the overpayment should be sent to the debtor or the trustee, depending on whether the trustee has made a valid turnover request. The first name line on the refund request must always match the first name line on the tax return for the specific module.</p>

Caution:

Caseworkers must update the "Issue to" field to "Never Process" on the refund screen on AIS when a 5792 will not be issued.

Note:

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 allows offset of prepetition income tax refund credits to prepetition income tax liabilities for cases filed on or after October 17, 2005.

2. **Post-Petition Credit with Additional Liability.** If the LTS credit is postpetition, the caseworker must research IDRS to determine if postpetition liabilities exist.

IF...	THEN...
research shows existing postpetition liabilities,	<p>apply the credit to the existing postpetition liability unless offset is barred by local rules or standing orders.</p> <p>CIO Action: input a credit transfer on line. (See IRM 21.5.8.4.1, <i>IDRS Guidelines for Credit Transfers</i>, and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i>.)</p> <p>Field Insolvency Action: prepare Form 2424 (or other form accepted by CCP) requesting a credit transfer and send to CCP.</p>
more than one postpetition liability exists,	<p>apply the credit to the most imminent CSED first, and continue in this same manner until the credit is exhausted unless offset is barred by local rules or standing orders.</p>
the credit is not exhausted but standing orders or local rules allow postpetition credits to offset to prepetition debts,	<p>CIO Action: input a credit transfer on line. (See IRM 21.5.8.4.1, <i>IDRS Guidelines for Credit Transfers</i>, and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i>.) Update the AIS history explaining actions taken. If a proof of claim has been filed, reassign the case to the appropriate Field Insolvency caseworker. The Field Insolvency caseworker will be advised of the potential need for case action via an E-mail sent by AIS to their Outlook E-mail address.</p> <p>Field Insolvency Action: prepare Form 2424 (or other form accepted by CCP) requesting a credit transfer and send to CCP. Amend claim or send credit letter to trustee as needed.</p>
the case is Chapter 13, the credit is not exhausted, no standing orders exist for offset to prepetition liabilities, but the dollar amount meets IRM criteria for referral to Counsel to request a lift stay,	<p>CIO Action: document the AIS history, noting the research results and the basis for transferring the case to the Field. Reassign case to appropriate Field specialist or advisor. The Field Insolvency caseworker will be advised of the potential need for case action via an E-mail sent by AIS to their Outlook E-mail address.</p> <p>Field Insolvency Action: consider requesting a lift of stay for offset based on local referral tolerances.</p>
the credit is not exhausted, no standing orders exist for offset to prepetition liabilities, and the amount does not meet the criteria for referral to Counsel to request a lift of stay,	<p>prepare Form 5792, <i>Manual Refund Request</i>, for any remaining credit and document the AIS history. The refund should be directed to the debtor or the trustee depending upon local rules or trustee turnover requests. (<i>IRM 5.9.16.4, Manual Refunds</i>.)</p>

Caution:

Caseworkers must update the "Issue to" field to "Never Process" on the refund screen on AIS when a 5792 will not be issued.

Note:

Because of time constraints, generally referrals for lift stays will not be made on Chapter 7 cases based on LTS reports.

3. **Postpetition Credit and No Additional Liability.** If the credit is postpetition and no additional liabilities are identified, the caseworker must prepare Form 5792, *Manual Refund Request* asking a refund be issued to either the debtor or payable to the debtor and mailed in care of the trustee. (IRM 5.9.16.4 *Manual Refunds*.)
4. **Payment Posting IRM Section.** IRM 5.9.15.6, *Proper Application of Payments*, guidance can be followed on determining the most appropriate manner in which to address credits identified by LTS reports.

**5.9.16.3.2 (02-01-2011)
"New Assessment" Reports**

1. **Identified by Transaction Codes.** For each debtor TIN on an open AIS case, LTS generates a New Assessment report when the following newly posted transaction codes appear on a balance due module:
 - TC 150 - Return posted with assessment
 - TC 240 - Miscellaneous penalty
 - TC 290 - Additional tax assessment
 - TC 300 - Additional tax or deficiency by Examination
 - TC 671 - Dishonored check

Note:

The LTS New Assessment reports are not worked in Chapter 7 No Asset cases and, when generated, may be discarded into classified waste.

2. **Transaction Code Analysis.** Caseworkers must analyze the transcripts for cases in their inventory to determine which transaction codes are present and what the next appropriate action is. Additional AIS and IDRS research may be required.

IF...	THEN...
the new assessment is on a prepetition period, and the case is a Chapter 13 bankruptcy,	CIO Action: re-assign the case to the appropriate Insolvency specialist or advisor; and document actions in the AIS history. Field Insolvency Action: determine if a new claim should be filed or if an existing claim should be amended. (See IRM 5.9.5.4, <i>AIS Documentation</i> .)
the new assessment is on a prepetition period and the case is a Chapter 7 Asset, Chapter 11 or Chapter 12,	determine if a new claim should be filed or if an existing claim should be amended.
the new assessment is on a postpetition Chapter 13 period and the assessed liability is less than \$2,500 for the current period and the aggregate assessed total of all postpetition assessments is less than \$2,500 ,	CIO will update the AIS history (example - Working LTS New Assessment for \$XX/20XX12 for \$XX, NAN) and discard the transcript in classified waste.
the new assessment is on a postpetition Chapter 13 period and IDRS indicates full pay has been received based on the systemic balance due notice,	CIO Action: place the transcript in classified waste if full payment has been received.
the new assessment is on a postpetition Chapter 13 period, and IDRS indicates full pay has NOT been received based on the systemic balance due notice, and the outstanding liability is \$2,500 or greater, or the aggregate assessed total of all postpetition assessments exceeds \$2,500 ,	CIO Action: • CIO will update the AIS history (example - Working LTS New Assessment 20XX12 for \$XX, reassigned to field), and transfer the case to the appropriate field specialist or advisor. The Field Insolvency caseworker will be advised of the potential need for case action via an E-mail sent by AIS to their Outlook E-mail address notifying them of the case transfer. Field Action: • follow local procedures for addressing postpetition liabilities. Annotate the AIS history explaining how postpetition liabilities are to be handled upon discharge. (See IRM 5.9.5.4, <i>AIS Documentation</i> .) • make a lock-in letter referral determination (see IRM 5.9.5.13)

Note:

Tolerances for transferring cases from the CIO to Field Insolvency for postpetition new assessments are determined by mutual agreement between the CIO and Field Insolvency.

3. **Amending Proofs of Claim.** IRM 5.9.13.18.1, *Unassessed Claims*, provides direction for amending claims. Some Insolvency offices send the trustee a credit letter rather than file an amended claim if a liability proves to be less than is shown on the Service's claim. Insolvency specialists should accede to the wishes of their trustee in choosing to file an amended claim or send a credit letter

**5.9.16.3.3 (02-01-2011)
"Case Closed on AIS" LTS**

1. **Case Closed on AIS.** For each debtor TIN, LTS generates a "Case Closed on AIS" transcript when AIS shows a closed docket, and a current -V or -W freeze condition is present on at least one MF module. The caseworker must analyze IDRS to determine if TC 521 is input on all modules where the Insolvency TC 520 had previously posted.

Caution:

Other functions, such as Appeals, use TC 520 transaction codes. The closing code (CC) associated with the TC 520 identifies which area has restricted the tax account. See Document 6209 for explanations of the closing codes associated with TC 520.

IF...	THEN...
the TC 521 has not posted on all modules,	use IDRS command code REQ77 to input TC 521 to those modules where TC 521 is lacking. See IDRS Command Code Job Aid on SERP for adjustment instructions.
the TC 521 has posted on all modules,	review IDRS for the status of TC 520s. For multiple TC 520s, determine which TC 520 remains unreversed. See "Caution" above.
the TC 521 has gone unpostable on at least one module because of an incorrect closing code,	use IDRS command code REQ77 to input TC 521 with the correct closing code to those modules where TC 521 unposted. See IDRS Command Code Job Aid on SERP for adjustment instructions.
the TC 520 relates to the LTS report bankruptcy case and the bankruptcy TC 521 has posted,	CIO Action: 1) Using command code REQ77, input TC 470 with no transaction date. 2) At the same time input TC 472 with no transaction date, but with a one cycle delay. (Status 72 will change to status 47 and then to status 50 systemically) 3) Once the case is in status 50, input command code STAUP, using status of case prior to bankruptcy and 00 cycles to remove the status 72 indicator. See IDRS Command Code Job Aid on SERP Field Insolvency Action: Request the above actions from Centralized Case Processing.
the TC 520 relates to an Appeals case or other non-bankruptcy litigation,	no action is necessary as the TC 520 is valid.

the TC 520 applies to a bankruptcy case not related to the LTS report case, no action is necessary.

When the LTS "Case Closed on AIS" transcript has been resolved, the caseworker must document the AIS history on all cases where action was taken and retain the transcript per managerial direction.

Note:

When another tool or automated report is available to identify TC 520s on closed cases that may need reversal, that tool or report may be used in lieu of the case" Closed on AIS" LTS.

**5.9.16.3.4 (05-16-2008)
"All Other" LTS**

1. **All Other.** For each debtor TIN, LTS generates an "All Other" transcript when AIS has an open docket and:
 - A. IDRS shows a current -V or -W freeze condition;
 - B. a TC 670 has recently posted with a designated payment code other than 03 or 11; or
 - C. any other condition that generates a transaction code.
2. AIS and IDRS must be researched to determine if payment(s) are in violation of the automatic stay. (See IRM 5.9.3.5.1, *Violations of the Automatic Stay*, IRM 5.9.6.6.1, *Debtor Payments on Dischargeable Taxes*, and IRM 5.9.6.6.2, *Voluntary Payments on Non-Dischargeable Taxes*.)

IF...	THEN...
the case is a Chapter 13 or a Chapter 7 No Asset bankruptcy and payments have a DPC 05 and are in violation of the automatic stay,	prepare Form 5792, <i>Request for Manual Refund</i> . (See IRM 5.9.16.4, <i>Manual Refunds</i> .)
the case is a Chapter 13 or a Chapter 7 No Asset bankruptcy with DPC 06, 07, or 08, and payments are in violation of the automatic stay,	CIO Action: The case should be given to the CIO liaison to advise the appropriate Field liaison that the case is being transferred to the Field for review and necessary actions. Field Insolvency Action: Review case and consult Counsel for guidance.
the case is a Chapter 7A, 11, or 12 bankruptcy, and payments are in violation of the automatic stay,	a decision must be made to refer the case to Counsel for a motion for offset or adequate protection or to prepare Form 5792, <i>Request for Manual Refund</i> .
payments are not in violation of the automatic stay,	determine if other liabilities exist where an offset is applicable.
payments are not in violation of the automatic stay, and an offset is applicable,	apply the payment according to the Bankruptcy Code or local rules/standing orders. CIO Action: input a credit transfer on line. (See IRM 21.5.8.4.1, <i>IDRS Guidelines for Credit Transfers</i> , and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i> .) Update the AIS history explaining actions taken. If a proof of claim has been filed, reassign the case to the appropriate Field Insolvency caseworker. The Field Insolvency caseworker will be advised of the case reassignment from the CIO by an E-mail sent to their Outlook E-mail address by AIS. Field Insolvency Action: prepare Form 2424 (or other form accepted by CCP) requesting a credit transfer and send to CCP. Amend claims or send credit letters as needed.
payments are not in violation of the automatic stay, but an offset is not applicable,	prepare Form 5792, <i>Request for Manual Refund</i> . (IRM 5.9.16.4)

When the LTS All Other transcript has been resolved, the caseworker must document the AIS history and retain the transcript according to managerial instruction.

**5.9.16.4 (02-01-2011)
Manual Refunds**

1. **Forms 5792.** The need to issue a manual refund may be identified by a debtor, an attorney, a trustee, a caseworker, or by an LTS report. Regardless of the source, manual refunds are prepared through the same steps. The format to input refund data systemically can be accessed by selecting the **Manual Refund** folder on the **Taxpayer Screen** on AIS. The *SBSE - AIS 4.0 Oracle User Guide* gives instructions to prepare and print Form 5792, *Request for IDRS Generated Refund*. If AIS is not available, manual refunds may be handwritten on paper Forms 5792. All Forms 5792 must be marked "Expedite."
2. **BPI Codes.** IRM 5.9.4.4.3.1, *Offset Bypass Indicators*, explains the correct offset bypass indicators to use when preparing a manual refund for a taxpayer in bankruptcy. BAPCPA has required modifications to the code previously used.
3. **Required Inputs.** As mentioned above, AIS provides a template of Form 5792. Some fields are systemically populated on the **Refund Screen**, such as the current name (to whom the refund is being issued), the refund tax period, the amount of the refund, the return Document Locator Number (DLN), the TIN, and remarks. Other fields require manual completion after the Form 5792 is printed from AIS. A drop down menu is provided with the AIS Form 5792 to annotate the "Issue To" field with the appropriate recipient of the refund:

Value	Description
Trustee	Refund to be issued to the trustee
Taxpayer	Refund to be issued to the taxpayer
Hold	Hold for research, will require change to Trustee, Taxpayer or Never Process.
Never Process	Do not issue refund, do not process.
Pending	Refund determination has not been made.

Note:

The name of the taxpayer on the Form 5792 must match the name on the tax return. If necessary, the **Name** systemically populated on the Form 5792 can be manually overwritten and "saved" by clicking on **Save** button on the navigation tool bar at the top of the **Refund Screen**. If the refund is being issued to the debtor in care of the trustee, the bankruptcy case number must be included in the **Remarks** field on the Form 5792.

4. **Data Needed for Completion.** Current IDRS prints of TXMOD, IMFOLT or BMFOL are necessary to complete Form 5792 as fill-in information is transcribed from the IDRS or CFOL material.

A. The "Issue to" field gives the caseworker the option of issuing the refund to the debtor directly or the debtor in care of the trustee. In most instances, Insolvency issues the refund to the taxpayer unless the trustee directs that all refunds be sent to him or her.

Caution:

In the event that a refund that is property of the estate that should have been sent to the trustee is refunded to the debtor, the caseworker should **NOT** generate another refund to send to the trustee. If the trustee requests the refund, the caseworker should advise the trustee to request the refund from the debtor.

- B. The debtor is entitled to interest if the credit is available for more than 45 calendar days from the date the refund is issued. Interest is computed using CC COMPA with definer D. (*IDRS Command Code Job Aid* on SERP provides instructions for using command code COMPA.) Interest is calculated either from the due date of the return, the return received date, or the payment date, whichever is applicable, to either the following business day or the second business day based on whenever Form 5792 is to be faxed to Campus Compliance. (See IRM 3.14.1.6.6.2, *Computing Credit Interest on Manual Refunds*.)

Note:

If a trustee has requested a refund because (s)he sent a payment on an account erroneously, interest will not be paid to the trustee unless that payment was an overpayment of the Service's claim.

- C. If Form 5792 is faxed before 12:00 p.m., the date of the next business day is used. If Form 5792 is faxed after 12:00 p.m., the date of the second business day is used. The interest calculated is placed in Box 6, TC 770 Amount. Box 5 totals the combined amounts of interest in Box 6 and the overpayment amount from Box 7.
- D. Field Insolvency must send the completed Forms 5792 to Compliance Services Collection Operation (CSCO) at the Philadelphia Campus. The Form 5792 should be sent to CSCO:
- a) by scanning the Form 5792 and E-mailing it to CSCO;
 - b) faxing the Form 5792 to CSCO in Philadelphia; or,
 - c) mailing the Form 5792 to CSCO.
- E. Campus Services Collection Operation (CSCO) at the Philadelphia Campus also process Forms 5792 prepared by the CIO.
- F. The initiator of the refund request must have a system in place to follow up in 14 days to verify posting of the refund requested on Form 5792.

Note:

The initiator of a manual refund is responsible for monitoring the posting of the refund and for contacting Campus Compliance to correct unpostable errors.

5. **Field Insolvency Refund Requests.** When manual refunds are prepared by Field Insolvency caseworkers, Form 5792 must be completed, signed by a delegated authority, and submitted to the Compliance Services Collection Operation (CSCO) at the Philadelphia Campus.
6. **Additional CIO Refund Steps.** In addition to completing Form 5792 and obtaining an approval signature from a delegated authority, the CIO must ensure command code RFUND is input on IDRS.

Note:

CMODE to Ogden is required prior to inputting command code REFUNDR.

7. **Monitoring.** When a manual refund is requested, the initiator must control and monitor the case until the TC 840 posts to the master file.
8. **Documentation.** Matters concerning refunds and credits should be handled expeditiously by the Service and pertinent information promptly documented on AIS. This includes information on expedited Form 5792 refund requests. AIS history items may be used in court should litigation develop.
9. **NMF Manual Refunds.** Manual refunds for non master file (NMF) accounts must be prepared on Form 3753, *Manual Refund Posting Voucher*, and sent to the centralized NMF processing address below:
Accounting Control/Service Operations
P.O. Box 2345
Cincinnati, OH 45201
Stop 21.

**Exhibit 5.9.16-1
Instructions for Preparing Form 5792**

Note:

All Forms 5792 should be prepared using the electronic version on AIS when possible.

1. Prepare one Form 5792 for each tax period. Exception: Portion of refund goes to the trustee and the remainder is to be issued to the debtor.
2. Ensure all of the entries are legible.
3. Only original entries (no strike through, correction tape, or liquid).
4. Punctuation - No periods (John M. Doe or Case No.) or commas (,). Acceptable forms of punctuation are & (ampersand), / (slash), - (Hyphen) and % (percent symbol or to indicate in care of).
5. Form 5792 must have an original signature of the approving official (stamped signatures or electronic signatures are not acceptable).

Note:

The signature on the Form 5792 should match the signature submitted on Form 14031, *Manual Refund Signature Form*, for the current fiscal year.

6. Field Insolvency should scan the Form 5792 and transmit it via secure E-mail to **SBSE PSC CSCO Man Ref* as the primary method for transmitting the manual refund request. The secondary method preferred is faxing the request to CSCO. Finally, the Form 5792 may be mailed to CSCO via overnight mail. The CIO will hand deliver Forms 5792 to the designated area in CSCO.
7. Follow these line-by-line instructions:

Section 1 - Account Information

Block 1: Enter the Taxpayer Identification Number (TIN) and the file source (if applicable) of the account from which the refund will be issued. The file source is a character immediately following the TIN such as an * or a P.

Block 2: Enter the Master File Tax (MFT) Code.

Block 3: Enter the tax period as YYYYMM. Exception: period ending for MFT 52 is always "000000."

Block 4: Leave Blank. Campus (CSCO) personnel will enter the plan number, if applicable.

Block 5: Enter the name control.

Block 6: Leave Blank. Campus (CSCO) personnel will enter the TC 840 amount (overpayment, plus allowable interest) on refunds submitted by Field Insolvency. CIO must complete this field unless an interest computation is required.

Block 7: Leave Blank. Campus (CSCO) personnel will enter the TC 770 amount (allowable interest). If no interest is being computed, campus (CSCO) personnel will enter "0" or ".00" .

Block 8: Enter the amount to be refunded, (i.e., the amount being refunded, less allowable interest).

Block 9: Enter the appropriate line number. See IRM Exhibit 2.4.20-12, *Description of Line Item Numbers*, for the appropriate codes. Most commonly used codes are:

- "1" should be placed in Box 9 if the refund is for a MFT 30 tax period where the refund is for the **prior year** . A **prior year** refund is defined as one occurring after the beginning of the 10th month, after the tax period ending date (includes a math error). Line 1 is only used for the one year identified as prior. It is not applicable for more than one tax period.
- "2" should be placed in Box 9 if the refund is on a MFT 30 tax period where the refund is for the **current year**. The **current year** is defined as one occurring within and including the 9th month before the period ending date (includes a math error correction).
- "3" should be placed in Box 9 when a MFT 30 tax period has a refund resulting from an audit adjustment with a 47 document code.
- "4" must be used in Box 9 if the refund is the result of a data processing adjustment with a 54 document code.
- "6" should be placed in Box 9 when the Form 5792 is prepared on a MFT 30 period for the purpose of:
Returning a levy payment that was received in violation of the stay.
Returning an installment agreement payment that was received after the petition date.
Returning a payment at the trustee's request because it was sent to the Service in error.
Refunding a trustee overpayment on our proof of claim.
Returning a Form 1040 refund for any tax year that is not the current or prior year. For example, a 1040 manual refund request for 200712 that is processed on November 15, 2010.
- "11" should be placed in Box 9 if the payment is for a MFT 01 tax period where the refund is for the **prior year**. **Prior year (BMF Refund)** is defined as a refund occurring 13 months or more subsequent to the tax period ending date (four months or more for Form 941 and Form 942).
- "12" should be placed in Box 9 if the refund is for a MFT 01 tax period where the refund is an overpayment for the **current year**. **Current year (BMF Refund)** is defined as one occurring with 12 months of the tax period ending date (within 3 months for Form 941 and Form 942).
- "15" should be placed in Box 9 if the refund is being issued on a MFT 01 tax period for the purpose of:
Returning a levy payment that was received in violation of the stay.
Returning an installment agreement payment that was made after the petition date.
Returning a trustee payment that the trustee wants returned because of an error on their part.
Returning a trustee overpayment on our claim to the trustee.

Block 10. A determination must be made on whether interest should be paid on the overpayment. If no interest is to be paid then use "0" in Box 10. Use an "N" for normal interest and "R" for restricted interest. Refer to IRM 20.2.4, *Overpayment Interest*, for details. **Interest on an Overpayment:** When a return is filed, an overpayment exists. The Service has 45 calendar days to issue a refund with no interest (See Exceptions). To determine whether the 45 calendar days have been met consider these dates:

- The normal return due date
- The return received date, without regard to extensions
- The Return Processible Date (RPD), if present. (also known as Correspondence Received Date)
- The received date of a formal or informal claim.

Add 45 days to the later of these dates. If the Form 5792 is not processed on or before that date, interest must be issued on the refund. In order to issue a refund within the 45 day interest-free period, the refund must be input by the 42nd day, if the 43rd day is a work day. If the 43rd day is not a work day, then the Form 5792 must be submitted earlier, as appropriate, so the 43rd day does not fall on a work day in order to meet the interest free period.

EXAMPLE: If the 43rd day is Saturday, the refund must be input no later than the Thursday proceeding the Saturday to meet the interest-free period.

Once the interest-free period has expired, we must pay interest on the refund from the return due date, or the return received date (if no extension exists), whichever is the later.

EXCEPTIONS - INTEREST IS NOT PAID IN THESE SITUATIONS:

Trustee: If the trustee requests a refund because he/she sent in a payment in error. *However*, if the payment resulted in an overpayment of the Service's claim, *then* interest should be paid.

Levy Payments: Levy payments that are being returned unless the levy proceeds belong to someone other than the taxpayer(s).

Installment Agreement Payment: Post-petition installment agreement payments.

Note:

If interest will be paid, you must also enter an interest "From" date in Section III. See IRM 3.14.1.6.1.2, *Computing Credit Interest on Manual Refunds*.

Block 11: Leave Blank. The Universal Location Code (ULC) (formerly the District Office code) will generate when the RFUND CC is input to IDRS. Campus (CSCO) personnel who inputs the RFUND command code will complete this block.

Block 12: Leave Blank. Campus (CSCO) personnel who input the RFUND command code to IDRS will input the sequence number.

Block 13: Leave Blank. Campus (CSCO) personnel will complete this block.

Block 14: This will self-populate from AIS. However, if the debtor is deceased, do not address the first name line to a deceased taxpayer. Use the name and title, if appropriate, of the person claiming the refund as the payee for refunds issued on decedent accounts. **Example:** Jim Jones, Executor. The deceased taxpayer's name is "Joe Smith, Deceased" is shown on the second name line.

Note:

If the name of the person on the 1st Name line does not match ENMOD or INOLES, you will need to explain it in the remarks section (Box 20) on the Form 5792.

Note:

There is a 35 character limitation. Do not use periods "." in blocks 14 thru 19.

Example: Joe E Smith or J E Smith

Block 15 - 19: These blocks will self-populate from AIS depending on your selection of who the refund should be sent to (debtor or trustee). These five blocks are subject to the 35 character limitation.

Block 20: If the refund is being issued to the debtor in care of the trustee, the bankruptcy case number should be listed in the "Remarks" section.

Block 21: AIS automatically selects SBSE.

Block 22: Enter the document locator number (DLN) of the return or the credit. Do not use the DLN of an electronically filed return.

Block 23: AIS automatically selects SBSE.

Block 24: Leave Blank.

Section II. Manual Refund Authority (Complete all Applicable Items).

Block 1 thru 12: AIS has been programmed to populate items 1C, 5B, 6, 8 and 11. If circumstances exist for other line items to be checked the Insolvency employee will need to do this manually.

Block 13: The campus (CSCO) employee who inputs command code REFUND will check this box.

Section III. Interest Computation.

Leave blank unless interest will be paid. If interest is to be paid, enter the "From" date. See IRM 3.14.1.6.6.2, *Computing Credit Interest on Manual Refunds*.

If, the taxpayer:	Then, allow interest from the later of:
has an extension and filed the return by the extended due date,	the original due date, payment date, or the Correspondence Received Date (if after the extension date).
does not have an extension or filed the return after the extended due date,	the return received date, the payment received date, or the Correspondence Received Date (if present).

Section IV: Manual Refund Approval

Block 1: Leave Blank. The Campus (CSCO) employee who will be entering the CC RFUND will put their IDRS number in this block.

Block 2 & 3: AIS will populate the name, IDRS number, and phone number of the Insolvency employee inputting the Form 5792.

Block 4: Leave blank for signature of Designated Approving Official. To be an approving official, the signature must be on file in the Service Center Accounting branch where the F 5792 will be sent. At the beginning of each Fiscal Year, signatures for those designated Approving Officials must be submitted to the appropriate service centers in order to be recognized.

Block 4a: If your immediate manager will be the person approving the F 5792, you may use the option on AIS to select this individual and the information will automatically populate. Otherwise, leave blank for approving official to complete.

Block 5: AIS automatically populates this when it is printed.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 17. Closing a Bankruptcy Case

5.9.17 Closing a Bankruptcy Case

- 5.9.17.1 [Overview](#)
- 5.9.17.2 [Lift of Stay and Reversing the Bankruptcy Freeze](#)
- 5.9.17.3 [Time Frames for Required Actions](#)
- 5.9.17.4 [Exempt, Abandoned or Excluded Property \(EAEP\)](#)
- 5.9.17.5 [Dismissal](#)
- 5.9.17.6 [Joint Account and Non-Debtor Spouse](#)
- 5.9.17.7 [Discharge and Exceptions to Discharge](#)
- 5.9.17.8 [Discharge Injunction](#)
- 5.9.17.9 [Chapter 7 Discharge Actions](#)

Manual Transmittal

August 11, 2014

Purpose

(1) This transmits a revised IRM Part 5.9.17, *Bankruptcy and Other Insolvencies, Closing a Bankruptcy Case*.

Material Changes

- (1) The content in IRM 5.9.17, *Closing a Bankruptcy Case*, has been updated, expanded and reformatted to provide clarification of existing materials. References to non-petitioning spouse (NPS) have been changed to non-debtor spouse (NDS). References to the CIO technician have been changed to the CIO caseworker.
- (2) Throughout IRM 5.9.17, the term "tax lien" or "lien" refers to the statutory lien of the Service under IRC § 6321. (See IRM 5.12.1.3, *Creation and Duration*, for additional information.) The term "Notice of Federal Tax Lien" or "NFTL" refers to the public notification of the Service's "lien" and security interest which has been filed with designated state and local jurisdictions. (See IRM 5.12.1.4, *Purpose and Effect of Filing a Notice of Federal Tax Lien (NFTL)*, for additional information.)
- (3) A Certificate of Release of Federal Tax Lien is issued to provide notice that liens covered by the Notice of Federal Tax Lien (NFTL) have been satisfied or are no longer enforceable. Throughout this IRM, the issuance of this certificate is referred to as a lien release.
- (4) Manual lien release refers to the process of requesting a lien release through the Automated Lien System (ALS). Field Insolvency (FI) and Centralized Insolvency Operation (CIO) do not prepare or issue actual Certificates of Release.
- (5) IRM 5.9.17.1(4) clarifies when CIO will take closing actions on Chapter 7 and Chapter 13 cases.
- (6) IRM 5.9.17.1(5) Chapter 7 Asset cases have been added to the cases that are closed by the CIO. A list has been added to show some issues that require the case to remain in FI.
- (7) IRM 5.9.17.1(6) now includes a list of AIS case classifications that prevent systemic closure of the case when open on AIS. Use a case classification to prevent case closure, when appropriate.
- (8) IRM 5.9.17.2(4) the address for Non-Master file adjustments has been updated.
- (9) IRM 5.9.17.2(5) reminds caseworkers to address prior installment agreements (IAs) when closing a case and directs them to the new subsections and exhibits on IA reinstatements within this IRM.
- (10) IRM 5.9.17.3(1) the term "initial closing action" is further defined.
- (11) IRM 5.9.17.3(2) managerial approval is no longer required to delay adjustment actions in discharged cases.
- (12) IRM 5.9.17.3(3) discusses reports that are used to ensure closing actions are initiated timely.
- (13) IRM 5.9.17.4(5) has been added to clarify that the Service can collect dischargeable liabilities from EAEP regardless of bankruptcy chapter. Dischargeable liability is defined.
- (14) IRM 5.9.17.4.1 has been added to discuss the pre-discharge review for EAEP in Chapter 7 No Asset cases.
- (15) IRM 5.9.17.4.2(1) stresses that the Service can collect dischargeable liabilities from excluded property due to the statutory lien.
- (16) IRM 5.9.17.4.2(1)(a) makes it clear that collection of discharged liabilities is limited to the value of the EAEP on the petition date and any post-petition appreciation in the property.
- (17) IRM 5.9.17.4.2(5) has been reworded to stress that the TC 520 must remain on dischargeable modules until they are fully adjusted.
- (18) IRM 5.9.17.4.3(1) caseworkers may now verify the validity of NFTLs electronically.
- (19) IRM 5.9.17.4.3(5) the time frame has been added for FI caseworkers to make a collection determination in cases transferred by the CIO after screening and before the discharge.
- (20) IRM 5.9.17.4.3(6) discusses the minimum AIS history documentation required in the EAEP case.
- (21) IRM 5.9.17.4.3(8) has been revised to include the letters used by caseworkers during the EAEP collection process.
- (22) IRM 5.9.17.4.3(10) the TC 520 closing code used on dischargeable modules kept open after the discharge due to lien retainage has changed. Caseworkers must use a cc 81.

- (23) IRM 5.9.17.4.3(11) caseworkers are not required to keep the case open on AIS when all dischargeable modules have been adjusted and bankruptcy freezes have been reversed. The case does not have to remain open until all liens are released.
- (24) IRM 5.9.17.4.3(13) clarifies documentation requirements regarding the extended CSED in the AIS history and requesting the TC 550 when a module is kept open after discharge.
- (25) IRM 5.9.17.4.3(15) when a partial payment is received on a dischargeable liability, lien releases will issue systemically after all adjustments have posted to IDRS. The requirement to release the lien manually has been removed.
- (26) IRM 5.9.17.4.3(17) clarifies when a lien release is required.
- (27) IRM 5.9.17.4.4(1) stresses that the Service's lien on dischargeable liabilities does not attach to contributions made to the excluded or exempt retirement plan after the bankruptcy petition date. CIO no longer has to contact FI to notify them of reassignment of the case for EAEP considerations because they are notified of case transfer via Outlook email.
- (28) IRM 5.9.17.4.4(2) the large dollar Chapter 7NA case does not have to be transferred to FI after the discharge in certain situations.
- (29) IRM 5.9.17.4.4(3) clarifies that CIO will perform EAEP asset research in all 7NA cases and resolve the excluded property DDR or transfer the case to FI based on procedures in IRM 5.9.17.4.1.
- (30) IRM 5.9.17.4.4(8) manual lien releases are no longer required for discharged taxes.
- (31) IRM 5.9.17.4.4(14) now includes a list of items that must be included in the package requesting approval to levy on a retirement account.
- (32) IRM 5.9.17.4.4.1 has been added to discuss levy on a Thrift Savings Plan (TSP).
- (33) IRM 5.9.17.5.1 has been added to discuss cases closed by the court as "Closed without Discharge."
- (34) IRM 5.9.17.5.5(1) further defines which function, FI or CIO, takes closing actions on dismissed cases.
- (35) IRM 5.9.17.5.5(3) lists case classifications that may alert caseworkers to actions that must be addressed during case closure.
- (36) IRM 5.9.17.5.5(4) expands on classifications used to identify unagreed deficiencies that may need to be addressed during case closure.
- (37) IRM 5.9.17.5.5(5) discusses the need to address prior IAs in dismissed cases and the classifications that identify prior IAs.
- (38) IRM 5.9.17.5.5(6) incorporates interim guidance regarding NFTL determinations by FI after dismissal.
- (39) IRM 5.9.17.5.6(2) provides guidance on reviewing orders vacating dismissal. In most instances, the bankruptcy stay is not reinstated.
- (40) IRM 5.9.17.5.6(3) specific TC 520 closing codes must be used when the automatic stay is not reimposed when a dismissal is vacated.
- (41) IRM 5.9.17.5.6(4) if the automatic stay is reimposed when a dismissal is vacated, the TC 520 date is based on whether or not the stay was reimposed retroactively.
- (42) IRM 5.9.17.5.6(5) when a joint account has been mirrored, only the account for the debtor should be frozen.
- (43) IRM 5.9.17.5.7 has been added to discuss NFTL determinations by FI when a case is dismissed.
- (44) IRM 5.9.17.7(1) LLCs have been added to the entities that may get a discharge in a Chapter 11 or 12 reorganization.
- (45) IRM 5.9.17.7(2)(e) an individual may get a hardship discharge in a Chapter 11 case.
- (46) IRM 5.9.17.7(3) has been added to discuss procedures to be followed when the Service receives a Complaint to Determine Dischargeability.
- (47) IRM 5.9.17.7(4)(a) a note has been added to clarify additional trust fund liabilities that are excepted from discharge.
- (48) IRM 5.9.17.7(4)(d) a caution has been added to clarify that a late filed post-petition return on an 11 USC § 1305 claim is excepted from discharge.
- (49) IRM 5.9.17.7(5) has been changed to clarify that the petition date in the prior bankruptcy is what determines if a debtor can get a discharge in the current bankruptcy case.
- (50) IRM 5.9.17.7(6) has been added to refer caseworkers to the new subsection on the "late notice" or "no notice" exception to discharge.
- (51) IRM 5.9.17.7(7) explains that an approved extension for filing the return does not change the "event" date for the failure to pay penalty and certain other penalties.
- (52) IRM 5.9.17.7(9) stresses that post-petition interest accrued on non-dischargeable taxes during the plan period is non-dischargeable.
- (53) IRM 5.9.17.7(10) a statement has been added to clarify that an unassessed TFRP penalty is non-dischargeable in a post-BAPCPA Chapter 13 case.
- (54) IRM 5.9.17.7(12) adjustments to discharged liabilities may be delayed until after the final payment has posted when the Service has a secured claim.
- (55) IRM 5.9.17.7(13) LLCs have been added to the table containing basic discharge information.
- (56) IRM 5.9.17.7.1 a new subsection has been added to discuss dischargeability of late filed returns in which a SFR was prepared.
- (57) IRM 5.9.17.7.2(3) clarifies that fraud and willful evasion are excepted from discharge in all chapters.
- (58) IRM 5.9.17.7.3(1) caseworkers now use "DISCHARGE DENIED" not "D1" as the method of closure when the court enters an order denying discharge.
- (59) IRM 5.9.17.7.3(3) clarifies that the automatic stay against the debtor terminates when discharge is denied, even though the stay remains in place against property of the estate as long as the property belongs to the estate.
- (60) IRM 5.9.17.7.8 has been added to discuss dischargeability and restitution assessments.
- (61) IRM 5.9.17.7.9 a new subsection has been added to discuss the "no notice" or "late notice" exception to discharge and procedures.
- (62) IRM 5.9.17.8(3) a statement has been added to clarify that the bankruptcy freeze on dischargeable modules must remain on the modules until the discharged modules have been fully adjusted.
- (63) IRM 5.9.17.9(1) LLCs have been added to the list of entities who are not discharged in a Chapter 7 case.
- (64) IRM 5.9.17.9(2) a new paragraph has been added to clarify that an individual may be ineligible to receive a discharge in the current Chapter 7 case when they received a discharge in a prior bankruptcy case.
- (65) IRM 5.9.17.9(3) there may be no need to investigate EAEP in the Chapter 7NA individual case after the discharge when it was investigated early in the case.
- (66) IRM 5.9.17.9(5) caseworkers are no longer required to send L984 to the trustee and to keep the Chapter 7 Asset individual case open for distribution after discharge if there is no NFTL on file and no collection potential from EAEP.

- (67) IRM 5.9.17.9(6) a new paragraph has been added to discuss procedures for transfer of the 7A individual case from FI to CIO prior to the discharge.
- (68) IRM 5.9.17.9(7) has been added to discuss the transfer of an individual or joint 7A case from AI to CIO after discharge.
- (69) IRM 5.9.17.9(8) the chart with actions taken at discharge has been revised and moved from IRM 5.9.17.9(5) to IRM 5.9.17.9(8).
- (70) IRM 5.9.17.9(10) gives guidance that caseworkers may need to refile a NFTL when a case is kept open after discharge.
- (71) IRM 5.9.17.10(3) clarifies which function takes closing actions on Chapter 7 and Chapter 11 partnership cases.
- (72) IRM 5.9.17.11 LLCs have been added to the business entities that are not discharged in a Chapter 7 case. LLCs are included in the closing procedures.
- (73) IRM 5.9.17.11(2) the requirement to keep the BMF case open for 6 months has been removed. The case can be closed once the claim has been acknowledged, the TFRP has been assessed and there are no other issues requiring the case to remain open.
- (74) IRM 5.9.17.11(3) the TFRP investigation must be completed, when required, before the Chapter 7 No Asset case can be closed.
- (75) IRM 5.9.17.11(5) an additional citation has been added for use of the TC 530 cc 10. Field Insolvency must prepare Form 53 to request input of the TC 530 on Chapter 11 cases. CIO inputs the TC 530 directly to IDRS in Chapter 7 cases.
- (76) IRM 5.9.17.11(6) adjust the TFRP if a payment received after the case is closed results in a reduction of trust fund taxes.
- (77) IRM 5.19.17.11.1 a new subsection has been added to discuss procedures in the Chapter 7 single member disregarded entity LLC.
- (78) IRM 5.9.17.12 includes instructions for closing liquidating Chapter 11 corporations and liquidating Chapter 11 LLCs.
- (79) IRM 5.9.17.12.1 guidance for closing Chapter 11 non-individual cases that reorganize in Chapter 11 has been moved from IRM 5.9.17.11 to this new subsection.
- (80) IRM 5.9.17.12.2(2) has been added to clarify when the discharge occurs in the individual Chapter 11 case.
- (81) IRM 5.9.17.12.2(3) discusses when an individual in a liquidating Chapter 11 is not eligible to receive a discharge.
- (82) IRM 5.9.17.12.2(4) discusses the exceptions to discharge in an individual Chapter 11 case.
- (83) IRM 5.9.17.12.2(5) further clarifies when closing actions must be initiated in the individual Chapter 11 case.
- (84) IRM 5.9.17.12.2(6) a new paragraph has been added to discuss closure of the estate in the Chapter 11 individual case.
- (85) IRM 5.9.17.13.2 a new subsection has been added to discuss the exceptions to discharge in the individual Chapter 12 case
- (86) IRM 5.9.17.14(2) a statement has been added to clarify that in a pre-BAPCPA Chapter 13 case, liabilities on a § 1305 claim are discharged in the "super discharge." .
- (87) IRM 5.9.17.14.1(1) clarifies that late filed returns on a § 1305 claim are non-dischargeable in the post-BAPCPA case.
- (88) IRM 5.9.17.14.1(2) except in cases where IRS was not adequately noticed, use "13 PLAN COMPLETED SI" as the method of closure to initiate closing actions by ADS when the Chapter 13 debtor receives a discharge upon completion of the plan.
- (89) IRM 5.9.17.14.1(3) a new paragraph has been added to discuss accrued interest in a Chapter 13 case. Accrued interest on non-dischargeable tax is also non-dischargeable.
- (90) IRM 5.9.17.14.1(4) a new paragraph has been added to refer readers to content in this IRM for determining dischargeability of SFRs and returns filed after a SFR in the Chapter 13 case.
- (91) IRM 5.9.17.14.1(7) adds an exception to discharge when IRS does not receive notice in sufficient time to file a proof of claim before the bar date in a Chapter 13 case.
- (92) IRM 5.9.17.14.1(11) the note clarifies when a referral to Area Counsel is needed before pursuing EAEP in the Chapter 13 case.
- (93) IRM 5.9.17.14.2(5) except in the case where IRS was not adequately noticed, use "CH7&HARDSHIPCH13 RI" to initiate ADS closing actions in the Chapter 13 case with a hardship discharge.
- (94) IRM 5.9.17.15(1) has been corrected to include LLCs in the business entities that may receive payments in bankruptcy that require adjusting the TFRP assessments of responsible parties. It also clarifies that the adjustment may be required due to payments in the business Chapter 7, 11 or 12 case.
- (95) IRM 5.9.17.15(2) a paragraph has been added to discuss individual accounts that may require adjustments when payments in individual bankruptcies are applied to TFRP assessments.
- (96) IRM 5.9.17.16(2) examples have been added to the table to clarify when a case is closed and the closure dates.
- (97) IRM 5.9.17.17(3) discusses when a lien release must be requested manually and when it can be released systemically.
- (98) IRM 5.9.17.17(4) discusses lien release when a discharge is processed manually.
- (99) IRM 5.9.17.17(5) manual lien release is not required when all periods are discharged.
- (100) IRM 5.9.17.17(6) clarifies how a lien release is requested by caseworkers.
- (101) IRM 5.9.17.17(7) provides the steps used by CIO to request a lien release.
- (102) IRM 5.9.17.17(9) a new paragraph has been added to discuss reports that are used to ensure timely lien release when release is required under IRC § 6325.
- (103) IRM 5.9.17.18(2) discusses input of the TC 550 when discharged modules are kept open after the discharge due to collection potential from EAEP.
- (104) IRM 5.9.17.19(4) the types of cases closed by the CIO has been updated. Caseworkers no longer use an "OI Screen" to prevent systemic closure.
- (105) IRM 5.9.17.19(5) FI no longer closes all Chapter 7 Asset cases.
- (106) IRM 5.9.17.20(5) caseworkers must keep the AIS "Referral Screen" and "REFERRAL" case classification open while litigation involving the Service is pending in a case.
- (107) IRM 5.9.17.21(5) the address for NMF adjustments has been corrected.
- (108) IRM 5.9.17.21.1(1) when MFT 31 mirroring is completed at case closure, any bankruptcies of the non-debtor spouse may require special actions. These actions are discussed.
- (109) IRM 5.9.17.21.1(2) a list has been added to show reasons that "up-front" mirroring may be required in a case. An amended proof of claim may be required in these cases.
- (110) IRM 5.9.17.21.1(5) IIP now systemically mirrors cases when the method of closure is "DISCHARGE DENIED."
- (111) IRM 5.9.17.21.2(1) additional reasons have been added to the list of conditions that prevent automatic mirroring.

- (112) IRM 5.9.17.21.2(3) has been corrected to reflect that master file will systemically update CSEDs in certain situations.
- (113) IRM 5.9.17.21.2(10) the contact for monitoring offers has been corrected.
- (114) IRM 5.9.17.21.3 a new subsection has been added to address cases that cannot be mirrored for the year of death when the secondary spouse is deceased.
- (115) IRM 5.9.17.21.4(1) the steps for MFT 31 mirroring have been revised to allow for input of the 971 AC 145 with a posting delay cycle.
- (116) IRM 5.9.17.21.4(2) now allows the CIO caseworker to input adjustments on line instead of preparing Form 3870.
- (117) IRM 5.9.17.21.5(3) discusses situations where a manual lien release is required on a MFT 31 module.
- (118) IRM 5.9.17.23 has been added to discuss actions needed to address prior installment agreements during case closure.
- (119) IRM 5.9.17.23.1 lists the letters used when addressing prior installment agreements during case closure.
- (120) IRM 5.9.17.24 a new subsection has been added to discuss processing TC 604 reversal requests in the post-BAPCPA case.
- (121) Exhibit 5.9.17-2 has been added to show the steps needed to address regular installment agreement reinstatements at case closure.
- (122) Exhibit 5.9.17-3 shows how to reinstate a DDIA or PDIA as a regular installment agreement.
- (123) Exhibit 5.9.17-4 has been added to address procedures for reinstating an IA when there is an open TDI (Del Ret).
- (124) Exhibit 5.9.17-5 has been added to provide procedures to address the IA that cannot be reinstated.
- (125) Exhibit 5.9.17-6 addresses determining discharge upon completion of a Chapter 13 plan when a SFR assessment is present.
- (126) Exhibit 5.9.17-7 lists the steps caseworkers must use to determine discharge when a SFR is present in other chapters.
- (127) Exhibit 5.9.17-8 provides the steps for processing TC 604 reversals and determining dischargeability in Chapter 7 cases and in Chapter 11, 12 or 13 cases with a hardship discharge
- (128) Exhibit 5.9.17-9 provides steps for processing TC 604 reversals and determining dischargeability in Chapter 13 cases with a discharge upon completion of the plan.
- (129) Exhibit 5.9.17-10 shows how to process TC 604 reversals and determining dischargeability in individual Chapter 11 or Chapter 12 cases with a discharge upon completion of the plan.
- (130) Exhibit 5.9.17-11 lists various non-pecuniary loss penalties and determining dischargeability in all cases except the Chapter 13 case discharged upon plan completion.
- (131) Exhibit 5.9.17-12 has been added to discuss adjusting TFRPs owed by individuals.
- (132) Editorial changes were made throughout this section to add clarity and to update or correct citations.

Effect on Other Documents

This material supersedes IRM 5.9.17, dated June 1, 2010. This revision incorporates interim guidance SBSE 05-0614-0047, *Reissuance of Determining Dischargeability of Late Filed Returns in Which a Substitute for Return was Prepared under IRC § 6020(b)*, dated June 12, 2014; SBSE 05-1213-0089, *Reissuance of Procedures for Processing Bankruptcy Cases when the IRS Receives No Notice or Late Notice*, dated December 6, 2013; SBSE 05-1213-0090, *Reissuance of Interim Guidance Procedures for Closing Chapter 7 Cases*, dated December 20, 2013; SBSE 05-0114-0006, *Insolvency Processing of TC 604 Reversal Requests from Automated Underreporter (AUR)*, dated January 24, 2014; SBSE 05-0114-0005, *Procedures for Processing Bankruptcy Cases with Restitution Assessments*, dated January 22, 2014; and SBSE 05-0314-0016, *Bankruptcy and Notice of Federal Tax Lien (NFTL) Filing*, dated March 18, 2014.

Audience

All Operating Divisions.

Effective Date

(08-11-2014)

Rocco A. Steco, Acting Director,
Collection Policy

5.9.17.1 (08-11-2014) Overview

- 1. Introduction.** IRM 5.9.17 discusses case closing procedures for bankruptcy cases. It is used primarily by caseworkers in Field Insolvency (FI) and caseworkers at the Centralized Insolvency Operation (CIO). It may be referred to by employees in SBSE and in other business organizations.
- 2. Closure of Accounts.** Periods with a bankruptcy freeze that remain unpaid at the close of a bankruptcy case must be adjusted, reactivated or reported currently not collectible, as appropriate. Entities that may be reported as currently not collectible are Chapter 7 corporations, certain Limited Liability Companies (LLCs) that liquidate in Chapter 7, corporations that liquidate in Chapter 11 and certain LLCs that liquidate in Chapter 11. Outstanding liabilities on Form 1041 may also be reported as currently not collectible. A discharge of debt in bankruptcy relieves the debtor of any personal liability for the debt. However, the debt may still be collected by either a distribution in the case, exercise of a right of setoff that existed prior to the filing of the bankruptcy petition, or from property encumbered by a pre-bankruptcy tax lien that remains enforceable after the case.
- 3. Automated Discharge System (ADS).** Much of the Insolvency discharge process for Chapter 7 individual and Chapter 13 bankruptcy cases is automated through the Automated Discharge System (ADS). ADS and the Insolvency Interface Program (IIP) bridge AIS to the Integrated Data Retrieval System (IDRS). Bankruptcy discharges in other chapters must be processed manually. (See IRM 5.9.18, *Automated Discharge System*.)
- 4. Chapter 7 and Chapter 13 Closures.** CIO caseworkers will initiate automatic closure on all Chapter 7 and Chapter 13 cases regardless of case assignment unless the CIO is systemically prohibited from inputting the method of closure on AIS. On cases where the method of closure cannot be entered and the case is assigned to a FI caseworker, the CIO caseworker will input the court closure date and update the AIS history with the manner of closure (dismissal, discharge, hardship discharge, or non-discharge). FI will transfer Chapter 7 and Chapter 13 discharged cases assigned to FI to the CIO for closure unless there are issues that require the case to remain in FI. The CIO will resolve Discharge Determination Reports on cases in CIO inventory, including those cases transferred from FI to the CIO.
- 5. Chapter 7 Asset Closures.** FI will complete an initial case review and ensure that all proofs of claim are acknowledged in the Chapter 7 Asset case. If there are no issues present that require the case to remain in FI, the case will be transferred to the CIO unless the Chapter 7 Asset case was filed by a partnership entity. Some issues that require the case to remain in FI include but are not limited to:
 - The case was dismissed and IRS received notice of the dismissal while the case was assigned to FI.
 - There is a NFTL on file and exempt property has been identified that may be used to satisfy the taxpayer's liability after the discharge is granted.

- Abandoned or excluded property has been identified that may be used to satisfy the taxpayer's liability after the discharge is granted due to the Service's statutory lien.

Note:

The Service can collect discharged tax, discharged penalty and/or discharged interest from exempt, abandoned or excluded property (EAEP) after discharge.

- Objections to proof of claim.
- Complaints to determine dischargeability or other litigation involving the Service.
- Unassessed TFRP liabilities, when applicable.

Once all claims are acknowledged and there are no "field" issues, FI will add a "SUMMARY HISTORY" to AIS and transfer the Chapter 7 Asset case to the CIO. Upon receipt of the business case, the CIO will input a TC 530 closing code 07 on all unpaid modules on IDRS, reverse all TC 520(s) and close the case on AIS, *when directed to do so in the AIS history*. CIO will monitor the individual Chapter 7 Asset case assigned to the CIO for discharge or dismissal. At discharge or dismissal, the CIO will input the court closure date on AIS and populate the "closure method" field on AIS. The closure method for the dismissed case will be "Regular Dismissal - D1" or "Dismissed for FMT - D2" based on the reason for dismissal in the dismissal order. "CH7&HARDSHIPCH13 RI" will be placed in the closure method field for the discharged case. The CIO will address any Discharge Determination Reports (DDRs) generated by the Automated Discharge System (ADS) and release liens, when required, on cases assigned to the CIO.

A liability may be non-dischargeable because the Service did not receive notice of the bankruptcy filing in sufficient time to file a timely proof of claim in the bankruptcy case. In these instances, the method of closure on AIS must be "No Notice". (See *IRM 5.9.17.7.9* for additional information.)

6. **Preventing Premature Closures.** FI caseworkers can have legitimate reasons to keep cases currently assigned to them open even though the case has been discharged or dismissed by the court. To prevent systemic closure of the case by CIO, the FI caseworker must ensure the case is assigned to him/her on AIS and that a "Case Classification" is open on AIS that prevents systemic closure. The following case classifications prevent systemic closure of the case when the case classification is open on AIS:

- ATAT
- CID FREEZE
- COURT CASE
- EXEMPT
- FULL PAID
- Iden Theft
- NONCLS
- NoNotice
- OIC PENDING
- PDSC ISSUE
- RE-ASSESS
- REFERRAL
- TFRP
- WAIT4FD
- WILLFUL

7. **Use of the Referral Screen.** The AIS referral screen must only be used to identify and track referrals to Area Counsel or the US Attorney, and for no other reason. Thus, if a referral is not pending, the referral screen should not be opened to prevent case closure on AIS.

8. **Observing the Automatic Stay.** Insolvency must adhere to the provisions of the Bankruptcy Code when closing bankruptcy cases by avoiding actions that may result in a violation of the Bankruptcy Code. (*IRM 5.9.17.3, Time Frames for Required Actions.*)

5.9.17.2 (08-11-2014)

Lift of Stay and Reversing the Bankruptcy Freeze

1. **Lift of Stay.** "Lift of stay" means the freeze on collection actions no longer applies. However, the stay is in effect against specific property of the estate, and it continues until the property is no longer property of the estate. The stay otherwise continues until the *earliest* of the date:

- A. The case is closed by the court;
- B. The case is dismissed;
- C. A discharge is granted or denied in the case of an *individual* Chapter 7 debtor or
- D. A discharge is granted or denied if the bankruptcy is filed under Chapters 9, 11, 12, or 13.

2. **Exceptions to the Stay.** For cases filed on or after October 17, 2005, the implementation date of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), certain Chapter 7, 11, or 13 cases filed by individuals may have no stay imposed, or the stay with respect to the debtor and the debtor's property that is not property of the bankruptcy estate may be terminated 30 days after the petition date. *IRM 5.9.5.7, Serial Filers*, and *IRM Exhibit 5.9.5-4, Common Processing Steps in Serial Filer Cases*, through *IRM Exhibit 5.9.5-6, Processing the Serial Filer Case When No Stay Arises*, provide instructions on proper closing procedures for these stay variations.

3. **Releasing the Bankruptcy Freeze Code.** Generally, Insolvency caseworkers must manually reverse the bankruptcy freeze code, or request systemic reversal of the bankruptcy freeze code, at the earliest point possible when one of the above situations occurs and the case meets all other closing requirements. Exceptions are allowed for pursuing collection from exempt, abandoned or excluded property (EAEP) or for awaiting receipt of the trustee's final distribution in the individual Chapter 7 Asset case with dischargeable liabilities secured by a tax lien.

4. **Non-Master File Accounts.** The bankruptcy freeze on any account with "N" after the TIN must be reversed by the Cincinnati Campus. Insolvency must use Form 3177, *Request for Terminal Action*, to request the appropriate freeze code reversal actions to be input on NMF cases. *IRM 5.9.18.4(2)* gives the steps to follow for posting adjustments to NMF modules. NMF accounts must have the CSED extended manually by input of TC 550. Forms 3177 to request input of the TC 550 on NMF modules must also go to the Cincinnati Campus.

The street address for the Cincinnati Campus is:
Cincinnati Accounting
201 W. Rivercenter Blvd.
Stop 21
Covington, KY 41011

The post-office box address for the Cincinnati Campus is:
Cincinnati Accounting
P. O. Box 2345
Stop 21
Cincinnati, OH 45201

Note:

Any TIN with an asterisk (*) must have the bankruptcy freeze code reversed at the close of a bankruptcy case.

5. **Prior Installment Agreements.** When the taxpayer had an installment agreement (IA) at the time the bankruptcy petition was filed, the filing of the bankruptcy petition does not terminate the IA and the Service treats the IA as suspended. When the bankruptcy case is dismissed or discharged, and there are outstanding liabilities that survive the bankruptcy, the caseworker must address the prior IA during case closure. See *IRM 5.9.17.23, Addressing Prior Installment Agreements When Closing a Case*, and *Exhibit 5.9.17-2* through *Exhibit 5.9.17-5* for additional information.

5.9.17.3 (08-11-2014)

Time Frames for Required Actions

1. **Closing Actions.** Generally, closing actions on a case must be initiated by Insolvency within 30 calendar days of notification of receipt of the discharge or dismissal order. When a case is closed through ADS, "initiating closing actions" means selecting the correct closure method ("CH7&HARDSHIPCH13 RI" or "13 PLAN COMPLETED SI") in the Closure Method field on the AIS Taxpayer Screen and beginning to resolve any DDRs generated by ADS for that case. Periods with Notices of Federal Tax Lien (NFTLs) may require manual intervention to release liens. (*IRM 5.9.17.17, Release of Federal Tax Liens*)
2. **Delaying Adjustments.** Legitimate reasons for delaying final adjustments beyond 30 days after discharge may exist. Reasons for delay include but may not be limited to:
 - Investigations into collection from exempt, abandoned or excluded property (EAEP).
 - Awaiting final distribution from the trustee in the individual Chapter 7 Asset case with dischargeable taxes where a secured claim was filed.

Note:

IRM 5.9.15.2.5 addresses how to post payments received after a case has been closed on AIS.

- Awaiting distribution in a case with dischargeable liabilities that are collectible from abandoned or excluded assets due to the Service's statutory lien.
 - Consideration of exceptions to discharge under 11 USC § 523(a)(1)(C), such as fraudulent returns or willful attempts to evade or defeat taxes. Delay of adjustment action(s) based on fraudulent returns or willful evasion usually require the written concurrence of Area Counsel. (*IRM 5.9.17.8, Discharge Injunction*, and *IRM 5.9.17.7.2, The Fraud or Willful Evasion Exception*)
3. **Using Reports to Ensure Timely Closing Actions.** Caseworkers must generate and work the "Court Closure F/U" report to ensure closing actions are initiated within 30 days of the Service being notified of the discharge or dismissal. The "Lien Research" report and/or "Potential Manual Lien Release Report" must be generated and worked weekly by caseworkers to identify discharged cases for which a lien release has not been systemically generated (excepting cases where pursuit of EAEP is being considered) and a manual lien release is required. A lien release may be required because a lien was fully satisfied as defined in IRC § 6325 and it appears that systemic lien release will be delayed due to resolution of a Discharge Determination Report (DDR), mirroring, etc. (See *IRM Exhibit 1.4.51-25* for additional information.)

5.9.17.4 (08-11-2014)

Exempt, Abandoned or Excluded Property (EAEP)

1. **Exempt Property.** A debtor may claim certain property as exempt from the bankruptcy estate under either state or federal law. Such property cannot be liquidated by the trustee. Exempt property is not liable for any debts of the debtor except alimony, security interests, non-dischargeable tax debts, and dischargeable liabilities secured by a Notice of Federal Tax Lien (NFTL) (11 USC § 522).
2. **Individuals and Exempt Property.** Only individuals may claim exempt property. Debtors must select either federal or state exemptions; selection from both is not permitted.
 - A. **Federal or State Exemptions.** The election of either federal or state exemptions is permitted unless the state in which the debtor lives, by law, specifically prohibits election. In those states, the debtor is allowed only those exemptions provided by state law.
 - B. **Spouses.** In the case of a husband and wife whose estates are jointly administered, the debtors are not permitted to elect different exemption options.
 - C. **Federal Exemptions.** 11 USC § 522(d) lists the federal exemptions available to the debtor.
3. **Excluded Property.** Certain property interests are "excluded" from the bankruptcy estate. This means the property interest does not become property of the bankruptcy estate upon the petition date. ERISA-qualified pension plans are generally excluded from the bankruptcy estate (11 USC § 541(c)(2)). For cases filed on or after October 17, 2005, certain educational IRAs subject to limitations may also be excluded under 11 USC § 541(b)(5) and (6). If a retirement plan is not ERISA-qualified, it may be exempt from the estate under 11 USC § 522.

Caution:

Collection from pension plans require special handling and require coordination with Area Counsel.

4. **Abandoned Property.** "Abandonment" severs a bankruptcy estate's interest in property. Under the Bankruptcy Code, the court may permit the trustee to abandon any property of the estate that is burdensome or of inconsequential value to the estate.
 - A. **Affirmative Abandonment.** The trustee may actively abandon property, or a party in interest may request abandonment. The trustee may abandon the property to the debtor or to a party with a possessory interest. A hearing before the court is required.
 - B. **Administrative Abandonment.** If the property is listed in the schedule of assets, but is not administered by the trustee, it is abandoned to the debtor upon closing of the estate.
5. **Collection from EAEP not Limited to Specific Bankruptcy Chapters.** While the CIO and FI have developed internal procedures for addressing EAEP assets in Chapter 7 No Asset cases, the Service can pursue EAEP to collect dischargeable liabilities in any bankruptcy chapter. The term "dischargeable liability" includes dischargeable tax, dischargeable interest and/or dischargeable penalties. Dischargeable liabilities can be collected from exempt property secured by a pre-petition NFTL. Dischargeable liabilities can also be collected from excluded or abandoned property due to the Service's statutory lien.

5.9.17.4.1 (08-11-2014)

Pre-discharge Review for Exempt, Abandoned or Excluded Property (EAEP) in Chapter 7 No Asset Cases

1. **Identification.** The Centralized Insolvency Operation (CIO) identifies Chapter 7 No Asset cases that may be considered for an exempt, abandoned or excluded property (EAEP) investigation based on the Case Assignment Guide (CAG) balance on AIS. Generally, these cases are identified soon after IRS receives notification of the bankruptcy filing, prior to the USBC § 341 Meeting of Creditors and before the bankruptcy discharge. Caseworkers at the CIO "screen" the case to determine if there are dischargeable liabilities. The CIO also determines if there are any exempt, abandoned or excluded assets (EAEP) available for possible collection after the bankruptcy discharge.

Reminder:

Dischargeable liability includes dischargeable tax, dischargeable interest and/or dischargeable penalties.

2. **Dollar Criteria for Unpaid Balance of Assessment (UBA).** The dollar criteria used to determine which exempt, abandoned, or excluded property (EAEP) cases will be selected for review is determined by agreement of the Director, Advisory & Insolvency (AI) and the CIO Operations Manager. The dollar amount should be calculated to establish an inventory that can be worked timely by available resources.
3. **Cases that Remain at the CIO.** If there are no dischargeable liabilities, the case remains at the CIO. Additionally, if there are dischargeable liabilities, no EAEP is identified and the UBA is less than \$10,000, the case remains at the CIO. There is no requirement to transfer the case to Field Insolvency (FI), for FI to determine if the taxes are non-dischargeable due to the fraud or willful evasion exceptions to discharge. In both instances, the CIO takes closing actions upon dismissal or discharge. In the discharged case, closing actions include inputting the "CH7&HARDSHIPCH13 RI" in the closure method field on AIS and resolving any Discharge Determination Reports (DDR's) generated by the Automated Discharge System (ADS).
4. **Cases Transferred from CIO to Field Insolvency (FI).** If there are dischargeable liabilities, the CIO identified EAEP during screening and the case meets the dollar criteria in (2) above, the case is transferred from CIO to FI for a further investigation of EAEP. If the total aggregate UBA of all modules is \$10,000 or more, the case is transferred to FI for a determination if liabilities are non-dischargeable due to fraud or the willful evasion exception to discharge. It does not matter if the CIO identified EAEP in their review, if the UBA is \$10,000 or more.

If the FI caseworker determines that there is no fraud or willful evasion, and there is no collection potential from EAEP, the FI caseworker must input a "SUMMARY HISTORY" (see IRM 5.9.5.4(6)), add case classifications "No EAEP" and "No WFTF" to AIS and return the case to the CIO. If FI has determined that the liabilities are non-dischargeable due to willful evasion (IRM 5.9.17.7.2), all liabilities are subject to collection after the discharge. There is no need for the case to remain in FI. Document the AIS "SUMMARY HISTORY" accordingly and add a "WILLFUL" case classification. CIO will take closing actions on the case at dismissal or discharge. There will be no need for the CIO to return the case to FI at discharge.

If the FI caseworker determines that there is EAEP subject to collection after the discharge, the case must remain in FI. The FI caseworker must add an "EXEMPT" case classification to AIS to identify that there is EAEP available for collection after the discharge. *The Service cannot take any action to collect from the EAEP until the automatic stay is lifted at discharge.* See IRM 5.9.17.4.2 through IRM 5.9.17.4.4.1 for additional information.

5.9.17.4.2 (08-11-2014)

Collection from Exempt, Abandoned or Excluded Property (EAEP)

1. **Collection Determination.** Upon discharge, all property is subject to collection of non-dischargeable liabilities. Upon discharge, dischargeable liabilities can be collected from exempt property for which a Notice of Federal Tax Lien (NFTL) was filed prior to the petition date if *the lien remains valid against the specific property.* (See IRM 5.9.5.9.2, *Refiling of Notices of Federal Tax Lien (NFTLs).*) Dischargeable liabilities can also be collected from abandoned or excluded property due to the Service's statutory lien. A NFTL is not required to collect from excluded or abandoned property. A determination must be made if collection action will or will not be pursued against such property. The determination must be documented in the AIS history.

A. **Dischargeable Liabilities.** For dischargeable liabilities, if a valid pre-petition NFTL has been filed, the Service should determine if it may collect on its lien from exempt property. Collection can be taken against abandoned property based on the statutory tax lien, whether or not a NFTL was filed. Although excluded property also need not be secured by a NFTL, other considerations must be taken before pursuing collection. (IRM 5.9.17.4.4 and IRM 5.9.17.4.4.1) Collection is limited to the value of the exempt, abandoned or excluded property on the petition date and any post-petition appreciation in the property.

Reminder:

Dischargeable liability is not limited to dischargeable tax. Dischargeable liability includes dischargeable tax, dischargeable interest and/or dischargeable penalties.

B. **Non-dischargeable Liabilities.** A determination may also be made if the Service can collect non-dischargeable liabilities from the exempt, excluded, abandoned, non-administered or after-acquired property of an individual debtor.

2. **Area Counsel Guidance.** When collection concerns arise (for example, questioning if certain property is exempt, or if collection action against the property is allowable under the Bankruptcy Code), Insolvency should seek guidance from Area Counsel.
3. **Options for Investigation.** When investigating exempt and/or abandoned assets, Insolvency has the option of issuing an OI or handling the investigation internally. Insolvency will pursue collection on excluded assets using its own resources rather than depending upon Field Collection.

Exception:

Cases coded as ATAT must be assigned to the Collection ATAT coordinator.

4. **Collection Considerations.** Collection against exempt, abandoned or excluded property (EAEP), including residences and retirement accounts, must employ an equitable and fair-minded approach to individuals who are emerging from the bankruptcy process. Although assets may have equity and collection may be readily accomplished (e.g., cash value of insurance, IRAs, etc.), prior to pursuing collection from EAEP, Insolvency must consider various factors discussed in IRM 5.10, *Seizure and Sale.* These factors include the following:

- A. Alternative means of collection prior to seizure (IRC § 6331(j));
- B. Seeking advice of Area Counsel before requesting the possible seizure of a personal residence as a District Court judge or a magistrate must approve a levy on a principal residence of the taxpayer, the taxpayer's spouse, former spouse and /or the taxpayer's minor children (IRC § 6334(e)(1));
- C. The prohibition against seizure of real property used as the debtor's residence, or any non-rental real property of the debtor used by any other individual as a residence, if the liability is less than \$5,000 (IRC § 6334(a)(13)(A));
- D. The requirement the Area Director must approve all seizures of tangible personal property or real property used in the trade or business of the debtor (IRC §§ 6334(e)(2) and 6334(a)(13)(B)(ii)(A));
- E. The sale of seized property at less than minimum bid is a violation of the law (IRC § 6335(e));
- F. "No equity" seizures are prohibited. There is no equity when the seizure cost incurred by the Service meets or exceeds the equity of the seized asset(s). (See IRC §§ 6331(f) and 6331(j) and IRM 5.10.1.2 for additional information.);
- G. The value of personal effects, books and tools exempt from seizure is indexed for inflation (IRC § 6334(g));
- H. Recent legal changes;
- I. Field Collection workload priorities, staffing, and resources if an OI is required;
- J. Insolvency staffing and resources;

- K. Reasonable expectations of potential net dollars to be applied towards the liability (for example, a valid lien exists for a large liability, but the equity in the assets may be minimal);
- L. The requirement the Area Director must approve all seizures of any principal residence of someone other than the taxpayer, the taxpayer's spouse, former spouse and/or minor children; and
- M. Complex circumstances, such as other lien creditors, title concerns, and community property issues.

Reminder:

After the bankruptcy discharge, the Service must adhere to all CDP requirements (IRM 5.9.3.8, *Collection Due Process (CDP) Cases*, when pursuing the collection of dischargeable liabilities from EAEP.)

- 5. **Preventing Violations of the Discharge Injunction.** To prevent violations of the discharge injunction, dischargeable module(s) must be kept under TC 520 (freeze code) control until all collection actions have been completed or a determination has been made not to pursue collections and all dischargeable modules have been fully adjusted. (See IRM 5.9.17.8, *Discharge Injunction*.)
- 6. **When to Make Adjustments.** In most instances, when an investigation of exempt, abandoned or excluded property (EAEP) is on-going, adjustments should not be made on the dischargeable liabilities, nor lien(s) released on dischargeable liabilities secured by a valid NFTL *until a collection determination has been made and a discharge has been entered by the court.*

5.9.17.4.3 (08-11-2014)

Addressing Lien Issues

- 1. **Verifying NFTL Validity.** Before pursuing collection based on exempt real property on dischargeable periods where a NFTL has been filed, the caseworker must verify the NFTL is valid. Contact with the lien recording authority may be required for verification if ALS does not provide adequate documentation. Caseworkers may also verify the validity of NFTLs by researching websites such as <http://www.accurint.com/> and available on-line courthouse records.
- 2. **Lien Survival.** The Service's statutory lien survives the bankruptcy for property abandoned or excluded from the bankruptcy estate whether or not a NFTL has been filed. If a valid NFTL has been filed pre-petition, the lien survives as to exempt, abandoned or excluded property. The lien attaches to the value of any assets to which the lien attached on the petition date up to the amount of the unpaid liability secured by the lien. Additionally, the lien attaches to any post-petition appreciation in the asset.
- 3. **Delaying Collection.** The Service may forego immediate collection from exempt, abandoned or excluded property and allow the lien to remain attached in the prospect of collecting dischargeable liabilities at some future date when property is transferred by the taxpayer. The paragraphs below discuss criteria and procedures for retaining liens when future collection is possible.
- 4. **Real Property.** Generally, liens will only be released when the tax liabilities are discharged, final distribution is made, and the determination is made that no collection potential exists against exempt, abandoned or excluded property (EAEP). Liens need not be released when the lien attaches to exempt or abandoned real property, and equity exists in that property even though no immediate collection activity is planned. To determine if equity exists, the value of the real property must be investigated using resources such as bankruptcy schedules and Accurint or by issuing an OI to Field Collection.
- 5. **Time Frames.** The chart below explains the time frames to be met by Field Insolvency (FI) in making a determination about the Service pursuing collection from EAEP.

IF...	THEN...
The case is screened by the CIO and sent to Field Insolvency (FI) for a further investigation of collection potential from EAEP prior to the discharge and Field Insolvency reviews and researches collection potential internally,	A determination to proceed with collection after the discharge or not to pursue further collection must be made <i>no later than 45 calendar days</i> after the case is transferred from the CIO to FI.
The case is reassigned to FI after the discharge and FI reviews and researches collection potential internally,	A determination to proceed with collection or close the case without further collection must be made <i>no later than 45 calendar days</i> after the discharged case is transferred from the CIO to FI.
The case is assigned to FI at the time of the discharge and the research is worked internally,	A determination to proceed with collection or close the case without further collection must be made <i>no later than 45 calendar days</i> after Insolvency receives notification of the discharge.
The case is assigned to FI and an OI is needed to request a further investigation by Field Collection at discharge,	A determination to proceed with collection or close the case without further collection must be made <i>no later than 90 calendar days</i> after Insolvency receives notification of the discharge.

- 6. **History Documentation.** By the end of the 45 or 90 day time frame outlined above, the AIS history must provide a definitive statement as to whether collection will proceed after the discharge or if the case can be closed without further collection action. Reasons must be provided to support either decision. At minimum, the FI caseworker must document how they arrived at the collection determination. The documentation should state resources researched to determine the value of assets and how equity was determined. Finally, the AIS history must include the total amount of any dischargeable liabilities owed to the Service.
- 7. **Field Insolvency Duties.** Field Insolvency will be responsible for all aspects of reviewing, monitoring, and ultimate closing of cases where the lien has been retained for potential future collection from the transfer of real property. This responsibility does not preclude issuing an OI to Field Collection.
- 8. **Contact with the Taxpayer.** After discharge, a "soft" letter must be sent to the taxpayer explaining the Service's intent to retain the lien. The letter must provide the debtor an opportunity to pay the lien interest. If an acceptable amount is offered by the taxpayer, the account must be adjusted to \$.00 after payment is received. If there is no response to the "soft" letter within 30 days of issuance, a notice of intent to levy should be sent. Letters sent depend on the type of property being pursued and if appeal rights are provided with the letter.

The following letters are used when the Service intends to pursue exempt or abandoned property in Chapter 7 cases:

- Letter 4068, *Post-discharge Letter Seeking Payment*, or "soft" letter, and if no response;
- Letter 4066, *Notice of Intent to Levy CDP Rights* or
- Letter 4067, *Final Notice of Intent to Levy - No CDP*.

The following letters are used when the Service intends to pursue excluded property in Chapter 7 cases:

- Letter 4553, *Excluded Property - Soft Notice*, and if no response;
- Letter 4554, *Excluded Property - Final Notice with CDP Rights* or
- Letter 4556, *Excluded Property - Final Notice without CDP Rights*.

Note:

These letters may be adapted for use in other bankruptcy chapters when pursuing EAEP after discharge.

Caution:

Caseworkers must follow noticing procedures in IRM 5.11.1.2, *Collecting Process, Notice of Levy, Pre-Levy Actions*, when issuing EAEP letters to the debtor. This includes inputting a TC 971 AC 069 when issuing the Letter 4066 or Letter 4554 giving final notice and appeal rights to the debtor.

9. **Settlement Considerations.** Each offer to satisfy a lien on exempt, abandoned or excluded property must be judged on its own merits. Payment of less than the full amount of the UBA of the dischargeable lien periods must be reviewed by a Field Insolvency caseworker and approved by the group manager. The AIS history must reflect the reasons for deciding either to accept or reject the taxpayer's offer. Factors to consider are:

- Events precipitating the bankruptcy
- Financial circumstances of the taxpayer after bankruptcy
- Total UBA of dischargeable lien periods
- Percentage of UBA to be paid by settlement
- Current equity in the EAEP
- Local outlook for property appreciation
- NFTL self-release date

10. **IDRS Actions.** When a decision is made to retain a lien against exempt/abandoned real property or to pursue abandoned/excluded property based on the statutory lien, the FI caseworker must ensure the TC 520 closing code is 81 on dischargeable periods. (*IRM 5.9.17.4.4, Insolvency Levy Procedures for Excluded Retirement Plans*) An IDRS control base must be established by the Insolvency caseworker on the dischargeable modules remaining open. In addition, an IDRS message must be input stating, "BANKRUPTCY ACTION." (See IRM 2.3.12, *Command Code ACTON*, for instructions.) The open IDRS control base will ensure no actions are taken on the dischargeable tax modules inadvertently by an IRS employee outside of Insolvency. The open control base will also signal the module was not erroneously overlooked during the discharge process.

11. **AIS History for Not Releasing Lien.** The AIS history must show all actions taken to resolve the lien through collection as well as the taxpayer's response to those actions. Justification for not releasing the lien must be provided. The exact property address and property description of the real property (e.g., condominium, double-wide trailer and lot, single family) subject to the lien must be listed in the AIS history. If closing actions on any dischargeable periods not covered on a NFTL remain, the caseworker must complete those actions. The AIS case will remain open until all dischargeable modules have been fully adjusted and the bankruptcy freeze reversed on IDRS. There is no requirement for the case to remain open until lien releases have been generated. Generally, lien releases will generate systemically when all adjustments to the respective modules have posted to IDRS. In the event the caseworker identifies an error in, or delay to a systemic release of lien, a manual release of lien should be requested. See *IRM 5.9.17.17(9), Lien Release Reports*, for additional information.

12. **Notice of Federal Tax Lien (NFTL) Refiles.** NFTL refiles will be requested on a case by case basis. If the decision is made not to refile a NFTL, upon self-release of the lien, the Field caseworker must adjust the lien period balance to zero and reverse the bankruptcy freeze on IDRS. When a NFTL is not refiled by the "Last Day for Refiling" shown on the NFTL, the statutory lien is released for that module. Follow-ups must be input on AIS to review cases during the NFTL refile window.

13. **CSEDs and Refiles.** Insolvency will ensure that IDRS reflects the correct CSED date for modules held open after discharge to assert the Service's lien rights. IDRS does not systemically compute the new CSED for these dischargeable periods because the TC 520 is not reversed on IDRS. Insolvency must calculate the extended CSED and request input of the TC 550 to IDRS. Insolvency may manually input the TC 550 to IDRS or request input of the TC 550 by Centralized Case Processing (CCP). A Form 4844 or Form 3177 can be sent by Insolvency to CCP to request input of the TC 550 to IDRS. Finally, the caseworker must document the extended CSED in the AIS history and schedule a follow-up on AIS to ensure dischargeable modules are adjusted to \$0 before the expiration of the extended CSED. (See *IRM 5.9.4.2, ASED/CSED*, for additional information.)

Generally, a refiled NFTL is valid for 10 years. Since the TC 520 is not reversed on IDRS for dischargeable modules, Insolvency must ensure that ALS reflects the extended CSED date. Otherwise, ALS may indicate that the CSED is still suspended by the bankruptcy and may show a CSED date of "****/****" instead of the correct CSED.

Note:

Caseworkers should use the CSED calculator found at <http://mysbse.web.irs.gov/Collection/toolsprocesses/csedcalculator/default.aspx>

to compute the extended CSED.

14. **Self-Release of the Lien.** When a lien is released because the NFTL was not refiled timely, whether intentionally or by oversight, a revocation of the erroneous release may be requested (see *IRM 5.12.3.14, Revocation of Certificate of Release*). However, Insolvency usually does not seek a revocation of the lien release in these cases. When a revocation of the erroneous release is not requested, the Field Insolvency caseworker must immediately complete closing actions so the dischargeable modules are adjusted to zero and the bankruptcy freeze is reversed.

15. **Partial Payment.** The Service may determine to pursue dischargeable liabilities from only real property. Upon sale of the real property, secured creditors are paid their lien interest. The payment to the Service may not satisfy the dischargeable liability. Upon receipt of the payment, the Field Insolvency caseworker must adjust the dischargeable liability to zero by requesting a TC 971 AC 031. A lien release will generate systemically once all adjustments have posted to IDRS. (*IRM 5.9.17.17, Release of Federal Tax Liens*) Any unreversed TC 520 must be reversed manually by inputting a TC 521 with a posting delay cycle. (See *IRM 5.9.18-1* for additional information.)

16. **Distributions and Liens.** Insolvency should not request a lien release or request adjustments when distribution is expected in the bankruptcy. Lien release after discharge but before a final distribution could impair the Service's secured status. Area Counsel should be consulted on any significant issues that arise concerning lien releases.

17. **Adjustments and Federal Tax Lien (FTLs).** IRC § 6325 provides for the release of a lien within 30 days of satisfaction when the liabilities for any periods are fully satisfied or have become legally unenforceable. IRC § 6325 does not require that the lien be released because of the bankruptcy discharge. To comply with IRC § 6325, when accounts secured by a pre-petition lien are discharged, Insolvency *must* adjust the accounts to zero, if necessary, and initiate lien releases when:

- A. The liability has been full paid,
- B. The liability has been abated for reasons other than the bankruptcy discharge or
- C. The true CSED has expired for cases with refiled NFTLs.

In these situations, it may be necessary to request a manual lien release if closing actions will delay systemic lien release beyond 30 days of Insolvency receiving the notice of discharge. Additionally, in the instance of an individual Chapter 11 case filed prior to BAPCPA, or a non-individual Chapter 11 case filed at any time, the Service will request a manual lien release within 30 days of receipt of the final payment. Caseworkers will review the "Lien Research" report on AIS or the "Potential Manual Lien Release" MyEureka report weekly to identify cases that require a manual lien release because liens were satisfied as defined in IRC § 6325.

In all other situations in which the accounts secured by a pre-petition lien are discharged, the Service will initiate the closing actions within 30 days of receipt of the notice of the discharge order. Generally, once the closing actions are completed, including the posting of all abatements on IDRS, a lien release will generate systemically. In most instances, there is no need to request a manual lien release due to the bankruptcy discharge when the liability is not satisfied as defined in IRC § 6325. A manual lien release is usually not required in the following situations:

- A. The Service has received payment for an agreed settlement of the lien
- B. Collection action against exempt, abandoned or excluded property (EAEP) has been completed
- C. A determination has been made that collection will not be pursued against EAEP

In the event the caseworker identifies an error in, or delay to a systemic release of lien, a manual release of lien should be requested.

18. **Taxpayer Issues.** Lien retention on dischargeable periods may affect taxpayers who seek to purchase or sell property after the bankruptcy has closed. The following are two probable scenarios and how they should be handled. If other scenarios arise, Insolvency should consult Area Counsel for guidance.

A. **Taxpayer Purchasing Real Property.** If a taxpayer is attempting to purchase real property while a lien is being retained on dischargeable periods, and the lender will not close because a NFTL was recorded, the caseworker must explain that per Revenue Ruling 68-57, a purchase money mortgage has priority over a previously filed NFTL, if protected by local law. (See IRM 5.12.1.4.1, *Lien and NFTL Priorities*, and IRM 5.17.2, *Federal Tax Liens*.) The pre-petition lien on dischargeable liabilities does not attach to after-acquired property so it will not attach to the real property being purchased by the debtor. However, when contacted about the NFTL, the caseworker should try to negotiate payment of the lien interest in the pre-petition property to which the lien does attach.

B. **Taxpayer Selling Real Property.** The debtor may attempt to sell property acquired post-petition. The title company may be concerned because the Service filed a pre-petition NFTL. The caseworker should explain that the pre-petition lien on dischargeable liabilities does not attach to after-acquired property. The lien on dischargeable liabilities only attaches to pre-petition property excluded or exempted from the bankruptcy estate or to property abandoned by the bankruptcy estate. The title company may request a Certificate of Discharge to show clear title on the after-acquired property.

5.9.17.4.4 (08-11-2014)

Insolvency Levy Procedures for Excluded Retirement Plans

1. **ERISA Considerations.** The Automated Discharge System (ADS) generates a Discharge Determination Report (DDR) to alert Insolvency of the presence of a retirement plan on IRPTL when the dollar amount of the dischargeable secured liability reaches an established threshold. (The NFTL requirement for generating the excluded property DDR will be deleted from ADS at a future date.) The retirement plan may be an ERISA-qualified pension plan and excluded from the bankruptcy estate (11 USC § 541(c)(2)). Additionally, the debtor may have a Thrift Savings Plan (TSP) that is excluded from the bankruptcy (IRM 5.9.17.4.4.1). If so, the Service can collect dischargeable liabilities from the pension plan after discharge due to the Service's statutory lien. A NFTL is not required.

If the retirement plan is not an ERISA-qualified pension plan, it may be exempt from the bankruptcy estate under 11 USC § 522. The Service can collect dischargeable liabilities from the exempt retirement plan if there is a valid pre-petition NFTL filed for the dischargeable liabilities.

Note:

In either situation, the lien attaches to the value of the retirement plan as of the petition date. The lien also attaches to any post-petition appreciation or depreciation of the pension plan. It does not attach to contributions made to the retirement plan after the petition date. (IRM 5.11.6.2)

When the CIO technical units receive these DDRs, they must first resolve any other DDRs, update the AIS history and reassign the cases to the appropriate Field Insolvency caseworker, when required. The FI caseworker will be systemically notified of reassignment via Outlook email.

Reminder:

If EAEP was investigated before the discharge, there may not be a need to reassign the case to FI to resolve the DDR after the discharge. See IRM 5.9.17.4.1 for additional information.

2. **Large Dollar Chapter 7 No Asset Cases.** In many Chapter 7 No Asset cases, investigations concerning the pursuit of exempt, abandoned or excluded property (EAEP) will have been completed by Insolvency prior to discharge. The AIS history will indicate that the investigation has been completed and whether or not dischargeable liabilities will be pursued after the discharge. If the AIS history states collection will not be pursued after the discharge, the case will not be transferred to FI when the case is discharged. The CIO will complete final closing actions. If assets were identified for the collection of dischargeable liabilities after the discharge, the case remains in FI until discharge. FI will take appropriate collection actions and close the case when collection has been concluded. (IRM 5.9.17.4.1)

3. **Excluded Property DDRs in Other Cases.** CIO is now responsible for performing EAEP asset research on all Chapter 7 No Asset cases. When the Automated Discharge System (ADS) generates an excluded property Discharge Determination Report (DDR), and an EAEP investigation was not completed prior to discharge, CIO will follow the EAEP research procedures in IRM 5.9.17.4.1. If the case meets transfer criteria, the CIO will transfer the case to Field Insolvency. If the case does not meet transfer criteria, the CIO will resolve the DDR and close the case.

4. **Considerations.** Attempts to collect from retirement plans should be made only when attempts to collect from non-retirement plan assets have not been productive. The following considerations must be weighed before proceeding with collection activities:

- A. The debtor's current overall financial situation
- B. Other assets available for paying the liabilities
- C. The debtor's current or soon-to-be dependence upon the retirement assets
- D. The debtor's age and health
- E. The debtor's employment history and prospects for accumulating additional assets for retirement
- F. Payment proposals submitted by the debtor

Prior to issuing a levy on excluded retirement plans, caseworkers must comply with all pre-levy guidelines in IRM 5.11.1, *Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions*. As a notice of levy issued on a retirement plan is issued to a third party, the taxpayer must be advised of potential third party contacts. See IRM 5.11.1.2.1, *Required Notices*, and IRM 5.1.17, *Third Party Contacts*, for additional information.

5. **Flagrant Misconduct.** Because assets set aside for retirement are provisions debtors have made for their and their family's well-being, the Service's position is retirement accounts will only be levied when the debtor's conduct in failing to pay taxes has been "flagrant" as identified in IRM 5.11.6.2. *If the debtor has not engaged in flagrant conduct, Insolvency must not levy retirement accounts.*

6. **Debtor's Request for Levy.** A debtor may ask the Service to levy his/her retirement account to avoid paying a ten percent tax on early retirement plan distributions even though the debtor may have the legal right to make a voluntary withdrawal. Insolvency should not levy on a retirement account merely at the request of the debtor.

7. **Retention of Lien.** A NFTL is not required to pursue collection from property abandoned by or excluded from the bankruptcy estate. However, if a NFTL has been filed on the module(s) for which collection is being pursued, a lien release must not be issued until collection from the abandoned or excluded property has been completed, or the decision is made not to pursue collection. *The lien release extinguishes the Service's statutory lien and eliminates the Service's right to collect from the abandoned or excluded property.*

8. **Collection Not to Be Pursued.** If the FI caseworker determines that collection from the retirement account should not be pursued, the FI caseworker must update the AIS history with the reason collection will not be pursued. The FI caseworker will take necessary actions to resolve the DDR. Actions include adjusting dischargeable liabilities by requesting the TC 971 AC 031 and reversing all bankruptcy freezes (TC 520(s)). Generally, there is no need to request a lien release on the dischargeable liabilities as it should generate systemically once all adjustments have posted to IDRS.

Reminder:

As stated in paragraph (2) above, if the investigation is concluded prior to the discharge, the CIO will take all closing actions on cases assigned to them.

9. **Debtor's Payment Proposal.** After all considerations have been weighed, and the decision has been made to proceed with collection on an excluded retirement account, the FI caseworker must send a letter requesting payment from the debtor. Letter 4553, *Excluded Property - Soft Notice*, should be used for Chapter 7 cases. In chapters other than Chapter 7, Insolvency should consult with Counsel to adapt Letter 4553 for use in appropriate cases. The letter invites the debtor to contact Insolvency to establish payment arrangements. If the debtor makes contact to propose payment arrangements or to discuss less than full payment, the FI caseworker must consider the following:

- A. Information provided by the debtor showing the current valuation of the retirement account
- B. Information from the debtor that the retirement account assets are currently being applied toward necessary living expenses
- C. Requests for a short term payout agreement

Note:

Generally, requests for payouts extending over six months should not be accepted.

The FI caseworker must recommend acceptance or rejection of the debtor's proposal to the group manager. If the proposal is accepted, the group manager must document concurrence with satisfying the lien interest in the AIS history.

10. **Advising the Debtor of the Proposal Status.** When a decision has been made to accept or reject a debtor's proposal, the Insolvency caseworker must advise the debtor of the decision in writing through an ad hoc letter. If the debtor has not been cooperative, Insolvency must decide if the debtor's conduct meets any of the flagrant misconduct criteria. If so, a Notice of Intent to Levy should be sent. The Letter 4554, *Excluded Property - Final Notice with CDP Rights*, provides a notice of intent to levy and the debtor's right to a Collection Due Process (CDP) hearing. The Letter 4556, *Excluded Property - Final Notice without CDP Rights*, gives a notice of intent to levy when the debtor was previously afforded CDP rights. (See IRM 5.9.17.4.3(8), *Contact with the Taxpayer*, for additional information.)

Reminder:

Caseworkers must request input of a TC 971 AC 069 when issuing final notice with CDP rights.

11. **Financial Analysis.** At any point in dealing with a debtor who is facing the levy of a retirement account, it may be appropriate to take a financial statement from the debtor. IRM 5.15, *Financial Analysis*, gives standards to be used in establishing necessary living expenses, including national standards (IRM 5.15.1.8), local standards (IRM 5.15.1.9), and other expenses (IRM 5.15.1.10). For debtors retired or nearing retirement age, it may be necessary to refer to the life expectancy tables in Publication 590, *Individual Retirement Arrangements*. Estimate how much can be withdrawn annually to deplete a retirement account in the debtor's remaining lifetime and if a levy on the retirement account will create a hardship for the debtor.

12. **Collection Appeal Rights.** A taxpayer who has not previously received CDP rights has 30 days after the date of the Final Notice-Notice of Intent to Levy to request a CDP hearing. (See IRM 5.1.9, *Collection Appeal Rights*.)

13. **Levy Form.** Form 668-A(c)(DO), *Notice of Levy*, is used to levy a taxpayer's retirement account. The Insolvency caseworker must complete the self-explanatory form for signature by the delegated authority (Delegation Order 191 (Rev. 3)). In this case, the Director of Advisory & Insolvency (AI) is the delegated authority.

14. **Levy Package.** The FI caseworker must document all actions leading up to the preparation of the levy in the AIS history. The history must include a summary entry noting all of the following:

- Debtor's name, address, TIN, age, health, financial condition, responsiveness, history of delinquency, current compliance, and example(s) of flagrant conduct.
- Adherence to the debtor's rights outlined in IRM 5.11.6.
- The fact that collection from other assets was considered.
- Verification the balance due is correct and levy action is appropriate.
- The value of the asset on the petition date plus any appreciation (IRM 5.9.17.4.2(1)(a), *Dischargeable Liabilities*) and type of asset targeted for levy.
- Dates of assessment, demand, and required notices (including EAEP letters and the date of issuance of the Third Party Notice).

Caution:

If it has been more than 180 days since the debtor was warned of enforcement action, a new a new warning of enforcement action must be given before a notice of levy is issued. (See IRM 5.11.1.2.2.7, *Timeliness of Notice*, for additional information.)

- The extended CSED for all modules held open after discharge to assert the Service's lien rights. (IRM 5.9.17.4.3(13), *CSEDs and Refiles*)
- The mandated levels of review and approval

The package must be sent through the group manager up the management chain. The package must include:

- A. A memo requesting the levy be approved and signed,
- B. The AIS history,
- C. ICS history, if available,
- D. Pertinent IDRS prints (ENMOD, SUMRY, TXMODs),
- E. NFTL facsimile, if a NFTL has been filed, and
- F. Any other documents that support a levy determination.

15. **Post-Levy Actions.** After levy proceeds have been received and all collection actions have been exhausted, the caseworker must take the necessary actions to close the case. This includes adjusting all dischargeable liabilities and reversing all bankruptcy freezes. If the levy proceeds result in a full payment, it may be necessary to request a lien release. If not, there generally is no need to request a lien release as it should generate systemically once all adjustments have posted to IDRS.

**5.9.17.4.4.1 (08-11-2014)
Thrift Savings Plan (TSP)**

1. **Excluded Property in the Bankruptcy Case.** Moneys due or payable from the Thrift Savings Plan (TSP) to an individual are excluded from the bankruptcy and subject to a levy under IRC § 6331. Any levies on an individual's TSP must be coordinated with Area Counsel.

2. **Procedures for Levy.** General procedures for levying a TSP can be found in IRM 5.11.6.2.1, *Thrift Savings Plan*. A levy on a TSP account should be treated in the same manner as a levy on a private pension or retirement plan or IRA. These procedures are detailed above in IRM 5.9.17.4.4. It must be stressed that before levying a TSP, the caseworker must:

- Consider alternative means of collecting the liability,
- Determine if the taxpayer's conduct has been flagrant and
- Consider whether the taxpayer depends on the money in the TSP now (or will in the near future) for necessary living expenses.

3. **Levy Address.** Levies on a TSP should be sent to General Counsel, Federal Retirement Thrift Investment Board at:

Thrift Savings Plan

IRS Tax Levy Processing

P.O. Box 4570

Fairfax, VA 22038-9998

4. **The Role of Associate Area Counsel.** Pursuant to Chief Counsel Notice CC-2013-007 (February 4, 2013), caseworkers must contact Associate Area Counsel for assistance prior to any levy on a TSP account. Additionally, if the Thrift Savings Board fails to respond to the levy, or if the Thrift Savings Board refuses to honor the levy, the caseworker must refer the case to Associate Area Counsel.

5.9.17.5 (08-11-2014)

Dismissal

1. **The Effect of the Dismissal Order.** Except for certain confirmed Chapter 11 cases, the dismissal order, per 11 USC § 349, returns the debtor to a pre-petition status, including the accrual of applicable penalties and interest. Property of the estate is *revested* in the debtor.
2. **CSED.** The Collection Statute Expiration Date (CSED) on all cases is extended for the period of time during which the IRS was prohibited from collecting the tax due to the bankruptcy case, and for six additional months – *even in a case that is subsequently dismissed.* (See IRM 5.9.4.2, *ASED/CSED.*)
3. **Effective Date.** A dismissal becomes effective *only* when the judge signs the order and when the clerk enters it on the docket and not when the order is orally stated from the bench. The docket date is to be used when inputting TC 521 to remove the bankruptcy freeze on IDRS.

5.9.17.5.1 (08-11-2014)

Closure without Discharge

1. **Financial Course.** The court will not grant a discharge if an individual debtor fails to complete an approved financial management course. See 11 USC §§ 727(a)(11) and 1328(g)(1). The court will close the case as either "Discharge Not Applicable" or "Closed without Discharge."
2. **Not Discharge Denied.** These cases are not to be considered the same as "Discharge Denied." They will not be counted as a dismissal for purposes of limiting the automatic stay in a new bankruptcy case. See IRM 5.9.5.7, *Serial Filers*, for additional information.
3. **Closure Method.** Insolvency will close these cases as "Dismissed for FMT - D2" . The date of the court's order closing the case as "Discharge Not Applicable" or "Closed without Discharge" should be input in the "Dismissed" "Closing Info & Dates" field on the Taxpayer Screen on AIS.

5.9.17.5.2 (08-11-2014)

Dismissal Issues Specific to Chapter 7

1. **Notice and Hearing.** A Chapter 7 case may be dismissed "for cause" only after notice and a hearing (11 USC § 707(a)).
2. **Causes for Dismissal.** Reasons ("causes") a debtor's bankruptcy may be dismissed include:
 - Unreasonable delay by the debtor that is prejudicial to creditors
 - Non-payment of any fees or charges
 - Failure of the debtor in a voluntary case to file schedules as required by 11 USC § 521, but only on motion of the US Trustee
 - Failure to meet the means test (for cases filed on or after October 17, 2005)
 - Failure to file tax returns due after the commencement of a case subject to BAPCPA
3. **Abuse of Bankruptcy Process.** The court, on its own motion or on a motion by the United States Trustee, may dismiss the case on other grounds if granting relief to the debtor would be a substantial abuse of the bankruptcy process. Grounds for dismissal could include:
 - Bad faith in filing the petition
 - Debts primarily consisting of consumer debts
 - Serial filings for cases filed on or after October 17, 2005 (See IRM 5.9.5.7, *Serial Filers.*)

Note:

A motion to dismiss for serial filings can also be brought by a party in interest.

5.9.17.5.3 (08-11-2014)

Dismissal Issues Specific to Chapter 12

1. **Grounds for Dismissal.** The court's authority to dismiss is found in 11 USC § 1208(c), which provides such action may be taken upon the request of a party in interest " for cause," including ten specific grounds. The more important ones are:
 - A. Failure to begin making timely payments required by a confirmed plan;
 - B. Gross mismanagement by the debtor;
 - C. Material default by the debtor with respect to the terms of a confirmed plan;
 - D. Unreasonable delay by the debtor that is prejudicial to creditors; and

E. Continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.

2. **"Cause."** Like any other party seeking dismissal, the Service bears the burden of proof in arguing sufficient "cause" for dismissal. Courts have broad discretion in determining what constitutes "cause," but the most common reasons for dismissal cited by the Service are:

A. The debtor's failure to pay federal taxes in accordance with the terms of a confirmed plan and

B. The debtor's failure to stay current on post-petition taxes.

Note:

If an objection to confirmation is filed, upheld, and cannot be resolved, the case will generally be dismissed by the court.

5.9.17.5.4 (08-11-2014)

Dismissal Issues Specific to Chapter 13

1. **Revert to Pre-Bankruptcy Status.** A number of Chapter 13 debtors fail to complete their plans. Upon dismissal, the stay of actions against property of the estate terminates and the tax accounts revert to pre-bankruptcy status. (See *IRM 5.9.17.5, Dismissal*.)

2. **Dismissal Requests by Debtor.** The dismissal may be at the debtor's request. Should a debtor request a dismissal, the court will generally grant the dismissal *unless the case was converted from another chapter*. The IRS usually concurs with the request. However, in rare instances, the IRS may object to protect the government's interests.

Example:

The debtor may seek to avoid the court's authority in resolution of a levy dispute by opting to be outside of the Bankruptcy Court's jurisdiction. However, if the Service has a strong case, the Service may prefer the debtor remain in bankruptcy so the court will have the authority to make a ruling on disbursement of the levy funds.

3. **Dismissal Request by Trustee.** The Chapter 13 dismissal is often sought by the trustee because the debtor is delinquent with plan payments or has compliance issues, such as unfiled tax returns.

4. **Dismissal Request by Creditor.** A creditor has the right to request the case be dismissed for cause. For the Service, cause can include:

- Pyramiding of taxes;
- Sporadic or chronically late payments or
- No payments.

For cases filed on or after October 17, 2005, 11 USC § 521(j) provides if the debtor fails to file a tax return that becomes due after the date of the petition or timely obtain an extension, the Service may request the case be dismissed. The court will convert or dismiss the case if the debtor does not comply within 90 days of the request.

5. **Importance of Early Motion.** If the pursuit of a conversion/dismissal motion is appropriate, the Service should make the motion as early as possible in the Chapter 13 bankruptcy process.

Note:

11 USC §§ 1307 and 521(j) list some of the bases for requesting dismissal in Chapter 13 bankruptcies.

6. **Termination of Stay of Actions.** Upon dismissal:

- The stay of actions against property of the estate terminates.
- The trustee usually returns all Chapter 13 payments not previously distributed to creditors to the debtor, minus trustee expenses.
- If a controversy ensues over entitlement to property after dismissal, the court has jurisdiction to resolve the issue.
- If the debtor in a dismissed case had filed joint returns with a non-debtor spouse, the joint tax accounts must be mirrored. (See *IRM 5.9.17.21.1, MFT 31 Mirror Modules*.)

5.9.17.5.5 (08-11-2014)

Closing Dismissed Cases

1. **The Role of CIO and FI.** Centralized Insolvency will input dismissals on the AIS "Taxpayer Screen" for all chapters when it is noticed either by ENS, paper notice or phone. The CIO's responsibility for this duty does not preclude the Field Insolvency (FI) caseworker from inputting closing data on AIS when the FI caseworker learns of a dismissal through the normal course of their casework. After processing paper dismissal notices, the CIO will forward the paper notices for cases assigned to FI to the appropriate FI caseworker. (See *IRM 5.9.11.3.5, Inputting Dismissal Dates*.)

The CIO will take closing actions on all Chapter 7 and Chapter 13 cases assigned to the CIO. Field Insolvency will take closing actions on all dismissed cases assigned to FI, with the exception of those actions taken by the CIO for both insolvency functions. See *IRM 5.9.17.21.1* and *IRM 5.9.17.23(1)* for additional information.

2. **AIS Method of Closure.** BAPCPA necessitates the standardization of dismissal "Closure Method" codes. When a Chapter 7 case is dismissed for failing to meet the means test, the method of closure code is "DISMISSED FOR FMT - D2." Dismissals for all other reasons regardless of chapter are closed with "REGULAR DISMISSAL - D1." Using these two closure methods automates systemic recognition of cases where the automatic stay may be impacted in subsequent bankruptcy filings of an individual debtor. In the case of a "serial filer" the automatic stay may terminate after 30 days with respect to the debtor and the debtor's property that is not property of the bankruptcy estate. In some "serial filer" cases, the stay may not arise at all. (See *IRM 5.9.5.7, Serial Filers*, for additional information.)

3. **Case Classifications in Chapter 7 or 13 Dismissals.** Before a Chapter 7 or Chapter 13 case is closed, the caseworker working the dismissal must check the "Classification Screen" on AIS. Certain classifications prevent systemic closure of the case when the case classification is open (*IRM 5.9.17.1(6)*). The case classification alerts caseworkers to issues that must be addressed during case closure. Some classifications that alert caseworkers to actions that must be addressed during case closure are:

- ATAT
- CID FREEZE
- EXAM
- IA
- IA Issues
- NDS
- OIC PENDING
- RE-ASSESS

- URP/IRP
- PDSC ISSUE

Recent cases may have multiple case classifications. In older cases, the "PDSC ISSUE" case classification was used to alert caseworkers of multiple issues that must be addressed during closure. (IRM 5.9.5.4.1(1), *Case Classifications that Alert Caseworkers to Actions Needed in a Case*) Caseworkers must read the SUMMARY HISTORY before taking closing actions in these cases.

If the case classification is listed in IRM 5.9.17.1(6), the issue must be addressed *and* the case classification closed before the case is closed. The open case classification prohibits manual closure of the case on AIS. The open classification also prohibits systemic closure of the case through IIP Process J.

4. **"PDSC ISSUE," "EXAM," "RE-ASSESS" or "URP/IRP" Classifications for Reassessment.** When an unagreed deficiency is assessed on a pre-petition tax period for which the statutory response time to file a Tax Court Petition had not expired when the bankruptcy case was filed, and the assessment date is post-petition, the assessment of the unagreed deficiency violated IRC § 6213. The assessment of the TC 290 or TC 300 must be reversed and reassessed after the automatic stay is lifted. (See IRM 5.9.4.3(8), *Unagreed Deficiency Assessments*.) The Insolvency caseworker must notify the bankruptcy coordinator for Exam or the AUR function when the automatic stay is lifted, allowing the bankruptcy coordinator to assess the unagreed deficiency before the ASED expires. (See IRM 5.9.18.2, *C/O Pre-discharge Review*, and IRM 5.9.18.6, *Hold Conditions*, for additional information.) These cases may be identified by a "PDSC ISSUE," "EXAM," "RE-ASSESS" or "URP/IRP" classification on the AIS "Classification Screen."
5. **"PDSC ISSUE" , "IA Issue" or "IA" Case Classification.** The Service treats the filing of a bankruptcy petition as suspending an installment agreement. Prior installment agreements must be addressed during case closure. (See IRM 5.9.4.18, *Installment Agreements and Bankruptcy*, IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing a Case*, and IRM Exhibits 5.9.17-2 through 5.9.17-5.) When a case has a prior installment agreement that must be addressed during case closure, the prior IA may be identified by the "PDSC ISSUE" , "IA Issues" or "IA" case classification.
6. **Dismissal Actions.** When closing dismissed cases, required actions include the following:
 - A. Reinstating post-petition assessments that were reversed because of the bankruptcy (see paragraph (4) above);
 - B. Addressing installment agreements that have been suspended by the bankruptcy (see paragraph (5) above);
 - C. Splitting joint accounts into two MFT 31 mirrored accounts if a non-debtor spouse issue exists;
 - D. Input of TC 521 either manually or through IIP Process J;
 - E. Documenting the AIS history screen with all closing actions, as they occur;
 - F. Inputting the method of closure and the date the case was dismissed by the court (if not already present) on the AIS Taxpayer Screen;
 - G. Forwarding case information to the Collection ATAT coordinator if an ATAT code is present on the case and
 - H. Determining if a NFTL should be filed (*IRM 5.9.17.5.7, NFTL Determinations after Dismissal*).

Note:

See Exhibit 5.9.17-1 for step tables for inputting dismissal actions on AIS and IIP.

5.9.17.5.6 (08-11-2014)

Orders Vacating Dismissal (Reinstatements)

1. **Appeal Rights.** Bankruptcy Rule 8002 allows parties of interest to file an appeal of a judgment, order or decree within 14 days of the date of entry of those actions. In the case of a dismissal, this means a debtor or debtor's attorney has 14 days from the date a dismissal is entered to appeal the dismissal order and request a reinstatement of the case. If a dismissed bankruptcy case is reinstated, an inadvertent violation of the automatic stay may occur.
2. **General Information.** Caseworkers must closely review orders vacating dismissal. In most instances, an order that vacates a dismissal does not operate to reinstate the bankruptcy stay. In other instances, the order may reinstate the bankruptcy stay on the day the order vacating the dismissal is signed and entered on the court docket. In very limited instances, the order may reinstate the bankruptcy stay to the original petition date.
3. **Automatic Stay Not Reimposed.** Unless the order vacating the dismissal states that the automatic stay is reimposed, the automatic stay does not go back into place when the dismissal is vacated. The CSED is not further suspended or extended by the bankruptcy. There may be assets that are property of the bankruptcy estate. The Service cannot take collection activity on these specific assets. Nor, can the Service generally offset a post-petition income tax refund to a pre-petition income tax liability. In these cases, the Insolvency caseworker must input a TC 520 cc 81 and a TC 520 cc 84 to all pre-petition balance due modules. The date input with the TC 520 should be the date the order vacating dismissal was entered on the court's docket. At case closure, Insolvency must input a TC 522 cc 81 and a TC 521 cc 84.

Caution:

The input of the TC 520 cc 81 will require Insolvency caseworkers to determine the disposition of income tax refunds. (See IRM 5.9.4.4, *Credits, Refunds, and Offsets*, IRM 5.9.4.4.1, *Addressing Credits, Refunds and Offsets*, IRM 5.9.16.4, *Manual Refunds*, and IRM Exhibit 5.9.16-1, *Instructions for Preparing Form 5792*, for additional information.)

4. **Automatic Stay Reimposed.** If the order vacating the dismissal states that the automatic stay is reimposed, *but does not state the stay is reimposed retroactively*, the automatic stay is reimposed to the day the order vacating dismissal was entered on the court's docket. The caseworker must input a TC 520 cc 6X with the date the order vacating dismissal was entered on the court's docket.

If the order vacating the dismissal states that the automatic stay is reimposed retroactively, the stay is reimposed to the original petition date. The caseworker must input a TC 520 cc 6X using the original petition date.

Note:

Caseworkers must consult Area Counsel when questions arise on specific cases and reimposition of the stay is unclear.

5. **MFT 31 Mirrored Accounts.** When a joint account has been mirrored into two MFT 31 accounts due to a non-debtor spouse, only the MFT 31 account for the debtor should be frozen, if required. There are exceptions in some community property states. Area Counsel should be consulted concerning community property issues or any other questions surrounding reinstatement. The Service must protect the rights of the debtor as well as the interests of the government.

5.9.17.5.7 (08-11-2014)

NFTL Filing Determinations after Dismissal

1. **NFTL Determinations.** Field Insolvency (FI) caseworkers should make a Notice of Federal Tax Lien (NFTL) filing determination when the aggregate unpaid balance of assessment (UBA) is over \$10,000 and a bankruptcy case is dismissed. Per IRM 5.12.2.1(2), a NFTL determination is the decision whether to file a NFTL, defer the filing of a NFTL, or not to file a NFTL. Field Insolvency caseworkers must apply the pre-filing considerations found in IRM 5.12.2.3, when determining if a NFTL will be filed.
2. **NFTL Considerations.** In all NFTL filing considerations, FI caseworkers should:

- Determine that the situation meets the determination and filing requirements for Notices of Federal Tax Lien (NFTLs) found in IRM 5.12.2, *Notice of Lien Determinations*. This includes making a reasonable effort to contact the taxpayer, if one has not already been made. Issuance of the statutory assessment notice and the balance due notices sent during the collection process will generally constitute a reasonable effort. Caseworkers may still wish to contact the debtor to request full payment and warn of the possible filing of a NFTL, in an attempt to resolve the case without the need to file a NFTL.
 - Verify that the automatic stay is not in effect for the periods included on the NFTL.
 - Determine whether or not a sound business reason exists to justify filing a NFTL.
 - Document the AIS history explaining the decision to file or to refrain from filing a NFTL, along with a description of all NFTL filing actions taken.
3. **Identifying Cases That Require a NFTL Determination.** FI can identify cases that require a NFTL filing determination by running the "Lien Determination" report on AIS. To identify dismissed cases assigned to the CIO and to FI that require a NFTL filing determination, FI caseworkers should generate the "Lien Determination" report on AIS using both the Centralized Insolvency Operation (CIO) Standard Employee Identifier (SEID) for the appropriate territory, and the FI caseworker's SEID, within the appropriate date parameters. These two reports will pull the dismissed cases for which a NFTL filing determination is required. FI caseworkers should include any post-petition liabilities accrued in an individual Chapter 11 dismissed case, or in a Chapter 13 dismissed case, on the NFTL when a determination is made to file a NFTL.

5.9.17.6 (08-11-2014)

Joint Account and Non-Debtor Spouse

1. **Joint Tax Liability.** When appropriate, after the debtor has received (or will be receiving) a discharge from a *joint* tax liability, the Service may consider pursuing collection from the non-debtor spouse.

Caution:

See IRM 5.9.3.6.1.1, *Community Property*, and IRM 5.9.18.5.8, *Community Property*.

- A. **Mirrored Accounts.** MFT 31 mirroring procedures are outlined in IRM 5.9.17.21, *Adjustment Methods for Discharged Liabilities*. Accounts on jointly filed returns may be split upon discharge or dismissal when only one spouse files bankruptcy.
- B. **NFTL Name Change.** When adjustments are made to the tax account on behalf of a spouse who has received a discharge from tax(es), and a valid lien exists that has been satisfied by or is no longer enforceable against the debtor spouse, Insolvency should request a partial lien release for the debtor spouse to ensure the lien will reflect *only* the name of the non-debtor spouse. (See IRM 5.9.17.17, *Release of Federal Tax Liens*.)
- C. **Return to Regular Collection.** If the case was dismissed, both accounts will return to the collection stream after MFT 31 mirroring is completed. If the bankruptcy case was discharged, the MFT 31 account of the debtor will be abated, if fully discharged, once collection from EAEP has concluded or a determination has been made not to pursue EAEP, if applicable. The MFT 31 account of the non-debtor spouse will return to the collection stream. If the balance owed by the debtor spouse was not fully discharged, the balance owed by the debtor will return to the collection stream.

5.9.17.7 (08-11-2014)

Discharge and Exceptions to Discharge

1. **Bankruptcy Discharges.** A discharge may be granted to the following:

- Individual debtors in Chapters 7, 11, 12 or 13
- Corporations, partnerships, and Limited Liability Companies (LLCs) that reorganize in Chapter 11 or Chapter 12

Note:

Discharges are not granted in Chapter 7 corporate bankruptcies, Chapter 7 partnership bankruptcies or Chapter 7 bankruptcies filed by LLCs. Discharges are also not granted in liquidating Chapter 11 cases.

2. **Discharge Date.** A discharge is effective:

- A. **In an individual Chapter 7—** when the discharge order is entered by the court;
- B. **In Chapter 11 cases filed prior to October 17, 2005—** upon confirmation of the plan (11 USC § 1141(d));
- C. **In Chapter 11 non-individual cases filed on or after October 17, 2005—** upon confirmation of the plan;
- D. **In Chapter 11 individual cases filed on or after October 17, 2005—** unless otherwise ordered, upon completion of all payments due/provided for under the plan and the entry of a discharge order;
- E. **In Chapter 11 hardship cases—** at anytime after confirmation of the plan when modification of the plan is not practicable and the court enters a hardship discharge (11 USC § 1141(5)(B));
- F. **In Chapters 12 and 13—** upon completion of all payments due/provided for under the plan and the entry of a discharge order and
- G. **In Chapters 12 and 13 hardship cases—** when the plan cannot be completed due to circumstances beyond the debtor's control (11 USC § 1228(b) and 11 USC § 1328(b)).

Note:

The date of the TC 521 releasing the bankruptcy freeze on IDRS for Chapters 7, 11, 12 and 13 is the effective date of the discharge; however, a bankruptcy is considered to be pending until the court closes the case.

3. **Complaints to Determine Dischargeability.** The Service may receive an adversarial "Complaint to Determine Dischargeability" in a bankruptcy case. The adversary may be received before the discharge or after the discharge.

If the adversary is received prior to the discharge:

- A. Input a TC 520 cc 84 with the bankruptcy petition date on the pre-petition balance due modules.
- B. Refer the case to Area Counsel (AC) or the U.S. Attorney (AUSA), as appropriate, within the locally agreed upon time frame for referrals so a timely response can be filed with the court.
- C. Add the referral to the "Referral Screen" on AIS and add a "REFERRAL" case classification.
- D. If a discharge is entered in the case before the adversary is resolved, reverse all TC 520(s) on the modules *except* the TC 520 cc 84 using the bankruptcy discharge date.
- E. Calculate the Collection Statute Expiration Date (CSED) on each of the outstanding modules.

Note:

Caseworkers should use the CSED calculator found at <http://mysbse.web.irs.gov/Collection/toolsprocesses/cscedcalculator/default.aspx> to compute the extended CSED.

- F. Notate the extended CSED in the AIS history.
- G. Advise AC or the AUSA, as appropriate, of the earliest CSED date so appropriate actions can be taken to protect the CSED.
- H. After the adversary has been resolved, request adjustment of any liabilities upon discharge, as required.
- I. Close the referral on the "Referral Screen" on AIS and close the "REFERRAL" case classification.
- J. Once all required adjustments have posted, or if no adjustments are needed, reverse the TC 520 cc 84 using the bankruptcy discharge date.

If the adversary is received after the discharge:

- A. Input a TC 520 cc 84 with the bankruptcy petition date on pre-petition modules to alert Service employees to contact Insolvency before taking any collection action on the account.
- B. Refer the case to AC or the AUSA, as appropriate, within the locally agreed upon time frame for referrals so a timely response can be filed with the court.
- C. Add the referral to the "Referral Screen" on AIS and add a "REFERRAL" case classification.
- D. Advise AC or the AUSA, as appropriate, of the earliest CSED date so appropriate actions can be taken to protect the CSED.
- E. After the adversary has been resolved, request adjustment of any liabilities, as required.
- F. Close the referral on the "Referral Screen" on AIS and close the "REFERRAL" case classification.
- G. Once all adjustments have posted, or if there are no adjustments required, reverse the TC 520 cc 84 using the bankruptcy discharge date.

Note:

If any accounts were fully or partially adjusted by the Automated Discharge System (ADS) before the adversary was received, communicate this information to AC or the AUSA, as appropriate. They may require further information on these modules.

In either of the above instances, the AIS history must be thoroughly documented with actions taken to resolve the litigation and with the final determination regarding dischargeability of the liability.

4. Pre-BAPCPA Exceptions to Discharge. 11 USC § 523 enumerates exceptions to discharge. For cases filed prior to October 17, 2005, these exceptions apply *only* to individual Chapter 7, 11, and 12 cases and Chapter 13 *hardship* discharge cases. These exceptions include:

- A. Taxes entitled to priority under 11 USC § 507(a)(8), including the trust fund portion of employment taxes and TFRP assessments;

Note:

This includes TFRP liabilities and unpaid trust fund taxes owed by the individual who has unpaid sole-proprietorship withholding liabilities, the individual who is personally responsible for unpaid withholding taxes in certain partnerships, or the individual who is the single member of a disregarded LLC with unpaid withholding taxes prior to January 1, 2009 or excise taxes prior to January 1, 2008.

- B. In an involuntary case, taxes that arise during the "gap period" between the dates of the filing of the bankruptcy petition and the order for relief under 11 USC § 507(a)(2);
- C. Taxes with respect to which a tax return was not filed;
- D. Taxes due on returns filed late (at any time after the date that is two years before the petition date) and

Caution:

This exception to discharge is also applicable to late filed post-petition returns on an 11 USC § 1305 claim when the Chapter 13 debtor received a hardship discharge.

- E. Taxes for which the debtor filed a fraudulent return or otherwise attempted willfully to evade or defeat payment.

Note:

The taxes listed above continue to be an exception to discharge in the post-BAPCPA individual Chapter 7, 11 and 12 case, as well as in the Chapter 13 *hardship* discharge.

5. BAPCPA Exceptions to Discharge. Corporations and LLCs that reorganize in Chapter 11 are also excepted from discharge under 11 USC § 1141(d)(6)(B) with respect to taxes for which the debtor made a fraudulent return or willfully attempted in any manner to evade or to defeat such tax. Also, an individual debtor may not be eligible to receive a discharge in the current case if they received a discharge in a prior bankruptcy case. Eligibility is determined by the type of bankruptcies filed and the petition date of the prior bankruptcy. (See IRM Exhibit 5.9.5-3 for additional information.)

In addition, the following categories of tax liabilities will not be dischargeable in a BAPCPA Chapter 13 case. These liabilities would have been discharged in a pre-BAPCPA Chapter 13 case if the liability was provided for in the plan and the debtor received a discharge upon completion of the plan (11 USC § 1328(a)):

- A. Trust fund taxes
- B. Taxes based on fraudulent returns or a willful attempt to evade or defeat the tax
- C. Taxes due on unfiled returns (See IRM 5.9.17.7.1 for additional information on SFRs.)
- D. Taxes due on returns filed late and after the date that is two years before the date of the bankruptcy petition

Note:

This exception to discharge is also applicable for late filed returns for post-petition taxes on an 11 USC § 1305 claim.

Example:

Late Filed Pre-Petition Return is Non-Dischargeable— John Doe filed Chapter 13 on March 29, 2009. The date that is two years before the bankruptcy petition date is March 29, 2007. He filed his 200612 income tax return on January 15, 2009. The return was due on April 15, 2007. The return was filed late and after March 29, 2007. The tax and interest on the tax is non-dischargeable.

Example:

Late Filed Post-Petition Return on a § 1305 Claim is Non-Dischargeable— John Doe filed Chapter 13 on March 29, 2009. The date that is two years prior to the bankruptcy petition date is March 2007. He filed his 200912 income tax return on December 1, 2010. The return was due on April 15, 2010. The Service filed a §1305 claim. Since the 200912 income tax return was filed late, and after March 29, 2007, the tax and interest on the 200912 return is non-dischargeable.

ADS flags the cases in the above list as it does with other exceptions to discharge. As with other exceptions to discharge, the penalty and interest on the penalty may be dischargeable. The accrued interest on non-dischargeable taxes is non-dischargeable. (See *Exhibit 5.9.17-9* for additional information.)

Reminder:

The three-year and 240-day "lookback" provision in 11 USC § 507(a)(8) are automatically tolled during a prior bankruptcy while the automatic stay is in effect. (See IRM 5.9.13.19.3(4), *BAPCPA Tolling*.) The two-year period with regard to late returns is also tolled during a prior bankruptcy.

6. **Processing Discharges when the IRS Received No Notice or Late Notice.** There may be instances when a debt is non-dischargeable because IRS received no notice of the bankruptcy case or late notice in the bankruptcy case. Caseworkers must follow *IRM 5.9.17.7.9, Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case*, below. These procedures are applicable in Chapter 7 Asset, Chapter 11, Chapter 12 and Chapter 13 cases. See IRM 5.9.17.9(4) for late notice in the Chapter 7 No Asset case.
7. **Non-Pecuniary Loss Penalties - Nondischargeable (Within Three Year Rule).** Pursuant to 11 USC § 523(a)(7), *Exceptions to Discharge*, a non-pecuniary loss penalty (a punitive penalty) relating to a tax is non-dischargeable if:

- A. It relates to a tax that is non-dischargeable under 11 USC § 523(a)(1), and
- B. If the transaction or event that gave rise to the penalty occurred within the three years before the bankruptcy was filed (in the three years prior to the petition date). See *Exhibit 5.9.17-9* to determine when penalties are dischargeable in the Chapter 13 case with discharge upon completion of the plan. See *Exhibit 5.9.17-11* to determine when penalties are dischargeable in all other cases.

Note:

The "transaction or event" date may vary according to the date the event occurred. This "transaction or event" date varies according to the type of penalty. For example, an extension for filing a return is not an extension for paying the tax. The "event date" for the failure to file penalty is changed by an approved extension for filing the return. The "event date" for the failure to pay penalty is not changed by an approved extension for filing the return. An extension for filing is not an extension for paying.

Examples of non-pecuniary loss penalties are:

- Failure to pay penalty
 - Failure to file penalty
 - Failure to deposit penalty
 - Failure to make estimated tax penalty
 - Fraud penalty
 - Negligence penalty
 - Substantial underpayment of tax penalty
8. **Non-Pecuniary Loss Penalties — Dischargeable (Over Three Year Rule).** Courts have also held any non-pecuniary tax penalty *more than three years old from the bankruptcy petition filing date is dischargeable, even if the underlying tax is deemed to be non-dischargeable*. Therefore, any non-pecuniary tax penalty imposed with respect to a transaction or event that occurred more than three years before the date the debtor filed for bankruptcy is dischargeable.
9. **Interest and Post-petition Penalties on Non-dischargeable Taxes.** *Pre-petition and post-petition interest on non-dischargeable taxes are non-dischargeable*, as are any post-petition penalties on these taxes. *This includes interest that accrues on non-dischargeable taxes during the bankruptcy plan*. However, certain post-petition penalties do not accrue while a bankruptcy case is pending under IRC § 6658.
10. **Trust Fund Recovery Penalty (TFRP).** The Trust Fund Recovery Penalty (TFRP) is a withholding tax for bankruptcy purposes. The TFRP is assessed to reimburse and compensate the government for an actual loss of unpaid withholding taxes. The TFRP is *not* dischargeable even when the TFRP assessment date is more than three years prior to the bankruptcy petition date. For cases filed post-BAPCPA, the TFRP is non-dischargeable even if the TFRP has not been assessed. It does not matter if the TFRP has been claimed. For example, if a Chapter 13 debtor is determined to be responsible for pre-petition trust fund taxes, the TFRP can be assessed and collected after the discharge has been granted by the court even though the liability was not included on a proof of claim in the Chapter 13 case.

Note:

The super discharge provisions in a Chapter 13 case apply for a TFRP assessment when the bankruptcy petition was filed prior to October 17, 2005. Trust fund taxes for cases filed on or after October 17, 2005, are not dischargeable even when the IRS files an untimely claim or does not file a claim at all.

11. **Valid Pre-petition Tax Liens.** 11 USC § 524 bars creditors, including the IRS, from seeking to collect discharged debts from the debtors personally. However, *NFTLs that are still valid may be enforceable against exempt, abandoned or excluded property (EAEP) owned by the debtor before bankruptcy, even though the tax debt was discharged*.

Reminder:

Property abandoned or excluded from the bankruptcy estate may be pursued after discharge based on the statutory lien even when no NFTL was filed prior to the bankruptcy petition date.

12. **Adjustment of Tax Accounts/Collection Determination.** Generally, Insolvency should immediately begin the adjustment of tax accounts that are discharged. However, adjustments should be delayed in cases with possible collection from exempt, abandoned or excluded property (EAEP). Or, if it is known a trustee's final distribution will be received after discharge, adjustment of accounts may be delayed until the final payment has posted when the Service has a secured claim. If payments should come in after the closure of an account, a TC 972 can be input to reverse the abatement, the payment(s) entered and the case re-closed once the payments have posted to IDRS. The payments may be also be applied to the Unidentified Remittance File (URF).

13. **TABLE – Showing Basic Discharge Information.** The table below shows, by bankruptcy chapter, when/if a discharge is available and the timing and effect of discharge on taxpayer entities.

Bankrupt Entity	Chapter 7	Chapter 11	Chapter 12	Chapter 13
Individual	When a discharge order is entered.	<i>For cases filed prior to October 17, 2005:</i> When the plan is confirmed. <i>For cases filed on or after October 17, 2005:</i> When a discharge order is entered upon completion of all plan payments or when a hardship discharge is granted. Note: Depending on facts, debtors with liquidating individual plans may not receive discharge. 11 USC § 1141(d)(3).	When a plan is completed and a discharge order is entered or when a hardship discharge granted.	When a discharge order is entered upon completion of all plan payments or when a hardship discharge is granted.
Corporation	Discharges are not granted in CH 7 for corporations, partnerships or LLCs,	When the reorganization plan is confirmed. There is no discharge in a Chapter 11 liquidation.		Corporation cannot file CH 13.
Partnership				Partnerships cannot file CH 13.
Limited Liability Company (LLC)		When the reorganization plan is confirmed. There is no discharge in a Chapter 11 liquidation.		A Limited Liability Company (LLC) cannot file CH 13.

5.9.17.7.1 (08-11-2014)

Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared

1. **Unfiled Return Excepted from Discharge.** 11 USC § 523(a)(1)(B)(i) provides an exception to discharge for a tax debt for which no return was filed. On September 2, 2010, the Office of Chief Counsel issued Chief Counsel Notice CC-2010-016, *Litigating Position Regarding the Dischargeability in Bankruptcy of Tax Liabilities Reported on Late Filed Returns and Returns Filed After Assessment*, to set forth the official position of the Service when a delinquent Form 1040 has been received. The notice makes it clear that not every tax for which a return was filed late is non-dischargeable. Rather, it is the position of the Service that when a debtor submits a Form 1040 after the SFR assessment, only the portion of the tax that was not previously assessed is subject to discharge because a debt assessed prior to the filing of a Form 1040 is a debt for which a return was not "filed" within the meaning of § 523(a)(1)(B)(i).

It is the position of the Service, and the position of most courts, that when a debtor submits a Form 1040 after the assessment under IRC § 6020(b), only the portion of the tax that was not previously assessed is subject to discharge. Although this position is supported by most courts, it is not supported in the 8th Circuit, which includes North Dakota, South Dakota, Nebraska, Iowa, Missouri, Minnesota and Arkansas. See *IRM 5.9.17.7.1(3)* below for the position of the 8th Circuit.

If the Form 1040 filed after the assessment reported no additional tax or a tax decrease, no portion of the tax is dischargeable. Only additional tax reported on the Form 1040 is subject to discharge. Thus, a specific tax year may have a portion of the tax that is subject to discharge and a portion that is excepted from discharge under 11 USC § 523(a)(1)(B)(i).

2. **Procedures in All Jurisdictions Except the 8th Circuit.** When there has been a SFR made by Examination or the SFR Unit, the caseworker must determine if the outstanding liability is subject to discharge. To determine discharge upon completion of a Chapter 13 bankruptcy plan, follow the procedures in *Exhibit 5.9.17-6, Determining Dischargeability upon Completion of the Chapter 13 Plan when a SFR Assessment is Present*. Follow the procedures in *Exhibit 5.9.17-7, Determining Dischargeability when a SFR Assessment is Present in the Chapter 11 or Chapter 7 Individual Case and in the Chapter 13 Case with a Hardship Discharge*, in other chapters.

In order to determine if the outstanding liability is subject to discharge, the caseworker must first determine if outstanding assessments are due to a SFR assessment or from a tax return received by the Service. A transaction code (TC) 599 closing code (cc) 89 can indicate an "agreed SFR" or a "return secured." To determine if the TC 599 cc 89 is an "agreed SFR" or a "return secured," the caseworker must consider the following:

- Is there a TC 976, TC 977 or TC 610 present? Generally, when a return has been received, a TC 976, TC 977 or TC 610 will be present on the module on the Integrated Data Retrieval System (IDRS). The transaction date of the TC 976, TC 977 or TC 610 indicates the Service received date.
- If there is no TC 976, TC 977 or TC 610 present that clearly indicates that the Service has received a Form 1040, additional research must be conducted:
 - a) TXMODA must be reviewed for history items that indicate receipt of the tax return.
 - b) Account Management Services (AMS) may contain entries that indicate that the return has been filed or received, or may clearly state that no return was received and the assessment was due to the receipt of a signed waiver agreeing to the SFR.
 - c) When the SFR was prepared by the Examination function, as indicated by the presence of a TC 300 on the TXMOD, there may be information present on IDRS through command code AMDISA that indicates if a return was received or if a waiver was secured agreeing to the SFR assessment.

When the TC 599 cc 89 is present, and electronic research does not support that the debtor has submitted a tax return, the caseworker should treat the TC 599 cc 89 as an "agreed SFR" and the assessments will be non-dischargeable, as no return has been filed. The caseworker should be aware that there are instances when the tax may be non-dischargeable, but the penalties are dischargeable. Specifically, when the return due date was more than 3 years prior to the petition date. See *Exhibit 5.9.17-9* to determine if penalties are dischargeable when the debtor received a discharge upon completion of a Chapter 13 plan. See *Exhibit 5.9.17-11* to determine if penalties are dischargeable in all other cases.

Caseworkers must follow *IRM 5.9.17.7.1(4)* below when a complaint to determine dischargeability or other adversary is received in the case.

3. **Procedures in the 8th Circuit.** Courts in the 8th Circuit follow the position set forth in the case of *In re Colson*, 446 F. 3d 836 (8th Cir. 2006). The 8th Circuit consists of courts in North Dakota, South Dakota, Nebraska, Iowa, Missouri, Minnesota and Arkansas. In these locations, the position of the court is that when the debtor files a document (e.g., a tax return form) that on its face evinces an honest and reasonable attempt to satisfy the tax laws, it qualifies as a tax return, whether or not it was filed after a SFR assessment. As such, if the return was filed by the debtor more than 2 years prior to the bankruptcy petition date, the entire liability (including the SFR assessment) is discharged. If the return was filed within 2 years of the petition date, the entire tax liability is non-dischargeable. It does not matter if the tax return filed by the debtor is a refund return, reports no additional tax or reports additional tax.
4. **Adversary Complaints to Determine Dischargeability.** In all courts, caseworkers must follow the steps below when a complaint to determine dischargeability or any other adversary is received. This includes following the procedures in *IRM 5.9.17.7(3), Complaints to Determine Dischargeability*. In these instances:

- A. If a complaint to determine dischargeability or other adversary is received, the case must be assigned to Field Insolvency (FI).
- B. The case should be directly referred to the U.S. Attorney unless it involves the denial of discharge based on 11 USC § 523 (a)(1)(C). Cases involving 11 USC § 523 (a)(1)(C) should be referred to Area Counsel. Upon referral, a "Referral Screen" should be opened on AIS. A "REFERRAL" case classification should also be opened to prohibit closure of the case while the case is being litigated.
- C. The caseworker must order the assessment package including attachments. Methods for ordering the package depend on local procedures. However, the package can be ordered using IDRS command code ESTAB. It is not necessary for the caseworker to wait for receipt of the assessment package before referring the case to the U.S. Attorney or Area Counsel. The assessment package can be forwarded upon receipt.
- D. If the assessment package cannot be secured, the TC 599 cc 89 will be treated as a filed return and all applicable discharge rules will be applied.

E. Once the litigation has been completed, the caseworker must close the "Referral Screen" and close the "REFERRAL" case classification. If a discharge has been entered in the case, the caseworker must adjust any modules requiring adjustments. Once adjustments have posted, the caseworker must request reversal of any TC 520(s) bankruptcy freezes on the account.

Note:

Contact Area Counsel with any questions regarding application of the discharge exception under 11 USC § 523(a)(1)(B)(i) involving a Form 1040 filed after the assessment of a SFR return.

5.9.17.7.2 (08-11-2014)

The Fraud or Willful Evasion Exception

1. **Exception to Discharge.** Written concurrence of Area Counsel must be obtained to withhold adjustment actions on an otherwise dischargeable tax liability based on the *fraud or willful evasion* exception under 11 USC § 523(a)(1)(C).
2. **IRM Guidelines.** Insolvency employees must follow IRM 5.9.4.14.4, *Referral Tolerances*, for guidelines in determining which cases to refer to Area Counsel under 11 USC § 523(a)(1)(C) for the fraud or willful evasion exceptions to discharge. All referrals to Area Counsel must be prepared by Field Insolvency.
3. **BAPCPA Provision.** Taxes covered under Chapter 13 petitions filed on or after October 17, 2005, are excepted from discharge for fraud or willful evasion. They were not excepted from discharge in the pre-BAPCPA Chapter 13 case with a discharge upon completion of the plan. Liabilities in all other bankruptcy chapters are also excepted from discharge for fraud or willful evasion.

5.9.17.7.3 (08-11-2014)

Discharge Denied

1. **Like a Dismissal.** If a discharge is denied, debts are not forgiven. A denial of discharge is treated the same as a dismissal. The closure method on the AIS Taxpayer Screen should be "DISCHARGE DENIED." The date the order denying discharge was entered on the court's docket should be placed in the "Dismissed" date field on AIS. IIP systemically reverses the TC 520(s). In the case of a joint balance due account when only one spouse has filed bankruptcy, using "DISCHARGE DENIED" allows for systemic creation of two MFT 31 mirrored accounts. (See IRM 5.9.17.22.1, *MFT 31 Mirror Modules*.)
2. **Counsel Referral.** If a caseworker identifies circumstances under which the debtor may have committed an act justifying a denial of discharge, the case should be referred to Area Counsel to consider an objection to discharge.

Note:

11 USC § 727 enumerates conditions that may result in a denial of discharge in a Chapter 7 case.

3. **Automatic Stay.** When an order denying discharge is issued by the court, the automatic stay in effect for the debtor is lifted. (11 USC § 362(c)(2)(C)) The automatic stay remains in effect against property of the estate until the property is no longer property of the estate. (11 USC § 362(c)(1)) If the debtor is a serial filer, the stay against the debtor may terminate prior to the order denying discharge or may have never gone into place against the debtor. (See IRM 5.9.5.7, *Serial Filers*.)

5.9.17.7.4 (08-11-2014)

Chapter 7 Revocation of Discharge

1. **Revocation Criteria.** A Chapter 7 discharge may be revoked by the court upon the request of the trustee, a creditor or the United States Trustee, if:
 - A. The discharge was obtained through fraud which the requesting party did not know of until after the discharge was granted and the request was made *within one year* after the discharge was granted;
 - B. The debtor acquired property of the estate and knowingly and fraudulently failed to report the acquisition of or entitlement to property of the estate, or failed to surrender same to the trustee; or
 - C. The debtor refused to obey a lawful order of the court, or to respond to a material question approved by the court, or to testify (other than on the ground of privilege against self-incrimination).
2. **Time Frame for Request.** A revocation request pursuant to b) or c) above must be made before the later of one year after the granting of the discharge or the date the case is closed under certain conditions (11 USC §§ 727(e)(1), 727(e)(2)(A), 727(e)(2)(B)).

5.9.17.7.5 (05-16-2008)

Chapter 11 Revocation of Confirmation/Discharge

1. **Revocation Criteria.** On request of a party in interest, the court may revoke a Chapter 11 order of confirmation or a discharge of a debtor after notice and hearing only if the order of confirmation or discharge was obtained through fraud.
2. **Time Frame for Request.** A revocation request must be submitted any time before 180 days after the date of entry of the order of confirmation (11 USC § 1144).

5.9.17.7.6 (05-16-2008)

Chapters 12 and 13 Revocations of Discharge

1. **Revocation Criteria.** A Chapter 12 or Chapter 13 discharge may be revoked by the court after notice and hearing if the discharge was obtained by the debtor through fraud and the requesting party in interest did not know of the fraud until after the discharge was granted (11 USC § 1228(d) and 11 USC § 1328(e)).
2. **Time Frame for Request.** The request must be submitted by a party in interest before one year after a discharge has been granted.

5.9.17.7.7 (08-11-2014)

Following Revocation

1. **Required Actions Following Revocation.** A notice of discharge revocation acts in the same manner as a notice of dismissal. If adjustments have been made to a tax module based on a successfully completed bankruptcy prior to the receipt of the notice of revocation, those adjustments must be reversed. If a discharge adjustment resulted in a lien release, the lien release must be revoked regardless of dollar amount. The lien release revocation re-establishes the statutory lien. However, a new NFTL must be filed to protect the government's interest in the taxpayer's property. See the following IRM sections for information regarding revocations:

- IRM 5.12.3.14, *Revocation of Certificate of Release*;
- IRM 5.12.3.15, *Reinstatement of Lien*;
- IRM 5.12.3.16, *Filing of Revocation Certificates*; and
- IRM 5.17.2.8.8, *Revocation of Release of Lien and Nonattachment of Lien*.

5.9.17.7.8 (08-11-2014)

Discharge and Restitution Assessments

1. **Background.** Following the conviction of a defendant for a criminal tax violation or tax-related offense, the court may order the defendant to pay restitution. The requirement that the defendant pay restitution will be contained in a document signed by the judge called a Judgment and Commitment (J & C) Order. In 2010, Congress amended IRC § 6201 to provide that the IRS shall assess and collect tax-related restitution in the same manner as if such amount were tax. This change in Section 6201 applies to restitution in all J & C Orders entered after August 16, 2010. Restitution assessments against individuals will be made on Master File Transaction (MFT) 31 and can be identified by Transaction Code (TC) 971 with Action Code 102. Restitution ordered in the case of an individual will be assessed with one of the following:

- TC 290 with Reason Code (RC) 141 through 150
- TC 300 with RC 141 through 150
- TC 298 with RC 141 through 150

Restitution assessed against a Business Entity (BMF) will be on MFT 02, 06, 05, etc. It is expected that restitution assessments on a BMF account will be rare.

TC 971 with action codes 180 through 189 will reflect the type of tax and tax periods for which the restitution was ordered. Most restitution assessments will be made against individual taxpayers, even if the restitution assessment relates to a BMF source.

Example:

Taxpayer A was convicted of criminal failure to collect or pay over tax under IRC § 7202, and was ordered to pay restitution in the amount of \$30,000. This amount was calculated based on the tax loss resulting from the taxpayer's failure to pay employment taxes in the amount of \$10,000 for each of the last three quarters of 2007. The assessment will be made against Taxpayer A, under his social security number (SSN), even though the assessment relates to the liability of a business.

Restitution-based assessments will be a mirror assessment of (although not necessarily identical to) the tax liability assessed pursuant to a civil exam, creating two separate assessments. Although the restitution-based assessment and civil tax liability assessment are distinct, the IRS generally may not collect both assessments in full for the same period because it would constitute impermissible double collection. In these cases, any payments made to satisfy the restitution-based assessment must also be applied by the Service to satisfy the civil tax liability for the same tax periods.

However, there are certain circumstances where the restitution is not related to the taxpayer's own civil tax liability for the same period. In such cases, collection in full of both the restitution-based assessment and the criminal defendant's personal tax liability is permissible.

Example:

Taxpayer B is an officer of Corporation B, and was convicted under IRC § 7202 of criminal failure to collect or pay over corporate income tax for 2007 and ordered to pay restitution. The restitution was calculated based on the tax loss resulting from the taxpayer's failure to collect, account for, and pay over Corporation B's 2007 income tax. In addition to this restitution order that covers corporate income tax liabilities, Taxpayer B is also personally liable for the same tax period (2007) for nonpayment of his personal income tax liability. In this situation, collection of both assessments in full is permissible; the Service will be separately collecting Taxpayer B's restitution-based assessment as well as the assessment of his personal income tax liability for the same year without cross referencing the two accounts.

Single points of contact are designated in Advisory to serve as liaisons for restitution cases, referred to as Advisory Probation Liaisons (APL). The APL can provide information regarding the terms for payment of the restitution, and are responsible for monitoring whether the taxpayer is in compliance with the J & C Order. APLs are an important resource for Insolvency caseworkers in handling cases with restitution assessments.

A list of the APLs is located at <http://mysbse.web.irs.gov/AboutSBSE/Collection/fieldcoll/aiq/aiqorg/contacts/19176.aspx>. In the event that the list does not contain the current APL, caseworkers should contact the Advisory group for the state listed in Pub 4235.

2. **Classifying a Case as Restitution.** When a revenue officer or an APL learns that a taxpayer against whom a restitution assessment has been made has filed bankruptcy, the revenue officer or APL will contact the Centralized Insolvency Operation (CIO) and inform them that the bankruptcy involves a restitution assessment. The revenue officer or APL should call the CIO and provide this information even if the IRS has otherwise received notice of the bankruptcy case and the case has been opened on AIS. The CIO caseworker should input "CRIMREST" on the case classification screen and note the information provided by the revenue officer or APL in the history.
3. **Case Assignment.** Field Insolvency will work all cases with Criminal Restitution assessments. These cases will not be assigned to CIO. Criminal Restitution is considered to be a complex issue. (See IRM 5.9.1.4, *The Role of Insolvency*, for additional information.)
4. **General Discharge Procedures.** Pursuant to 11 USC §§ 523(a)(13) and 1328(a)(3), restitution amounts ordered in the J & C Order are not subject to discharge in an individual debtor's case filed under any chapter of the Bankruptcy Code. If restitution is ordered against an entity, i.e., a non-individual, who later files a Chapter 11 case, the restitution assessment will not be discharged to the extent the Chapter 11 plan provides for payment of the liability. (See 11 USC § 1141(d)(1)(A)) Further, the tax loss ordered to be paid as restitution would probably qualify as a tax for which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat the tax. (See 11 USC § 1141(d)(6)(B))

Note:

Consult Area Counsel should questions arise regarding the willful evasion or fraud exception to discharge in these cases.

For purposes of the discharge, interest will be treated in the same manner as the tax to which it relates. Accordingly, interest will not be discharged if the restitution assessment is not discharged. The only penalty which may accrue on a restitution assessment is the failure to pay penalty. The failure to pay penalty on restitution assessments should be treated like any other penalties in bankruptcy that relate to non-dischargeable taxes, except in Chapter 13 cases, and will not be subject to discharge if the failure to pay occurred within three years of the bankruptcy case.

The dischargeability of any additional assessments on the module which are not for restitution will be determined based on the guidelines contained in *IRM 5.9.17.7, Discharge and Exceptions to Discharge*, and *IRM 5.9.2.10.1, Bankruptcy Discharges and Collection*. Caseworkers should pay particular attention to whether the taxes are non-dischargeable because the debtor filed a fraudulent return or made a willful attempt to evade or defeat the tax, and should follow the procedures contained in *IRM 5.9.17.7.2, The Fraud or Willful Evasion Exception*.

5. **Discharges on IMF Accounts.** Criminal restitution assessments will be identified by a new "CRIMREST" Discharge Determination Report (DDR), which will be present on Individual Master File (IMF) restitution assessments. The restitution assessment and the interest should not be discharged on an IMF module. If the module contains only the restitution assessment and interest, the DDR should be worked by taking the following actions:

- A. Input a TC 521 with the appropriate closing code to reverse the open TC 520.
- B. On the AIS ADS screen, enter **M** (manually processed) in the "DECISION" field next to the corresponding DDR.
- C. Click "Save" in the top right corner of the ADS screen.

D. Document the AIS history screen with all actions taken.

If the penalty and interest on the penalty are dischargeable, caseworkers should work the "CRIMREST" DDR in these cases by taking the following actions:

- A. Input TC 971 AC 033 on all partially dischargeable modules using command code REQ77.
- B. Input appropriate abatement transactions on IDRS for the penalties using command code REQ54.
- C. At the same time the penalty abatements are input to IDRS using command code REQ77, input TC 521 with appropriate closing codes(s) with a three cycle posting delay.
- D. On the AIS ADS screen, enter **M** (manually processed) in the "DECISION" field next to the corresponding DDR.
- E. Click "Save" in the top corner of the ADS screen.
- F. Document the AIS history with all actions taken.

If the penalty and interest on the penalty are not dischargeable, caseworkers should work the "CRIMREST" DDR in these cases by taking the following actions:

- A. Input TC 521 with the appropriate closing code to reverse the open TC 520.
- B. On the AIS Automated Discharge System (ADS) screen, enter **M** (manually processed) in the "DECISION" field next to the corresponding DDR.
- C. Click "Save" in the top right corner of the ADS screen.
- D. Document the AIS history with all actions taken.

6. Discharges on BMF Accounts. If the restitution assessment was established on a BMF module and the taxpayer:

- Filed a Chapter 7 case or a liquidating Chapter 11 case, caseworkers should close the case using the procedures in *IRM 5.9.17.11* and *IRM 5.9.17.12*, as no discharge is granted.
- Filed a regular, non-liquidating Chapter 11 case, the restitution assessment will be discharged except to the extent the plan or plan confirmation order provides otherwise, or to the extent that § 1141(d)(6) applies (mentioned above). Caseworkers should follow the instructions contained in *IRM 5.9.17.12.1* in closing these cases. In the event that any portion of the restitution assessment or related interest may have been discharged, caseworkers should contact the appropriate APL and Area Counsel about the discharge.
- Document the AIS history to reflect the actions taken.

5.9.17.7.9 (08-11-2014)

Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case

1. **Background.** Bankruptcy Code § 523(a)(3) provides that an individual debtor is not discharged of a debt if the creditor does not receive notice in time to file a timely proof of claim because the debtor failed to include the creditor on the schedules and statements. This provision does not apply if the creditor otherwise has timely notice or actual knowledge of the case. This provision applies to Chapter 7 Asset, Chapter 11, Chapter 12 and Chapter 13 cases. It does not apply to Chapter 7 No Asset cases, as no proof of claim is filed.

The Bankruptcy Code does not give a minimum time period by which a debtor must give notice of the bankruptcy filing to a creditor in order for the notice to be timely. The cases in which the courts have addressed this issue have used varying time periods, with court decisions stating that 30 days is enough time for a creditor to file a proof of claim, but 12 days is not enough. =====

2. **Procedural Changes.** Before following the procedures below, Field Insolvency employees must check PACER to determine if the IRS was listed as a creditor prior to receipt of the current "late" notice. Field Insolvency should check the following on PACER:

- The creditor mailing matrix,
- Original Schedules D, E and F,
- Any amendments to Schedules D, E and F,
- Any documents stating an amendment has been made to the creditor mailing matrix, and
- Any other pertinent documents on PACER.

Note:

When the creditor mailing matrix is amended to add additional creditors, the creditors are added to the matrix but there is no indication to show when they were added. However, any amendments made to the creditor mailing matrix will be shown on the PACER docket report. The method of reflecting these amendments varies between courts. If the Internal Revenue Service is shown on the creditor mailing matrix but the Service did not receive notice, it will be necessary to review the PACER docket report for any docket entries showing amendments to Schedules D, E or F, or showing that amendments were made to the creditor mailing matrix.

If research shows that the IRS was previously given notice at the correct address =====, the notice should be treated as timely even if the Internal Revenue Service did not receive the notice. In this situation, caseworkers should note the details of the prior notice in the history and process the case without following the procedures in this subsection.

3. **Determining if a Timely Proof of Claim Can be Filed.** When notice of a bankruptcy case is received in a Chapter 7 Asset, Chapter 11, Chapter 12 or Chapter 13 case filed by an individual when the bar date has expired or is imminent, caseworkers must determine if a proof of claim can still be filed which will either be timely or will still allow the Internal Revenue Service to receive payment in the bankruptcy case. Procedures in this subsection should be followed for all cases in which notice is received =====

If the bar date has not expired when notice is received, caseworkers should make every effort to file a proof of claim before the bar date passes. Caseworkers should not refrain from filing a proof of claim in order to have the taxes treated as non-dischargeable because the notice was not received timely.

Caution:

The bar date field in AIS is generally computed as being 90 days from the first date set from the first meeting of creditors. Caseworkers should not rely on this as being the bar date, but should also compute whether the governmental bar date has not expired using the period of 180 days from the filing of the petition. Additionally, if the bar date has not expired because of some other procedure, such as when a new bar date is set after a case is converted, the bar date should also be considered to be open even if AIS shows it as expired.

If the bar date has expired, but the proof of claim will still be allowed under the provisions of the Bankruptcy Code or under local procedures, the proof of claim should be filed.

Example:

The Internal Revenue Service can still receive payment for priority taxes on a proof of claim filed after the bar date in a Chapter 7 Asset case if the proof of claim is filed on or before the earlier of: (1) the date that is 10 days after the mailing of the summary of the trustee's final report; or (2) the date on which the trustee commences final distribution of the estate.

Example:

In some jurisdictions, a proof of claim is considered to be timely in a Chapter 13 case even when filed after the bar date if the debtor failed to give timely and/or proper notice of the bankruptcy to the affected creditor.

If notice is received and a late proof of claim will not be allowed under the Bankruptcy Code or local procedures, no proof of claim is required to be filed where the caseworker determines such claim cannot be timely filed. The caseworker should obtain managerial approval for any decision not to file a proof of claim. The caseworker should document the history as to when and how the notice was received, and why it was not possible to file a timely proof of claim. The manager should document the history with a concurrence that a claim should not be filed. The case should then be processed as non-dischargeable as set out below.

Note:

If the notice was received the caseworker should consider consulting Area Counsel on whether the courts in the jurisdiction where the case is pending have established a firm date by which notice will be considered to be untimely. The caseworker may also want to consult Area Counsel if notice was received during this time period and exceptional circumstances, such as a system outage, prevented the caseworker from filing a proof of claim before the expiration of the bar date. When notice is and the caseworker has determined that a proof of claim could not be timely filed, the caseworker should consider whether a suit referral should be made to Area Counsel. A referral should be made for a suit to determine dischargeability when it is questionable if the notice was untimely before treating the taxes as non-dischargeable. Caseworkers should apply the tolerance amounts for referrals, absent exceptional circumstances.

4. **Adding a "NoNotice" Classification to the AIS Case Classification Screen.** A new case classification of "NoNotice" has been created on AIS for use in cases in which the debtor did not give timely notice of the bankruptcy case. This classification should only be used for:

- Cases filed by individuals under Chapter 7 Asset, Chapter 11, Chapter 12 or Chapter 13;
- Notice was given or it was determined by Area Counsel or through litigation that the notice was untimely; and
- No proof of claim was filed.

The "NoNotice" classification will prevent the case from being closed while the classification is still open.

At the time the caseworker determines that a timely proof of claim cannot be filed, the "NoNotice" classification should be added to the case classification screen. Caseworkers should follow the procedures in IRM 5.9.5.4 through IRM 5.9.5.4.4.4 for AIS history documentation.

The AIS history should be documented to include:

- Date notice was received;
- When the bar date expired;
- If notice was received prior to the expiration of the bar date;
- Concurrence by the manager in any decision not to file a proof of claim when notice was received prior to the expiration of the bar date;
- Every opinion received from Area Counsel; and
- Statement that the liabilities are non-dischargeable for lack of timely notice.

5. **Closing Cases in Which Notice was not Given Timely.** A new case closure method of "No Notice" has also been created on AIS. When the "NoNotice" case classification is present, the case should be closed using the "No Notice" case closure method below. The procedures for closing Chapter 7 No Asset cases outlined in IRM 5.9.17.9(4) do not change, even if the debtor did not give timely notice.

6. **Field Insolvency Procedures.** For Chapter 11 and Chapter 12 cases, when the discharge is entered in a case with a "NoNotice" classification, Field Insolvency caseworkers should input the discharge date, but should take any closure actions necessary as if the case were dismissed.

Example:

The Field Insolvency caseworker may need to arrange for MFT 31 mirroring pursuant to IRM 5.9.17.21, or for reinstatement of an installment agreement.

Field Insolvency caseworkers should take the following actions to close out these cases:

- Input the date the discharge was entered by the court;
- Input the date notice of the discharge was received by the Internal Revenue Service;
- Close the "NoNotice" classification on the classification screen;
- Select the "No Notice" case closure method;
- Request the TC 521 through IIP (Process J); and

- Reinstate any installment agreement(s) if the criteria for reinstatement is met.

7. **CIO Procedures.** When Chapter 7 Asset and Chapter 13 cases are received for discharge processing and there is a case classification of "NoNotice", the caseworker should review the history to verify that timely notice was not received by the Internal Revenue Service and that a determination was made that the taxes are non-dischargeable. Caseworkers should then follow the instructions in IRM 5.9.18.2 and treat the case as if it were dismissed. The actions to be taken include:

- Inputting the date the discharge was entered by the court, if no notice of the discharge was previously received;
- Inputting the date the notice of the discharge was received by the Internal Revenue Service, if it was not previously received;
- Closing the "NoNotice" classification on the classification screen;
- Selecting the "No Notice" case closure method;
- Requesting TC 521 through IIP (Process J); and
- Reinstating any installment agreement(s).

5.9.17.8 (08-11-2014) Discharge Injunction

1. **Preventing Violations of the Discharge Injunction.** Under 11 USC § 524, a discharge operates as an injunction against the continuation or commencement of any act to collect the discharged debt against the debtor personally. General collection actions must not be taken, including sending balance due notices, serving wage levies, or making offsets of post-petition refunds to discharged liabilities. Collection against pre-petition exempt property of the estate which is subject to a lien may be taken without violating the discharge injunction. Collection may also be taken against pre-petition property abandoned or excluded from the estate due to the statutory lien, even if a pre-petition NFTL was not filed.
2. **Service Prohibition.** The Service can be liable for damages if the discharge injunction is violated (IRC § 7433(e)). The Service, therefore, is prohibited from taking actions to collect, recover, or offset post-petition refunds on any discharged debt.
3. **Adjusting Accounts.** To prevent violations of the discharge injunction under 11 USC § 524, Insolvency should take timely and precautionary measures when adjusting accounts having discharged liabilities. Dischargeable modules must be kept under TC 520 (freeze code) control until all dischargeable modules have been fully adjusted.

5.9.17.9 (08-11-2014) Chapter 7 Discharge Actions

1. **Partnerships, Corporations and Limited Liability Companies (LLCs).** Discharges are not granted in partnership, corporate or LLC Chapter 7 cases. (See IRM 5.9.17.10 and 5.9.17.11 below.)
2. **Ineligibility to Receive a Discharge Due to a Discharge in a Prior Case.** An individual may not be eligible to receive a discharge in the current Chapter 7 case if they received a discharge in a prior bankruptcy case. Eligibility is based on the petition date of the prior bankruptcy, the prior bankruptcy chapter and the petition date of the current Chapter 7 case. It is also based on whether the discharge in the prior bankruptcy was in a case filed pre-BAPCPA or post-BAPCPA. See 11 USC § 727(a)(7), 11 USC § 727(a)(8) and IRM Exhibit 5.9.5-3 for additional information.
3. **No Asset Discharge for Individual Debtors.** When an individual debtor receives a discharge in Chapter 7 No Asset case, unless the account is tagged for manual processing, the CIO runs the case through the Automatic Discharge System (ADS) for systemic adjustments. Absent the generation of a discharge determination report (DDR), all closing actions including lien releases will be completed without caseworker intervention. Many Chapter 7 no asset cases are investigated prior to the discharge for collection potential from exempt, abandoned or excluded property (EAEP) and for the willful evasion exception to discharge, when required. The investigation is usually early in the case. In these instances, there should be documentation in the AIS history to assist caseworkers in the resolution of any DDRs for EAEP or the DDR for willful evasion. If there is no collection potential from EAEP, there should be a "No EAEP" case classification on AIS. If there is no indication of willful failure to pay, there should be a "No WFTP" case classification on the case. See IRM 5.9.17.4, *Exempt, Abandoned or Excluded Property (EAEP)*, and subsections for additional information.

Because the bankruptcy law regarding the scope of a Chapter 7 discharge is complex, if manual processing of Chapter 7 cases is required, Area Counsel should be consulted for legal guidance, if necessary when issues are not clarified within this IRM.

Reminder:

If a trustee refund turnover request remains valid on a discharged case, the CIO must identify and monitor that case for posting of the refund post-discharge.

4. **Lack of Notice in Chapter 7 No Asset Cases.** When Insolvency is advised of a discharge of a Chapter 7 No Asset bankruptcy not input on AIS and dischargeable pre-petition liability exists, regardless of the reason for the AIS omission, the Insolvency caseworker will take the following actions:
 - A. Research the docket number on the court's electronic records.
 - B. Load the account onto AIS.
 - C. Take immediate action to correct any violations of the stay or discharge injunction.
 - D. Document the AIS history with circumstances of the late notification and IRS actions taken.
 - E. Input the discharge date on the AIS Taxpayer Screen.

The case will appear on the next Court Closure Follow-up Report where the discharge will be processed normally through ADS.

5. **Asset Discharge for Individual Debtor.** Final distribution of funds in a Chapter 7 Asset case filed by an individual may come months or years after the court has entered a discharge or denial of discharge in the case. If there is no NFTL on file, or if there is no collection potential from abandoned or excluded property after the bankruptcy discharge, there is no reason to keep the case open for a distribution in the case once a discharge has been entered by the court. The case can be closed upon discharge or denial of discharge. If there is a NFTL on file, or collection potential from abandoned or excluded property after the bankruptcy discharge, the case should remain open until the earlier of a distribution in the case or entry of an order closing the case without distribution.
6. **Transfer of the Individual or Joint Chapter 7A Case to the CIO Prior to Dismissal or Discharge.** Once the Field Insolvency (FI) caseworker has completed the initial case review and there are no issues that require a case to remain in FI, most individual or joint cases can be transferred from FI to the Centralized Insolvency Operation (CIO). The CIO will monitor the case for dismissal or discharge. At dismissal or discharge, the CIO will take any necessary closing actions. This includes updating the method of closure on the Taxpayer Screen on AIS. It also includes resolving any Discharge Determination Reports (DDR) issued by ADS.

Note:

If a case is dismissed while assigned to FI, the case cannot be reassigned to CIO for closure. FI will take closing actions.

If the case is not dismissed or discharged, the FI caseworker should transfer the individual or joint Chapter 7 Asset case to the CIO when:

- The FI caseworker has completed the initial case review.

- All proofs of claim of the Service have been filed and acknowledged by the court.
- There is no unresolved litigation, such as an objection to claim or complaint to determine dischargeability, that requires the case to remain in FI.
- Investigations of exempt, abandoned or excluded property (EAEP), when required, have been concluded and there is no collection potential from EAEP after the discharge. The FI caseworker must notate the AIS history and add a "No EAEP" case classification to AIS, in these cases.
- Investigations of the willful failure to pay exception to discharge have been concluded, when required. The FI caseworker must update the AIS history with the results of the investigation. If it was determined that there was no evidence to support the willful failure to pay exception to discharge, the FI caseworker must add a "No WFTP" case classification to AIS.

Note:

These procedures do not change existing procedures in individual Chapter 7 Asset "no liability" cases which are only open due to trustee turnover requests. These cases should be reassigned to the CIO after the initial case analysis if the FI caseworker has determined that this is truly a "no liability" case. The case will remain open during the turnover period.

Prior to transfer from FI to CIO, the FI caseworker must add a "SUMMARY HISTORY" on AIS. The history must state, "SUMMARY HISTORY - NO ISSUES EXIST, CIO TAKE ACTION WHEN DISMISSAL/DISCHARGE RECEIVED."

If there are issues that require the case to remain in FI, the case can be transferred from FI to the CIO *once those issues are resolved*.

7. Transfer of the Individual or Joint Chapter 7A Case to the CIO After Discharge. If a discharge is received on an individual or joint Chapter 7A case while the case is assigned to FI, the FI caseworker must determine if there are any issues that require the case to remain open. If there are no issues that require the case to remain open, the case can be transferred from FI to the CIO. However, the FI caseworker must:

- Ensure that all proofs of claim of the Service have been filed and acknowledged.
- Input RI in the Method of Closure Field on the AIS Taxpayer Screen.
- Add a "SUMMARY HISTORY" on AIS stating, "SUMMARY HISTORY - DISCHARGE RECEIVED AND RI INPUT, REASSIGN TO CIO." If there are any unique closing actions that the CIO needs to be aware of, include those actions in the SUMMARY HISTORY.
- Reassign the case to CIO.

If issues exist that require the case to remain open, the case must remain assigned to Field Insolvency *until those issues are resolved*. The FI caseworker must document the AIS history with actions taken. Once all "field" issues have been resolved, the case can be transferred from FI to the CIO for closure.

8. Actions Required at Discharge. Caseworkers should follow the chart below when a discharge is entered in a case:

IF...	THEN...
The court entered a discharge to the debtor, and the trustee filed a final "Report of No Distribution" with the court or the court entered a final decree and closed the case,	The case should be run through ADS and processed through prescribed actions including any exempt, abandoned, excluded property considerations, if not previously considered.
The court entered a discharge to the debtor, the case is still open at the court and the Service: <ul style="list-style-type: none"> • Has a secured claim on dischargeable periods secured by a NFTL or • There are abandoned or excluded assets that are available for collection of dischargeable taxes due to the Service's statutory lien, 	<p>The case should be held open.</p> <p>A. Non-dischargeable periods should be manually released from the bankruptcy freeze and returned to the collection stream.</p> <p>B. Dischargeable periods with a secured claim must be held open awaiting distribution or until the case is closed by the Court without distribution.</p> <p>C. Dischargeable periods secured by the Service's statutory lien on abandoned or excluded assets must be held open awaiting distribution or until the case is closed by the Court without distribution.</p> <p>D. Dischargeable periods for liabilities not claimed as secured on the proof of claim, or secured by the statutory lien on abandoned or excluded property, should be abated.</p> <p>Note: Lien releases should not be issued until the distribution is received. A NFTL refile determination should be made if appropriate. (See IRM 5.9.5.9.2.)</p>
No valid pre-petition NFTL has been filed for dischargeable periods or there is no potential to collect dischargeable periods from abandoned or excluded property due to the Service's statutory lien,	<p>The case should be run through ADS and processed through prescribed actions. Payments received after the case has been closed must be posted through AIS and applied as follows:</p> <p>1) Amounts covering dischargeable periods should be processed through AIS to the Unidentified Remittance File or the abatement may be reversed and the payment applied to the balance due module.</p> <p>2) Amounts in excess of those needed to full pay the dischargeable periods should be applied through AIS to the earliest assessed non-dischargeable period(s).</p>

9. CSEDs and Distributions. A follow-up should be placed on accounts awaiting distribution when CSED expiration dates are imminent. A phone call should be made to the trustee to determine if distribution will be received prior to the collection expiration date. Depending on the trustee's response, the caseworker along with the group or team manager, must decide on the best course of action to take. Procedures found in IRM 5.1.19.5.3, *Documenting Imminent CSEDs*, and IRM 5.1.19.5.4, *Expiration of a Collection Statute*, should be followed in documenting and working bankruptcy cases with imminent CSEDs.

10. Liens and Exempt, Abandoned or Excluded Property (EAEP). A valid Notice of Federal Tax Lien filed prior to the bankruptcy filing date helps protect the government's interest in exempt, abandoned or excluded property (EAEP) with collection potential. The Service's statutory lien continues to attach abandoned or excluded property with collection potential after discharge, *even if a pre-petition NFTL was not filed*. (See IRM 5.9.17.4, *Exempt, Abandoned or Excluded Property (EAEP)*, and subsections.) When a case is kept open after the discharge due to collection potential from EAEP, the lien must be protected. This includes the timely refiling of NFTLs to prevent the lien from "self-releasing" while the Service is awaiting distribution in the case or taking enforcement action against EAEP. See IRM 5.9.5.9.2, *Refiling Notices of Federal Tax Lien (NFTLs)*, for additional information.

11. Rapid Discharge in Chapter 7s. In most cases, unless a complaint has been filed objecting to the discharge, the discharge will be granted to an individual Chapter 7 debtor quickly relative to discharges in other chapters. This generally happens six to nine months after the petition date.

Note:

Caseworkers must follow the guidance in *IRM 5.9.17.7.8. Discharge and Restitution Assessments*, when the debtor has an outstanding restitution-based assessment.

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Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 18. Automated Discharge System (ADS)

5.9.18 Automated Discharge System (ADS)

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5.9.18.1 (05-16-2008)

Automated Discharge System

1. **Conversion to Oracle.** Current IRM 5.9 instructions for accessing information and inputting data on the Automated Insolvency System (AIS) are based on the Informix database system which is being phased out. For AIS databases that have converted to the Oracle operating system, users must consult the AIS Oracle user guide for instructions.
2. **Systemic Discharge Determinations.** The Automated Discharge System (ADS) interfaces with the Integrated Data Retrieval System (IDRS) to automate discharge actions for Chapter 7 and Chapter 13 bankruptcies. ADS selects tax modules that are eligible for discharge processing, identifies cases requiring review by Insolvency caseworkers, and inputs closing actions on IDRS. Some closures require managerial approval before systemic abatements can proceed.
3. **ADS Actions.** ADS eliminates manual tasks through automated processing. ADS:
 - A. expands the functionality of AIS by automating the disposition of bankruptcy cases after discharge;
 - B. selects tax modules eligible for abatement;
 - C. identifies cases requiring employee review before closing actions are finalized; and
 - D. inputs case closing actions on IDRS after any required approval.

Note:

ADS is sometimes referred to as "IIP 2." But the acronym ADS will be used exclusively throughout this IRM chapter.

4. **DDR Resolutions.** The Centralized Insolvency Operation (CIO) exclusively runs ADS. All Chapter 7 and Chapter 13 cases with a discharge date and an RI or SI in the method of closure field are processed regardless of whether the cases are assigned to the CIO or Field Insolvency. However, the CIO only receives and resolves discharge determination reports (DDRs) generated by ADS for cases assigned to the CIO. *Therefore, Field Insolvency is responsible for properly resolving DD Rs generated on cases assigned to its inventory.* Field Insolvency caseworkers must generate applicable reports (e.g., court closure follow-up reports) to identify cases in their inventory requiring DDR resolution.

5.9.18.2 (03-01-2006)

CIO Predischarge Review

1. **Case Class Code Y.** To alert the Centralized Insolvency Operation (CIO) to conditions that might affect the final disposition of a Chapter 7 No Asset or Chapter 13 case, Insolvency caseworkers must input a Y in the "case class" field of the AIS entity screen. This Y signals the technician working the case closure to read the AIS history and take appropriate actions before continuing with ADS processes.
2. **Technician Actions.** Court closure follow-up lists for Chapter 7 No Asset cases and Chapter 13 cases should be printed and worked at a minimum of twice a week. When the technician accesses a discharge, before an RI or SI is entered into the method of closure field on AIS, the technician must check the case class field for a Y. If a Y is present, the caseworker must read the AIS history to determine the special circumstance(s) that may need to be addressed before the case is run through ADS. The table below presents possible reasons for taking predischarge actions and what those actions might be if a Y is in the "case class" field.

IF...	THEN...
potential for fraud has been identified and fraud appears plausible,	before running ADS transfer the case to the appropriate Field Insolvency office for referral to a fraud technical advisor or Counsel.
the Service was not notified of a Chapter 13 bankruptcy prior to the government bar date and the IRS does not appear on the debtor's mailing matrix,	do not discharge the case. Take any closure actions necessary as if the case were dismissed, such as MFT 31 mirroring or reinstatement of an installment agreement. Input the TC 521(s) manually or systemically.
certain liabilities have not been provided for in the Chapter 13 plan, or unusual plan provisions exist that affect discharge,	process the discharge manually, omitting the discharge of the liabilities not provided for in the plan. Caution: Because these discharges will not be filtered through ADS, the caseworker must ensure all other discharge issues are addressed adequately.
a reinstatement of an installment agreement is required,	follow the instructions in IRM 5.9.4.17, <i>Installment Agreements and Bankruptcy</i> , then process the discharge through ADS.
refund turnover orders or requests are in force,	after all other issues raised by the Y "case class" code are resolved, change the Y to a T.

	Then follow the direction given in IRM 5.9.6.1.3(5), <i>Reopening a Closed Case</i> .
an Exam assessment is pending or re-assessment of a TC 291 or TC 301 should be reversed to TC 290 or TC 300,	contact the appropriate Bankruptcy Exam Coordinator and advise him/her the bankruptcy has been discharged and the assessment can be made or the reversed assessment should be reinstated.
an Exam assessment is pending or re-assessment of a TC 291 or TC 301 should be reversed to TC 290 or TC 300, and Exam says it <i>will not</i> proceed with the assessment or reassessment,	annotate the AIS history accordingly, and process the discharge through ADS. (See IRM 5.9.15.2.2.(3), <i>Deposit to URF or XSF</i> .)
an Exam assessment is pending or re-assessment of a TC 291 or TC 301 should be reversed to TC 290 or TC 300, and Exam says it <i>will</i> proceed with the assessment or re-assessment,	ask Exam how long it will take to input the assessment or reassessment. Input a follow-up date for that amount of time and monitor for the assessment(s) to post. Upon posting, process the discharge through ADS.

Caution:

In the above scenarios if a lien release is required and abatement of the lien period(s) will be delayed, a manual lien release must be requested. (See IRM 5.9.17.18, *Release of Liens*.)

5.9.18.3 (03-01-2007)

Discharge Determination Reports (DDRs)

- Processing Reports.** Once a discharge is received and the case is loaded to ADS for discharge processing, the ADS program generates reports to advise Insolvency caseworkers of both:
 - actions taken by ADS
 - when a case decision is required by the employee
- IIP 2.** Discharge Determination Reports (DDRs) are generated from IIP 2 Process K by CIO clerical units. (See IRM 5.9.12.5, *Insolvency Interface Program*.) An IDRS transcript is provided with most determinations. DDrs are then forwarded to the technical units for resolution.
- Types of DDrs.** Two types of DDrs result from IIP Process K:
 - pre-discharge determinations which consist of "Problem Conditions " and "Hold Conditions," and
 - post-discharge determinations which consist of Flagged Conditions. Flagged means ADS has identified conditions that require action by the caseworker.
- Flagged Options.** When a flagged TIN or module requires further action, the options are limited to:
 - forwarding the module for abatement (post-determinations only); or
 - processing the TIN or module manually (pre- and/or post-determination DDR).
- Proper ADS Case Closure.** When a case is closed properly through ADS, the method of closure field on the AIS entity screen will be "RC" or "SC." Adding a closed on AIS date after a method of closure field with an "RA" or "SA" indicates improper closing actions and is unacceptable

5.9.18.4 (03-01-2007)

Problem Conditions

- Resolving Problem Conditions.** When ADS encounters a circumstance that prevents processing a TIN, it generates a DDR with a specific problem condition. ADS will continue trying to process the discharge, and it will generate reports until one of the following occurs:
 - The problem condition is resolved, after which ADS will successfully process all modules of the TIN; or
 - The reviewer manually works the TIN and makes a decision of a manual request **M** on the manual process screen.
- Social Security Number with an "N."** A social security number (SSN) with an "N" indicates a period is on non master file (NMF). ADS does not process NMF accounts. The caseworker must remove the TIN from ADS Processing and notify ADS the TIN has been worked. The caseworker must complete the procedures outlined in Exhibit 5.9.18-2. In addition, the caseworker must take the following actions:

IF...	THEN...
a penalty adjustment is requested for a non-dischargeable period,	<ul style="list-style-type: none"> prepare Form 3177, <i>Notice of Action for Entry on Master File</i>, to request input of TC 971 cc33. Include on that form a request for a TC 550 to extend the CSED. Note: Insolvency is responsible for computing the new CSED and entering it on Form 3177. Prepare Form 1331-B for the abatement of penalties.
a full abatement is being requested,	<ul style="list-style-type: none"> Form 3177 will not be completed. NMF cannot input TC 971 cc31, so the caseworker should not request this transaction code and closing code. Prepare Form 1331-B for adjustment of the balance due to \$0.
both dischargeable and non-dischargeable periods are on NMF,	<ul style="list-style-type: none"> complete Form 3177 with TC 971 cc33 and TC 550 and Form 1331-B for the non-dischargeable period(s), and complete Forms 1331-B for both the dischargeable period(s) and non-dischargeable period(s).

Then:

- Forward Forms 3177 (if applicable) and 1331-B along with Form 3210 to the Cincinnati Submission Processing Campus.
- Set a 45-day follow-up to monitor for the non master file unit to post the TC 971 cc33 and TC 550, if applicable, and all Form 1331-B adjustments.
- When the adjustments have posted, prepare a new Form 3177 to request a TC 521 with the appropriate closing code be input to reverse the bankruptcy freeze. Forward the Form 3177 to the Cincinnati Submission Processing Campus.
- Complete manual closing screen actions per Exhibit 5.9.18-2.

Caution:

If a lien release is in order for non master file module(s), a manual lien release must be requested prior to initiating the NMF closing actions. (See IRM 5.9.17.18, *Release of Liens*.)

- Tin Not in Proper Format.** If the TIN is not in the proper SSN/EIN format, ADS cannot process the discharge adjustment. The correct format is XXX-XX-XXXX for SSN and XX-XXXXXXX for EIN. The caseworker must work the abatement manually by following the procedures provided in Exhibit 5.9.18-1 and then remove the bad TIN from ADS processing by completing the manual closing screen actions shown in Exhibit 5.9.18-2.
- SFR with More than One TC 300.** When a substitute for return (SFR) contains more than one TC 300, the caseworker must decide if the condition can be resolved so only one TC 300 remains on the account. If this cannot be done, the entire TIN must be processed manually. The caseworker must complete the procedures in Exhibit 5.9.18-1 to resolve the DDR, followed by the steps in Exhibit 5.9.18-2 to complete manual closing screen action.

Caution:

In Chapter 7 and Chapter 13 cases, SFRs may be non-dischargeable. (See IRM 5.9.2.9.1.2, *A Valid Tax Return*.)

- 5. **MFT Is Not 55 and Return Received Date Not Valid.** If the Master File Tax (MFT) code is *not* 55 and the return received date is not valid, a DDR is generated. ADS requires a return received date to make a discharge determination with the exception of MFT 55. ADS uses the last day of the period for the return received date for MFT 55. IDRS is unlikely to display a tax module "A" (TXMODA) without a return received date. Since the date is critical, ADS will continue to check for it. The caseworker must complete the steps given in Exhibit 5.9.18-1 to resolve the DDR and then complete manual closing screen action per Exhibit 5.9.18-2.
- 6. **Discharge Does Not Process Partnership or Corporation.** ADS does not discharge modules identified as partnerships or corporations (MFT codes 02 or 06). The caseworker must remove the TIN from ADS processing and resolve all the modules manually. The caseworker must complete the procedures in Exhibit 5.9.18-1 to resolve the DDR. To complete manual closing screen action, steps in Exhibit 5.9.18-2 must be followed.
- 7. **SFR and TC 300 with Disposal Code 3, 4, or 9, but No TC 870 Date.** ADS cannot make a discharge determination on a period with an agreed assessment without the return received date. The TC 870 date represents the received date of the agreed assessment. Since adding a TC 870 date is highly unlikely, all periods of the TIN must be processed manually. IRM 5.9.2.9.1.2, *A Valid Tax Return*, states the conditions under which a module with an SFR assessment may be dischargeable or may be subject to exceptions to discharge. The case worker must complete the procedures in Exhibit 5.9.18-1 to resolve the DDR. Exhibit 5.9.18-2 gives instructions to complete manual ADS closing actions.
- 8. **SFR and TC 300 with Disposal Code 3, 4, or 9 but No TC 870 Date or ASED Date.** This condition is the same as in paragraph (7) above, except the ADS program also scans the ASED date to determine the return received date. Without the dates ADS cannot make a discharge determination. IRM 5.9.2.9.1.2, *A Valid Tax Return*, states the conditions under which a module with an SFR assessment may be dischargeable or may be subject to exceptions to discharge. The case worker must complete the Exhibit 5.9.18-1 procedures to resolve the DDR. Exhibit 5.9.18-2 outlines steps to complete manual closing actions.
- 9. **-V or -W FRZ Not Present.** If the -V or -W bankruptcy freeze is not present, ADS cannot make a discharge determination. Complete the following procedures to correct the DDR:

- Input TC 520 with appropriate closing code on the prepetition period where it is missing using command code REQ77 (See IDRS Command Code Job Aid on SERP.)
- Document the AIS history
- Dispose of DDR in classified waste.

Note:

Once the transaction posts ADS automatically resumes the discharge processing. No follow-up action is necessary.

**5.9.18.5 (03-01-2006)
Flagged Conditions**

- 1. **Individual Modules.** ADS only flags potentially dischargeable *modules* that require a manual determination. After the module is flagged, ADS returns to the unflagged modules in that same account to complete discharge processing. Flagged conditions do not hold entire TINs as do problem or hold conditions.
- 2. **Potential Trust Fund Recovery Penalty (TFRP).** ADS identifies an MFT 55 period if a zero balance is showing, and no TC 240 is present. Prior to the Bankruptcy Reform Act of 1994, some districts held the assessment because of the prohibition to assess until after discharge. The caseworker must determine if the TFRP will be assessed. (See IRM 5.9.3.10, *Trust Fund Recovery Penalty*.) The technician must complete the following procedures to determine if a TFRP will be assessed and correct the flagged condition:
 1. Review AIS case history for previous assessment determination.
 2. Examine the proof of claim for TFRP estimated periods.
 3. Check command code UNLCE for assessment periods and amounts and corporation EIN (see SERP Command Code Job Aid).
 4. Review corporation account for TFRP LEM tolerance.
 5. Review Form 941 periods for ASED(s).
 6. Check Integrated Collection System (ICS) by EIN for the name of the revenue officer assigned the corporate account, his telephone number, and histories regarding potential assessment.
 7. Contact the assigned revenue officer directly for information.

Note:

This condition will be obsoleted as older bankruptcy cases are closed.

IF...	THEN...
an assessment is appropriate based on local guidelines,	a follow-up date must be set for posting of the assessment.
the TFRP has posted after the discharge date,	determine if it will be discharged. (See IRM 5.9.17.7, <i>Discharge and Exceptions to Discharge..</i>)
a TFRP is to be assessed and <i>is</i> included in the Chapter 13 plan (dischargeable),	the caseworker must follow the procedures in Exhibit 5.9.18-3.
the TFRP <i>is to be assessed</i> and is <i>not</i> included in the Chapter 13 plan (non-dischargeable),	the caseworker must follow the procedures in Exhibit 5.9.18-4.
the TFRP <i>is to be assessed</i> in a Chapter 7,	the caseworker must follow the procedures in Exhibit 5.9.18-4.
the TFRP <i>is not</i> to be assessed,	the caseworker must follow the procedures in Exhibit 5.9.18-4.

Note:

In a Chapter 13, if the TFRP was not provided for in the plan, the liability may be excepted from discharge and returned to the collection stream. However, for cases filed on or after October 17, 2005, the TFRP is excepted from discharge regardless of whether it is provided for in the plan (11 USC § 1328(a)(2)).

- 3. **Potential Split Period Assessment.** ADS identifies Chapter 13 cases for MFT 55 and MFT 13 modules with a petition date prior to the last day of the tax period. ADS cannot determine if a period is quarterly or annual. Not all MFT 55 assessments are TFRP; some may be other types of penalties assessed quarterly. The case worker must determine if the potential split period assessment has a portion of the liability that is non-dischargeable. (See IRM 5.9.17.7, *Discharge and Exceptions to Discharge*, and IRM 5.9.17.22, *Adjustment Methods for Discharged Liabilities*.) If the liability is discharged, follow the procedures in Exhibit 5.9.18-3. If the liability is partially dischargeable, follow the steps in Exhibit 5.9.18-4.
- 4. **Business Master File Splits.** Split period assessments DDRs are generated for Business Master File (BMF) liabilities as well. ADS flags a BMF liability with a petition date between the first and last day of the period. (See IRM 5.9.13.19(2), *Claimable Liability*.)
 - If the entire liability is dischargeable, the caseworker must follow procedures in Exhibit 5.9.18-3.

- If part of the liability is *not* dischargeable, the caseworker must complete the procedures outlined in Exhibit 5.9.18-4.
5. **Multi-Assessment Unpaid.** ADS identifies a tax module with a petition date more than three years after the return due date that has multiple assessments, and at least one assessment is unpaid. The technician must determine if the unpaid assessments are dischargeable. (See IRM 5.9.17.7, *Discharge and Exceptions to Discharge*, IRM 5.9.13.19.3(2), *The Concept of Tolling*, and IRM 5.9.17.22, *Adjustment Methods for Discharged Liabilities*.) The caseworker must complete the following procedures:
 - If the entire liability is dischargeable, the caseworker must follow procedures in Exhibit 5.9.18-3.
 - If any of the assessments are *not* dischargeable, the caseworker must complete the procedures outlined in Exhibit 5.9.18-4.
 6. **Possible Trust Fund.** ADS flags potential trust fund modules when the due date of the return is more than three years from the petition date, *and* the MFT is 01, 04 or 11.
 - A. The caseworker must determine if non-dischargeable trust fund amounts are still due and if the non-trust fund portion of the assessment is dischargeable. (See IRM 5.9.17.7, *Discharge and Exceptions to Discharge* and IRM 5.9.17.22, *Adjustment Methods for Discharged Liabilities*.)
 - B. To determine the trust fund and non-trust fund balances due, the caseworker should refer to Exhibit 5.9.3-1. If, after subtracting all payments, *no trust fund is due*, follow the steps in Exhibit 5.9.18-3. However, if *trust fund taxes remain due*, any unpaid *non-trust fund portion* must be abated manually. (See Exhibit 5.9.8-4.)
 7. **Excise Tax - Possible Non-Trust Fund.** ADS flags modules where the due date of the return is more than three years prior to the petition date and the MFT code is 03 and abstract codes are 022, 026, and 027.
 - A. The case worker must determine if non-dischargeable trust fund amounts are still due and if the non-trust fund portion of the assessment is dischargeable. (See IRM 5.9.13.19.3(2), *The Concept of Tolling*, and IRM 5.9.17.22, *Adjustment Methods for Discharged Liabilities*.)
 - B. If *no trust fund taxes are due*, follow the steps in Exhibit 5.9.18-3 to complete ADS processing.
 - C. If *trust fund taxes are due*, any unpaid *non-trust fund portion* must be abated manually. Exhibit 5.9.18-4 outlines the steps for completing the AIS closure.

5.9.18.5.1 (05-16-2008)
Penalty Abatement DDRs

1. **Non-Dischargeable Taxes.** ADS flags modules where the tax is non-dischargeable, but the penalties could be dischargeable. This condition may exist with Chapter 7 discharges as well as Chapter 13 hardship discharges. This flag also includes non-hardship Chapter 13 discharges for cases with a petition date on or after October 17, 2005. Specifically trust fund taxes, taxes due on unfiled returns or late returns filed within two years prior to the petition date, and taxes resulting from fraudulent returns or that the debtor willfully attempted to evade or defeat are not dischargeable for Chapter 13 cases filed under BAPCPA. Penalty abatement determinations must be made in situations where a tax liability is non-dischargeable, since under § 523(a)(7), penalties are sometimes dischargeable even when the associated taxes are not. Thus, a DDR is generated to notify the technician to make a determination on the dischargeability of a module, and, if appropriate, manually process the penalty abatement. (See IRM 5.9.17.7, *Discharge and Exceptions to Discharge*, IRM 5.9.13.19.3(2), *The Concept of Tolling*, and IRM 5.9.17.22, *Adjustment Methods for Discharged Liabilities*.)

Reminder:

All exceptions to discharge under 11 USC § 523(a) apply to Chapter 13 hardship discharges.

2. **Priority - Penalties Dischargeable, Tax Is Not.** ADS flags modules where the due date of the return is more than three years before the petition date and tax is still determined to be priority (non-dischargeable) because of tolling of time from prior bankruptcies. The three-year period under § 523(a)(7) for determining if a penalty is non-dischargeable may also be equitably tolled. The caseworker must determine if penalties must be discharged even though the tax is not discharged. The caseworker should complete the following procedures to remove the case from ADS:
 - If dischargeable unpaid penalties exist, abate the applicable penalties on line, then follow the procedures listed in Exhibit 5.9.18-4.
 - If no dischargeable penalties exist or if all penalties have been paid, follow steps given in Exhibit 5.9.18-8.
3. **240 Days - Penalties Dischargeable, Tax is Not.** ADS flags modules where the return due date is more than three years before the petition date, and an additional assessment was made within 240 days before the petition date. The caseworker must determine if penalties should be discharged even though the tax is not dischargeable. To remove from ADS, the caseworker must:
 - A. abate the applicable penalties on line and then follow the steps given in Exhibit 5.9.18-5 if dischargeable penalties exist; or
 - B. follow instructions in Exhibit 5.9.18-4 if no dischargeable penalties are posted.
4. **2 Year Rule - Penalties Dischargeable, Tax Is Not.** ADS identifies modules where the return due date is more than three years before the petition date, and the tax return was filed within two years before the petition date. Originally this flag was limited to Chapter 7 and Chapter 13 hardship discharges. However, it now has been expanded to include all Chapter 13 cases filed on or after October 17, 2005, in response to the implementation of BAPCPA. The caseworker must determine if penalties are present to discharge even though the tax is not dischargeable. The caseworker must complete the following procedures to remove from ADS:
 - A. Abate the applicable penalties on line and then follow the steps given in Exhibit 5.9.18-4 if dischargeable penalties exist; or
 - B. Follow instructions in Exhibit 5.9.18-8 if no dischargeable penalties have posted.
5. **Unagreed SFR - Penalties Dischargeable, Tax Is Not.** ADS identifies modules where the tax period has an SFR and an unagreed indicator. An unagreed indicator is where the following is *not* present:
 - Disposal code 03, 04, 09
 - TC 560
 - TC 599 cc 39, 64, or 89

The caseworker must determine if penalties are present on the tax module to discharge even though the tax itself is not dischargeable. IRM 5.9.2.9.1.2, *A Valid Tax Return*, states the conditions under which a module with an SFR assessment may be dischargeable or may be subject to exceptions to discharge. The technician should complete the following procedures to remove the case from ADS:

 - A. Abate the applicable unpaid penalties on line and then follow the steps given in Exhibit 5.9.18-4 if dischargeable penalties exist; or
 - B. Follow instructions in Exhibit 5.9.18-8 if no dischargeable penalties exist or if the penalties have been full paid.
6. **Fraud - Penalties Dischargeable, Tax Is Not.** ADS will identify modules where the fraud indicator TC 320 is present on TXMODA. The caseworker must determine if penalties should be discharged even though the tax is not. As stated above this flag will apply to Chapter 13 cases filed on or after October 17, 2005, which would otherwise be subject to a Chapter 13 super discharge as well as to Chapter 7 and Chapter 13 hardship discharges. To remove the account from ADS, the technician must:
 - A. abate the applicable penalties on line and then follow the steps given in Exhibit 5.9.18-4 if dischargeable penalties exist; or
 - B. follow instructions in Exhibit 5.9.18-8 if no dischargeable penalties have posted.

5.9.18.5.2 (03-01-2006)

(Super Discharge) No Return or Return Not Assessed

1. **No Return; Return Not Assessed.** ADS flags Chapter 13 modules where no TC 150 has posted to the account.

- A. Cases Filed Prior to October 17, 2005. A determination must be made as to whether the period is included in the plan. If a Y is present in the "case class" field on the AIS entity screen, the technician must read the AIS history input by the Field Insolvency specialist regarding special discharge circumstances. Discharge actions should be based on the information provided in the history.
- If the plan provides for the period, the open delinquent return module should be closed online with the appropriate closing code. (See Document 6209.)
 - If the period is not provided for by the plan, the technician should address the return delinquency by closing the module if appropriate (e.g., little or no tax due) or by allowing the open module to return to the collection stream.
- B. Cases Filed on or after October 17, 2005. If a return has not been filed prior to the petition date, any taxes due for that return are not dischargeable. Any open TDIs should not be closed.

The caseworker must input TC 521 and complete the procedures outlined in Exhibit 5.9.18-2 to clear the account from ADS.

5.9.18.5.3 (03-01-2006)

Fraud Conditions

1. **Possible Fraud.** ADS flags modules as possible fraud when the due date of the return to the petition date is greater than three years, a TC 350 (negligence penalty) appears on the TXMOD, and a TC 914 or 910 (case held or assigned to Criminal Investigation) is present.

A. A determination must be made if fraud exists which excepts a period from discharge. See IRM 5.9.17.7, *Discharge and Exceptions to Discharge*; IRM 5.9.17.7.1, *The Fraud and Willful Evasion Exemption*; and IRM 5.9.4.10, *Bankruptcy Fraud*.

B. If fraud exists and the case is Chapter 7 or Chapter 13 hardship or a Chapter 13 case filed on or after October 17, 2005, the technician should refer to Exhibit 5.9.18-6.

2. **Assistance in Determining Fraud.** Fraud technical advisors assist employees in identifying and documenting indicators of fraud cases for referral to Criminal Investigation (CI). Fraud advisors are made up of revenue agents and revenue officers and are located in designated areas across the country. The Philadelphia Campus has a fraud technical advisor assigned to work issues arising from CIO processing. The fraud advisor may contact Counsel for help in developing a quality referral to CI.

- If the fraud referral is not accepted by CI, the caseworker must determine if the case will be referred to Area Counsel based on the fraud exception to discharge.
- If written concurrence is received from Counsel stating the taxes are non-dischargeable based on the fraud exception to discharge, the caseworker must complete the procedures in Exhibit 5.9.18-8 to remove the case from ADS.
- If fraud does *not* exist, the technician follows the steps in Exhibit 5.9.18-3.

5.9.18.5.4 (03-01-2006)

Abandoned/Exempt/ Excluded Property DDR

1. **Abandoned/Exempt/Excluded Property Review.** ADS identifies modules as flagged conditions when a TC 582 (Notice of Federal Tax Lien indicator) exists and command code IRPTRL shows at least one of the following with a dollar amount greater than zero:

- Mortgage Interest Paid (MTG INT PD)
- Rents
- Investment Expenses (INVEST EXP)

2. **ADS Dollar Tolerance.** The total aggregate balance due modules with a TC 582 present must be greater than the database dollar criteria established in the ADS parameters for the system to generate this DDR.

3. **Non-Dischargeable Periods.** The caseworker must determine the dischargeability of the flagged periods, including penalties. (See IRM 5.9.17.7, *Discharge and Exceptions to Discharge* and IRM 5.9.13.19.3(2), *The Concept of Tolling*.) If a period is non-dischargeable, steps in Exhibit 5.9.18-8 are followed to remove the case from ADS.

4. **Dischargeable Periods and Exempt/Abandoned Property.** If the lien periods are dischargeable and evidence of real property has triggered the flag, the caseworker must:

- A. research the Automated Lien System (ALS) or print a lien facsimile from AIS to verify liens have been filed and are valid for the dischargeable periods; and
- B. transfer the case to the assigned Field Insolvency specialist to review the debtor's schedule of assets (financial documents debtor filed with the bankruptcy court) and command code IRPTRL and issue an OI to Field Collection if warranted. (See Exhibit 5.9.18-7.)

5. **Dischargeable Periods and Excluded Property.** A valid prepetition Notice of Federal Tax Lien is not necessary to pursue collection against property excluded from the estate. As long as an IRC § 6321 lien attached to such property before the petition date, the lien is enforceable against excluded property after the bankruptcy. (See IRM 5.9.17.4.3, *Insolvency Levy Procedures for Excluded Retirement Plans*.) When ADS generates a DDR that applies to excluded property, specifically retirement plans, the case can be assigned to Field Insolvency without ALS research.

5.9.18.5.5 (03-01-2006)

Section 1305 Claims

1. **Postpetition Claims.** ADS flags a Chapter 13 postpetition module in status 72. This indicates a TC 520 is posted to the module. At the time the Field Insolvency specialist addresses the postpetition liability, (s)he must update the AIS history with an explanation of how that liability will be handled upon discharge. If Field Insolvency prepares a § 1305 claim, the Field caseworker must document in the history that payment of the postpetition module has been provided for in a modified plan. (See IRM 5.9.13.10, *Section 1305 Claims*.)

2. **Unpaid § 1305 Claims.** If a § 1305 claim has been partially paid at the time of discharge, the caseworker should research IDRS and the AIS payment screen for misapplied payments. If misapplied payments are found that fully pay the § 1305 claim, the payments in question should be transferred to the postpetition period and a follow-up input for the payment transfer(s) to post. Once the payments have posted to the 1305 period, the period should be discharged. The caseworker should process the closure following Exhibit 5.9.18-3.

3. **Transfer for Trustee Contact.** If the AIS history confirms a modified plan has been approved and includes provisions for payment of a § 1305 claim, full pay has not been received, and misapplied payments are not found, the case should be transferred to Field Insolvency for contact with the trustee. When the issue has been resolved between the trustee and Field Insolvency, the case will be transferred back to the CIO for final disposition.

5.9.18.5.6 (03-01-2006)

Willful Failure to Pay

1. **Counsel Request.** The willful failure to pay flag was established at the request of Counsel to identify potential "Toti" cases based on the court's decision in Toti v. United States, 24 F.3d 806 (6th Cir. 1994). The reviewer must determine if the flagged condition is an exception to discharge as outlined in 11 USC § 523. (See IRM 5.9.17.7, *Discharge and Exceptions to Discharge*, and IRM 5.9.17.7.1, *The Fraud and Willful Evasion Exemption*.)
2. **Systemic Identification.** ADS identifies modules where the:
 - A. due date of the return to the petition date is greater than three years;
 - B. prior tax year's adjusted gross income (AGI) is greater than the ADS parameter set by management; and
 - C. aggregate balance is greater than the ADS parameter based on Counsel referral criteria.

3. **Caseworker Actions.** The bankruptcy technician must:

1. review IDRS to determine if willful failure to pay exists; and
2. seek advice from a CIO bankruptcy specialist on transferring the case to Field Insolvency to prepare a referral to Counsel for written concurrence not to discharge taxes based on the exception to discharge.

If Counsel's guidance is *not* to except from discharge and the case is Chapter 7, the technician should follow the steps in Exhibit 5.9.18-3. If written Counsel concurrence is received to except a Chapter 7 module from discharge, the caseworker must complete the procedures outlined in Exhibit 5.9.18-8.

**5.9.18.5.7 (03-01-2006)
Postpetition Payment**

1. **Postpetition Payment, Violation of Automatic Stay : TC 670=05/706 /820.** When the flagged condition is *Post Petit Payment, Viol stay-TC 670 pay=05/706/820*, a payment is identified as a TC 670 = 05 (Notice of Levy), TC 706 (Overpayment Applied from Another Tax Module), or a TC 820 (Credit Transferred). ADS identifies modules with a TC 670 followed by designated payment code 05, or TC 706, or TC 820 with a transaction date between the petition date and the discharge date. This DDR generates for regular discharges, but not for super discharges. The reviewer must determine if the postpetition payment is a violation of the stay. (See IRM 5.9.4.4.1(2), *Table-Credits, Refunds, Offsets*, and IRM 5.9.4.4.2, *Postpetition Payments and Credits*).
2. **Levy Payments.** Levy payments are initially identified as TC 670 with designated payment code 05. However, if the levy payment results in an overpayment on a module, it may systemically roll over to other modules as a TC 706 or TC 820. When addressing TC 706 or TC 820, the technician must refer to the module from which the credit has been transferred to determine if the payment was originally derived from a postpetition levy. When a credit is identified as a levy payment, the caseworker should prepare Form 5792, *Request for IDRS Generated Refund*. (see IRM 5.9.16.4, *Manual Refunds*) and follow the steps in Exhibit 5.9.18-8.
3. **Non-Levy Payment.** If the credit is a TC 706 or TC 820 representing a postpetition payment to a prepetition liability, and does not represent proceeds from a notice of levy, the caseworker should review local rules/standing orders or AIS history to determine if the offset of a postpetition refund to a prepetition liability is allowed, and if so, abide by the local rules/standing orders.
4. **Discharge Actions.** After postpetition payment issues have been addressed, the caseworker must determine if any or all of the liabilities are dischargeable. If so, the caseworker should follow procedures in Exhibit 5.9.18-1 for full abatements or Exhibit 5.9.18-4 for partial abatements.
5. **No Action Required.** If no action is necessary, the caseworker should take the steps in Exhibit 5.9.18-8.

**5.9.18.5.8 (03-01-2007)
Community Property**

1. **Non-Debtor Spouse.** A DDR is generated when ADS identifies a bankruptcy filed in a community property state or commonwealth when a non-debtor spouse has filed joint tax returns with a debtor spouse. A determination must be made if the account should be mirrored or discharged for both spouses. The community property states and commonwealth are:

Arizona	California	Idaho
Louisiana	Nevada	New Mexico
Texas	Washington	Wisconsin
Puerto Rico	Alaska (may elect)	

2. **Marital Property.** Property acquired during marriage is presumed to be community property with certain exceptions, such as an inheritance where only one spouse is the heir. All community property becomes a part of the bankruptcy estate, including the interest of the non-debtor spouse.
3. **"Hypothetical Discharge."** Upon the debtor spouse's discharge, the non-debtor spouse receives a "hypothetical discharge." (See IRM 25.18.4.11.4.) This hypothetical discharge is only good as long as the spouses remain subject to community property laws which are determined by the state where the taxpayers domicile (live). The Service assumes the spouses are subject to community property laws as long as both are alive, they remain married to each other, and they domicile in a community property state or commonwealth. (See IRM 25.18.1.2.3.)
4. **Necessary Research.** When working community property DDRs, technicians should review Schedule I, *Current Income of Individual Debtors*, to determine the debtor's marital status at the time of bankruptcy filing. IMFOLI also shows the current marital status of the debtor based on the most recently filed return.

Note:

If at any time during the bankruptcy, the debtor and non-debtor spouse divorce, or the debtor dies, the community property estate ceases to exist, and collection can proceed against the non-debtor spouse.

5. **Joint Dischargeability.** If the debtor listed (s)he was married at the time of the bankruptcy filing and IDRS/CFOL research indicates the debtor remains married to the same non-debtor spouse, the technician can process any joint dischargeable periods for abatement. However, if the debtors are no longer married or for some other reason are no longer subject to collection from community property, the accounts must be mirrored if the balance due meets the dollar criterion for mirroring.
6. **Undetermined Marital Status.** If a technician is unable to determine the debtor's marital situation at time of filing the bankruptcy and at the time of discharge using PACER and IDRS, the jointly filed returns should be treated as community property for abatement purposes.
7. **"Manual" Designation.** If the determination is made to treat the joint liabilities according to community property provisions and not mirror the account, the technician should close the DDR by selecting **M**(annual) and should manually abate the periods on IDRS and release the bankruptcy freeze code.
8. **"Forward" to Mirror.** If the determination is made to mirror the account because community property criteria do not apply, the technician should **F**(orward) the case to the manager's queue for approval. Systemic mirroring will begin upon the manager's inputting the ADS approval code.
9. **Documentation.** The AIS history must be updated to reflect the research leading to treating the joint liabilities as community property or the reasons for proceeding with mirroring.

**5.9.18.6 (03-01-2006)
Hold Conditions**

1. **Processing on All Modules Held.** ADS creates a hold condition when any IDRS module indicates a credit balance. All modules on that TIN will be placed on hold until the credit condition no longer exists. The goal of the condition is to resolve the credit and then allow ADS to continue the discharge determination on all periods of the TIN. No follow-up action is necessary. (See IRM 5.9.4.4, *Credits, Refunds and Offsets*, and IRM 5.9.17.7, *Discharge and Exceptions to Discharge*.)

2. **Initial Credit Balance and Unresolved Credit Balance.** Two "hold condition" DDRs are generated by ADS:

- A. Initial Credit Balance
- B. Unresolved Credit Balance

The unresolved credit balance results from an initial credit balance remaining unresolved after 30 days from the ADS start date. The caseworker should resolve the credit balance through offset or refund as appropriate. When the module is no longer a credit balance, ADS automatically resumes processing. If the credit cannot be resolved, the caseworker must manually process all the periods of the TIN. The following table provides guidance in resolving credit balances.

IF...	THEN...
liabilities exist and the credit is prepetition,	determine if an offset is applicable. (See IRM 5.9.4.4.1(2), <i>Table — Credits, Refunds, Offsets.</i>)
an offset is not applicable,	per any local rules/standing orders or trustee turnover request, prepare Form 5792, <i>Request for Manual Refund</i> . (See IRM 5.9.16.4, <i>Manual Refunds</i> .)
an offset is applicable, follow any local rules or standing orders that apply,	input the credit transfer on IDRS. (See IRM 21.5.8.4.1, <i>IDRS Guidelines for Credit Transfers</i> , and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i> .) Document the AIS history.
liabilities exist and the credit is postpetition,	determine if an offset is applicable. (See IRM 5.9.4.4.1(2), <i>Table - Postpetition Payments and Credits</i> .)
liabilities exist, the credit is postpetition, and an offset is not applicable,	per any local rules/standing orders or trustee turnover request, prepare Form 5792, <i>Request for Manual Refund</i> . (See IRM 5.9.16.4, <i>Manual Refunds</i> .)
liabilities exist, the credit is postpetition, and an offset is applicable,	follow any local rules or standing orders that apply; input the credit transfer on IDRS. (See IRM 21.4.8.4.1, <i>IDRS Guidelines for Credit Transfers</i> , and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i> .)
no liabilities exist but the Service has filed an estimated/unassessed proof of claim and credit is on/for that period,	review the AIS history and claim screen for an assessment amount or information verifying a liability exists, and review IDRS for assessment posting to verify if an assessment has posted where money can be applied.
no liabilities exist but the Service has filed an estimated/unassessed proof of claim and credit is on/for that period and no assessment has posted,	prepare Form 2424, <i>Account Adjustment Voucher</i> , to transfer the credit to Unidentified Remittance if credit received date is less than one year old; or prepare Form 8758, <i>Excess Collections File Addition</i> , to transfer to Excess Collections. (See IRM 3.17.220.2.1.1, <i>Preparation of Form 8758</i> .) Send prepared Form 2424 or Form 8758 to appropriate Campus Accounting Branch. Document the AIS history.
no liabilities exist but a -L freeze (Exam) or a TC 922 (Underreporter) exists on a module for which the Service has filed an estimated/unassessed proof of claim and the credit is on/for that period,	review the AIS history to determine the Exam or Underreporter contact, and call the Exam or Underreporter contact to advise of lift of stay and request the assessment be made. Note: If the credit is not on the proper period, create a dummy module by moving the credit to the period to be assessed.
no liabilities are posted, but a -L freeze (Exam) or a TC 922 (Underreporter) exists on a module for which the Service has filed an estimated/unassessed proof of claim and the credit is on/for that period and an assessment is to be made,	monitor for the assessment to post. If the credit has not already posted to assessment period, offset whole or part of credit to the assessment period as per the plan, creating a dummy module if necessary. (See IRM 21.4.8.4.1, <i>IDRS Guidelines for Credit Transfers</i> , and IRM 21.5.8.4.2, <i>Credit Transfer Input on IDRS</i> .)
no liabilities exist but a -L freeze (Exam) or a TC 922 (Underreporter) exists on a module for which the Service has filed an estimated/unassessed proof of claim and the credit is on/for that period and an assessment is not to be made,	prepare Form 2424, <i>Account Adjustment Voucher</i> , to transfer to Unidentified Remittance if credit received date is less than 1 year old; or prepare Form 8758, <i>Excess Collections File Addition</i> , to transfer to Excess Collections. (See IRM 3.12.37.30.2.1, <i>Preparing Form 8758</i> .) Send prepared Form 2424 or Form 8758 to appropriate Campus Accounting Branch. Document the AIS history.
no liability exists and no estimated/unassessed proof of claim was filed and no prepetition returns await processing,	per any local rules/standing orders or trustee turnover request, prepare Form 5792, <i>Request for Manual Refund</i> . (See IRM 5.9.16.4, <i>Manual Refunds</i> .)
the credit balance DDR cannot be resolved,	follow the steps in Exhibit 5.9.18-1, <i>Discharge Determination and IDRS Actions</i> , and the steps in Exhibit 5.9.8-2, <i>ADS Manual Determination Closing Actions</i> .

Exhibit 5.9.18-1 (03-01-2006)
Discharge Determination and IDRS Actions

Manual Closing Procedures for Full Abatement. If a case cannot be closed through ADS, the following procedures are input manually on IDRS to abate fully dischargeable periods or assessments. (See Exhibit 5.9.18-4 for partial abatement procedures.)

1. Determine dischargeability of all periods under the Taxpayer Identification Number (TIN).
2. Input TC 971 ac031 on all dischargeable periods using CC REQ77.
3. Input TC 521 with appropriate closing code for all dischargeable periods allowing a two cycle posting delay, using command code REQ77 (see SERP Command Code Job Aide).
4. Non-dischargeable period should be closed by inputting TC 521 with the appropriate closing code.

Caution:

Before taking discharge actions, cases should be reviewed for exempt/abandoned/excluded property issues and non-debtor spouse issues. If MFT 31 mirroring is required, refer to IRM 5.9.17.22.1, *MFT 31 Mirror Modules*.

Exhibit 5.9.18-2 (03-01-2006)
ADS Manual Determination Closing Actions

Steps for Manual Determinations. When ADS cannot fully abate dischargeable assessments, and manual IDRS inputs are required, the caseworker should take the following actions on ADS:

1. Select **R** (manual pRocess) from the ADS screen menu.
2. Enter the docket number to the Manual Process Query and hit **ESC**.
3. Position the cursor on the module involved:
 - use **CTRL-T** to access the AIS history screen
 - update the AIS history screen and address all flagged conditions
 - **E**(nter) to return to ADS
4. Position the cursor on the module involved and enter **M**(anual determination).
5. Enter **ESC** to save.

6. Enter **Y(es)** to commit to change.
7. Dispose of DDR in classified waste unless otherwise directed by management.

Note:

If lengthy manual processing time is required, a **P**(ending) should be input to the ADS decision field. The **P** will stop the generation of DDRs for the affected TIN; however, if ADS is updated with a **P**, the caseworkers must finish with an **M**.

Exhibit 5.9.18-3 (03-01-2006)
ADS Forward for Manager Approval Closing Actions

Managerial Approval. When ADS closing actions require a manager's approval, the steps in the table below should be observed.

Step	Action
1	Select R (manual pRocess) from the ADS screen menu.
2	Enter the docket number to the Manual Process query screen and hit ESC .
3	Position the cursor on the module involved: <ul style="list-style-type: none"> • Use CTL-T to access the AIS history screen • Update the AIS history screen and address all flagged conditions • E(nter) to return to ADS
4	Position the cursor on the module involved and enter F (orward for approval).
5	Enter ESC to save.
6	Enter Y(es) to commit to the change.
7	If the manager rejects the abatement, (s)he will print the DDR to be given to the employee who forwarded the case for approval. Once the caseworker resolves the DDR, an F is reentered to forward for full abatement or an M is entered for discharges requiring manual closures.

Exhibit 5.9.18-4 (03-01-2006)
Partial Abatement / DDR Manual Determination

Actions for Partial Abatements. When a period qualifies for abatement of non-pecuniary penalties and interest on those penalties, the caseworker should take the following actions:

1. Input TC 971 ac033 on all partially dischargeable periods using command code REQ77.

Note:

TC 971 ac033 is a ledger entry to indicate partial abatement due to bankruptcy. Unlike TC 971 ac031, it does not trigger systemic abatements.

2. Input appropriate abatement transactions on IDRS for non-pecuniary penalties using command code REQ54.
3. At the same time the penalty abatements are input on IDRS using CC REQ77, input TC 521 with appropriate closing code(s) with a three cycle delay.
4. Select **R** (Manual pRocess) from the ADS screen menu.
5. Enter the docket number to the Manual Process query screen and hit **ESC**.
6. Position the cursor on the module involved:
 - use **CTRL-T** to access the AIS history screen
 - update the AIS history screen and address all flagged conditions
 - **E**(nter) to return to ADS
7. Position the cursor on the module involved and enter **M**(anually processed).
8. On the pop up screen:
 - select **N**(ot discharged), and enter the dollar amount of the *non-dischargeable* portion
 - use **CTRL N** to access the pop up window for the reason code selection
 - enter the appropriate reason code
9. Enter **ESC** to save.
10. Enter **Y(es)** to commit to the change.
11. Dispose of DDR in classified waste unless otherwise directed by management.

Note:

If a caseworker is unable to complete the manual processing, (s)he may input **H**(old) to the ADS decision field. The **H** prevents the generation of DDRs for the affected period; however, if the caseworker updates the decision field with **H**, (s)he must always finish with an **M**.

Exhibit 5.9.18-5 (03-01-2006)
Transfer Case to Field Insolvency Office and DDR Hold Process

Complex Issues. Although the CIO is charged with running ADS and working DDRs, when complex issues arise in the discharge process, the cases must be transferred to the appropriate Field Insolvency specialists for resolution. (See IRM 5.9.1.3(3), *Complex Issues*.) To effect a transfer, the CIO technician should take the following actions:

1. Select **R** (manual pRocess) from the ADS screen menu.
2. Enter the docket number to the Manual Process query screen and hit **ESC**.
3. Position the cursor on the module involved:
 - use **CTRL-T** to access the AIS history screen
 - update the AIS history screen and address all flagged conditions

- **E**(nter) to return to ADS.

4. Position the cursor on the module involved, enter **H**(old process).
5. Enter **ESC** to save.
6. Enter **Y**(es) to commit to the change.
7. Update the AIS history with details of the DDR's complex issue, and transfer the case to the appropriate Field Insolvency specialist.

Note:

Refer to Exhibits 5.9.5-1 and 5-2 for instructions on the AIS transfer of cases between Field Insolvency and the CIO.

**Exhibit 5.9.18-6 (03-01-2006)
Fraud Referral and DDR Hold Process**

Fraud. Before pursuing a potential fraud referral, the technician must determine the dischargeability of the flagged period(s) absent a fraud exception to discharge. (See IRM 5.9.17.7.1, *The Fraud or Willful Evasion Exception*, and IRM 5.9.13.19.3(2), *The Concept of Tolling*.) A decision to forward a case to Area Counsel or a fraud technical advisor will be made by Field Insolvency. If a period is otherwise dischargeable and exceeds a dollar tolerance set by Field Insolvency, the CIO technician should take the following actions:

1. Select **R** (manual pRocess) from the ADS screen menu.
2. Enter the docket number to the Manual Process query screen and hit **ESC**.
3. Position the cursor on the module involved:
 - use **CTRL-T** to access the AIS history screen
 - update the AIS history screen to indicate the case has been transferred to Field Insolvency to determine if contact with the fraud technical advisor or referral to Area Counsel is in order
 - **E**(nter) to return to ADS
4. Position the cursor on the module involved, enter **H**(old process).
5. Enter **ESC** to save;
6. Enter **Y**(es) to commit to the change.
7. Update the AIS history with details of the DDR's complex issue, and transfer the case to the appropriate Field Insolvency specialist.

Note:

Refer to Exhibits 5.9.5-1 and 5-2 for instructions on the AIS transfer of cases between Field Insolvency and the CIO.

**Exhibit 5.9.18-7 (03-01-2006)
Exempt Property and Exempt (ERISA) Reviews and DDR Hold Process**

Exempt Property. Cases meeting the dollar criteria for consideration of collection from exempt, excluded, or abandoned property assets should be transferred to Field Insolvency for further review and action.

1. Select **R** (manual pRocess) from the ADS screen menu.
2. Enter the docket number to the Manual Process query screen and hit **ESC**.
3. Position the cursor on the module involved:
 - use **CTRL-T** to access the AIS history screen
 - update the AIS history screen to indicate the transfer of the case to the Field for collection determination
 - **E**(nter) to return to ADS
4. Position the cursor on the module involved, enter **H**(old process).
5. Enter **ESC** to save.
6. Enter **Y**(es) to commit to change.
7. Update the AIS history.
8. Update the AIS history with details of the DDR's complex issue, and transfer the case to the appropriate Field Insolvency specialist.

Note:

Refer to Exhibits 5.9.5-1 and 5-2 for instructions on the AIS transfer of cases between Field Insolvency and the CIO.

**Exhibit 5.9.18-8 (03-01-2006)
Not Discharged Closing Action**

This exhibit gives closing steps for any DDR where the action is Not Discharged Closing Action. If a technician is working a DDR, and a period is non-dischargeable and no other actions are required, the caseworker should take the following actions:

1. Input TC 521 with appropriate closing code to IDRS using command code REQ77 (see SERP Command Code Job Aid).
2. Select **R**(manual pRocess) from the ADS screen menu.
3. Enter the docket number to the Manual Process Query Screen and press **ESC**.
4. Position the cursor on the module involved:
 - use **CTRL-T** to access the AIS history screen
 - update the AIS history screen and address all flagged conditions

- **E**(nter) to return to ADS
5. Position the cursor on the module involved and enter **M**(anually processed).
 6. On the pop up screen:
 - select **N**(ot discharged) and enter the dollar amount of the *non-dischargeable* portion
 - use **CTRL-N** to access the pop up window for the reason code selection
 - enter the appropriate reason code
 7. Enter **ESC**to save.
 8. Enter **Y**(es) to commit to the change.
 9. Dispose of the DDR in classified waste unless otherwise directed by management.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 19. Insolvency Disclosure and Telephone Procedures

5.9.19 Insolvency Disclosure and Telephone Procedures

- 5.9.19.1 [Disclosure](#)
- 5.9.19.2 [Field Insolvency Phone Calls](#)
- 5.9.19.3 [CIO Telephone Procedures](#)
- 5.9.19.4 [Secondary Issues](#)
- 5.9.19.5 [Documentation of Phone Calls](#)
- Exhibit 5.9.19-1 [Disclosure Chart](#)
- Exhibit 5.9.19-2 [Common IDRS Adjustments](#)
- Exhibit 5.9.19-3 [Approved Insolvency Letters](#)

Manual Transmittal

November 15, 2011

Purpose

(1) This transmits a revised IRM 5.9.19, *Insolvency Disclosure and Telephone Procedures*, with table of contents, text, and exhibits.

Material Changes

- (1) Editorial changes have been made throughout the IRM, and cross-references have been updated.
- (2) Organizational titles have been updated.
- (3) Emphasis has been added to 5.9.19.1(10) that the Service is not required to disclose prepetition returns to the trustee.
- (4) Discussion of "cause and cure" in 5.9.19.2(1) has been modified to conform with other IRM provisions requiring that discussion include a clear action date and a discussion of the consequences for failing to meet the action date.
- (5) Note has been added to 5.9.19.2(1) that "cause and cure" discussion should be held with debtor during in-person meetings.
- (6) Caution has been added to 5.9.19.2(1) that action date set during "cause and cure" discussion should not conflict with any dates set in written correspondence.
- (7) The toll-free telephone number for the CIO has been changed to the current number in 5.9.19.2(3).
- (8) A new paragraph has been added as 5.9.19.2(5) to detail the calls to be taken by Field Insolvency in Chapter 7 Asset cases.
- (9) 5.9.19.2(4) was renumbered as 5.9.19.2(5) and was modified to detail the calls to be taken by Field Insolvency in Chapter 7 No Asset and Chapter 13 cases.
- (10) 5.9.19.3.2(2) and (3) were modified to clarify the roles of Field Insolvency and the CIO in responding to case specific issues.
- (11) 5.9.19.3(3) has been modified to include filing status on the return in question as one of the items for taxpayer verification.
- (12) 5.9.19.3(3) has been modified to add a note with cross-references to IRM 21.1.3.2.3 and 21.3.2.4 on procedures to follow in the event that the employee is unable to verify all required items.
- (13) 5.9.19.2(6) and 5.9.19.3.1(1) have been modified to clarify that the 1-800-829-1040 number is for individual accounts, and to give the telephone number for questions regarding business accounts.
- (14) The Oral Statement Authority- Tolerances for the Address Change or Correction row in Exhibit 5.9.19-2 was changed to reflect the current position on accepting an oral change of address.
- (15) Additional pattern letters available to Insolvency employees have been added to Exhibit 5.9.19-3, minor corrections have been made to the exhibit regarding the use of other letters.

Effect on Other Documents

This material supersedes IRM 5.9.19, dated May 16, 2008.

Audience

All Operating Divisions.

Effective Date

(11-15-2011)

Scott D. Reisher, Director
Collection Policy

5.9.19.1 (11-15-2011) Disclosure

1. **Introduction.** During the pendency of a bankruptcy proceeding, which can range from a few days to several years, IRS employees can have numerous contacts on the case. These may include oral, written, and electronic communications. Insolvency employees may also appear at § 341 meetings of creditors and give testimony in bankruptcy court.
2. **Damages/Penalties for Unauthorized Inspection or Disclosure.** Service employees must not inspect or disclose confidential tax information without authorization. They must be aware of disclosure laws and the nature of information permitted to be disclosed and to whom it may be disclosed. Unauthorized inspection or disclosure of returns or return information may result in civil damages against the United States (IRC § 7431) and/or criminal penalties against the individual who inspected or disclosed the information (IRC §§ 7213 and 7213A).
3. **Statutory Authority.** IRC § 6103 contains specific provisions forming the statutory framework for disclosures authorized in the bankruptcy context.
4. **Tax Administration.** Significant differences exist in the disclosure rules depending upon whether or not a proceeding pertains to tax administration as defined in IRC § 6103(b)(4).
5. **General Rule.** A bankruptcy case should be considered a proceeding pertaining to tax administration if the bankruptcy court's jurisdiction is properly invoked in any manner to determine a tax matter, and the federal government and the debtor are properly before the court.

Example:

The debtor's listing the IRS as a creditor in the petition or in an attached schedule of liabilities, or the IRS's taking formal action, such as filing a motion to compel filing of a tax return, are examples of proceedings pertaining to tax administration. Another example is the IRS's filing a proof of claim for taxes owed even though the debtor failed to list the IRS as a creditor in the debtor's schedules filed with the bankruptcy court.

6. **Certain Disclosures Allowed.** Under the rules of IRC § 6103(h)(2) and (4), if a bankruptcy case pertains to tax administration, certain disclosures of the debtor's tax information are permitted to the court, to the Department of Justice, to case trustees (including the standing Chapter 13 trustee), or to any other party to the proceeding. Such disclosures generally do not require the debtor's consent.

Caution:

Disclosures of the debtor's return information under IRC § 6103(h)(2) and (4) should be limited to information directly related to the tax matter at issue. Third party return information should be disclosed only if it satisfies the "item" or "transaction" test. See IRM 11.3.22.12.1.2, *I.R.C. § 6103(h)(2)(B) and (h)(2)(C)* and IRM 11.3.22.17, *Disclosure of Returns and Return Information in Judicial and Administrative Tax Proceedings*.

7. **Non-Tax Administration.** If a bankruptcy case does not involve tax administration, the debtor's tax information usually can be disclosed *only*:

- A. with the debtor's consent;
- B. to a Chapter 7 or 11 case trustee if requested in writing pursuant to IRC § 6103(e)(4), (5), or (7); or
- C. in a criminal proceeding pursuant to IRC § 6103(i).

Note:

Caseworkers must determine if a particular bankruptcy case or proceeding pertains to tax administration. *Not every bankruptcy case meets the definition of a tax administration case.*

8. **Disclosure and Debtor's Attorney.** In a bankruptcy proceeding involving the tax liabilities of a debtor, the IRS may disclose to the debtor's *attorney of record* the debtor's return information relevant to the resolution of those tax matters affected by the proceeding (IRC § 6103(e)(6)). An attorney becomes the debtor's attorney of record by filing the bankruptcy petition or otherwise entering an appearance before the court in the bankruptcy case.
9. **Verification of Representation.** During the term of a bankruptcy case, a debtor may change legal representation. IRS caseworkers must verify the attorney contacting the Service on the debtor's behalf is indeed the debtor's current attorney of record. If doubt exists that the bankruptcy petition has been filed or that the representative is currently the attorney of record, Service employees must probe the contact to establish those facts or obtain a valid consent from the debtor prior to making a disclosure, when the bankruptcy is a proceeding relating to tax administration.
10. **Disclosure and the Trustee.** Under IRC § 6103(h)(4), Insolvency may disclose tax information to the trustee assigned to the bankruptcy as long as the information is directly related to the Service's prepetition or § 1305 claim. For example, Insolvency may consult the trustee to determine if the trustee will allow modification of the plan to accommodate payment of a § 1305 claim. Insolvency may not discuss full paid prepetition tax periods for which no claim has been filed unless the debtor consents. BAPCPA gives the trustee the right to review certain prepetition returns filed by the debtor, but it is the debtor, *not the Service*, who is required to provide those returns and return information.

Note:

Disclosure to a trustee's employees is not allowed unless the debtor has provided consent for such disclosure.

11. **Disclosure and Debtor's or Attorney's Accountant.** The debtor or the debtor's attorney of record may request that the IRS discuss the debtor's tax information with an accountant. Disclosure is *not* proper under those circumstances unless the debtor has signed a valid power of attorney appointing the accountant as his or her representative or unless the debtor has provided a valid written or oral consent (*Treas. Reg. § 301.6103(c)-1.*). Form 2848, *Power of Attorney and Declaration of Representative*, may delegate authority to the attorney to add or substitute the accountant as an additional representative or permit the attorney to execute consents to disclose to the accountant.
12. **Disclosure and the § 341 Meeting.** The first meeting of creditors (the 341 meeting) is held shortly after the debtor files a bankruptcy petition (11 USC § 341). The debtor is examined under oath by creditors and the trustee.
 - A. An IRS employee may attend the 341 meeting to gain information concerning tax compliance (e.g., unfiled tax returns or potential responsibility for unpaid trust fund taxes).
 - B. If the IRS is listed as a creditor in the debtor's schedules, the IRS may disclose in the 341 meeting the debtor's return information to the extent necessary to examine the debtor (IRC § 6103(h)(4)).
 - C. If the IRS is not listed in the schedules and the Service has not yet filed a proof of claim, the IRS may exhibit general familiarity with the debtor's tax history in examining the debtor, providing the disclosure is necessary to obtain information not otherwise reasonably available (IRC § 6103(k)(6)).

Caution:

In all of these situations, questions must be posed so only necessary information is disclosed by the IRS.

13. **Disclosure Resources.** Insolvency employees should be familiar with Chapter 6 of the *Disclosure & Privacy Law Reference Guide*, Publication 4639 available on the IRS website at <http://www.irs.gov/pub/irs-pdf/p4639.pdf>. It provides information on disclosure and bankruptcy. Also, they should refer to relevant statutes in the Internal Revenue Code, including §§ 6103, 1398, 1399, 7213, 7213A, 7401, 7431, and 7602; IRM 11.3, *Disclosure of Official Information*; and relevant statutes contained in the Bankruptcy Code.

Note:

If IRS employees face specific disclosure issues not covered in any of the above references or need interpretative help, they should contact their local Disclosure Office.

5.9.19.2 (11-15-2011) Field Insolvency Phone Calls

1. **Cause and Cure.** Because of the large geographic areas handled by Field Insolvency specialists and advisors, most of their contacts with debtors and debtor's attorneys are by telephone. In addition to securing returns or return information, determining the feasibility of a plan, or collecting postpetition taxes, the caseworker must attempt to identify the primary cause of a debtor's noncompliance and educate the debtor or the debtor's representative on how to remain compliant with future filing and payment obligations. If the case worker requests that the debtor or debtor's representative provide information or complete an action, the caseworker should communicate a reasonable and clear action date, and advise of any potential consequences if the action date is missed.

Note:

This requirement to discuss "cause and cure" also applies to in-person meetings with the debtor or debtor's representative, such as 341 meetings or office appointments.

Caution:

Any action dates set orally should not conflict with dates set in letters or other correspondence, such as Letter 1714.

2. **Caller Identification.** Field Insolvency personnel are bound by the same disclosure procedures for identifying callers as are the phone assisters at the Centralized Insolvency Operation (CIO). (*IRM 5.9.19.3, CIO Telephone Procedures, and Exhibit 5.9.19-1.*)
3. **Call Referral.** For call inquiries received in the Field Insolvency offices on cases assigned to the CIO inventory, the callers should be referred to the toll-free phone unit in Philadelphia at 1-800-973-0424 unless the inquiries fall under the umbrella of complex case issues as outlined in IRM 5.9.1.3(3), *Complex Issues*. Field specialists or advisors must work calls on complex issues.
4. **Chapter 7 Asset Calls.** Field specialists and advisors will work calls received on Chapter 7 Asset cases assigned to them, and will handle calls on cases assigned to the CIO if a complex issue is involved. CIO will take calls on Chapter 7 Asset cases assigned to CIO caseworkers, but will refer complex questions to a field specialist or advisor.
5. **Chapter 7 No Asset and Chapter 13 Calls.** Field specialists and advisors will answer questions received on Chapter 7 No Asset cases and Chapter 13 cases assigned to the Field Insolvency inventory. CIO will handle questions received on Chapter 7 No Asset and Chapter 13 cases assigned to the CIO inventory, unless the inquiry concerns a post-petition liability or is deemed a complex issue. CIO will handle calls involving general payment questions. CIO will also handle questions regarding a Chapter 13 debtor's eligibility to enter into an Installment Agreement for post-petition debt, using the tool Installment Agreement Requests When in a Chapter 13 Bankruptcy, http://serp.enterprise.irs.gov/databases/who-where.dr/cio_assignment.dr/chptr_13_post_pet_ia_req.htm, available on SERP. For other post-petition or complex issues, the assister must provide the caller with the phone number for the appropriate Field Insolvency specialist. Field specialists and advisors will handle inquiries involving complex issues.
6. **Chapter 9, 11, 12, and 15 Calls.** Field Insolvency must take all calls concerning Chapter 9, 11, 12, and 15 insolvency issues even if no bankruptcy has been filed.
7. **Non-Insolvency Calls.** When Field Insolvency receives a call on a case in its inventory, but the issue is not bankruptcy-related (e.g., math error), the specialist or advisor should refer the caller to the toll-free number 1-800-829-1040 for individual accounts or to toll-free number 1-800-829-4933 for business accounts. If a call has been received completely in error but falls under the purview of another IRS function, the specialist or advisor must research SERP to provide the taxpayer with a correct contact number.

Caution:

"Internal use only" phone numbers are not to be given to the public.

5.9.19.3 (11-15-2011) CIO Telephone Procedures

1. **Overview of Response to Incoming Calls.** The technical units handle bankruptcy calls concerning Chapter 7 No Asset and Chapter 13 issues in the CIO inventory unless the inquiry concerns a complex issue.
2. **Phone Processing Steps.** The phone processing steps are an overview of the methods CIO technicians will use to respond to incoming calls. Processing steps include:
 - A. **Call Identification.** Identifying the type of call: general Insolvency questions, non-Insolvency questions, case-related Insolvency questions or complex issues.
 - B. **Servicewide Electronic Research Program (SERP).** Researching SERP to provide caller with correct contact number regarding non-Insolvency questions.
 - C. **Bankruptcy Law Advisory Research Engine (BLARE).** Using electronic research tools to provide caller with correct information regarding general Insolvency questions.
 - D. **Insolvency Case Assignment Tool.** Accessing web site http://serp.imt.irs.gov/cgi-bin/AISCT_Search.cgi to provide the caller with correct contact numbers for the assigned employee regarding Chapter 9, 11, or 12 case-related questions, Chapter 7 Asset questions on cases assigned to Field Insolvency, pre-confirmation Chapter 13 questions, or complex issues.
 - E. **Disclosure.** Performing disclosure inquiries for callers requesting specific case information relating to bankruptcy and/or taxes.
 - F. **Integrated Data Retrieval System (IDRS) Research.** Researching IDRS to find specific taxpayer account information for Chapter 7 No Asset or 13 case-related questions pertaining to cases in the CIO inventory.
 - G. **Response to Caller.** Responding to the caller with information needed to resolve Chapter 7 No Asset or 13 case-related questions.
 - H. **Written Responses.** Requests from callers for responses in writing can be provided using the programmed letters on AIS or SERP. (*Exhibit 5.9.19-3.*) Ad hoc letters may be prepared under management supervision. Counsel approval may be required for ad hoc letters.
 - I. **On-line Adjustments.** Inputting bankruptcy-related on-line adjustments to debtors' accounts if necessary, using appropriate IDRS command codes while the caller is on the phone. (*See Exhibit 5.9.19-2.*)
 - J. **Additional Actions.** Taking additional actions as needed (e.g., referrals, manual refund requests, corrections of stay violations, callbacks and case documentation).
 - K. **Complex Issues.** Referring to IRM 5.9.1.3(3), *Complex Issues*, to identify which calls should be handled by a Field Insolvency specialist. The phone assister must provide the caller with the correct contact number of the assigned employee with regard to complex issues. In addition the CIO assister must annotate the AIS history with the caller's phone number and the best time to call the debtor.
 - L. **Calls Unrelated to Bankruptcy.** Researching SERP to provide taxpayers with a correct contact number when non-Insolvency calls are received at the CIO call site.

Caution:

"Internal use only" phone numbers are not to be given to the public.

3. **Taxpayer Verification.** Before divulging taxpayer information, the phone assister must verify the caller is in fact the debtor by verifying the debtor's name, TIN, address, filing status on the return in question, and date of birth. This information can be found using CC INOLES on IDRS. If the caller is asking for non-case specific bankruptcy information, taxpayer verification is not needed.

Note:

If the assister is unable to verify any of this information, the assister should follow the specific instructions outlined in IRM 21.1.3.2.3, *Required Taxpayer Authentication*, and IRM 21.1.3.2.4, *Additional Taxpayer Authentication*.

4. **Contacts with Trustees.** Most contacts with a trustee are not considered third party contacts under IRC § 7602(c) while the bankruptcy case is pending *as long as the contact relates to matters and issues involved in the bankruptcy case*. Before speaking with a trustee, the caseworker should verify the trustee information on AIS. If a trustee's phone call covers several cases, full verification of trustee information need only be completed for the first case. Once the trustee's identity is confirmed, for subsequent cases the assister may simply verify the trustee on the phone is handling each case (s)he is referencing by checking AIS information. No disclosures of the debtor's return information may be made to the Chapter 13 trustee or to the U.S. Trustee unless the bankruptcy is a proceeding pertaining to tax administration or the debtor taxpayer has authorized the disclosure.

Note:

Contacting a trustee about payment issues after the court closes the bankruptcy case is allowed.

5. **Attorney of Record.** Contacting the attorney of record for the debtor is not considered a third party contact while the case is open and under the jurisdiction of the bankruptcy court. The contact must be confined to issues affecting the bankruptcy filing.

6. **Other Contacts.** IRM 21.1.3.4, *Other Third Party Inquiries*, provides information on third party contacts.

**5.9.19.3.1 (05-16-2008)
General Insolvency Call Issues**

1. **Procedural Questions.** CIO technicians should respond to general Chapter 7 No Asset and Chapter 13 insolvency questions using available resources without accessing AIS or IDRS. If a query is about basic bankruptcy concepts and is not case-specific, the phone assister should refer to the Bankruptcy Code, the IRM, or BLARE. For non-bankruptcy issues, such as correcting a math error or effecting a credit transfer, the technician should refer the caller to the toll-free number 1-800-829-1040 for individual taxes or toll free number 1-800-829-4933 for business taxes.

**5.9.19.3.2 (11-15-2011)
Case-Specific Insolvency Issues**

1. **Chapters 9, 11, 12, or 15 Calls.** If a caller to the toll-free line asks either general or case-specific questions concerning a Chapter 9, 11, 12, or 15 bankruptcy, the phone assister will provide the caller with the phone number of the appropriate Field Insolvency caseworker by using the Insolvency Case Assignment Tool on SERP. If a case is open on AIS, the assister must complete an AIS history documenting receipt of the call and the caller's phone number with a best time to call. (IRM Exhibit 5.9.11-1, *Accessing a Case on AIS*.) If a caller declines to give a phone number or best time to call, the AIS history should reflect that fact.
2. **Chapter 7 Asset Calls.** After the caller's identity has been confirmed, CIO employees will answer all questions for Chapter 7 Asset cases assigned to the CIO, unless a complex issue is involved as outlined in IRM 5.9.1.3(3), *Complex Issues*. If the case is assigned to a Field Insolvency employee or involves a complex issue, the CIO assister will provide the caller with the phone number of the appropriate Field Insolvency specialist or advisor. If the case is still open on AIS, the assister must enter in the AIS history the receipt of the call, the caller's phone number and the best time to call.
3. **Chapter 7 No Asset or 13 Calls.** After confirming the caller's identity, CIO phone assisters will answer all questions on Chapter 7 No Asset or 13 questions for cases assigned to the CIO inventory unless the inquiry concerns a post-petition liability or is deemed a complex issue. CIO will handle calls involving general payment questions. CIO will also answer questions regarding a Chapter 13 debtor's eligibility to enter into an Installment Agreement for post-petition debt, using the Installment Agreement Requests When in a Chapter 13 Bankruptcy tool, located on SERP at http://serp.enterprise.irs.gov/databases/who-where.dr/cio_assignment.dr/chptr_13_post_pet_ia_req.htm. For other post-petition or complex issues, the assister must provide the caller with the phone number for the appropriate Field Insolvency specialist. Once the call has been determined to be a case-specific question on an account assigned to the CIO and not a complex issue, the phone assister must ensure the caller is the debtor or has proper disclosure authorization. (See *Exhibit 5.9.19-1, Disclosure Chart*.)

Reminder:

Matters not involving tax administration cases cannot be disclosed to a third party without a taxpayer's oral or written consent.

IF...	THEN...
the caller is <i>not</i> authorized to receive information,	advise the caller the debtor must submit a completed Form 2848 or Form 8821 allowing disclosure of tax information to a third party, or have the caller call back with the debtor on the line, at which time the debtor can give oral permission to disclose tax information to the third party. Caution: Form 8821 does not authorize the third party named to represent the taxpayer.
the issue is complex,	provide the caller with the telephone number of the Field employee assigned the case. Document the AIS history. IRM 5.9.1.3(3) lists complex issues.

**5.9.19.3.3 (05-16-2008)
Bankruptcy Law Advisory Research Engine (BLARE)**

1. **Automated Phone Guide.** Phone assisters at the CIO use BLARE, an automated research engine, to arrive at logical answers to commonly asked questions. Used in conjunction with the IRM and the Bankruptcy Code, BLARE provides assisters with sufficient information to respond to most Chapter 7 No Asset and Chapter 13 queries. Topics accessible through Blare are:

- disclosure
- dischargeability
- community property
- liens
- levies
- local rules
- non-debtor spouse
- offers in compromise
- pay off amounts
- plans
- proofs of claim

- refunds
- seizures
- stay violations
- Associate Area Counsel
- installment agreements

2. **Updates.** The data on BLARE can be updated on short notice by the CIO quality analysts after approval from an IRS panel made up of representatives from Counsel, Policy, Field Insolvency, and the CIO. All of the responses on BLARE are consistent with policy and procedures found in IRM 5.9.

5.9.19.4 (03-01-2007) Secondary Issues

1. **Bankruptcy Case-Related Issues.** Secondary issues may arise in the process of answering or resolving bankruptcy case-related issues. If the information in the AIS case history is insufficient to satisfy the caller's request or resolve the issue, the phone assister should obtain the contact number for the assigned employee, either from AIS or from the Insolvency Case Assignment Tool on SERP, and give the information to the caller. CIO assisters must annotate the AIS history with receipt of the call, the caller's phone number and the best time to call.
2. **Resolve Issue.** While helping debtors with their bankruptcy issues, secondary issues may arise requiring adjustments/corrections on their accounts. *Exhibit 5.9.19-2* lists common adjustment requests. Any adjustment requests not made in writing must meet Oral Statement Authority, and tolerances must also be considered by both Field Insolvency and CIO caseworkers. Management must ensure required security measures are in place regarding on-line IDRS adjustments.

5.9.19.5 (03-01-2007) Documentation of Phone Calls

1. **Required Annotations.** Mandatory AIS documentation of phone calls generally applies to both Field Insolvency and the Centralized Insolvency Operation.
2. **Live Phone Calls on Specific Cases.** When a debtor, a debtor's representative, or third party (which can include another IRS employee) phones an Insolvency employee, the AIS history for the case in question must include the identity of the caller, a statement that a disclosure probe was completed, the nature of the call, and any resolutions, agreements, or unresolved issues brought to light because of the phone conversation. If the CIO refers a caller to a Field Insolvency caseworker, the CIO assister must annotate the AIS history with the receipt of the call, the caller's phone number and the best time to call.
3. **General Phone Calls.** If a call is received asking general bankruptcy information, absent any direction from management to the contrary, no history record need be kept of that phone call.
4. **Phone Messages.** Caseworkers are expected to return phone messages within one workday of receipt. Unsuccessful attempts to return a call must be documented in AIS. The documentation should be brief. If a message is left for a debtor, debtor's representative, or third party on voice mail or an answering machine, the message cannot disclose any taxpayer information.
5. **Out Calls.** If an Insolvency caseworker calls a debtor, debtor's representative, or third party, the caseworker must confirm the identity of the party taking the call to protect against inadvertent disclosure of tax information. The disclosure review must be documented in the AIS history. This direction applies both to returned phone messages and calls initiated by the caseworker.

Exhibit 5.9.19-1 Disclosure Chart

Note: Information can be received from a third-party. (See IRM 11.3.2.2, *General Rules*.)

Stakeholder	Disclosures Permitted	Disclosures NOT Permitted
Debtor	All matters regarding tax returns signed by the debtor (IRC § 6103(e)(1)) and IRC § 6103(e) (7). Requests for return copies must be in writing (IRC § 6103(e)). (See IRM 11.3.2.3, <i>Processing Requests for Returns and Return Information</i> .)	Information regarding criminal investigations by Criminal Investigation (CI) if acknowledging the existence of an investigation will impair tax administration. (See IRM 11.3.2.2, <i>General Rules</i> , and IRC § 6103(e)(7)) Caution: Existence of a CI investigation can be neither confirmed nor denied unless CI authorizes otherwise. No representations should be made that an investigation is not currently being conducted if the opposite is known to be true.
Non-debtor spouse	Only matters on returns signed by the non-debtor spouse (IRC § 6103(e)(1)(B)).	All tax return information separately filed by the debtor where the debtor has <i>not</i> given oral or written consent. This includes data available on IDRS through CC IRPTR such as Forms 1099, W-2's, etc. (See the example in IRM 11.3.2.4.1(2), <i>Individuals</i> .)
Attorney	All matters of tax administration cases for the debtor for which the attorney is named representative, generally prepetition returns and return information. (See IRM 11.3.3.1.6(4), <i>Disclosure to an Attorney-in-Fact</i>). The "representative" requirement is considered to be met by the attorney's entry of an appearance in the bankruptcy proceeding, by the signing of the petition, or for which the attorney has a valid Form 2848.	Attorneys are not allowed to receive information on any return due and owing after the petition date unless the debtor has given oral or written consent, or unless an issue arises regarding postpetition taxes before the bankruptcy court (e.g., a 1305 claim has been filed) and the attorney is representing the debtor with respect to postpetition tax issues. Additionally, once the bankruptcy is discharged, dismissed or closed by the court and ceases to be a matter of tax administration, the bankruptcy attorney ceases to be the attorney of record. He may not then receive information without the debtor's express oral or written consent even if the information related to tax periods or matters clearly administered by the bankruptcy court.
Attorney's representative	NONE, with the following exception: Item 5 of Form 2848 allows a "write-in" for re-designation of authority to allow the holder of Form 2848 to re-designate his authority to others.	Aside from the debtor's attorney, no disclosure of the debtor's return information made be made to employees of the law firm representing the debtor unless the debtor has given oral or written consent with the exception annotated in the box to the left. Form 8821, item 2, permits the debtor to directly delegate authority to employees of the firm to receive tax information, but not to act on the debtor's behalf.
CPA/Tax Preparer	NONE, with the following exception: Returns can permit "Check the Box" authorization to be extended to a third-party designee, which can include a preparer. However, the "Check the Box" authorization ends after the return is processed or by the return due date, without regard to extensions, whichever is earlier.	For bankruptcy purposes, the CPA/Tax Preparer of the debtor's tax returns is not permitted to receive any disclosure of tax return information unless the debtor has given oral or written consent. See IRM 11.3.2.5.2, <i>Preparers</i> , for exceptions outside the scope of bankruptcy.
Trustee	In a bankruptcy proceeding pertaining to tax administration, prepetition returns and return information pertaining to the debtor or bankruptcy estate may, upon written request, be disclosed to the trustee. Also, in cases where the trustees have fiduciary responsibility, hence a material interest, to prepare returns and pay taxes (tax administration purposes), they have authority for access to the same, irrespective of whether the return is pre or postpetition. (See IRC § 6103(e)(4), (5), and (7); IRC § 6103(h)(4); and IRM 11.3.2.4.12, <i>Bankruptcies</i> .) Note: In involuntary bankruptcies, no disclosure may be made to	Trustees are not allowed to receive information on any tax returns for periods after the petition date unless the debtor has given oral or written consent, except for claims filed in Chapter 13 cases under § 1305, or for tax obligations incurred postpetition, while the trustee is operating the debtor's business. IRC § 6103(e) generally does not permit disclosures to the United States Trustee or the standing Chapter 13 trustee; however, such disclosures may be permitted in the context of a judicial proceeding if the

	the trustee until the order for relief has been entered or unless the court finds that such disclosure is necessary for purposes of determining whether an order for relief should be entered (IRC § 6103(e)(5)(C)).	bankruptcy case pertains to tax administration.
Other third-party	NONE, generally; however, see IRM 11.3.2.2(4), <i>General Rules</i> , and IRC § 6103(k)(6) disclosure for investigative purposes and IRC § 6103(h)(4), disclosure in an administrative or judicial tax proceeding. Other third parties may receive the debtor's return information if they have sufficient material interest, pursuant to IRC § 6103(e). (See IRM 11.3.2.2(3), <i>General Rules</i> .)	Generally, third-parties are not allowed to receive tax return information unless the debtor has given oral or written consent.
Holder of a Form 2848, <i>Power of Attorney and Declaration of Representative</i> (POA)	POAs are allowed to receive tax returns and return information only for the tax periods listed on the Form 2848.	POAs are not allowed to receive tax returns or return information for any tax periods <i>not</i> listed on the Form 2848, unless the debtor has given oral or written consent.
Corporate officers	May receive tax returns and return information of corporations for which they signed the tax return in question, or have the authority legally to bind the corporation in accordance with state law, and are still employed by the corporation in the same capacity and with the same authority. (See IRC § 6103(e)(1)(D) and IRM 11.3.2.4.3, <i>Corporations</i> .)	May not receive returns or return information if no longer employed by the corporation or if no longer a current corporate officer.
Partners	May receive tax returns and return information on partnerships for which they were a general or limited partner of the partnership during any part of the period covered by the return. (See IRM 11.3.2.4.2(1), <i>Partnerships</i> .)	May not receive information on individual income tax returns of the partners or returns or return information of the partnership for which a Schedule K-1 was not filed for the person requesting the disclosure or for which the person was not a general or limited partner of the tax return period in question. (See IRM 11.3.2.4, <i>Partnerships</i> .)
US Bankruptcy Court	All matters in tax administration cases of the debtor or bankruptcy estate, generally prepetition returns and return information to the extent authorized by IRC § 6103(h)(4). (See IRM 11.3.22, <i>Disclosure to Federal Officers and Employees for Tax Administration</i> .)	With the exception of matters concerning administrative expenses and § 1305 claims, the bankruptcy court is generally not allowed to receive information on any tax returns due and owing after the petition date unless the debtor has given oral or written consent.
Chief Counsel	May receive returns and return information on cases currently in litigation, in anticipation of litigation, and for purposes of issuing a legal or technical opinion or as otherwise needed for a tax administration purpose in the course of official duties. (See IRM 11.3.22.6, <i>Access by Employees of the Office of Chief Counsel</i> , and IRC § 6103(h)(1).)	Tax return information may not be disclosed to Chief Counsel employees who do not have a need to know the information to perform their official duties.
AUSA/DOJ	May receive returns and return information on cases currently in litigation, in matters of tax administration if the taxpayer is a party to the proceeding, or the proceeding arises out of, or in connection with, determining the taxpayer's civil or criminal liability, with respect to tax. Third-party return information may also be disclosed if the item or transaction test of IRC § 6103(h)(2)(B) or (C) is met. (See IRM 11.3.22.12.1, <i>What May be Disclosed</i> , and IRC § 6103(h)(2)(A).)	AUSA/DOJ cannot receive tax return information on cases that have not been referred to them as matters of tax administration (IRC § 6103(h)(2) and (3)). In non-tax criminal matters, such as bankruptcy fraud, requests from AUSA/DOJ should be referred to the Disclosure Officer per IRC § 6103(i).
Internal IRS employees	May receive returns and return information on a need-to-know basis where the employee's official duties require such disclosure. This may include a manager, a lead, or an OJI. (See IRM 11.3.22.4.1, <i>Access by IRS Employees Based on "Need to Know,"</i> and IRC § 6103(h)(1) .)	Tax return information may not be disclosed to IRS employees who do not have a need to know the information to perform their official tax administration duties.
Form 8821, <i>Tax Information Authorization</i>	Holders of Form 8821 are allowed to receive tax return information only for tax periods listed on the Form 8821. Form 8821, line 3, column d, lists restrictions. If nothing is listed in column d, then any information may be disclosed within the limits of the Form, column b, and Period, column c.	Holders of Form 8821 are not allowed to represent the debtor before the IRS, nor receive copies of returns without an accompanying written request for Form 4506, <i>Request for Copy of Tax Return</i> , or Form 4506T, <i>Request for Transcript of Tax Return</i> .

Disclosure References are:

- IRM 21.1.3.3, *Third Party (POA/TIA/F706) Authentication*
- IRM 21.1.3.2.4, *Additional Taxpayer Authentication*
- IRM 21.1.3.6, *E-file PIN's and Form 8453 (U.S. Individual Income Tax Transmittal for an IRS e-file Return)*
- IRM 11.3, *Disclosure of Official Information*
- IRM 11.3.2, *Disclosure to Persons with a Material Interest*
- IRM 11.3.3, *Disclosure to Designees and Practitioners*
- IRM 11.3.22, *Disclosure to Federal Officers and Employees for Tax Administration Purposes*
- Bankruptcy Disclosure Handbook, Document 9225
- IRC § 6103

**Exhibit 5.9.19-2
Common IDRS Adjustments**

ADJUSTMENT	IRM REFERENCES	ORAL STATEMENT AUTHORITY - TOLERANCES
Address Change or Correction	<ul style="list-style-type: none"> • IRM 25.15.7.5.2.4.4, <i>ENMOD</i> • IRM 3.13.5.16, <i>Domestic Changes Received</i> • IRM 3.13.5.16.1, <i>Updating Address Records</i> • IRM 3.13.5.12, <i>Address Changes from Oral Statements</i> • IRM 3.13.5.12.1, <i>Oral Address Procedures for Completing a New Address</i> 	An oral address change can be made if the necessary verification is provided. If the required verification cannot be provided, the taxpayer must provide a Form 8822, <i>Change of Address</i> , before the address can be changed. When an address is updated through an oral statement, advise the taxpayer to also change their address with the local United States Post Office.

Name Correction	<ul style="list-style-type: none"> IRM 25.14.7.5.2.4.4, <i>ENMOD</i> IRM 3.13.5.16, <i>Address Changes Received</i> 	NOT APPLICABLE
Credit Transfer	<ul style="list-style-type: none"> IRM Exhibit 21.5.8-1, <i>Transaction Codes and Reversals</i> IRM 21.5.8, <i>Account Resolution, Credit Transfers</i> IRM 2.4.17, <i>Command Codes ADD24/34/48, ADC24/34/48, FRM34 and DRT24/48</i> 	There are no oral statement ceiling amounts/dollar limits, but credits must be available for transfer on IDRS.
Installment Agreements, Reinstatements, Revisions, Extension of Time to Pay	<ul style="list-style-type: none"> IRM Exhibit 5.19.1-5, <i>IDRS Input of Full Pay Agreements, 120 Days or Less, CC IAREV for AM/ACS/ACSS/CSCO/FA</i> IRM Exhibit 5.19.1-6, <i>IDRS Input of Installment Agreements, CC IAORG</i> IRM Exhibit 5.19.1-7, <i>IDRS Input of Installment Agreements CC IAREV</i> IRM Exhibit 5.19.1-8, <i>IDRS Input of Pre-assessed IAs and Extensions</i> 	Streamlined installment agreement criteria for dollar amounts and time limits are in effect. (See IRM 5.14.5.2, <i>Streamlined, Guaranteed and In-Business Trust Fund Express Installment Agreements.</i>)
Transcript Request	<ul style="list-style-type: none"> MFTRA-X IRM Exhibit 2.3.32-2, <i>Command Code MFTRA Input Examples - Request Types</i> 	NOT APPLICABLE
Correct Unpostables	<ul style="list-style-type: none"> IRM 2.12.32, <i>General Unpostables</i> IRM 3.12.32.22, <i>General Information for GUF Command Code Screen Formats</i> IRM Exhibit 2.3.37-1, <i>Input Display UPTIN</i> IRM 21.5.5, <i>Unpostables</i> IRM 21.5.5.3.2, <i>Researching Unpostables on IDRS</i> 	NOT APPLICABLE
Input/Reverse TC 520	<ul style="list-style-type: none"> IRM 5.9.5.6, <i>Bankruptcy Freeze Code (TC 520)</i> IRM 5.9.5.6.1, <i>Closing Codes</i> IRM 5.9.5.6.2, <i>Reversing the Bankruptcy Indicator</i> IRM 5.9.17.17, <i>Reversal of Freeze Codes (TC521)</i> IRM 5.9.17.2, <i>Lift of Stay and Reversing the Bankruptcy Freeze</i> IRM 2.4.19, <i>Command Codes REQ77, FRM77 and FRM7A</i> 	NOT APPLICABLE
Input TC 971	<ul style="list-style-type: none"> IRM 5.9.17.22, <i>Adjustment Methods for Discharged Liabilities</i> IRM 21.5.1.4.8, <i>Transaction Code 971</i> IRM 2.4.19, <i>Command Codes REQ77, FRM77 and FRM7A</i> 	NOT APPLICABLE
IDRS History Items	<ul style="list-style-type: none"> IRM Exhibit 2.3.12-1, <i>ACTON Input Format</i> IRM 21.2.2.4.2.1, <i>IDRS History Items and Account Inquiry</i> 	NOT APPLICABLE
Delete Adjustment Inputs (same-day)	<ul style="list-style-type: none"> IRM Exhibit 2.4.13-2, <i>Input Format, CC TERUPC</i> 	NOT APPLICABLE
Control Bases	<ul style="list-style-type: none"> IRM Exhibit 2.3.12-1, <i>ACTON Input Format</i> IRM 21.2.2.4.2, <i>IDRS Case Controls</i> 	NOT APPLICABLE
Closing TDI	<ul style="list-style-type: none"> IRM 5.19.2.6.9.3, <i>Resolving TDI Research (TC 594/599) Transcripts</i> 	NOT APPLICABLE
Dummy Module	<ul style="list-style-type: none"> IRM 21.2.2.4.4.1, <i>Taxpayer Information File (TIF)</i> IRM 2.3.12.2, <i>Case Control Using Command Code ACTON</i> 	NOT APPLICABLE
Stop Refunds	<ul style="list-style-type: none"> IRM 21.4.1.4.10, <i>Refund Intercept CC NOREF</i> IRM 21.4.5, <i>Erroneous Refunds</i> 	NOT APPLICABLE

The IDRS Command Codes Job Aid on SERP provides directions for IDRS inputs.

Oral Statement Authority is explained in IRM 21.1.3.20.

Tolerances are given in IRM 21.5.1.4.12.

Exhibit 5.9.19-3 Approved Insolvency Letters

Letters to Debtors and Third Parties. The following table lists Insolvency letters by number and explains their uses.

Letter #	Title	To	CH	CC	Originator
982	Fiduciary Pmt of Claim	TTEE	11	N/A	Field Specialist/Advisor

983	Closed POC	TTEE	13	Debtor & Atty	CIO Technician
984	Will Claim Be Paid	TTEE	7A	N/A	Field Specialist/Advisor
986	Fiduciary Responsibilities	TTEE	7,11	N/A	Field Specialist/Advisor
985	POC Acknowledgement	Court	11, 7A, 12, 13	N/A	Field Specialist/Advisor
1714	Request for Missing Tax Returns	Debtor	7A, 11,12, 13	N/A	Field Specialist/Advisor
2173	Adequate Protection	Debtor	11, 13	Atty	Field Specialist/Advisor
3923	Delinquent Plan Pmt	Debtor	11	TTEE	Field Specialist/Advisor
3924	FTD Letter	Debtor	11	N/A	Field Specialist/Advisor
3925	Plan and Disclosure Request	Court	11	Atty	Field Specialist/Advisor
3926	Plan Status Letter	TTEE	13	N/A	CIO Technician
		Debtor	11	N/A	Field Specialist/Advisor
3927	Post Petition Liability	Debtor	13	N/A	CIO Technician
3928	Request for Business Info	TTEE Debtor	13, 7A	Atty	CIO Technician
		Debtor	11, 7A	Atty	Field Specialist/Advisor
3929	Stat 60	Debtor	13, 7N	N/A	CIO Technician
3930	Withdraw Claim	Court	11, 12, 13	Atty Taxpayer	Field Specialist/Advisor
4066	Notice of Intent to Levy CDP Rights	Debtor	7N	N/A	Field Specialist/Advisor
4067	Notice of Intent to Levy-No CDP	Debtor	7N	N/A	Field Specialist/Advisor
4068	Post-discharge Letter Seeking Payment	Debtor	7N	N/A	Field Specialist/Advisor
4111	Chapter 7 Bankruptcy Balance Letter	Debtor	7N	N/A	CIO Technician
4112	Chapter 13 Plan Balance Letter	Debtor	13	N/A	CIO Technician
4113	Bankruptcy Installment Agreement Letter	Debtor	7,13	N/A	CIO Technician
4114	Bankruptcy Discharge Determination Letter	Debtor	7, 13	N/A	CIO Technician
4521	Non-Debtor Spouse Letter	Non-Debtor Spouse	11, 13	N/A	Field Specialist/Advisor
4522	Trustee Refund Letter	TTEE	7, 13	N/A	CIO Technician
4553	Excluded Property Letter/Soft Notice	Debtor	7N	N/A	Field Specialist/Advisor
4554	Excluded Property Notice of Intent to Levy Letter- CDP Rights	Debtor	7N	N/A	Field Specialist/Advisor
4556	Excluded Property Letter - No CDP	Debtor	7N	N/A	Field Specialist/Advisor

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 20. Non-Bankruptcy Insolvencies

5.9.20 Non-Bankruptcy Insolvencies

- 5.9.20.1 [Stockbroker Insolvencies](#)
- 5.9.20.2 [Receivership Proceedings](#)
- 5.9.20.3 [Assignment for the Benefit of Creditors \(ABC\)](#)
- 5.9.20.4 [Corporate Dissolutions](#)
- 5.9.20.5 [Bulk Sales](#)

Manual Transmittal

January 28, 2016

Purpose

(1) This transmits a new IRM 5.9.20, Bankruptcy and Other Insolvencies, *Non-Bankruptcy Insolvencies*.

Material Changes

(1) Editorial changes have been made throughout the IRM and citations have been updated.

Effect on Other Documents

This replaces IRM 5.9.20 dated March 5, 2015.

Audience

Centralized Insolvency Operation, Field Insolvency, and Advisory.

Effective Date

(01-28-2016)

Kristen Bailey, Director, Collection Policy

5.9.20.1 (03-05-2015)

Stockbroker Insolvencies

1. **Overview.** Because stockbrokers are entrusted with the financial investments of their customers, special laws have been enacted to protect the assets of their investors. In conjunction with these special protections, Congress has limited the extent to which stockbrokers may seek bankruptcy protection. Specifically, stockbrokers are prohibited from being a debtor in Chapters 11 and 13 bankruptcies (11 USC § 109(d) & (e)). By default the only chapter of bankruptcy for which a stockbroker may be eligible is Chapter 7. (Compare 11 USC § 109(b) with § 109(d) & (e).) The Field Insolvency operation is fully responsible for working stockbroker insolvencies.
2. **Interstate Commerce.** The majority of stockbrokers deal in interstate commerce and, in so doing, are required to be members of the Security Investor Protection Corporation (SIPC) by the Securities Investor Protection Act (SIPA) of 1970, 15 USC §§ 78aaa et seq. Generally, these stockbrokers should not be filing bankruptcy. However, if a determination has been made a broker or brokerage firm's customers' investments do not need protection under SIPA, it may file a Chapter 7 bankruptcy. The discussion of SIPA cases in the subsection below explains procedures to be taken by Field Insolvency caseworkers.
3. **Intrastate Commerce.** A broker or dealer whose business is exclusively *intrastate* and who does not use any facility of a national securities exchange may appropriately file a Chapter 7 bankruptcy. Insolvency specialists should handle these cases as they would any other Chapter 7 bankruptcy.

5.9.20.1.1 (01-28-2016)

SIPA Cases

1. **SIPA Actions.** SIPC is a private, non-profit, non-governmental corporation to which most registered brokers are required to belong. Assessments against members are deposited into a fund designed to protect customers (i.e., investors doing business with the broker or brokerage) in the event of the financial failure of a SIPA member. If SIPC determines that a member has failed or is in danger of failing and other conditions are met, SIPC may seek liquidation of the firm.
 - A. SIPC files an application for a protective decree with the district court as a civil suit where SIPC is listed as one of the plaintiffs in the matter. If a Chapter 7 bankruptcy has been filed, the bankruptcy proceeding is stayed pending the outcome of the SIPC liquidation. See 11 USC § 742.
 - B. A trustee is appointed to satisfy investors' and other creditors' claims.
 - C. Once the SIPC liquidation proceeding is completed, if the broker or brokerage had filed a Chapter 7 previously, the Chapter 7 case is dismissed. 11 USC § 742.
2. **SIPC Trustee.** After the district court grants the protective decree, it appoints a trustee and the case is removed to the bankruptcy court. SIPA contains special provisions protecting investment customers, but the general provisions of the bankruptcy code also apply to SIPA liquidations. Since the case is opened in the district court and assigned a case number there, the case is not assigned a bankruptcy case number; however, the Bankruptcy Court gives it an adversary number. Insolvency will use the adversary number to load the case onto the Automated Insolvency System (AIS). The duties of the SIPC trustee are similar to those of a Chapter 7 trustee with the additional duties to:
 - A. Be responsible for all noticing issues on the case;
 - B. Hire any necessary personnel, such as an accountant, to assist in the liquidation process;
 - C. Use any member of SIPC to assist in the liquidation proceeding;

- D. Maintain and control customer accounts;
- E. Investigate the debtor and condition of the estate; and
- F. Report any and all findings to the court.

Note:

These additional duties do not require approval of the bankruptcy court. (15 USC § 78ff-1.)

Note:

The SIPC trustee may submit a request to the Service seeking exemption from filing the returns of a brokerage company in a SIPA proceeding, in appropriate circumstances, under the procedures discussed in IRM 5.9.6.14.1(2) , *Relief from Filing Requirement*.

3. **Assigned Offices.** All SIPA cases are handled by two Field Insolvency offices.

- St. Paul works SIPA cases assigned to jurisdictions handled by Insolvency Area West
- Manhattan works SIPA cases assigned to jurisdictions handled by Insolvency Area East

When notices pertaining to SIPA proceedings are received by any other Field Insolvency office or by the CIO, those notices must be forwarded to either St. Paul or Manhattan as time sensitive mail according to procedures established in IRM 5.9.11.2(4), *Specialty Mail Received by the Field*.

4. **Initial Insolvency Questions.** Usually the Service will not receive any notification of a stockbroker insolvency until SIPC files an application for a protective decree and the case is transferred to the bankruptcy court as an adversarial proceeding. The Field Insolvency specialist or advisor must contact the trustee to obtain information such as:

- The taxpayer identification number (EIN/SSN)
- Other entities involved and their corresponding TINs
- Date of the 341 meeting of creditors
- If the IRS is named as a creditor
- The last date to file a claim
- How to be added to creditor matrices, if necessary
- Other relevant information or special procedures required by the trustee

5. **Adding the Case to AIS.** Field Insolvency will be responsible for loading SIPA cases on to AIS. Because AIS has no database for SIPA cases, they will be added as "RC" (receivership) in the "Chapter" field of the AIS entity screen. The caseworker will use the adversary number with the letters "-AD" following the last digit of the number or following the judge's initials. The "-AD" will identify the case as a SIPA proceeding. The trustee information can be loaded to the AIS Attorney screen.

6. **Manual Processing.** The Insolvency Interface Program (IIP) will not process SIPA cases. Field Insolvency caseworkers will be responsible for verifying TINs, reviewing status codes, addressing pending Exam actions (TC 420), taking necessary actions to avoid or correct stay violations, and inputting TC 520 cc 84 manually on all periods. If any periods are estimated, a dummy may be required.

Note:

Closing code 84 will not establish a dummy module. It may be necessary to establish a dummy mod using cc 81, and change the closing code to 84 after the dummy mod is established.

7. **TFRP Investigation.** TFRP investigations will be conducted and assertions will be made as if the case were a Chapter 7 bankruptcy.

8. **Claims.** Claims are filed with the trustee rather than with the court. The typical deadline to file a claim is six months from the date of notice. The Automated Proof of Claim (APOC) system will not process SIPA cases. The caseworker will prepare the Service's claim as if it were for a Chapter 7 bankruptcy. When a claim is printed from the AIS claim screen, it will be annotated as a "receivership." The caseworker must white out the "receivership" designation and replace it with "SIPA."

9. **Payment Preference.** Customer creditors (see Exhibit 5.9.1-1, *Glossary of Common Insolvency Terms*) always receive full preference in these liquidation proceedings. The IRS will never be a customer creditor. After distribution is made to customer creditors, distribution toward non-customer claims is treated as if the broker or brokerage had filed a Chapter 7 Asset case (11 USC § 726; see 15 USC § 78ff(e)).

10. **Payment Posting.** The SIPA trustee should be instructed to mail payments to either Manhattan or St. Paul, as appropriate, to be posted through AIS and sent to the Campuses serving Manhattan and St. Paul. Payments received by the CIO by error will be posted to the period with the most imminent CSED by the CIO. The CIO will advise Manhattan or St. Paul of payment receipt by phone or secure email. Designated payment code "03" should be used on the payment vouchers.

11. **Stay.** Upon SIPC's filing of an application for a protective decree under SIPA, all tax proceedings concerning the brokerage are stayed until the application is dismissed or until the liquidation proceedings are finished. 11 USC § 362(a). Thus, all normal bankruptcy stay procedures must be followed. For instance, receipt of levy payments must be refunded to the SIPC trustee; Notices of Federal Tax Liens filed in violation of the stay must be withdrawn.

12. **Case Closure.** After completion of a liquidation proceeding, corporations, limited liability companies, and limited partnerships should be closed as TC 530 cc 10 upon reversal of the TC 520. Individual brokers' cases should be closed as if they were Chapter 7 discharges.

13. **Counsel Guidance.** Issues arising from SIPA proceedings that have not been covered in this IRM should be discussed with Counsel.

5.9.20.2 (01-28-2016) Receivership Proceedings

1. **Overview.** A receivership proceeding is when a state or federal court appoints a fiduciary (receiver) to take control of the assets of a business or individual debtor. A receivership may be established to:

- A. Conserve, preserve, protect, or administer property involved in a legal action;
- B. Prevent fraud or loss of property from fraud;
- C. Prevent mismanagement of property; or
- D. Replace an irresponsible or insolvent assignee where claims are jeopardized in an assignment for benefit of creditors.

The Field Insolvency operation is fully responsible for working receivership cases.

2. **Court Jurisdiction.** The majority of receivership actions are brought in the state courts because the basis for jurisdiction by federal district courts is limited. The court appointing the receiver has jurisdiction over the assets of the receivership. The court handles all questions pertaining to the preservation, collection, liquidation, and distribution of the assets.

Note:

No absolute right to the appointment of a receiver exists. The decision is at the discretion of the court.

3. **US District Courts.** The US government can request a federal district court to appoint a receiver as part of a federal tax lien foreclosure action under IRC § 7403(d). Such a receivership is usually sought where necessary for the collection, preservation, or orderly liquidation of property being foreclosed.

4. **CSED.** The statute for collection of taxes is suspended during the time the taxpayer's assets are in the custody of the court plus six months (IRC § 6503(b)).

5. **Types of Receiverships.** Receiverships are generally classified as either "general" where all of the non-exempt assets of a business or individual debtor are under the court's control, or "limited" where a specific asset or group of assets are under the court's control. The following chart illustrates the difference between a general and a limited receivership.

Action	General Receivership	Limited Receivership
Receiver controls	All non-exempt property	A specific asset or class of assets only
Debtor controls	All exempt property	All exempt property
IRS method of collection	Proof of claim	Proof of claim
IRS collection action during the proceeding can include	<ul style="list-style-type: none"> • Seizure of any exempt assets • Levy on income from exempt property 	<ul style="list-style-type: none"> • Seizure of assets not part of the receivership • Levy on income produced by assets not under the receivership

6. **Receiver.** The receiver is considered an officer of the court with fiduciary responsibilities to the court and creditors. The receiver is usually an independent party without an interest in the case. However, a party in interest with special knowledge of the business may be appointed receiver upon agreement of the parties to the suit. The receiver is not personally liable for receivership obligations.

Note:

The receiver of a corporation in receivership may submit a request to the Service seeking exemption from filing the returns of the corporation, in appropriate circumstances, under the procedures discussed in IRM 5.9.6.14.1(2), *Relief from Filing Requirement*

7. **Bankruptcy versus Receivership.** The Service generally will not initiate or join in a proceeding to request an involuntary bankruptcy for a taxpayer. However, IRC § 7403(d) authorizes the Service to request the appointment of a receiver. Such a receivership is usually sought where necessary for the collection, preservation, or orderly liquidation of property being foreclosed.

8. **Adding the Case to AIS.** Field Insolvency specialists or advisors must add receivership cases to AIS, inputting "RC" in the chapter field on the AIS entity screen. The court-appointed receiver's name, address, and phone number must be added to the AIS attorney table.

9. **Manual Processing.** IIP does not process receivership cases, so the caseworker must manually input TC 520 cc 84 on balance due modules. Field Insolvency caseworkers will be responsible for verifying TINs, reviewing status codes, addressing pending Exam actions (TC 420), taking necessary actions to avoid or correct stay violations, and inputting TC 520 cc 84 manually on all periods. If any periods on the proof of claim are estimated, a dummy module may be required.

Note:

Closing code 84 will not establish a dummy module. It may be necessary to establish a dummy module using cc 81 and change the closing code to 84 after the dummy module is established.

10. **TFRP Investigation.** TFRP investigations will be conducted and assertions made as if the case were a Chapter 7 bankruptcy.

11. **Unfiled Returns.** Unfiled returns should be requested from the receiver. The Service should make IRC 6020(b) returns for returns not received by the deadline given to the receiver. This may require issuing a summons for the 6020(b) information.

Note:

The IRS can make immediate assessments of unassessed income, estate and gift tax deficiencies pursuant to IRC § 6871; Treas. Reg. 301.6871(b)-1(c).

12. **Bar Date.** Claims must be filed by the bar date established by the court or the claim may be disallowed.

13. **Proof of Claim.** The Automated Proof of Claim (APOC) system does not process Receivership cases. The proof of claim should be filed manually on Form 4490, unless the receiver requests the claim be filed on another form or presented in letter format. Penalties and interest should be computed to the date of the court order establishing the receivership. Schedules of assets and liabilities are not provided to the court and creditors, so secured claims should be filed at full value. The claim should be filed according to the requirements of the court.

14. **Case Files.** In addition to AIS documentation, paper files should be kept for receivership cases, including notices, copies of claims, and correspondence sent to or received from the receiver.

15. **Follow-Up Review.** After filing a claim, the specialist or advisor must input a one year follow-up on the AIS case to check for distribution. If no distribution has been received by the follow-up date, the caseworker must contact the receiver by phone or ad hoc letter asking about the progress of the distribution and the likelihood of the Service's receiving payment on its claim.

16. **Payment Application.** The court determines the formula for the distribution of assets and to which creditors the assets will be distributed. Generally, the assets are paid:

- First, to the receiver's administrative creditors, including the receiver.
- Then, to pre-appointment creditors and other creditors.

Although creditors fall into classes as is the case with a bankruptcy, payment order of those classes may not be mandated by statute and courts may have some discretionary power.

17. The receiver should be instructed to mail payments to the Field Insolvency office where the case is assigned. The CIO will post payments received in error to the period with the most imminent CSED. The CIO will advise the field specialist or advisor of payment receipt by phone or secure email. Designated payment code "03" should be used on the payment vouchers.

18. **Case Closure.** Once the receivership proceeding is complete and the creditors have been paid to the extent allowed by the court distribution, the receiver is discharged and the case is closed. Unlike bankruptcy cases, receivership proceedings do not provide a discharge. The IRS may collect any tax claim that remains unpaid once the proceeding ends. IRC § 6873. When a business entity has been dissolved under state receivership proceedings or other dissolution actions, and all IRS activity, including addressing any TFRP issues, has concluded the litigation freeze code must be reversed and the modules closed with a TC 530 cc10. When an individual receivership is closed in the court and all IRS activity has concluded, the litigation freeze code should be reversed.

19. **Counsel Guidance.** Issues arising from receivership proceedings that have not been covered in this IRM should be discussed with Counsel. In some instances formal intervention by Counsel may be required.

5.9.20.2.1 (01-28-2016)

Federal Deposit Insurance Corporation (FDIC) Receivership Proceedings of Insolvent Financial Institutions

1. **Overview.** When a financial institution encounters economic distress, the financial institution can be placed into a receivership proceeding pursuant to 12 USC §1821. The receivership proceeding is much like a bankruptcy case. Prior to January 1, 1996, the Resolution Trust Corporation (RTC) was the fiduciary of the insolvent financial institutions. On January 1, 1996, the FDIC took over the responsibility of serving as the fiduciary of failing financial institutions. The FDIC also assumed the responsibility of closing the cases of financial institutions previously administered by the RTC that remained open as of close of business on December 31, 1995. The FDIC has the authority to wind up the financial institution's operations, liquidate the assets, and to pay the claims of creditors from the funds secured from the liquidation of the assets.
2. **Court Jurisdiction.** The FDIC receivership is an administrative proceeding. The financial institution's assets are not under the direct control of a court. Therefore, the CSED for the financial institution is not extended during the period that the FDIC is the receiver for the insolvent financial institution.
3. **Notification.** Form 56-F, *Notice Concerning Fiduciary Relationship of Financial Institution*, is the only form the IRS should accept as notice of the FDIC Receivership. Form 56-F is filed with the campus where the financial institution files their income tax return, either the Cincinnati or Ogden Campus. For the purpose of IRC § 6036, a copy of Form 56-F is sent to the Advisory Group Manager, Specialty Collection Offers, Liens and Advisory, of the area office of the IRS having jurisdiction over the institute for whom the FDIC is acting.
Until the Form 56-F is revised, the Advisory Group Manager should forward the form to:

Internal Revenue Service

Insolvency, Attn: FDIC

MS 5024 DAL

Dallas, TX 75242

Note:

The IRS should not honor an informal notice from the FDIC, such as an email to SBSE Collection employees, as the equivalent of a Form 56-F.

4. **Adding the case to AIS.** Field Insolvency specialists or advisors must add the FDIC receivership cases to AIS, inputting "RC" in the chapter field on the Taxpayer Screen on AIS. For easy identification of the FDIC cases, the caseworker must select "FDIC" from the drop down menu in the "Classification" field on the Taxpayer Screen when adding the case to AIS. The name of the failed financial institution should be added in the "Last Name" field on the Taxpayer Screen. The "First Name" field should show c/o FDIC. The address should be the address of the FDIC location administering the case. The FDIC information may be found using cc *ENMOD* on IDRS or from lines 9 through 13 of the Form 56-F.
 5. **Creating a Case Number.** The FDIC administers these cases by the EIN of the insolvent financial institution and does not assign a case number to the proceeding. To add a case to AIS, a case number is required and must be created. Create a case number using the year of failure, the first 5 digits of the EIN of the insolvent financial institution, and FDIC. Enter the number in the **court case** number field on AIS in "YY-EINEI-FDIC" format. Do not include FDIC in the AIS case number field.
 6. **Manual Processing.** IIP does not process receivership FDIC cases. The caseworker will be responsible for verifying TINs, reviewing status codes, addressing pending Exam actions (TC 420), and inputting the TC 520 cc 84 manually on all balance due modules or on any module with a potential balance due. If there is no liability (actual or potential), the case should be closed as NL. No TC 520 cc 84 input will be required on the cases closed as NL.
- #### Note:
- Closing code 84 will not establish a dummy module. It may be necessary to establish a dummy module using cc 81 and change the closing code to 84 after the dummy module is established.
7. **TFRP Investigation.** TFRP investigations will be conducted and assertions made as if the case were a Chapter 7 bankruptcy.
 8. **Unfiled Returns.** Unfiled returns should be requested from the FDIC. The Service should make IRC § 6020(b) returns for returns not received by the deadline given to the FDIC. This may require issuing a summons for the 6020(b) information.
 9. **Bar Date.** The deadline for filing a proof of claim is set by the FDIC and can be found on the FDIC website, <http://www.fdic.gov>. Use the hyperlink of the failed financial institution to obtain the deadline information as well as a copy of the FDIC proof of claim. The claim must be filed by the established deadline or the claim may be disallowed.
 10. **Proof of Claim.** The proof of claim should be filed on Form RLS7214 found on the FDIC website. APOC will not compute the proof of claim in these cases. The caseworker must manually compute the claim. Penalties and interest should be computed to the date of the failure of the financial institution. Secured claims should be filed at full value. Instructions for completing and filing the proof of claim can be found on <http://www.fdic.gov>.
 11. **Case Files.** In addition to AIS documentation, paper files must be kept for the FDIC cases. The files should contain notices, copies of claims, correspondence sent to or received from the receiver, and any other information pertinent to the case that cannot be maintained on AIS.
 12. **Refund Determination.** When a Form 56-F is filed by the FDIC, the BMF Entity Campus is responsible for the input of the TC 971 AC 076 to IDRS. This creates a *Savings and Loan Modular Refund Freeze* on the MFT 02. LMSB and the campus administer the refunds on these cases. If an application for tentative carryback allowance (TCA) is filed with respect to the insolvent financial institution, Accounts Management follows the procedures in IRM 21.5.9.4.2.1, *Carryback Applications/Claims from Financial Institutions in Receivership - Form 56-F Filed*.
 13. **Payment Application.** The distribution of payments to creditors in the FDIC cases is not mandated by statute. Information about the order of distribution of the specific case can be found on the FDIC website. Claims are paid in the order of priority:

- A. Administrative expenses of the receiver
- B. Deposit liability claims
- C. Other general or senior liabilities of the institution
- D. Subordinated obligations
- E. Shareholder claims

14. **Payment Posting.** The FDIC should be instructed to mail payments to the field Insolvency office where the case is assigned. The CIO will post payments received in error to the period with the most imminent CSED. The CIO will advise the field caseworker of payment receipt by phone or secure email. Designated payment code "03" should be used on the payment vouchers. The payment must be posted using the "Non Plan Payment" option from the "Payment Monitoring Menu" on AIS.
15. **Case Closure.** Once any TFRP issues or other IRS activity has been completed and the proof of claim has been acknowledged by the FDIC, the caseworker should initiate closing actions on the case.. Balance due modules should be closed as uncollectible using the TC 530.
 - If the date the financial institution failed is prior to January 1, 1996, the case was previously administered by the RTC. The modules should be closed with a TC 530 cc 15.
 - If the date the financial institution failed is January 1, 1996 or later, the modules should be closed with TC 530 cc 10.

Once the TC 530 has posted to IDRS, the TC 520 cc 84 should be reversed on IDRS.

16. **Counsel Guidance.** Issues arising from the FDIC receivership proceedings that are not covered in this IRM should be discussed with Counsel. This is especially important when the FDIC is administering the assets of the failed financial institutions and the parent entity or related entity has filed a Chapter 11 or Chapter 7 bankruptcy case.

5.9.20.3 (01-28-2016)

Assignment for the Benefit of Creditors (ABC)

1. **Overview.** An assignment for the benefit of creditors (ABC) is a state law proceeding that is speedier and less costly than a bankruptcy. It involves a voluntary transfer by a debtor of some or all of the debtor's property to an assignee. The assignee applies the assigned property or proceeds from the sale of that property toward payment of the outstanding debts. Generally, the assignment must be in writing, usually in a document conveying title from the debtor to the assignee. Most states apply the requirements of contract law for the assignment to be valid. The Field Insolvency operation is fully responsible for working ABCs.
2. **Assignee.** The assignee can be a person, persons, or an entity in trust. In general, the assignee's duties, powers and liabilities are those of a fiduciary.
3. **Types of Assignments.** The two types of ABCs are:
 - A general assignment of all or substantially all of the debtor's property
 - A partial assignment of only some of the debtor's property
4. **State Laws.** Generally, assignments are under the jurisdiction of a state court. If the court supervises the assignment, the proceeding may be handled as a receivership. (See IRM 5.9.20.2, *Receivership Proceedings*.) If the case is not handled as a receivership, the following applies:
 - "-AS" must follow the case number or judge's initials in the case number field on the AIS entity screen to identify the case as an assignment rather than a receivership
 - The proof of claim must state the kind of proceeding as "Assignment for the Benefit of Creditors"

Note:

The assignee may request a letter in lieu of a claim form.

5. **Non-Judicial Assignment.** The ABC may not be under court jurisdiction. If so, no stay against collection exists. When this is the case, Insolvency must immediately contact Counsel to determine if the Service will be a party to the ABC proceeding or will pursue collection administratively. Variations in state laws will affect what actions are in the best interest of the government.
6. **Counsel Guidance.** Issues arising from assignments for the benefit of creditors that have not been covered in this IRM should be discussed with Counsel.

5.9.20.4 (03-05-2015)

Corporate Dissolutions

1. **Overview.** A corporation's existence is artificial and created by state law. State statutes provide for the creation of a corporation, the period of its existence, and the termination of its life. When a corporation's existence ends, the affairs of the corporation must be wound up, meaning debts must be paid and assets distributed. This process is referred to as a corporate dissolution.
2. **Methods of Dissolution.** Dissolution may be accomplished by non-judicial means, usually approved by the stockholders, or by judicial means, usually through a state court procedure. Among the ways a corporation may be dissolved are:
 - Expiration of the corporate charter
 - Merger
 - Voluntary surrender of the corporate charter by the stockholders
 - Involuntary dissolution of the corporate charter by the state, usually done to enforce a violation of state law

5.9.20.4.1 (01-28-2016)

Corporate Dissolutions - Judicial

1. **Judicial Dissolution.** If difficulties arise during the liquidation of assets, payment of claims, or distribution of assets, or if state law requires, dissolution may be conducted in a court proceeding.
 - A. Usually the court appoints a receiver, liquidator, or other fiduciary who is charged with attending to the dissolution under orders of the state court.
 - B. The state court hears and determines all controversies arising during the course of the dissolution.
2. **Stay from Collection.** The Service cannot take collection actions against any property in the custody of the court. The CSED is suspended during the period the corporation's assets are in the custody of the court and for six months thereafter. IRC § 6503(b).
3. **Manual Processing.** Advisors will be responsible for verifying TINs, reviewing status codes, addressing pending Exam actions (TC 420) taking necessary actions to avoid or correct stay violations, and inputting TC 520 cc 84 manually on all periods
4. **TFRP Investigation.** TFRP investigations will be conducted and assertions made as if the case were a Chapter 7 bankruptcy. (See IRM 5.9.6.15, *Trust Fund Recovery Penalty*.)
5. **Unfiled Returns.** Unfiled returns should be requested from the receiver or other fiduciary. The Service should make IRC § 6020(b) returns for returns not received by the deadline given to the receiver. This may require issuing a summons for the 6020(b) information.
6. **Proof of Claim.** The proof of claim should be filed manually on Form 4490, unless the court or fiduciary of the court requests the claim be filed on another form or presented in letter format. APOC will not compute the proof of claim in these cases. The caseworker must manually compute the claim. Penalties and interest should be computed to the date of the court order establishing the dissolution proceeding. Schedules of assets and liabilities are not provided to the court and creditors, so secured claims should

be filed at full value. The claim should be filed according to the requirements of the court or the agent of the court.

7. **Counsel Guidance.** Issues arising from corporate dissolutions that have not been covered in this IRM should be discussed with Counsel.

5.9.20.4.2 (03-05-2015)

Corporate Dissolution - Non-Judicial

1. **Non-Judicial Dissolution.** If parties in interest can liquidate a corporation without court intervention, and if all parties and creditors feel they are being treated equitably, no need arises to conduct the dissolution under the guidance of a state court. A non-judicial liquidation is most often found where:

- A. Sufficient money exists or can be generated to pay all corporate creditors; and
- B. The value and disposition of the assets and the priority among claimants is not disputed.

2. **Dissolution Conducted.** The dissolution is usually conducted by the officers of the corporation who act in a fiduciary capacity.

3. **No Stay.** In a non-judicial corporate dissolution, a stay against enforced collection is not in force. However, revenue officers should consult Counsel before taking collection actions if they have questions about the Service's legal standing in doing so.

5.9.20.5 (03-05-2015)

Bulk Sales

1. **State Oversight.** Most states with bulk sales laws have adopted Article 6 of the Uniform Commercial Code and require that :

- A. The seller give the buyer a list of creditors and the amounts owed to each of them;
- B. The potential buyer to notify each creditor of the proposed sale; and
- C. The notice include an inventory of sales items and the terms of the sale.

Note:

Failure to comply with the notice requirement renders the transfer ineffective as against creditors to whom no notice (or improper notice) was given.

2. **Required Research.** Revenue officers working in the Advisory function, will work all bulk sales. When the Service is advised of a bulk sale, the advisor assigned the case must research internal systems to determine if the seller owes taxes and take action as needed to ensure payment. If all pre-levy requirements have been met, the Service will issue a levy on the seller prior to sale or, if the sale is complete, the Service will levy on the proceeds.

3. **Lien Rights.** The table below explains the IRS' lien rights with respect to bulk sales:

If	And	Then
If the NFTL was filed prior to the transfer		The lien follows the property and the IRS can seize the property notwithstanding the transfer.
IRS has a statutory lien, but no Notice of Federal Tax Lien has been filed	the IRS did not receive the notice required by the bulk sales law	the transfer is ineffective against the IRS. The statutory lien would be valid against the transferee.
IRS has a statutory lien, but no Notice of Federal Tax Lien has been filed	the IRS received proper notice required by the bulk sales law	the transfer is effective and the purchaser takes the property free and clear of the federal tax lien. Under IRC 6323(a), a federal tax lien is not valid against a purchaser until a notice has been filed.

Note:

The bulk sales law only require notice to "creditors" . If the IRS is not a creditor at the time of the transfer, the bulk sale law will not apply and the tax lien would not attach. Generally, the IRS would not be a creditor before an assessment is made.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 9. Bankruptcy and Other Insolvencies

Section 21. Electronic Proofs of Claim (EPOC)

5.9.21 Electronic Proofs of Claim (EPOC)

- 5.9.21.1 [Overview](#)
- 5.9.21.2 [Electronic Proof of Claim \(EPOC\)](#)

Manual Transmittal

March 14, 2014

Purpose

(1) This transmits new IRM 5.9.21, Bankruptcy and Other Insolvencies, Electronic Proofs of Claim (EPOC).

Background

The information in IRM 5.9.21, *Electronic Proofs of Claim (EPOC)*, has been rewritten to accommodate the new Java programming of EPOC. The previous information and instructions were based on the prior Visual Basic version of EPOC, which has been disabled.

Material Changes

- (1) IRM 5.9.21, *Electronic Proofs of Claim (EPOC)*, has been revised to include new information and instructions on how to operate the new Java version of EPOC.
- (2) Information formerly in Electronic Proofs of Claim (EPOC) IRM 5.9.21 has been removed.

Effect on Other Documents

This IRM supersedes the information contained in IRM 5.9.21, dated June 12, 2013

Audience

Centralized Insolvency Operation and Field Insolvency.

Effective Date

(03-14-2014)

Dretha Barham, Director
Collection Policy

5.9.21.1 (03-14-2014)

Overview

1. **Purpose** . This Internal Revenue Manual (IRM) section describes the process and procedures for operating the Electronic Proofs of Claim (EPOC) system application.
2. **Audience** . This IRM is designed for use by Centralized Insolvency Operation (CIO) personnel responsible for transmitting proofs of claim to the U.S. Bankruptcy courts using the EPOC system. Field Insolvency personnel submit claims for EPOC processing by CIO personnel.
3. **Process Owner** . SB/SE ECS Collection Policy, Insolvency provides enterprise guidance and centralized oversight for the EPOC program.

5.9.21.2 (03-14-2014)

Electronic Proof of Claim (EPOC)

1. IRS claims may be created manually or systemically by the Automated Proof of Claim (APOC) application and can be viewed in the Automated Insolvency System (AIS) Proof of Claim (POC) screen.
2. A proof of claim for a specific case can be transmitted to the court via the Electronic Proof of Claim (EPOC) interface. Claims are submitted for EPOC manually by a Field Insolvency employee assigned to a case.
3. Claims submitted for EPOC will be transmitted to the courts daily by EPOC operators (CIO employees with EPOC Operator privileges.) Claims that are successfully transmitted will get systemically acknowledged on AIS. Claims that error out during EPOC transmissions will be researched, corrected, and re-submitted for EPOC transmission by EPOC operators.

5.9.21.2.1 (03-14-2014)

EPOC and CM/ECF Access

1. **Electronic Filing Required**. Some courts require or request electronic filing of proofs of claim through the courts' Case Management/Electronic Claim Filing (CM/ECF) websites. The web address <http://pacer.psc.uscourts.gov/announcements/general/ecfnews.html> provides a complete list of the CM/ECF courts. Courts appearing on this list do not necessarily mandate EPOC claim filing. Specific court websites identify if EPOC is mandatory. Access to CM/ECF is coordinated locally with the court. Field Insolvency Group Managers are required to submit LOGIN applications to each court for CM/ECF privileges. The courts provide website documentation and training. The Automated Insolvency System (AIS) court screen provides an indicator for courts requiring electronic filing of claims.

Note:

Only an AIS System Analyst with Analyst privileges can update the AIS court screen. The EPOC court indicator must be marked **Y** to use EPOC functionality.

The court table is located by selecting the Court Information Option in the AIS Support Menu.

2. **EPOC Interface.** IRS regulations require additional security measures with EPOC use. IRS claims can *only* be submitted to CM/ECF websites by a secure EPOC interface. EPOC transmits the AIS claim data to the court websites. EPOC also supplies the PDF claim document required by the court websites.
3. **Access to CM/ECF Sites.** The Centralized Insolvency Operation (CIO) is the only office performing the actual EPOC transmissions. Only select CIO users need access to the EPOC interface. An EPOC button in the AIS Misc. Options menu is used to open and operate the interface. This EPOC button will only be visible and available to employees approved for EPOC access. An EPOC Operator privilege will be granted through the AIS Support Menu Employee Information screen. An OL5081 Modify Profile request is required by IRS to request EPOC access.

**5.9.21.2.2 (03-14-2014)
Submitting Claims to EPOC from AIS**

1. **The EPOC Process.** From the Proof of Claim menu, the user selects a button to *Submit Claim for EPOC*. The creditor number assigned for each case must be added to AIS *prior* to submitting the claim for EPOC transmission. The creditor number is automatically downloaded for cases received through ENS. However, for cases added to AIS manually, the creditor number must *also* be manually added. Creditor numbers are secured from PACER, RACER, CM/ECF or <http://www.uscourts.gov/allinks.html>. Claims are held in a queue until they are transmitted to a court's CM/ECF website through the AIS - EPOC interface. The following table illustrates the steps in sending a claim via EPOC.

STEP	AIS	EPOC	CM/ECF Website
1	The Field Insolvency specialist or advisor prepares the Proof of Claim document. After review to ensure the case has an IRS creditor number, the Specialist or Advisor selects a button to <i>Submit Claim for EPOC</i> to send the Proof of Claim to the EPOC court. The EPOC status changes from <i>Not Submitted</i> to <i>Submitted for Processing</i> .		
2	At night, AIS selects all claims whose status is <i>Submitted for Processing</i> . This process will prepare the claim for EPOC. Data used for the website fill-in form is added for each claim. The EPOC status on AIS changes to <i>Currently Being Processed</i> .		
3	All queued Proof of Claim documents are loaded into EPOC by court designation.		
4	Documents are translated to PDF format.		
5	The designated EPOC operator selects the EPOC button under the AIS Interfaces menu.		
6		A new EPOC window will appear on the user's computer.	
7		The EPOC operator will select the Claim Filing button. When the Claim Filing screen appears, the user will enter the court they are assigned to process in the <i>Search Court</i> field. For example; to access Texas West, the user will enter TXW.	
8		All of that day's claims for that court will appear on the screen in (P) Processing status. The EPOC operator can either select specific claims to transmit by clicking on the check box next to each claim case number and then click the Submit Selected Claims button, <i>or</i> they can just click on the Select All and Submit button to submit all claims without clicking on each check box.	
9		EPOC runs from 7:00am to 7:00pm EST, Monday - Friday. EPOC picks up and transmits submitted claim data every 30 minutes (on the 00 and 30 of every hour).	
10		EPOC will connect with the designated court's CM/ECF and will supply the required Login and Password after the claims are submitted for processing. The EPOC operator will not see this action on their screen.	
11			The court's CM/ECF website receives case information and the formatted .pdf claim documents from EPOC. The EPOC operator will not see this action on their screen.
12			The court's CM/ECF website sends an acknowledgement (or error message) for each claim submitted to AIS through EPOC. The EPOC operator will not see this action on their screen.
13		EPOC will automatically log off from the court's CM/ECF website after all claims for that court have been transmitted and acknowledged. The EPOC operator will not see this action on their screen.	
14		The EPOC operator repeats steps 7 & 8 for each court that is assigned until all claims have been submitted for all assigned courts.	
15		The EPOC operator can select the Claim Filing Status button to view the status of each claim for any court. The user must enter the court in the <i>Search Court</i> field.	
16		Claims that have been submitted to the court will be designated with an S . Claims that have not been submitted will be designated with a P (Processing). Claims that have been Accepted will be designated with an A . Claims that had errors will be designated with a D (Denied). Claims that could not be transmitted will be designated with a U (Unknown).	
17		Claims in D (Denied) and U (Unknown) statuses must be corrected and re-submitted.	
		The EPOC operator selects the Exit button to close the EPOC	

18		screen after all claims for all assigned courts have been transmitted.	
19	AIS retrieves acknowledgements and errors from EPOC and updates the Proof of Claim and History screens. Claims that are acknowledged will receive a claim number and acknowledgement date. The EPOC Status will change to <i>Accepted by Court</i> . The EPOC Status for Denied claims will change to <i>Rejected by Court</i> . The EPOC Status for Unknown errors will remain as <i>Currently Being Processed</i> .		

- A. When a claim is added to AIS, either by the Automated Proof of Claim (APOC) system or manually, the Proof Prepared date is blank, and the Proof Required field on the Taxpayer Screen should be "Yes." The case will be on the Bar Date report, but not on the POC F/U Report.
- B. To file claims to an EPOC court, use the *Submit Claim for EPOC* button on the Proof of Claim screen. When the claim is picked up for overnight processing, the status changes to *Currently Being Processed* and the Proof Prepared date is filled in. The Proof Required field on the Taxpayer Screen is not changed. The case will be on the Proof of Claim Follow-up report. The case will be on the EPOC Status report.
- C. After EPOC files the claim, AIS is updated with the information from the court and the EPOC status is updated. If the claim is successfully filed, the Proof Acknowledgement date is filled in and the Proof Required field on the Taxpayer Screen is changed to "F." The case will not be on a Bar Date or POC F/U report. If the claim is rejected, the Proof Acknowledgement date is NOT filled in, the Proof Required field on the Taxpayer Screen is changed to "R." The case remains on the Bar Date report. *IRM 5.9.21.2.4*

2. **Amending a Claim.** A claim number is now systemically input to the "original claim #" field on the proof of claim screen. EPOC adds the court's claim number at the same time it inputs the court's acknowledgment date.

- A. When a claim is amended, the caseworker must ensure the court's claim number is shown on the AIS Proof of Claim screen prior to submitting the amended claim to EPOC.
- B. If a claim appears on the claim registry with a zero claim number, the caseworker must contact the court to have it assigned a valid claim number.
- C. Amended claims without an original claim number and/or an amended claim number on AIS will be rejected by AIS. An error message will appear when the user attempts to submit the claim for EPOC instructing the user to enter the appropriate claim numbers.

3. **Withdrawing a Claim.** To withdraw a claim filed through EPOC, it must be amended to \$0.00 and submitted by clicking on the "Submit Claim for EPOC" button on the Proof of Claim Screen.

**5.9.21.2.3 (03-14-2014)
Using the EPOC Interface**

1. **Using the EPOC Interface.** To access the EPOC interface, the designated EPOC operator selects the **EPOC button** located in the AIS Interfaces menu.

2. **EPOC Message of the Day (MOTD).**

- A. When an authorized EPOC operator selects the EPOC button, a new window will appear displaying the EPOC Message of the Day (MOTD).
- B. The following navigation buttons will be visible: **Claim Filing, Claim Filing Status, Refresh, and Exit.**

3. **Claim Filing.** Select the **Claim Filing** button from the Navigation menu. The Claim Filing screen allows the user to display the pending Proofs of Claim for a specific court jurisdiction.

- A. The EPOC operator next selects their assigned court to process by typing the court initials in the **Search Court** box. For example, to load claims to transmit to the Arizona court, the user must type "AZ."

Note:

As an EPOC operator types alpha characters, all related courts for those alpha characters will be displayed in a dropdown menu box. For example, when typing "AL", the Search Court menu box will display **ALM, ALN, ALS**. The user can point and click on the court that they want to process.

- B. The claims to be processed for the specified court will appear in a column format showing important claim data, such as AIS case number, court, form, creditor number, status, date created, claim number, amended number, and the various claim amount data. None of the claims will be selected for processing as a default. Claims in this screen will be in the "P" (Need to be Processed by EPOC) or "U" (Unknown Error) status.

Note:

Unknown Errors are claims that could not previously be accepted by the court. EPOC operators must submit these claims again to the court. They will usually process the second time they are transmitted.

- C. For quick submission of all claims to the court – the EPOC operator should select the **Select All and Submit** button. The EPOC operator can also submit individual claims by selecting them one at a time and then selecting the **Submit Selected Claims** button.

Note:

If a claim is not selected for processing, then the next time that screen is refreshed, that claim will reappear. If the case is removed from the AIS side of the application, then it will no longer show on the list. Use the **Refresh** button to refresh the screen.

- D. When claims are submitted for EPOC transmission, the Claim Filing screen will display the total number of claims that were submitted.

E. EPOC will take the following actions, which the EPOC operator will not see:

- Determine whether the court uses the single claim upload or multi-claim zip upload process.
- Log into the court's CM/ECF website.
- Provide the creditor number and claim amount data for each claim submitted.
- Attach the .pdf proofs of claim documents.
- Capture the acknowledgement data and updates the AIS Proof of Claim and History screens.

Note:

If the court website is unreachable, or the EPOC login / password is invalid, a systemic e-mail will be sent to the Information Technology (IT) Developers, CIO System Analyst, & Collection Policy, Insolvency Program Analysts.

4. **Claim Filing Status.** To review the status of claims submitted that day, the EPOC operator can review the Claim Filing Status screen. The EPOC operator must select the **Claim Filing Status** button in the top navigation menu while in the Claim Filing or MOTD screens.

- A. The EPOC operator must enter the court initials of the court that they want to review in the Search Court box and Enter.

B. The Claim Filing Status screen will display all claims for that court for that day listing the court case number, court, form, creditor number, date created, claim number, amended number, status, and a message.

C. The Status Codes include:

- **P** = Process (Claims received from AIS that still need to be "processed" by EPOC – the EPOC operator still needs to submit these to the court).
- **S** = Submitted (Claims that have been Submitted to the court by EPOC and are waiting on the court's response).
- **A** = Accepted (by the court).
- **D** = Denied (by the court – the message column will explain why it's denied – these claims will appear on the Denied EPOC Claims and EPOC Status reports in AIS).
- **U** = Unknown (will appear when there is an internet transmission interruption – these claims will appear on the EPOC Submission Status report in AIS. They also will appear in the Claim Filing screen. They must be submitted again to the court either the same day or the following day).

5. **Exiting EPOC.** When an EPOC operator has completed submitting the claims for each assigned court jurisdiction, they must click the **Exit** button located in the top Navigation menu, to close EPOC.

5.9.21.2.4 (03-14-2014)

EPOC Reports

1. The AIS Reports Menu contains three important EPOC Reports that must be reviewed and worked to ensure that all claims are correctly transmitted, accepted, and acknowledged. The **Denied EPOC Claims** report, **EPOC Submission Status** report, and the **EPOC Status** report will identify rejected claims and claims that still need processing.
2. **Identifying Rejected Claims.** The court's rejection of an original claim is indicated in the "EPOC Status" field of the Proof Screen with the annotation "Rejected by Court," and the **F** in the "Proof Req'd" field on the Taxpayer Screen changes to an **R**. Rejected claims also appear on the bar date report and are systemically annotated in the AIS case history. When the claim is resubmitted and subsequently accepted, the **R** in the AIS Proof Req'd field reverts to an **F** for original claims, and the EPOC Status field shows "Accepted by Court." If for some reason the **R** does not revert to an **F** systemically, the case must be referred to a manager to input the **F** manually through the "Manager's Only Menu" selected from the "Case Assignment Guide" screen.

Note:

When an amended claim is rejected, the **F** does not change to an **R** because the bar date provisions have previously been met.

3. **Systemic Histories.** EPOC creates four systemic AIS histories for rejected claims:

- A. **Incorrect Creditor Number.** This indicates the claim is not filed. The EPOC operator must research the creditor number on CM/ECF using the generic login and password. Then the EPOC operator must update AIS with the correct creditor number and resubmit the claim by clicking the "Submit Claim for EPOC" button on the AIS Proof of Claim screen.
- B. **Incorrect Case Number.** This indicates the claim is not filed. The EPOC operator must verify the docket number, update it on AIS if needed, and resubmit the claim by selecting the "Submit Claim for EPOC" button on the Proof of Claim screen.
- C. **Invalid Amendment Number.** This indicates the amended claim may not be filed. The EPOC operator should check PACER to determine if the claim was accepted. If not, the amended claim number must be updated and then should be resubmitted by clicking the "Submit Claim for EPOC" button on the AIS Proof of Claim screen.
- D. **No Confirmation Stamp.** This rejection message is triggered by systemic interruptions in the court's website. The EPOC operator must check PACER to determine if the claim was accepted. If it was accepted, the EPOC operator must update the acknowledgement date and document the history screen. If the claim was not accepted, the EPOC operator must resubmit the claim by clicking the "Submit Claim for EPOC" button on the Proof of Claim screen.

4. **Denied EPOC Claims Report.** The Denied EPOC Claims report is generated using the AIS Reports menu. The Denied EPOC Claims report will list Rejected and Unacknowledged claims on open AIS cases. *A Denied EPOC Claims report must be generated daily for each EPOC court.*

- A. Select "Reports" from the left side AIS Menu options.
- B. Select the "Denied EPOC Claims" button.
- C. Run the report for a specific court (for example: ALN or AL% for all Alabama courts).
- D. The Org1, Org2, Site, Group, SEID, and Name fields must list "0" .
- E. AIS will generate a .pdf report for the court(s) selected listing all claims with a Rejected or Unacknowledged status.
- F. The report will give the reason a claim is rejected. Some examples include *Creditor Not Found, Invalid Claim Number, No Confirmation Stamp, etc.*
- G. Research each case listed on both AIS and PACER.
- H. The reject will determine the user's course of action – updating the creditor number, claim numbers, or case number on AIS. After a claim has been corrected on AIS – the user must resubmit the claim on AIS for EPOC.
- I. Unacknowledged claims and No Confirmation Stamp rejects must also be researched on both AIS and PACER. If the claim has posted to PACER, then the EPOC Status on the AIS Proof of Claim screen must be updated to "Accepted" . If the case has not posted on PACER, then the claim must be resubmitted on AIS for EPOC.
- J. Update the case history on all claim/case updates using the appropriate canned EPOC History item.

5. **EPOC Submission Status Report .** The EPOC Submission Status Report is generated using the AIS Reports menu. This report focuses on the transmission status of claims within EPOC, not AIS. It can list all claims for a specified date range within a specified category, such as Accepted, Rejected, Submission Cancelled, Submission Re-queued, Selected for Court Upload, Currently Being Processed, and Unknown. Analysts and managers will use this report to review the daily EPOC transmissions.

- A. Select "Reports" from the left side AIS Menu options.
- B. Select the "EPOC Submission Status" button.
- C. In the AIS Reports menu – check the "Selected for Court Upload" , "Currently being Processed" , and "Unknown" boxes.
- D. The report can be run for all courts ("All " will be listed as default)
- E. The report can be run for a selected court – type the court (AZ for example) in the Jurisdiction field.
- F. Enter specific Begin and Finish dates.
- G. The Org1, Org2, Site, Group, SEID, and Name fields must list "0."
- H. AIS will generate a spreadsheet listing of claims.
- I. Unknown error claims can be resubmitted within EPOC.

J. Claims found in Processed status must be submitted within EPOC to the courts.

K. Older claims found in Submitted status may mean there is a problem with the court's CM/ECF website, or the court is "locked" within the AIS EPOC Jurisdiction table. Elevate this issue to the appropriate analyst.

6. **EPOC Status Report.** The EPOC Status report is generated using the AIS Reports menu. The EPOC Status report will list all AIS claims with an open EPOC status: Rejected, Processing, or Submitted. This report can also list all Accepted cases within a specified date range. Analysts and managers will use this report to focus on specific EPOC data when reviewing the EPOC inventory.

A. Select "Reports" from the left side AIS menu options.

B. Select the "EPOC Status" button.

C. In the Parameters menu, check the "Currently Being Processed" box and the "Rejected By Court" box.

D. Run the report for all courts (Leave the courts box blank), or for a specific court. For example, enter **TXN%** for all Texas North courts.

E. The Org1, Org2, Site, Group, SEID, and Name fields must list "0."

F. AIS will generate a spreadsheet listing of claims.

G. Claims listed as Rejected or Currently Processing will also be found on the **Denied EPOC Claims** report.

5.9.21.2.5 (03-14-2014)

EPOC Admin Maintenance

1. If CIO receives a call from an Field Insolvency specialist, advisor, or manager stating that a claim should not be transmitted to the court, the CIO EPOC Operator Manager/Lead/System Analyst should take the following steps:

A. Make sure the claim is not selected when transmitting the rest of the claims to the court that day.

B. Go to the AIS Proof of Claim screen and change the EPOC Status from "Currently being Processed" to "Not Submitted" and add a history item.

C. This will remove the claim from the EPOC Claim Filing queue.

D. Click the "Refresh" button in EPOC, to refresh the list of claims ready for EPOC Filing, to ensure that the claim has been removed.

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