



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.8.2

MARCH 29, 2017

EFFECTIVE DATE

(03-29-2017)

PURPOSE

- (1) This transmits revised IRM 4.8.2, *Technical Services, Case Processing*.

BACKGROUND

- (1) This section provides an overview of case review procedures, criteria for returning cases to the area using a reviewers report, the use of Examination Records Control System (ERCS) inventory controls, statute controls, and suspense cases.

MATERIAL CHANGES

- (1) This transmittal reissues existing procedures. Minor editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary. Other significant changes to this IRM include the following:

Reference	Description of Changes
IRM 4.8.2.1	Inserted new section for Internal Controls as required by IRM 1.11.2.
IRM 4.8.2.2	Clarified the information available on the Technical Services SharePoint site.
IRM 4.8.2.5	Included information regarding restitution-based assessment (RBA) cases related to the respective status codes.
IRM 4.8.2.6.2	Updated the timeframe for the initial screening of incoming cases and their statute of limitations.
IRM 4.8.2.9	Clarified the appropriate status code to use when returning cases to the field.
IRM 4.8.2.10	Revised the location for storing copies of Form 3990 which are retained in Technical Services pending the response from the field.
IRM 4.8.2.11.2	Clarified language to properly identify and speak to the initial presumptive period for the taxpayer.
IRM 4.8.2.11.3	Removed detailed procedures of the Fraud and Grand Jury Suspense program and moved to IRM 4.8.11. Revised summary paragraph to clarify the role of the reviewer or coordinator assigned to this program and updated references.
IRM 4.8.2.11.3.1	Clarified roles and titles of the fraud coordinator and Department of Justice (DOJ).

Reference	Description of Changes
IRM 4.8.2.11.4.1(3)	Added paragraph to reference procedures for tracking time applied and actions taken on the activity record.
IRM 4.8.2.11.4.2.3	Updated debtor's liability limit for Chapter 11 small business cases.
IRM 4.8.2.11.4.8.8(3)	Included clarification regarding cases with six months or less remaining on the statute.
IRM 4.8.2.11.4.8.15	Re-structured sub-section to organize by steps in the procedures for cases when only one spouse is in bankruptcy and to include the MFT 31 mirroring process.
IRM 4.8.2.11.4.8.15.4	Added paragraph to ensure MFT 31 accounts are mirrored properly after being established.
IRM 4.8.2.11.4	Incorporated Interim Guidance SBSE-04-0316-0005 dated March 17, 2016 throughout sub-section.
IRM 4.8.2.11.4.9	Added checklist requirement to be completed prior to placing a case into bankruptcy suspense.
IRM 4.8.2.11.4.9.3	Added project codes and tracking codes to be included on cases if not already reflected on AIMS.
IRM 4.8.2.11.4.9.4	Added requirement for managers to complete checklist when reviewing and approving statute of limitations updates. Also included Caution to ensure the non-bankrupt spouse assessment is made prior to updating the statute to "KK".
IRM 4.8.2.11.4.9.6	Updated the tracking of monthly PACER checks and research on the new checklist.
IRM 4.8.2.11.4.9.7	Added requirement for managers to monitor action dates and the use of Review Type 48 on cases throughout the suspense process.
IRM 4.8.2.11.4.10	Updated to reflect Review Type 48 to be used on cases throughout the suspense process and to reflect the new exhibit for calculating the statute of limitations.
IRM 4.8.2.11.4.10.1	Updated section title to clarify the types of cases it refers to.
IRM 4.8.2.11.4.10.2	New sub section added to address cases with a split spousal assessment required.
IRM 4.8.2.11.5.1	Clarified actions that need to be verified before placing a case into bankruptcy suspense.
Exhibit 4.8.2-1	Updated to include codes related to Criminal Restitution

Reference	Description of Changes
Fraud Exhibits	Removed exhibits related to the Fraud and Grand Jury Suspense program and moved to IRM 4.8.11. (i.e., Exhibits numbered three through nine)
Exhibit 4.8.2-3 and Exhibit 4.8.2-4	Re-numbered exhibit after exhibits related to Fraud and Grand Jury Suspense were moved.
Exhibit 4.8.2-5	Re-numbered exhibit after exhibits related to Fraud and Grand Jury Suspense were moved. Exhibit revised to reflect new cover sheet.
Exhibit 4.8.2-6	New exhibit for re-calculation of the statute of limitations on bankruptcy suspense cases.
Exhibit 4.8.2-7	New exhibit for the bankruptcy suspense review checksheet.
Exhibit 4.8.2-8	New exhibit for the bankruptcy suspense managerial checksheet.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.8.2, dated 04/14/2015 and incorporates Interim Guidance Memorandum SBSE-04-0316-0005, *Interim Guidance on Standardized Bankruptcy Procedures*, dated March 17, 2016.

AUDIENCE

SB/SE Technical Services employees.

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4.8.2

Case Processing

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4.8.2.1
(03-29-2017)
Program Scope and Objectives

- (1) *Purpose.* This IRM section describes the procedures for processing cases that flow through Technical Services. Specifically, IRM 4.8.2 outlines the procedures and criteria for the following:
 - a. Returning cases to field examination for re-work,
 - b. Applying of the appropriate coding for cases on ERCS to monitor and control inventory and statutes of limitation, and
 - c. Monitoring of suspense programs in Technical Services.
- (2) *Audience.* These procedures apply to Technical Services employees assigned to the various programs discussed in this IRM.
- (3) *Policy Owner.* The Technical Services office is under Examination Operations, Field Examination.
- (4) *Program Owner.* Technical Services is the program office responsible for processing and closing cases which include the following (but not limited to):
 - a. Mandatory review cases
 - b. Unagreed cases requiring a statutory notice of deficiency (SNOD)
 - c. Protested cases closing to Appeals
 - d. Hobby Loss suspense cases
 - e. Bankruptcy suspense cases
 - f. Form 1254 suspense cases
- (5) *Contact Information.* To recommend changes or make any other suggestions to this IRM section, e-mail the author.

4.8.2.1.1
(03-29-2017)
Background

- (1) The Technical Services area was established in 2000 when the various business units such as SB/SE, LB&I, W&I were realigned and their respective Examination and Collection areas were aligned separately. As such, Technical Services serves as the overall closing function for Field Examination cases for the various situations as listed in IRM 4.8.2.1 (4).

4.8.2.1.2
(03-29-2017)
Authority

- (1) By law, the Service has the authority to make the appropriate assessments once the examination is completed and the taxpayer has been appropriately notified of the audit results. IRM 4.8.2 details the procedures to be followed when unagreed cases are closed from Field Examination to ensure the taxpayer's rights have been protected as well as the case inventory while in Technical Services is properly monitored and statutes are protected. Also, by law, the taxpayer is afforded certain rights when dealing with bankruptcy, hobby loss issues, Form 1254 litigation, etc. thus requiring the suspense programs in Technical Services to monitor the outcome of said issues and to complete the case processing as appropriate.
- (2) The Bankruptcy Code provides an opportunity to the taxpayer to file for debt relief via a bankruptcy petition to the U.S. Bankruptcy Court. These guidelines are found in Title 11 of the United States Code. The Bankruptcy Reform Act of 1994 (BRA 94) and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) provided significant revisions to the Bankruptcy Code. The Insolvency section of the Collection function of the SB/SE operating division of the Service is responsible for the coordination of the bankruptcy case for each taxpayer.

4.8.2.1.3
(03-29-2017)
Responsibilities

- (1) The Director, Examination - Technical Services is the executive responsible for the inventory control and case processing in Technical Services. The detailed responsibilities are as outlined below in this IRM.

4.8.2.1.4
(03-29-2017)
Terms

- (1) Audience - The employees responsible for taking action or who require knowledge about the program, process or activity.
- (2) Automatic stay - the stay that arises by operation of law when a bankruptcy petition is filed. It prohibits certain acts against the debtor, the debtor's property, and property of the estate. Since the automatic stay provision was amended in 1994 and again in 2005, the scope of the automatic stay depends on when the bankruptcy petition was filed.
- (3) Bankruptcy coordinator - the Technical Services revenue agent assigned to complete the various required procedures for the bankruptcy suspense program outlined in this chapter.
- (4) Collateral record - the record maintained on ERCS only for monitoring cases or issues that are not controlled on AIMS.
- (5) Form 3990, *Reviewer's Report* - document that is used by the reviewer to outline the necessary revisions and / or re-work needed on a case when returned to Field Examination.
- (6) Review type - the respective code placed on a case to identify the type of inventory in which it is associated (e.g., SNOD, bankruptcy, etc.)
- (7) Suspense cases - cases that must be held until certain actions are completed before the final processing can be completed.
- (8) Suspense type - the respective code placed on a case that gives the timeframe / action date for which the case is to be completed.

4.8.2.1.5
(03-29-2017)
Acronyms

- (1) The table lists commonly used acronyms and their definitions:

AD	Area director
AIMS	Audit Information Management System
AIS	Automated Insolvency System
ASED	Assessment statute expiration date
AUR	Automated Underreporter
AUSA	Assistant United States Attorney
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
BOD	Business operating division
CCP	Centralized Case Processing
DOJ	Department of Justice

ERCS	Examination Returns Control System
FORT	Field Office Resource Team
FPA	Final Partnership Administrative Adjustment
GM	Group manager
IDRS	Integrated Data Retrieval System
PACER	Public Access Court Electronic Record
PCS	Partnership Control System
RGS	Report Generation Software
SNOD	Statutory notice of deficiency
TEFRA	Tax Equity Fiscal Responsibility Act
TM	Territory manager
TS	Technical Services

4.8.2.2
(04-14-2015)
Case Processing

- (1) This section provides the basic guidelines for processing cases in Technical Services (TS). Current information is available on the TS *SharePoint*.
- (2) Refer to the TS *SharePoint* for training courses, memoranda, a listing of subject matter experts (SMEs), job aids, presentations, reviewer alerts, and other current reference tools for TS employees to obtain current information and guidance. Also, the following may be found on the SharePoint site:
 - a. A directory of reviewer program assignments under the “contacts” link, and
 - b. TS Publications:
 - *Technical Digest- Keys to Success*.
 - c. The “Technical Guidance” link includes articles highlighting new procedures, changes in processing cases within TS, and listings of procedures by programs.

4.8.2.3
(04-14-2015)
**Cases Requiring Action
By Technical Services**

- (1) Closed cases that were worked in Examination are updated to Status Code 21 by the groups and are sent directly to TS if the case:
 - a. Is subject to mandatory review,
 - b. Has special features requiring post-examination processing,
 - c. Is identified by the area for special review,
 - d. Is being closed unagreed with a valid protest to Appeals, or
 - e. Is a single year or multi-year examination in which any year is closed unagreed for the issuance of a statutory notice of deficiency.

Refer to IRM 4.10.8.12.10.3, *Request for Appeals Conference*, for guidance regarding review of the taxpayer’s protest.
- (2) Examination cases selected as a part of the examination quality measurement staff (EQMS) sample will be routed to the appropriate EQMS review site. Please see IRM 4.8.3, *Examination Quality Measurement Staff (EQMS)*, for EQMS processes and EQMS reviewer guidelines.

4.8.2.3.1
(04-14-2015)
**Mandatory Review
Cases**

- (1) Mandatory review cases include, but are not limited to, the following:
 - a. Joint Committee (JC) cases (see IRM 4.36, *Joint Committee Handbook*)

Note: Joint committee cases are forwarded to the Joint Committee review group in LB&I via Status Code 21. SB/SE revenue agents will complete a referral form and e-mail it to the LB&I mailbox at *LB Joint Committee Paperless. When the case is assigned to a JC specialist, the revenue agent and manager will receive an e-mail with instructions on where to mail the case.
 - b. Employee return examinations (see IRM 4.2.6, *Examination of Employee Returns*)
 - c. Jeopardy or termination cases (see IRM 4.15, *Jeopardy/Termination Assessments Handbook*)
- (2) Refer to IRM 4.8.4, *Mandatory Review*, for further details on these cases.
- (3) National research project (NRP) cases are not mandatory review but may meet other mandatory review criteria. See IRM 4.22, *National Research Program*, sections 1-4, for additional information. Normal processing procedures should be followed. Reviewers may be requested to perform in-process case reviews.

4.8.2.3.2
(06-27-2013)
**Cases Requiring
Post-Examination
Processing**

- (1) The categories of special feature cases requiring post-examination processing is extensive. The "Forward to Technical Services" section of Form 3198, *Special Handling Notice*, contains a comprehensive listing of mandatory review and post-examination processing cases. Some examples of special handling functions typically performed in TS include tax equity fiscal responsibility act (TEFRA) key case and linked investor returns, bankruptcy cases, innocent spouse cases, transferee cases, interest abatement, and statute expiration cases.
- (2) Refer to IRM 4.8.5, *IRM Post Examination Case Processing Requirements*, and IRM 4.8.8, *Miscellaneous Responsibilities*, for further details on processing these cases.

4.8.2.3.3
(06-27-2013)
Area Identified Cases

- (1) Areas have the discretion to designate any category of cases for special review if it is determined that such action is warranted.

4.8.2.3.4
(04-14-2015)
**Multi-Year Examinations
With at Least One
Unagreed Year and One
Agreed / No-Change
Year**

- (1) Multi-year examination cases with different types of closures have special processing requirements within TS.
- (2) Where the multi-year case is **not** selected for EQMS sample:
 - a. Close agreed / no-change year to Centralized Case Processing (CCP) for assessment.
 - b. Move the agreed / no-change year on report generation software (RGS) CEAS for closure if applicable.
 - c. Annotate Form 3198 on both the unagreed case and the agreed / no-change case regarding separate closure of the agreed / no-change year(s).
 - d. If determination by the reviewer is that the agreed or no change year(s) are fundamental to the unagreed case and shall remain with the unagreed year(s), the reviewer will e-fax the paperwork to CCP to make a partial

assessment for the agreed case. See <http://mysbse.web.irs.gov/examination/cp/cont/28100.aspx> for current e-fax numbers for CCP. Once the assessment has been made, the agreed and unagreed case files should remain together and close accordingly (to Appeals or issuance of SNOD). When closing to Appeals, use AMCLS, Disposal Code 07 and enter \$1 in Item 18 of Form 5344, *Examination Closing Record*, for the agreed / no change year only. For the unagreed year, Item 18 will contain the unagreed amount. See IRM 4.4.12.5.30, *Item 18: Unagreed Amount Appealed/Petitioned*, to determine the unagreed amount to enter in Item 18 and IRM 4.8.2.9.2.1 (1)(b) for complete review guidance of the Form 5344.

- (3) Where the multi-year case is selected for EQMS with 210 days or **less** remaining on the statute:
 - a. The case is excluded from the EQMS sample,
 - b. Fax / secure e-mail / mail the selection sheets to EQMS with an explanation indicating year and statute of the year that is excluding entire case, and
 - c. Follow procedures in item a) above as if not EQMS selected.
- (4) Where the multi-year case is selected for EQMS with **more** than 210 days remaining on the statute:
 - a. All agreed / no-change and unagreed years must remain together;
 - b. Add the EQMS selection sheet to the case file, update ERCS to Status Code 23, Review Type 33, and route on Form 3210, *Document Transmittal*, via ground service mail to the EQMS site alerting them on the Form 3210, to "LIVE case Included, Return to TS address after review";
 - c. EQMS will review the case within 10 business days and return in ground service mail; and
 - d. The reviewer will split agreed / no-change year(s) from the unagreed years, unless it is determined essential and follow steps in item a) above.

Note: If the multi-year case selected for EQMS is a protested case to Appeals, there must be at least 395 days remaining on the statute. Appeals policy requires a non-docketed case to have at least 365 days remaining on the statute as of the date the case is received in Appeals. The additional 30 days is required to allow for EQMS to complete their review and for TS to receive and prepare the case for closing to Appeals.

4.8.2.4 (06-27-2013) Area Reviews

- (1) At headquarters discretion, specialized case reviews may be completed at designated centralized review sites for the review of special projects or special cases such as:
 - Joint committee cases
 - Insurance company cases
 - Excise tax cases
 - Employment tax cases
 - Estate and gift tax cases

4.8.2.5
(03-29-2017)

**Inventory Controls:
Status Codes**

- (1) Cases are routed to TS using Status Code 21, *In Transit*, to TS and are assigned the following standardized status codes upon receipt (refer to Exhibit 4.8.2-1 for a listing of TS status codes and their related review and suspense types):

Status Code	Description
20	All returns subject to mandatory review (except joint committee cases) or special processing either awaiting or in the process of being reviewed, including closing agreements, innocent spouse cases, and offer in compromise cases. Joint committee cases are reviewed in Large Business and International (LB&I) review sites (Status Code 26).
21	Cases are placed in Status Code 21 to forward them to TS. A Technical Services code (TSC) must be included when updating to Status Code 21. Once received, TS will input the correct status code, review type, and suspense type codes. Reminder: Any return over 21 calendar days in Status Code 21 requires follow up actions for location and assignment. Note: Joint Committee cases also utilize Status Code 21 when cases are forwarded to the Joint Committee review group in LB&I. See IRM 4.8.2.3.1.
22	Protested cases are placed in Status Code 22 prior to closure to Appeals and are transmitted to Appeals within 10 business days of receipt.
23	All sample selected or management identified returns awaiting review or in the process of being reviewed.
24	All cases in which the 90 day letter (or equivalent) has been issued and is awaiting a response from taxpayers. If the taxpayer fails to respond, the case will be defaulted at 105 days (or 165 days if the taxpayer resides outside of the United States).
25	Pre-90 Day Letter - Cases awaiting preparation or issuance of the 90 day letter. Review Type 42 is used to control cases sent to area counsel for review. All cases will be updated to Status Code 24 once the 90 day letter is issued. In process restitution-based assessment (RBA) cases - See IRM Exhibit 4.8.6-1.
26	Joint Committee - cases forwarded to the LB&I Joint Committee review group.
27	TEFRA and Non-TEFRA "in process" cases.
28	Cases in which TEFRA letters or final partnership administrative adjustments (FPAAs) have been issued.
29	TEFRA Suspense: Suspended for action by others. The review type assigned to the project will also be used while in suspense in TS.
30	1254 Suspense is used only for cases with a Form 1254, <i>Examination Suspense Report</i> , in the case file. In process restitution-based assessment (RBA) cases - See IRM Exhibit 4.8.6-1.
31	Other TEFRA Suspense. Project cases will use the review type assigned to the project while suspended in TS.
32	Fraud Suspense contains cases in which the joint investigation is complete and is awaiting settlement of the criminal aspects of the case.
35	In process restitution-based assessment (RBA) cases - See IRM Exhibit 4.8.6-1.

Status Code	Description
36	Grand Jury Suspense contains cases that are actively investigated by the Department of Justice (DOJ).
38	<p>All Other Suspense Cases such as cases awaiting technical advice from Headquarters, or cases placed in suspense by the area office.</p> <ul style="list-style-type: none"> - ERCS Collaterals will be established for all non-audit information management system (AIMS) workload including Rev. Proc. 92-29, IRC 1033, <i>Involuntary Conversions</i>, conditions of probation (COP) and Taxpayer Advocate Service (TAS) cases. - Only one collateral record is required for each case or issue and the record will remain open until final closure from TS. - Status Code 38 may be used for cases that are related to cases in other status codes but do not require the same processing while in TS. For example, a nontaxable non-TEFRA flow-through entity with a "GG", <i>Non-TEFRA Flow-Through</i>, statute that must remain associated with a related shareholder return that is in Status Code 24 with Review Type 34 may be updated to Status Code 38, Review Type 34. Similarly, Status Code 38 with the appropriate review type (that of the related tax year(s)) may also be used on no-change years that are part of the same case file if the no-change years will remain open in TS until final closure. <p>Status Code 38 includes collateral records for monitoring Examination-related conditions of probation. See IRM 4.8.11.</p>
39	Bankruptcy cases held in suspense.

- (2) The use of ERCS review types and suspense types to control and monitor inventories is mandatory. The purpose of assigning ERCS review and suspense types in conjunction with status codes is to provide consistency as a means of effectively monitoring workload and serving as the basis of an accurate work plan. See Exhibit 4.8.2-1 for a table of how the status codes, review types, and suspense types interrelate. Check the TS shared drive in the "memos" folder for a current listing of ERCS codes.
- (3) **Review Types** assist in the identification of cases. All cases are assigned a review type that will not change except in special circumstances when the case is received in TS.
- (4) **Suspense Types** and the use of action dates assist in the identification of the IRM guidelines for processing returns and to ensure appropriate and timely follow-up is initiated, particularly those in suspense categories. Action dates are important to ensure timely action is taken, such as transactions posting to information data retrieval system (IDRS), and to ensure customers are provided a timely work product.

4.8.2.6
(06-27-2013)
Statute Controls

- (1) Reviewers are responsible for identification and protection of the statutes of limitation on all returns assigned to them or for which they have control.

4.8.2.6.1
(06-27-2013)
Procedures

- (1) Procedures for statute controls are outlined in IRM 25.6.23, *Examination Process - Assessment Statute of Limitations Controls*. Reviewers are also responsible for the identification of returns with early expiration dates and completion of proper procedures.

- 4.8.2.6.2
(03-29-2017)
Statute Control System
- (1) A continuous statute control system is maintained for all returns within 210 days of the statute expiration. The TS group manager is responsible for the overall supervision of statute controls and for ensuring that all incoming receipts from whatever source are screened timely. The TS group manager is also responsible for ensuring that the statute control duties are performed by the appropriate personnel knowledgeable in maintaining accurate statute controls. The employee checking in new case receipts will screen the cases to ensure the statutes match between Audit Information Management System (AIMS), Exam Returns Control System (ERCS) and Form 895, *Notice of Statute Expiration*, (or Form 3198, in the absence of a Form 895). The employee will document the actions performed. This initial screening should generally occur within two days of receipt of the case by the group. Further, generally within ten days of case assignment, the reviewer will verify that statutes have been calculated correctly. The reviewer will take the necessary action to make any necessary corrections to the statute and / or determine that the case in question should be returned to the examination group due to statute questions.
- 4.8.2.7
(06-27-2013)
Cycle Time
- (1) Cycle time for the various stages of cases in TS is represented in the chart in Exhibit 4.8.2-1.
- 4.8.2.7.1
(06-27-2013)
Cases Requiring Priority Handling
- (1) The following cases receive priority handling:
- Early statute expiration cases,
 - Agreed unpaid deficiency cases of \$100,000 or more (see IRM 4.4.18, *Large Dollar Cases*),
 - Unagreed cases designated for closure to Appeals, and
 - Cases requiring completion of post-examination processing.
- (2) It is critical that reviewers prioritize their statutory notice of deficiency inventory to comply with management inventory goals and the annual examination work plan. This prioritization becomes extremely critical during statute season (December 15 – April 15) when the field closes a larger volume of cases and the goals for the annual examination work plans depend upon TS to issue notices of deficiency on outstanding cases on or before April 15th. Reviewers should prioritize their inventory in the following order:
- Early statute expiration cases where assessment statute expiration date (ASED) will expire within 60 days (see IRM 4.4.25.2.2, *Quick Assessments, State of Limitations Less Than 60 Days*);
 - Special compliance projects with completion deadlines within 60 days; and
 - All other statutory notice cases on a first-in first-out (FIFO) basis.
- 4.8.2.7.2
(06-27-2013)
Exceptions
- (1) Time periods should be adjusted to meet the requirements of the program.
- 4.8.2.8
(06-27-2013)
General Case Review Procedures
- (1) The function of TS is to ensure the highest level of quality and fairness in examinations as SB/SE carries out its mission to protect the public interest by determining the substantially correct tax by applying the tax law with integrity and fairness. TS performs case reviews to:

- a. Measure and assess SB/SE's ability to carry out this mission (using EQMS, explained in IRM 4.8.3) and
 - b. Ensure technical and procedural requirements of cases with special processing requirements are correctly completed.
- (2) EQMS case reviews are discussed in IRM 4.8.3. This section discusses case reviews of cases with special processing requirements and addresses the following topics:
- a. Scope of review
 - b. Review standards
 - c. Providing feedback to the examiners and management using Form 3990, *Reviewers Report*
 - d. Case return procedures
 - e. Suspense cases
 - f. Case closing

4.8.2.8.1
(06-27-2013)
Scope of Review

- (1) Reviewers will review the case in sufficient depth to ensure:
- a. Correct technical conclusions
 - b. Accurate tax and penalty computations
 - c. Proper completion of all procedural requirements
 - d. Proper managerial involvement
 - e. Proper protection of taxpayer rights

4.8.2.8.2
(04-14-2015)
Case Review Standards

- (1) The quality attributes are SB/SE's expectations for quality examinations and are guidelines to assist examiners in performing examinations. The quality attributes provide objective criteria against which case quality may be evaluated.
- (2) IRM Exhibit 4.8.3–1, *Quality Attributes*, Document 13127, *Field Compliance Embedded Quality*, *Office Examination Attribute Job Aid*, and Document 13128, *Field Compliance Embedded Quality*, *Field Examination Attribute Job Aid*, list and explain the quality attributes and should be used as a guide for case reviews and documenting conclusions.

4.8.2.8.3
(06-27-2013)
Reviewers Report (Form 3990)

- (1) Communication between the TS staff and the examination function regarding the review of a case is generally in the form of the reviewers report, Form 3990.
- (2) The reviewers report is an official communication between TS and the examination area regarding technical / procedural errors or commendatory feedback observed in cases under TS review. It is also used by management to identify trends and to determine necessary corrective actions.
- (3) Informal contacts with examiners (telephone call or e-mail) should be made when a defect can be perfected without returning the case to the responsible group. The informal contact will be documented in the reviewer's activity record.
- (4) Mathematical, technical, managerial or procedural errors or omissions that require additional consideration or development are usually returned to the responsible group when it cannot be perfected by the reviewer.

- (5) Form 3990 should clearly communicate the corrective action required, explaining in an objective understandable manner the error, or if a commendatory observation, a clear explanation describing how the examiner's actions were superior.
- (6) Only an objective discussion of the deficiencies should be addressed. Avoid subjective commentary unless the conclusion reached by the examiner is not supported by the facts developed in the case file. Conclusively support observations as they relate to the quality attributes.
- (7) Strive to choose words and phrases that are constructive in nature and demonstrate an interest in helping the examiner.
- (8) Cases will not be returned to the group for further development unless one of the case return criteria is met. See IRM 4.8.2.9.1, *Case Return Criteria*, and IRM 4.8.2.9.2, *Exceptions to the Case Return Criteria*.
- (9) Refer to Exhibit 4.8.2-2 for response time frames and status updates by the examination group.
- (10) A detailed analysis of Form 3990s may be used by management to accomplish the following:
 - Assess program performance
 - Identify system changes
 - Identify training and education needs
 - Improve work processes

4.8.2.8.4
(06-27-2013)

Reviewers Report (Form 3990) – Types of Reports and Usage

- (1) **Observation Report:** The observation report is used to advise management of areas requiring attention or exceptionally good performance of an examiner. There are two types of observation reports based on who the report is sent to:
 - a. **Commendatory, Managerial, or Other:** Observation reports are sent to the area field territory manager once the report is signed by the TS group manager. These reports may not be combined with, substituted for, or be a supplement to, the inquiry or advisory reports.
 - b. **Procedural:** Observation reports and the case file, if necessary, are routed directly to the field group manager. When the reviewer concurrently issues an advisory or inquiry report, the procedural inaccuracies may be cited in the same report and should be clearly labeled as procedural comments.
- (2) **Advisory Report:** An advisory report is prepared when:
 - a. It is necessary to advise the field group manager and examiner of non-compliance with the quality attributes (see IRM Exhibit 4.8.3-1), and
 - b. When the reviewer has determined the case file does not need to be returned as they were able to correct the error(s), or waive the error(s) in accordance with the tolerance levels discussed in *SB/SE Delegation Order (D.O.) 4.41, Error Tolerance Levels* at <http://mysbse.web.irs.gov/opsupport/hc/facilitiesorganizationalsupport/orgsupportteam/imd/delorders/functional/examination/21542.aspx>

When an advisory report is issued, the case file is **not** normally returned. The field manager enters the examiner's name in the "Referred To" block, and gives a copy to the examiner. No further action is necessary by the examiner unless there is also an inquiry.

- (3) **Inquiry Report:** An Inquiry report is prepared when it is necessary to return the case file to the field group for further action by the examiner due to possible non-compliance with the quality attributes. Case return criteria and exceptions must be considered in determining whether to return the case to the group (IRM 4.8.2.9.1 and IRM 4.8.2.9.2).

4.8.2.9
(03-29-2017)
Returning Cases to the Field

- (1) Cases may be returned to the group via the previous field status code on ERCS (e.g., Status Code 12, Status Code 17, etc.) for further development if any one of the case return criteria outlined below is applicable. The criteria should be applied to all cases handled by TS. Exceptions to the case return criteria are also discussed in this section.

4.8.2.9.1
(06-27-2013)
Case Return Criteria

- (1) The purpose of the case return criteria is to limit the number of cases returned to the group for rework. The criteria identify those cases with potential for significant impact to taxpayer compliance or tax revenues. Generally, cases will not be returned to the group for further development or correction unless one of the conditions listed below is met.

4.8.2.9.1.1
(06-27-2013)
Substantial Error

- (1) There is a clearly defined substantial error based on an established Service position existing at the time of the examination. "Substantial" refers to the dollar amount of the tax that would not be assessed if the case were not returned. Any proposed change to a case involving net additional tax totaling \$10,000 or more, regardless of the years involved, is normally to be regarded as substantial.
- (2) Cases returned under the criteria in paragraph (1) must clearly demonstrate an error of substantial magnitude and not merely a "possible" or "potential" error. However, a case may be returned with less than absolute surety regarding the additional tax liability if it appears to be within range of \$10,000.
- (3) The following examples illustrate the substantial error case return criteria:
- EXAMPLE 1:** A reviewer identified an error in the computation of unreported income using an indirect method. Using the facts presented in the case file, the reviewer computed the correct amount of income and determined that the taxpayer's liability should be increased by \$15,759. In this example the case should be returned to the field for correction.
 - EXAMPLE 2:** A reviewer identified several errors within a case file. The interview was inadequate and included contradictory statements that were never reconciled. The examiner did not address the taxpayer's personal expenses, which appeared to be insupportable based on the cash flows reflected by the audit. A bank deposit analysis was illegible and the audit trail was practically nonexistent. The taxpayer agreed to the proposed adjustments. In this example the case would not be returned for further development. The case does not comply with all the quality attributes, but specific errors resulting in concrete adjustments have not been identified. Substantial additional tax cannot be determined.

- c. **EXAMPLE 3:** An area participates in the post-assessment review process. A reviewer identifies an error that will increase the taxpayer's agreed tax liability by \$12,689. In this example, procedures for reopening case files should be followed and the case returned to the field for correction.

4.8.2.9.1.2
(06-27-2013)

Fraud or Malfeasance

- (1) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation by the taxpayer or representative.
 - a. **EXAMPLE 1:** While reviewing a case file, the reviewer realized there were inconsistencies in the taxpayer's oral testimony for which there was no documentary proof. The taxpayer was generally uncooperative and procrastinated repeatedly. The examiner did not address the badges of fraud. The facts, while requiring comment by the examiner, do not clearly evidence fraud potential. Few people will make admissions against their own interest. Further, procrastination and lack of cooperation are methods to cope with an unpleasant, if not intimidating, situation and should not be overvalued. Without more concrete indicators of intentional deception or misrepresentation, this case should not be returned to the examiner.
 - b. **EXAMPLE 2:** While reviewing a case file, a reviewer noticed that the copy of an appraisal document used to substantiate a large charitable contribution appeared to have been altered and a signature was obliterated. The examiner did not recognize the problem. Complete disallowance of the contribution would result in additional tax of \$5,784. This case would be returned to the examiner to more fully develop the contribution issue and potential fraud.

4.8.2.9.1.3
(04-14-2015)

Serious Administrative Omissions

- (1) Circumstances exist that indicate failure to return the case would be a serious administrative omission. Examples include:

- a. Actions (or inactions) that may result in serious criticism of the Service's administration of the tax laws.

Example: A revenue agent issued an unagreed report including negligence penalties when a taxpayer could not be contacted in three weeks. The taxpayer responded to the 30 day Letter, explained the reasons for his absence (it was reasonable), and requested that the audit be resumed. The agent closed the case unagreed to TS without responding to the taxpayer's request.

This case should be returned to the agent for completion. The taxpayer has specifically asked that the audit be completed and there is no evidence of procrastination. The agent's actions (or inactions) could be interpreted as capricious, arbitrary, and the addition of penalties vindictive.

- b. Actions (or inactions) that may establish a precedent that would seriously hamper subsequent attempts by the Service to take corrective action.

Example: As part of an employment tax examination, the examiner reviewed payroll journals and discussed the workers duties and responsibilities with the taxpayer. He later determined that Form 1099s were filed for workers and included a two sentence description of the workers' activities. The examiner did not specifically address the three main categories of evidence or reclassify the workers as employees. (See IRM Exhibit 4.23.5-1, *Determining the Right to Direct or Control*.)

The brief description and the taxpayer's business activities suggested that an employee / employer relationship probably existed.

If the workers are employees as the reviewer suspects, then failure to fully address this employment tax issue has potentially created a safe haven preventing the Service from reclassifying the workers as employees for future years. See IRM 4.23.5.2.2.5, *Safe Haven—Prior Audit*, for a discussion concerning prior audit safe haven available under Section 530 of the Revenue Act of 1978. The case should be returned to the examiner. To avoid a prior audit safe haven under section 530, the worker classification issue **MUST** be discussed and properly evaluated at the time of Employment Tax examination.

Note: An employment tax examination must be conducted for a specific job category and no change to the worker status made for a section 530 safe haven to be created from the examination. For examinations that began after December 31, 1996, the Service audit must have included an examination for employment tax purposes of the status of the class of workers at issue or a substantially similar class of workers. See IRM 4.23.5.2.2.5, *Safe Haven - Prior Audit*.

If the examination had been an income tax examination, the failure to address the employment tax issue, while a failure for examination attributes and a mistake that enables the employer to continue to erroneously misclassify the workers, does **NOT** create a section 530 safe haven.

- c. Actions (or inactions) that may result in inconsistent treatment of similarly situated taxpayers.

Example: When computing a flow-through adjustment from a partnership, an examiner incorrectly classified the loss as flowing from a non-passive rather than a passive activity. A copy of the partnership audit report indicates there are three other passive partners.

The case would be returned for correction, as the results are inconsistent with the treatment of the other partners.

4.8.2.9.1.4
(06-27-2013)
Unprocessable Cases

- (1) The case is unprocessable, (e.g., case requires new agreements, AIMS establishment, etc.) Generally, if the case cannot be closed off AIMS, it is unprocessable and will be returned to the examiner for correction. However, many of these errors can be quickly corrected without formally returning the case; reviewers should not hesitate to take corrective action to solve problems expeditiously.

Example: AIMS controls had not been established for a delinquent return included in the case file. The case would be returned to the examiner.

4.8.2.9.1.5
(06-27-2013)
**Correction of Errors
That Will Benefit the
Taxpayer**

- (1) The correction of the error is favorable to the taxpayer. Corrections that are in the taxpayer's favor (less tax due or larger refund) must be made. Every effort should be made to waive errors within the scope of authority. However, taxpayers should not be harmed by Service errors. If correcting an error reduces the taxpayer's liability or increase the taxpayer's refund, then the correction will be made without regard to the dollar amount. The case should be returned to the examiner for correction. However, if the error can be readily corrected by TS, such action should be taken to close the case expeditiously.

Example: The SE tab in Return Setup on RGS reflects Schedule C net income as zero vs. a negative number; therefore, the self employment (SE) tax when computed is overstated.

4.8.2.9.2
(06-27-2013)
**Exceptions to the Case
Return Criteria**

- (1) There are exceptions to the case return criteria (e.g., corrections that must be considered based on the needs of our customers).

4.8.2.9.2.1
(04-14-2015)
**Unagreed Appeals
Cases**

- (1) Unagreed cases are reviewed primarily by a tax examiner who will expedite their movement to Appeals by verifying the following items:
 - a. Statute of limitations is identified correctly and has at least 365 days remaining when the case arrives in Appeals. Therefore, there must be 395 days remaining on the statute when received in TS to allow sufficient processing time.

Note: If Appeals returns the case to Examination for consideration of new information or new issues raised by the taxpayer, there must be at least 210 days remaining on the statute of limitations when the case is received. If Appeals previously released jurisdiction of the case and returned it to Examination for additional work, there must be at least 180 days remaining on the statute of limitations when the case is received in Appeals.

- b. Form 5344 is completed correctly. See <http://mysbse.web.irs.gov/exam/mis/data/25823.aspx>, *Form 5344 Entries - Area of Responsibility*, for specific instructions for non-RGS Form 5344s.

Note: Item 03 and Item 04 of Form 5344 should be reviewed for accuracy when the tax deficiency is related to a C corporation and exceeds \$100,000 to ensure the interest computations for Large Corporate Underpayments (LCU) can be completed.

- c. Case file contains 30 day letter, valid protest and managerial signature.
- d. Case can be updated on RGS to appropriate RGS group (SB/SE cases only).
- (2) Protested cases should be corrected prior to forwarding to Appeals. See IRM 4.10.8.12.10.3 for procedures on reviewing the taxpayer's request for an Appeals conference.
- (3) See IRM 4.8.2.3.4 for procedures on sending agreed, no-change, and non-taxable returns to Appeals because they are related to unagreed cases being closed to Appeals.
- (4) Additional information is available in IRM 4.8.8.17, *Technical Services, Miscellaneous Responsibilities, Appeals/Counsel Liaison*, and IRM 4.4.12.4.31.

- 4.8.2.9.2.2
(06-27-2013)
Statutory Notices of Deficiency
- (1) Statutory notices of deficiency will be perfected before issuance. This may require returning the case to the examiner for clarification or correction of errors.
- 4.8.2.9.2.3
(06-27-2013)
Math Errors On Waivers
- (1) There is separate authority to process cases if there is a math error on a waiver (or other agreement form). This criteria is applied independently from the case review criteria. Instructions for those cases, where correction of a math error on the waiver would result in additional tax or less refund, are outlined in *SB/SE Delegation Order 4.41*.
- 4.8.2.9.2.4
(06-27-2013)
Exceptions for Program Requirements
- (1) The reviewer must give consideration to the proper completion of procedures and requirements associated with specific programs such as TEFRA, bankruptcy cases, or employee audits.
- 4.8.2.9.2.5
(06-27-2013)
Cost Effectiveness
- (1) Judgment plays an important role in the review process. Cost benefits must be considered before cases are returned to the examiner for corrections. The presumption that it is not cost effective to return a case for further development should be applied to all cases.
- 4.8.2.10
(03-29-2017)
Case Return Procedures
- (1) Case files should be returned to the responsible group manager.
- (2) The reviewer will complete Form 3990 in accordance with instructions provided on Form 3990. The reviewer's reports should identify the following:
- a. Name of responsible group manager / territory manager
 - b. Required response date (60 days from date of issuance)
 - c. Taxpayer name, identification number, and tax year(s)
 - d. Earliest statute date (when statute date on any return in the case file being returned expires within 6 months)
 - e. Type of report (Observation, Advisory, Inquiry)
 - f. Reason for review (mandatory-employee audit, fraud / grand jury, notice of deficiency, TEFRA, other)
 - g. Reason for case return and any necessary corrective action
 - h. Name and signature of the reviewer, time spent on case, and date
 - i. Name and signature of TS manager, and date
- (3) The reviewer will forward the case file with the reviewers report to the TS manager for approval. Upon approval, copies of the signed Form 3990 will be distributed as follows:
- a. Original and one copy to the responsible group manager
 - b. One copy for the case file
 - c. One copy retained by the TS group
 - d. One copy for field area territory manager (when applicable)
- 4.8.2.10.1
(06-27-2013)
Case Reopening Criteria
- (1) Areas conducting post-assessment or "dead" case reviews must use procedures outlined in IRM 1.2.13.1.1, *Policy Statement 4-3*, and Rev. Proc. 2005-32.

- 4.8.2.10.2
(06-27-2013)
Statute Expiration Cases
- (1) If a case is returned to the group within 30 days of expiration of the assessment period, TS will advise the group manager by telephone before sending the case to the group.
- 4.8.2.10.3
(06-27-2013)
Cycle Time
- (1) Generally, cases should be corrected and returned to TS within 60 days. See Exhibit 4.8.2-2. for response time frames and status updates.
- 4.8.2.10.4
(06-27-2013)
Action by the Examiner
- (1) There are times when it may be necessary for a reviewer to contact an examiner for additional information or clarification regarding a case. These inquiries should be treated with the highest priority.
- (2) Whenever possible, the reviewer will attempt to obtain the information by telephone from the field examiner / group manager. If the information cannot be readily supplied, the reviewer will issue a Form 3990 and the case will be returned to the examiner.
- (3) If the case is returned to the field group, the field group manager should refer to Item 1 of Form 3990, for the examiner to which the reviewers report is referred and the date.
- (4) Examiners will be reassigned the case on RGS (SB/SE cases only). The case should be discussed with the group manager and a course of action agreed upon.
- (5) Every attempt should be made to respond to the inquiry in a timely manner.
- a. Telephone inquiries should be addressed within 3 working days.
- b. Formal written inquiries should be acted upon within 60 days.
- (6) If the response will take longer than 60 days, a short memorandum providing a status report should be submitted by the field group every 60 days to TS. The memorandum should contain the case name, tax years, earliest statute of limitations, status explanation / reason for delay, and expected completion date. See Exhibit 4.8.2-2 for a summary of response time frames and status updates.
- (7) All voided portions of the examination report and workpapers should be maintained in the case file. If there were no math changes or additions made to the report the examiner should mark the box in Item 7 of Form 3990 and initial in space provided.
- (8) When the examiner has completed action on the case, they will sign and date Item 11. Then the group manager will indicate approval by completing Item 12 of Form 3990 and return the case back to TS.
- 4.8.2.10.4.1
(06-27-2013)
Recontacting the Taxpayer
- (1) If it is necessary to re-contact the taxpayer, the examiner will contact the taxpayer within 15 days after receiving the case. The group manager may wish to be present when the taxpayer is informed of a change in the government's position.
- (2) The examiner / group manager should resolve any controversies with TS before contacting the taxpayer.

- (3) If the taxpayer does not agree to an increased deficiency or cannot be reached, a 30 day letter should be issued if time remains on the statute of limitations. The case should be returned to TS using appropriate closing procedures.

4.8.2.10.4.2
(06-27-2013)

**Procedures for Settling
Controversies**

- (1) If examination area management disagrees with TS, the case will not be returned until the controversy is resolved.
 - a. If the controversy can be resolved, the parties can proceed as agreed.
 - b. If agreement cannot be reached, the controversy will be resolved through existing management channels.
 - c. If the examiner disagrees with the resolution of the controversy, the examiner will adopt management's position. However, examiners have the right to submit a dissenting opinion that will be maintained as part of the case file.

4.8.2.11
(06-27-2013)

Suspense Cases

- (1) TS will maintain area "suspense" cases while waiting for an event to occur, such as completion of litigation or other administrative action based on national or area directive.

4.8.2.11.1
(06-27-2013)

Form 1254 Suspense

- (1) A case in Form 1254 suspense is held pending a court decision or final action by national office or chief counsel. You may contact your local counsel for any updates or questions.
- (2) Cases may be held in suspense under the following circumstances:
 - a. The facts in the case to be suspended must be the same or similar to an issue pending in a federal court.
 - b. The issue is similar to or under consideration in district court in another jurisdiction but only if Form 906, *Closing Agreement on Final Determination Covering Specific Matters*, was secured, usually by Appeals.
 - c. Headquarters or chief counsel has identified the issue as a suspense issue in most cases.

4.8.2.11.1.1
(06-27-2013)

**Placing the Case in
Suspense**

- (1) When placing a case in suspense, the reviewer will:
 - a. Determine the case meets the requirements for suspense and the case file has been properly completed. A revenue agent report (RAR) or claim disallowance that addresses the unagreed issue(s) being suspended must be in the file. A claim allowance must also be included in the file should the taxpayer's position prevail.
 - b. Determine if the RAR has been shared with the taxpayer for purposes of IRC 6404(g).
 - c. Review all issues. Ensure all issues, other than the suspense issue(s), are resolved to the extent possible and any partial assessment is made before the case is placed in suspense. The only issues that may be suspended are unagreed issues meeting the suspense criteria. If a partial agreement cannot be secured and the taxpayer has failed to file a protest, a statutory notice of deficiency needs to be issued.
 - d. Ensure Form 1254, *Examination Suspense Report*, is complete and meets the requirements of the Form 1254 suspense.
 - e. Protect and control statutes of limitation for all returns in the case file. When the case is received for suspense there must be at least 24 months

remaining on the statute of limitations. If not, the case should be returned to the originating group with a request to secure an adequate extension. Reviewers assigned the responsibility for management of the suspense files for the first time should perform a statute check immediately.

- f. Prepare and issue Letter 1014, *Letter to Taxpayer Advising Him of the Reasons for Suspended Action on His Tax Return Examination*, to the taxpayer, informing him / her the case is being placed into suspense.
- g. Place the case in Status Code 30, Review Type 44, Suspense Type 590.

4.8.2.11.1.2
(06-27-2013)
Monitoring the Case in Suspense

- (1) Monitor the statutes of the cases in suspense every month. If six months or less remain on a statute, the suspense coordinator will solicit a statute extension from the taxpayer. If the taxpayer is unwilling to extend the statute, forward the case for issuance of a notice of deficiency. Resolution of the case should be discussed with the manager prior to removal from suspense.

Note: The activity record should indicate that Pub 1035, *Extending the Tax Assessment Period*, was provided to the taxpayer which advises the taxpayer that they are not required to sign the extension.

- (2) Every quarter the cases in suspense will be reviewed to determine if the suspense issue(s) have been resolved.
- (3) If the issue is unresolved, document the case activity record as to who was contacted and the status of the issue.

4.8.2.11.1.3
(06-27-2013)
Case Closing

- (1) When the suspense issues are resolved, send the case back to the examination group to prepare and issue the final report to the taxpayer to attempt to obtain his / her agreement. In some instances, the reviewer will be able to directly forward the case for closure when a protective claim has been accepted.
- (2) A cover memo will be prepared to the field manager explaining the work required to resolve the suspense issue and close the case.
- (3) If closing the case, the reviewer will ensure:
 - Proper case file assembly
 - Proper completion of Form 5344
 - Proper statute controls
 - Proper completion of Form 3198 - see *Form 3198*

4.8.2.11.2
(06-27-2013)
IRC 183(e) Hobby Loss Suspense

- (1) A case forwarded for IRC 183(e), *Activities Not Engaged in for Profit*, suspense is a case open on AIMS/ERCS in which the taxpayer has executed Form 5213, *Election to Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit*. The Service will generally postpone the determination until after the end of the fourth consecutive tax year (sixth tax year for an activity that consists mainly of breeding, training, showing, or racing horses) after the tax year in which the taxpayer first engaged in the activity (hereinafter referred to as the "initial presumption period"). For detailed information regarding IRC 183, see IRM 4.10.13.6, *Activities Not Engaged in For Profit - Hobby Loss (IRC Section 183)*.

- (2) Under IRC 183(e)(4), the statute of limitations for the IRC 183 issue is extended by the taxpayer executing Form 5213 until two years after the due date (determined without regard to extensions) of the return for the last year of the initial presumption period. The extension also applies to partners or shareholders in the activity.

Note: The automatic extension applies only to those deductions attributable to the activity and to any deductions (such as medical expense or charitable contribution deductions) that are affected by changes made to adjusted gross income.

- (3) The examiner will complete the examination of all open years in the initial presumption period and forward the case for suspense, pending receipt of years that have not been filed. All partial assessments or other unagreed issues should be resolved prior to sending the case for suspense. If needed, a statute extension may be secured for any non-hobby loss issues.

4.8.2.11.2.1
(06-27-2013)
**Placing the Case Into
Suspense**

- (1) Place the case in Status Code 38, Review Type 47, Suspense Type 595.
- (2) Verify that the Form 5213 was timely filed (three years after the due date of the return of the for the first year of the initial presumption period).

4.8.2.11.2.2
(06-27-2013)
**Monitoring the Case in
Suspense**

- (1) Each year, after the due date for the current year's return, check IDRS to determine if the subsequent return has been filed. If filed, order a RTVUE or a BRTVU for the additional filed year.
- (2) Again, inspect the return for audit potential for IRC 183 related and non-IRC 183 related income and expenses. Determine if examination is warranted, and if not, place it in suspense associated with the other years.
- (3) Monitor the statutes of the cases in suspense every month. If 210 days or less remain on a statute, prepare Form 895, *Notice of Statute Expiration*, to update the statute to "MM" with an explanation that the return is only open for the IRC 183 issue and the statute for this issue expires two years after the due date (determined without regard to extensions) of the return for the last year of the initial presumption period. Refer to IRM Exhibit 25.6.23-3, *Instructions for Updating the Statute on AIMS*, for further details on updating to alpha codes.

4.8.2.11.2.3
(06-27-2013)
Closing the Case

- (1) Once the date prescribed by law (determined without extensions) for the filing of the tax return for the last taxable year in the initial presumption period has expired, the case must be removed from expense.
- (2) If sufficient information is contained in the file, a determination will be made by TS and the case will be closed.
- (3) If additional case development is required, return the case to the originating group. The coordinator will attach a cover memorandum to the case explaining that a determination should be made on the IRC 183(e) issue.

4.8.2.11.2.4
(06-27-2013)
**IRC 6404(g) Tolloed
During IRC 183
Suspense**

- (1) The 36-month notification period specified in IRC 6404(g) is tolled (ceases to run) during the time the IRC 183(e) election is in effect and for the particular activity to which the election relates. Tolling also applies to the actual suspension of interest and other amounts under IRC 6404(g), if the suspension period has already begun when the taxpayer makes the IRC 183(e) election.

Example: A taxpayer participated in an activity that began in 2009. The taxpayer makes an IRC 183(e) election in February 2013 with two months remaining in the 36-month IRC 6404(g) notification period for the taxable year in question (2009). Because of the election, the IRS will not determine before the close of the 2013 taxable year whether the IRC 183(e) presumption applies. Under Treas. Reg. 301.6404-4(c)(2)(i), tolling of the IRC 6404(g) notification period starts on the date the IRC 183 election is made, and ends on the later of 1) April 15, 2014; or 2) the date the taxpayer's return for the taxable year 2013 is filed. For example, if the taxpayer files the 2013 return on May 1, 2014, the remaining two months in the notification period would resume running on May 2, 2014 for the activity to which the election related.

4.8.2.11.3
(03-29-2017)
**Fraud and Grand Jury
Suspense**

- (1) Fraud and Grand Jury Suspense is an important part of the TS Fraud Program responsibilities. The reviewer or "coordinator" assigned to Fraud and Grand Jury Suspense must have a comprehensive knowledge of the entire joint investigation process. The following references may be used to gain an understanding of this process and relevant related issues:

- IRM 4.8.11 - *Technical Services Fraud Program Responsibilities*
- IRM 4.8.6 - *Criminal Restitution and Restitution-Based Assessments*
- IRM 25.1 - *Fraud Handbook*
- IRM 20.1 - *Penalty Handbook*
- IRM 25.6 - *Statute of Limitations*
- IRM 25.25.10 - *Frivolous Return Program*
- IRM 25.26 - *Restitution*
- IRM 4.10.6.2 - *Recognizing Noncompliance*
- IRM 4.12.1 - *Nonfiled Returns*
- IRM 8.11 - *Penalties Worked in Appeals*
- IRM 8.13 - *Closing Agreements*
- IRM 9.4 - *Investigative Techniques*
- IRM 9.5 - *Investigative Process*
- IRM 9.8.1 - *Scheme Development Center*
- IRM 9.9 - *Criminal Investigation Management Information System (CIMIS)*
- IRM 38 - *Chief Counsel Directives Manual - Criminal Tax*

- (2) Additionally, the following resources are available:

- Servicewide Fraud Website - <http://sbaseservicewide.web.irs.gov/Fraud/default.aspx>
- Criminal Investigation Website - <http://ci.web.irs.gov/>
- Financial Crimes Enforcement Network - <https://www.fincen.gov>
- Public Access to Court Electronic Records - <https://pacer.psc.uscourts.gov>
- LB&I Fraud Website - http://lmsb.irs.gov/pa/cent/fraud/fraud_home.asp
- SB/SE Fraud Website - <http://mysbse.web.irs.gov/examination/tip/fraud/default.aspx>

- Technical Services Fraud SharePoint Website - <https://organization.ds.irsnet.gov/sites/SBSEfeTS/SME/Fraud/SitePages/Home.aspx>
- (3) The reviewer assigned to the TS fraud program, is commonly referred to as a “fraud coordinator”. The local TS fraud coordinator (LTSFC) is responsible for the following:
- Verifying or determining the correct statute and monitoring the statute of limitations for each return / tax period in suspense.
 - Protecting the statute of limitations on assessment for all cases in suspense.
 - Reviewing and determining whether cases that are sent for suspense meet the suspense criteria.
 - Placing the case in suspense, or returning it to the group if it does not meet the suspense requirements.
 - Coordinating with area counsel and Criminal Investigation (CI) on issues that arise on cases that are in suspense.
 - Ensuring that fraud suspense and fugitive checks are performed every six months and that all fraud suspense inventory is properly coded with respect to ERCS status code, review type, suspense type and next action date.
 - Returning cases to the field that have been released from suspense.
 - Ensuring that a statutory notice of deficiency gets issued for cases in suspense when determined appropriate with concurrence from CI, Examination, and area counsel.
 - Review the civil disposition of criminal investigation cases to ensure compliance with procedural requirements, including conditions of probation and restitution, as applicable.
 - Monitoring tax-related conditions of probation (specifically the Examination-related conditions), in coordination with Field Examination, Collection Advisory and CI.

4.8.2.11.3.1
(03-29-2017)

**Why Cases Are Placed
in Fraud and Grand Jury
Suspense**

- (1) Cases are placed in suspense when the control of the case is no longer under the jurisdiction of any function of the Service. This usually happens when CI recommends prosecution of the taxpayer or when a grand jury investigation is initiated. In both of these scenarios, the case is under the control of the Department of Justice (DOJ). Although CI controls the criminal investigation for the Service, the fraud coordinator has the responsibility of controlling the civil statutes.
- (2) Refer to IRM 4.8.11, *Technical Services Fraud Program Responsibilities*, for the roles and responsibilities of the LTSFC (including, but not necessarily limited to, Fraud and Grand Jury Suspense, civil resolution, probation and restitution).

4.8.2.11.4
(06-27-2013)

Bankruptcy Suspense

- (1) A bankruptcy case is commenced by the filing of a petition in U.S. Bankruptcy Court pursuant to the Bankruptcy Code.
- (2) The Bankruptcy Code allows individuals, partnerships, corporations, and limited liability companies to file for debt relief by way of filing a bankruptcy petition with the U.S. Bankruptcy Court.
- a. The Bankruptcy Code, with amendments, can be found in Title 11 of the United States Code.

b. The Bankruptcy Reform Act of 1994 (BRA 94) and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) made significant changes to the Bankruptcy Code.

- (3) The Bankruptcy Code provides the law under which bankruptcy proceedings are commenced, administered, and closed. Bankruptcy laws are separate from tax laws, and coordination is necessary to comply with both.
- (4) Insolvency, a Collection function of the Small Business/Self Employed Operating Division of the Service, is responsible for administering that coordination.
- (5) Refer to Exhibit 4.8.2-3 for a summary of assessment and suspension rules under the Bankruptcy Code, as revised over the years.

4.8.2.11.4.1
(06-27-2013)
Overview

- (1) A TS bankruptcy coordinator is responsible for coordinating with and fielding questions from many people inside and outside the Service to ensure timely and accurate assessment of taxpayers who have filed for bankruptcy protection. They are responsible for managing examination case inventory and assisting others who manage cases impacted by bankruptcy.
- (2) Because bankruptcy is a specialized field it is important that the TS bankruptcy coordinator have a working knowledge of bankruptcy terminology. IRM Exhibit 5.9.1-1, *Glossary of Common Insolvency Terms*, contains a list of bankruptcy definitions and concepts.
- (3) The TS bankruptcy coordinator must complete Form 9984, *Examining Officer's Activity Record*, or equivalent, to document time and actions performed. See IRM 4.8.1.6.1(3), *Case Review (641)*.

4.8.2.11.4.1.1
(06-27-2013)
Sources

- (1) Cases are received in TS from various parts of the organization. The primary sources of bankruptcy cases are field and office compliance groups. TS may also receive litigation cases from Campus Correspondence Examination, Automated Underreporter Program, TEFRA Suspense, and Appeals.

4.8.2.11.4.1.2
(06-27-2013)
Origination

- (1) A bankruptcy case is typically commenced when a debtor files a petition for debt relief with the U.S. Bankruptcy Court. Bankruptcy provides individuals, partnerships, and corporations a way to satisfy their creditors when they are insolvent.
- (2) Federal law found in Title 11 of the United States Code is commonly known as the Bankruptcy Code. The law has two primary objectives:
 - a. To provide debtors with a fresh start by providing certain debt relief, and
 - b. To establish an orderly and equitable system of financial reorganization or liquidation.

4.8.2.11.4.1.3
(06-27-2013)
Bankruptcy Estate

- (1) A bankruptcy estate is created upon the commencement of the bankruptcy case. It generally consists of all of the debtor's legal or equitable 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.

- (2) The bankruptcy estate is only a separate taxable entity in Chapter 7 or 11 cases of an individual.
- (3) In Chapter 13 cases, and Chapter 11 cases of individuals filed on or after October 17, 2005, certain assets acquired by the debtor post-petition are included in the estate.

4.8.2.11.4.2
(06-27-2013)

Types of Bankruptcy

- (1) The following are types of bankruptcy:
 - Chapter 7, *Liquidation*
 - Chapter 9, *Adjustment of Debts of a Municipality*
 - Chapter 11, *Reorganization*
 - Chapter 12, *Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income*
 - Chapter 13, *Adjustment of Debts of an Individual with Regular Income*
 - Chapter 15, *Ancillary and Other Cross-Border Cases*

4.8.2.11.4.2.1
(06-27-2013)

Chapter 7 Liquidation

- (1) Liquidation is the act of reducing tangible and intangible assets to cash. All Chapter 7 cases involve the liquidation of the debtor's assets, to the extent there are some available for creditors. A business could be liquidated in Chapter 7 if there is no hope of continuing business operations and / or paying debts. The bankruptcy petition may be filed voluntarily or involuntarily. An involuntary bankruptcy petition is filed by the creditors on behalf of the debtor. In all Chapter 7 cases, a trustee is appointed.
- (2) For individuals, the liquidation is limited to non-exempt assets. A discharge in a liquidation case is available only to individuals.

4.8.2.11.4.2.2
(06-27-2013)

Chapter 9 - Adjustment of Debts of a Municipality

- (1) Chapter 9 is a bankruptcy proceeding for a governmental unit. In order to qualify as a Chapter 9 debtor, 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 9 cases are very rare.

4.8.2.11.4.2.3
(06-27-2013)

Chapter 11 - Reorganization

- (1) Chapter 11 is a bankruptcy proceeding in which an individual, business, or other entity may be allowed to reorganize or liquidate. A reorganization is accomplished through the confirmation of a Chapter 11 plan by the bankruptcy court. The plan is binding on the debtor and all creditors. Reorganization plans typically provide for payments to creditors over a number of years. A Chapter 11 plan can provide for either the liquidation or the reorganization of the debtor.
- (2) In lieu of reorganizing, many businesses opt to liquidate in a Chapter 11. Such liquidations generally are accomplished where the Chapter 11 plan provides for the liquidation of the debtor's assets. A business could be liquidated if there is no hope of continuing business operations and / or paying debts.
- (3) There is a presumption in Chapter 11 cases that the debtor will remain in possession of its assets, but a trustee can be appointed by the bankruptcy court for cause. If a trustee has not been appointed, the debtor is referred to as the "debtor in possession" (DIP). The DIP has the rights and many of the duties of a bankruptcy trustee.
- (4) A large percentage of Chapter 11 bankruptcies eventually end in liquidation.

- (5) Chapter 11 - Small Business Case. A Small Business Case under Chapter 11 is a proceeding where the debtor's liabilities do not exceed \$2,490,925 and no active creditors' committee exists. Many, if not most, Chapter 11 cases will fall within this definition.
 - a. The debt limitation must be adjusted every three years under 11 USC 104 to reflect the Consumer Price Index.

4.8.2.11.4.2.4
(06-27-2013)
**Chapter 12 - Adjustment
of Debts of a Family
Farmer or Fisherman
with Regular Annual
Income**

- (1) A Chapter 12 bankruptcy is designed to enable a debtor who is a family farmer or family fisherman to reorganize rather than liquidate its operation. Chapter 12 cases resemble in part both Chapter 11 and Chapter 13 cases.

4.8.2.11.4.2.5
(06-27-2013)
**Chapter 13 - Adjustment
of Debts of an Individual
with Regular Income**

- (1) Only an individual with regular income can be a debtor under Chapter 13. A payment plan is confirmed whereby the debtor makes payments to the Chapter 13 trustee, who makes disbursements to creditors according to the plan. The duration of the plan is generally three to five years.

4.8.2.11.4.2.6
(06-27-2013)
**Chapter 15 - Ancillary
and Other Cross-Border
Cases**

- (1) A Chapter 15 proceeding may be commenced when a foreign court or foreign representative seeks assistance in the United States in connection with a foreign proceeding.

4.8.2.11.4.3
(06-27-2013)
Automatic Stay

- (1) Understanding the operation of the automatic stay is the first step to understanding how bankruptcy impacts a taxpayer's tax debt.

4.8.2.11.4.3.1
(06-27-2013)
Definitions

- (1) Automatic-Stay: The "automatic stay" arises by operation of law when a bankruptcy petition is filed. It prohibits certain acts against the debtor, the debtor's property, and property of the estate. Since the automatic stay provision was amended in 1994 and again in 2005, the scope of the automatic stay depends on when the bankruptcy petition was filed.
- (2) Income tax periods:
 - a. The "petition date" is the date the bankruptcy petition was filed with the bankruptcy court.
 - b. An income tax period is the calendar or fiscal period covered by a tax return. It does not depend upon when the return was filed or due. The period covered by the income tax return determines whether a liability is a pre-petition or post-petition. The Bankruptcy Code treats pre-petition and post-petition liabilities differently.
 - c. Pre-petition income tax debts are income taxes for periods that ended before the bankruptcy petition was filed.
 - d. A post-petition income tax debt is for an income tax period that ends on or after the bankruptcy petition date. For determining whether a tax is pre-petition or post-petition, it does not matter whether the return was due, or the tax was assessed, before or after the petition date.

Example: A 2006 income tax return (balance due) has a year ending December 31, 2006. Taxpayer filed a bankruptcy petition on December 30, 2006. The tax return was filed by and assessed on April 17, 2007. The tax liability for 2006 is considered a post-petition tax liability.

Example: A 2006 income tax return (balance due) has a year ending December 31, 2006. The bankruptcy petition was filed February 8, 2007. The tax return was filed by and assessed by April 17, 2007. The tax liability for 2006 is considered a pre-petition tax liability.

Example: A 2006 income tax return (balance due) has a year ending December 31, 2006. The bankruptcy petition was filed February 8, 2007. The tax return was filed on and assessed on May 30, 2007. The tax liability for 2006 is considered to be a pre-petition tax liability.

- (3) Discharge: A permanent injunction against the collection of a discharged debt as a personal liability of the debtor. Not all debts are subject to a bankruptcy discharge. Generally, a discharge is granted to an:
- Individual debtor's Chapter 7 case, 60 days after the date set for the first meeting of creditors;
 - Individual Chapter 11 filed before October 17, 2005, or Chapter 11 cases of non-individuals when the case is confirmed;
 - Individual Chapter 11 filed on or after October 17, 2005, upon completion of the plan; (BAPCPA), or
 - Individual Chapters 12 and 13 when the plan is completed, typically within three to five years.

Note: For items (c) and (d) above, the court may grant a hardship discharge.

- (4) Dismissal: A term used when a bankruptcy proceeding is terminated prematurely by the court. Debts are not forgiven and the debtor does not receive a discharge. While the bankruptcy estates of individuals in Chapter 7 and 11 cases are separate taxable entities, the bankruptcy estate will not be treated as a separate taxable entity if the case is dismissed. Upon dismissal, the debtor is no longer protected by the automatic stay.
- (5) Denial of Discharge: A determination by the bankruptcy court that the debtor is not entitled to receive a bankruptcy discharge. The court order is recorded in the docket history.
- (6) Closed: Refers to a court order closing the bankruptcy case. It is recorded in the docket history.

4.8.2.11.4.3.2
(06-27-2013)
**Automatic Stay -
BAPCPA, Petitions Filed
on or After October 17,
2005**

- (1) The filing of a bankruptcy petition under Chapters 7, 11, 12, and 13 gives rise to an automatic stay effective as of the bankruptcy petition date. The stay generally prohibits the commencement or continuation of collection activities against the debtor, the debtor's property, and property of the estate (subject to certain exceptions). It also prohibits the commencement or continuation of certain Tax Court cases.

- (2) For bankruptcy cases filed on or after October 17, 2005, there is no stay against assessments (that was repealed in 1994). Also, for these cases the automatic stay does not apply to the commencement or continuation of a United States Tax Court proceeding to determine an individual's post-petition income tax period liability. Therefore, an individual who files a bankruptcy petition under BAPCPA is now permitted to file a Tax Court petition for post-petition income tax periods over which the Tax Court may preside, without violating the automatic stay.

Caution: It is important to determine whether the automatic stay will directly or indirectly toll the ASER to make sure that deficiencies are assessed timely.

- (3) Even for bankruptcy cases filed on or after October 17, 2005, the stay applies to both pre- and post-petition liabilities of corporations, as long as the liabilities can be determined by the bankruptcy court.

Note: Under BAPCPA, the ASER on unagreed individual pre-petition income tax period liabilities will be suspended if a statutory notice of deficiency is issued. The ASER on unagreed corporate pre- and post-petition income tax liabilities will be suspended.

- (4) The automatic stay commences upon the filing of a bankruptcy petition. The stay continues until the earliest of the following:
- a. The time the bankruptcy case is dismissed (a case may be dismissed voluntarily by the debtor or involuntarily for "cause.")
 - b. The time the case is closed by the bankruptcy court (all chapters), or
 - c. The time a discharge is granted or denied (except for corporations in Chapter 7 cases, which never receive a discharge).
- (5) The time of discharge is as follows:

Bankruptcy Chapter	Discharge Time
7	Corporations – A corporation does not receive a discharge in Chapter 7, so the discharge is neither granted nor denied. Individuals – Ordinarily, a discharge is granted about three months after the petition date. The Chapter 7 discharge is automatic if no objections are filed.

Bankruptcy Chapter	Discharge Time
11	<p>For Chapter 11 cases of individuals filed on or after October 17, 2005, the debtor generally receives a discharge after completion of payments under the plan. In all other Chapter 11 cases, the discharge is generally granted upon confirmation of the plan. However, a corporation that is liquidating in Chapter 11 may not be granted a discharge. Check with Associate Area Counsel to see if the automatic stay terminated upon plan confirmation, and the ASERD begins to run.</p> <p>Corporations – A business entity that files Chapter 11 typically tries to reorganize, not liquidate. However, it is not uncommon for a Chapter 11 plan to provide for the liquidation of the debtor corporation. A corporation in a liquidating case does not receive a discharge.</p>
13	<p>For Chapter 13 cases a discharge is granted upon completion of the debtor's plan, ordinarily three to five years after the petition is filed.</p>

4.8.2.11.4.3.3

(06-27-2013)

**Automatic Stay -
BAPCPA, Serial
Bankruptcy Filings on or
After October 17, 2005**

- (1) For bankruptcy filings on or after October 17, 2005 (Bankruptcy Abuse Prevention Consumer Protection Act of 2005 (BAPCPA)), Bankruptcy Code 362(c)(3) and (c)(4) prevent the automatic stay from remaining in effect, or coming into effect at all, in certain cases where the debtor has recently been a debtor in bankruptcy.
- (2) Under Bankruptcy Code 362(c)(3), generally if an individual (or joint individuals) files a Chapter 7, 11, or 13 case, AND if the same individual (or joint individuals) was in a single or joint bankruptcy case within the preceding one-year period (12 month period preceding), AND the first case was dismissed, THEN the subsequent bankruptcy is presumed abusive, and the automatic stay will terminate 30 days after the second petition was filed, UNLESS within that 30-day period:
 - a. A motion is made by a "party in interest" (e.g., the debtor or a creditor) to extend the stay, and
 - b. The "party in interest" demonstrates by clear and convincing evidence that the filing of the second case is in good faith.
 - c. The previous case was a Chapter 7 dismissed under 11 USC 707(b) (which includes the means test and other factors) and the later case is not a Chapter 7 case.

Caution: Court records may not reflect the automatic stay has been extended within 30 days from the filing of the petition. Allow extra time for the court record to be updated. Contact area counsel if there is any question about whether the stay terminated. Also, if the first bankruptcy case was dismissed after the second bankruptcy case was filed, it is not clear whether the stay would terminate after 30 days. Consult counsel for a determination of whether the stay terminated.

Note: 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.

- (3) Bankruptcy Code 362(c)(4) further limits serial filings. Generally, the stay will not go into effect if the individual debtor had two or more cases pending within the previous one-year period that were dismissed. At the request of a "party in interest," the court shall promptly enter an order confirming that there is no automatic stay. The court may agree to order the automatic stay to take effect at the request of the debtor or "party of interest." If the court grants an automatic stay, it becomes effective on the day of the court order, not the petition date.

Exception: When a Chapter 7 case is dismissed under section 707(b) of the Bankruptcy Code and converted to a Chapter 13 (or Individual's Chapter 11), the automatic stay in the new Chapter 13 (or Chapter 11) will not terminate in 30 days. An order in the court record is not necessary to indicate the continuation of the automatic stay.

- (4) A "party in interest," such as the Service, may request the court issue an order confirming the automatic stay is terminated.

Important: Direct any inquiry to confirm whether the automatic stay is in effect to Area Counsel.

4.8.2.11.4.3.4
(06-27-2013)
**Automatic Stay -
Bankruptcy Reform Act,
Petitions Filed On or
After October 22, 1994
and Before October 17,
2005**

- (1) The filing of a bankruptcy petition under Chapters 7, 11, 12, or 13 gives rise to an automatic stay effective as of the bankruptcy petition date. The stay generally prohibits any collection action against the debtor, the debtor's property, and property of the estate (subject to certain exceptions).
- (2) For bankruptcy cases filed on or after October 22, 1994, the stay does not prohibit the making of a tax assessment.

Note: While the stay does not directly prohibit the making of an assessment, it may indirectly stay the making of an assessment because the stay prohibits the commencement or continuation of any Tax Court case concerning the debtor (an exception regarding post-petition liabilities of individuals was added in 2005). The ASER on unagreed individual pre- and post-petition income tax period liabilities may be suspended indirectly once a statutory notice of deficiency is issued because the stay against the commencement of the Tax Court case tolls the time to file the Tax Court case, which tolls the ASER.

- (3) There are no serial filer exceptions to the stay for bankruptcy cases filed on or after October 22, 1994, and before October 17, 2005.
- (4) The automatic stay commences upon the filing of a bankruptcy petition. See IRM 4.8.2.11.4.3.2(4) and (5) above for the time frames of the stay.

4.8.2.11.4.3.5
(06-27-2013)
**Automatic Stay -
Assessment Statute
Expiration Date**

- (1) The automatic stay does not prohibit assessments for bankruptcy cases that were filed on or after October 22, 1994. The assessment statute could be suspended indirectly if the Service issued a notice of deficiency. That is because the stay against Tax Court proceedings tolls the debtor's time to file a Tax Court petition for the time the debtor was prohibited from doing so, plus 60 days. See IRC 6213(f). The ASER is tolled while the time to file a Tax Court petition is tolled, plus an additional 60 days. See IRC 6503(a).
- (2) For cases filed on or after October 22, 1994, the Service must do one of the following in order to protect the assessment statute:
 - Make agreed assessment
 - Survey
 - No-change
 - Issue a statutory notice of deficiency
 - Get protection in the form of a consent to extend the statute

4.8.2.11.4.4
(06-27-2013)
Bankruptcy Examination

- (1) When the Insolvency Unit is notified of a bankruptcy filing, they will generally place a freeze code (-V or -W) on all master file accounts of the taxpayer using a Transaction Code (TC) 520 with an appropriate closing code. The date of the TC 520 will be the date the taxpayer filed the bankruptcy petition.
- (2) If a taxpayer is not under examination when the Insolvency Unit is notified of the bankruptcy, a freeze code may be put in place due to Service debts or refund offset to another agency (child support or student loans). The criteria for the bankruptcy TC 520 is established by Collection Insolvency **not** Examination. Absence of the TC 520 is not evidence an automatic stay is not in effect. A check of PACER should be made.

4.8.2.11.4.4.1
(04-14-2015)
**Joint Return, One
Spouse in Bankruptcy**

- (1) IRC 6503(a) suspends the running of the statute of limitations under IRC 6501 while the Secretary is prohibited from making an assessment plus 60 days. If two taxpayers file a joint return and only one spouse files for bankruptcy, the statute of limitation for the other spouse (the "non-bankrupt" spouse) is not suspended under IRC 6503(a). In other words, the bankruptcy stay does not protect the non-bankrupt spouse's statute of limitations. Therefore, the non-bankrupt spouse must be assessed on MFT 31 prior to the normal statute date under IRC 6501.

4.8.2.11.4.4.2
(06-27-2013)
**Community Property
Considerations**

- (1) For information on community property considerations see IRM 4.8.2.11.4.8.15.1.

4.8.2.11.4.4.3
(06-27-2013)
**IRC 1398, IRC 1399, and
IRC 108**

- (1) The TS bankruptcy coordinators will need to have an understanding of IRC 1398, *Rules relating to individuals' Title 11 cases*, and IRC 108, *Income from Discharge of Indebtedness*, as these code sections relate to returns of debtors who are individuals and returns of bankruptcy estates.
- (2) Pursuant to IRC 1398 and IRC 1399, the bankruptcy estate is a separate taxable entity only when the debtor is an individual in a Chapter 7 or 11 case. Where a separate taxable entity is created, both the debtor and the estate have an obligation to file returns for income tax periods ending after the bank-

ruptcy case was commenced (assuming they have sufficient income). The estate calculates its income and deductions in the same way as an individual who is married filing separately.

Note: If the debtor is an individual who is a partner, the individual's interest in the partnership is property of the estate. If the estate holds the debtor's partnership interest when items of income or loss pass through, then the estate, not the debtor, should report those items. Even in Chapter 7 and 11 cases of individuals, no separate entity is created if the bankruptcy case is dismissed (even though one may have existed temporarily) and all income and deductions generated during this period should be reported on the debtor's Form 1040.

- (3) The bankruptcy estate is not a separate taxable entity if the debtor is not an individual or if the individual is in Chapter 12 or 13. A bankruptcy filing by a corporation or partnership does not create a separate taxable entity. If a trustee is required to file a return, the return will be a Form 1120, *U.S. Corporation Income Tax Return*, or Form 1065, *U.S. Return of Partnership Income*, respectively. IRC 1399, *No Separate Taxable Entities for Partnerships, Corporations, etc.*
- (4) A bankruptcy estate of an individual in Chapter 7 or 11 is required to file an income tax return for any tax year in which its gross income equals or exceeds the sum of the personal exemption amount plus the basic standard deduction amount of a married individual filing a separate return. The responsibility of computing and paying the estate's tax liabilities and filing the return rests with the trustee or the debtor-in-possession. The form used by the estate is Form 1041, *U.S. Income Tax Return for Estates & Trusts*. See Pub 908, *Bankruptcy Tax Guide*. The taxable income of the estate is computed in the same manner as for an individual. The estate is entitled to the same Schedule A or Schedule C deductions as an individual. The standard deduction is the same as for a married individual filing a separate return. Likewise, the estate must choose between itemizing its non-business deductions or taking the standard deduction. The tax rate used is the rate for a married individual filing a separate return. When married individuals file a joint bankruptcy petition, each individual must file a Form 1040, which are both attached to the single estate Form 1041. See IRC 1398(c).
- (5) Expenses incurred before the commencement date by a cash basis debtor but paid by the estate retain their character as if paid by the debtor. The debtor's unpaid bills for business or investment expenses can be deducted as business or investments expenses of the estate, when paid. If wages owed by the debtor to employees are paid by the estate, the estate is liable for employment taxes. See IRC 1398(c).
- (6) The estate may adopt either a calendar or a fiscal tax year and the return must be filed within four and a half months after the close of its tax year. An estate may request an extension to file. The estate must adopt the same method of accounting (cash, accrual, etc.) for its income and deductions that was used by the debtor. See IRC 1398(g)(7).
- (7) A debtor may elect, and the spouse may join the election, to treat the taxable year which includes the bankruptcy commencement date (date of bankruptcy filing) as two taxable years. The first income period ends on the day before the

commencement date, and the second begins on the day of the commencement date. More rules of this election are in IRC 1398(d).

- (8) The gross income of the estate includes any income generated by the assets of the estate (e.g., interest, dividends, etc.), and gains from the sale of the estate assets. It also includes gross income of the debtor to which the estate is entitled under Bankruptcy Code 541, except for amounts already received or accrued by the debtor as income before the bankruptcy commencement date. See IRC 1398(e).
- (9) Pre-BAPCPA (cases filed before October 17, 2005): For Chapter 11 cases of individuals filed before October 17, 2005, gross income of the bankruptcy estate is determined in the same manner as in Chapter 7 cases involving individuals. Notably, gross income of the estate generally does not include any income that the debtor earns after the commencement of the bankruptcy case. If the debtor is operating a business, the income of the business may have to be allocated between the estate and the debtor. In some cases where a business is being operated, the business income could be treated as income of the estate, and amounts the debtor is allowed to live on could be treated as income of the debtor.
- (10) Post-BAPCPA cases (cases filed on or after October 17, 2005): For cases filed on or after October 17, 2005, earnings from services performed by the individual debtor after the commencement of the Chapter 11 case are property of the bankruptcy estate under Bankruptcy Code 1115. Pursuant to IRC 1398(e)(1), gross income of the estate therefore includes income that the debtor earns for services performed after the bankruptcy petition date. The income that the debtor earns for services performed after the commencement of the bankruptcy case should generally be included on the estate's return in cases filed after October 17, 2005.
- (11) If a post-BAPCPA Chapter 11 case is converted to a Chapter 13 case, the Chapter 13 estate is not a separate taxable entity and earnings from post-conversion services and income from property of the estate realized after the conversion to Chapter 13 are taxed to the debtor.
- (12) If a post-BAPCPA Chapter 11 case is converted to a Chapter 7 case, Bankruptcy Code 1115 will not apply after conversion and earnings from post-conversion services will be taxed to the debtor, rather than the estate. In such a case, the property of the Chapter 11 estate will become property of the Chapter 7 estate. Any income on this property will be taxed to the estate even if the income is realized after the conversion to Chapter 7.
- (13) A debtor in possession may be compensated by the estate to manage or operate a trade or business that the debtor conducted before the commencement of the bankruptcy case. For cases filed on or after October 17, 2005, such payments should be reportable by the debtor as miscellaneous income on his or her individual income tax return. Amounts paid by the estate to the debtor in possession for managing or operating the trade or business may qualify as administrative expenses of the estate.
- (14) For Chapter 11 cases of individuals filed on or after October 17, 2005, within a reasonable time after the commencement of a Chapter 11 bankruptcy case, the trustee (if one is appointed) or the debtor in possession should provide notification of the bankruptcy estate's EIN to persons that are required to file information returns with respect to the bankruptcy estate's gross income, gross

proceeds, or other types of reportable payments. See IRB 2006-83 and IRC 6109(a)(2). Since these payments are property of the estate under Bankruptcy Code 1115 for Chapter 11 cases filed after October 17, 2005, such persons should report the gross income, gross proceeds, or other reportable payment on an appropriate information return using the estate's name and EIN in the time and manner required under the Internal Revenue Code and regulations (see IRC 6041 through IRC 6050W).

Note: The trustee or debtor in possession should not, however, provide the EIN to the debtor's employer or other person filing Form W-2 with respect to the debtor's wages or other compensation, since Bankruptcy Code 1115 does not affect the determination of what constitutes wages for purposes of federal income tax withholding or the Federal Insurance Contributions Act. See IRC 3121(a) and IRC 3401(a). An employer should continue to report all wage income and accompanying tax withholdings, whether pre-petition or post-petition, on a Form W-2 issued to the debtor under the debtor's social security number. See IRC 6721 through IRC 6725 for applicable penalties for failure to comply with information reporting requirements, including providing taxpayer identification numbers, and provisions for penalty waivers for reasonable cause.

- (15) When a Chapter 11 bankruptcy case is closed, dismissed, or converted to a case under Chapter 12 or 13, the bankruptcy estate ends as a separate taxable entity. The debtor should, within a reasonable time, provide notification of the closing, dismissal, or conversion to the persons that were previously notified of the bankruptcy case to the extent notification is necessary to ensure that gross income, gross proceeds, and other types of reportable payments realized after the closing, dismissal, or conversion are reported to the proper person and with the correct taxpayer identification number. Gross income, gross proceeds, and other reportable payments realized after the closing, dismissal, or conversion to Chapter 12 or 13 should, in general, be reported to the debtor, rather than the estate.
- (16) If the post-BAPCPA Chapter 11 case is converted to a Chapter 7 case, the bankruptcy estate will continue to exist as a separate taxable entity and gross income (other than post-conversion income from the debtor's services), gross proceeds, or other reportable payments should continue to be reported to the estate if the gross income, gross proceeds, or other reportable payment represents property of the Chapter 7 estate. Because income from services performed by the debtor after conversion to Chapter 7 is not property of the Chapter 7 bankruptcy estate, the debtor should, within a reasonable time after the conversion to Chapter 7, notify payors required to report the debtor's non-employee compensation on Form 1099-MISC that such compensation earned after the conversion to Chapter 7 should be reported using the debtor's names and taxpayer identification number, rather than the estate's name and EIN.
- (17) A debtor who is an individual in the post-BAPCPA Chapter 11 case (a case filed on or after October 17, 2005) is not required to file a new Form W-4 with his or her employer to adjust withholding allowances solely because the debtor filed a Chapter 11 case and the post-petition wages are includible in the gross income of the estate. This is true even though the estate may be taxed at a higher tax rate than the debtor and is entitled to only one personal exemption. A new Form W-4 may be necessary; however, under the applicable regulations when, for instance, the debtor is no longer entitled to claim the same number of allowances claimed on the Form W-4 previously provided to the employer,

such as for certain deductions or credits that now belong to the estate. See Treas. Reg. 31.3402(f)(2)-1. Furthermore, even where not required, in some circumstances the debtor may wish to file a new Form W-4 to increase the amount of income taxes withheld from the post-petition wages that will be allocated to the estate. Otherwise, estimated tax payments on behalf of the estate may be required in order to avoid a penalty for underpayment of estimated tax. See IRC 6654(a).

- (18) IRC 1401 imposes a tax upon the self-employment income of every individual. The term “self-employment income” means the net earnings from self-employment derived by an individual. See IRC 1402(b).
- (19) The term “net earnings from self-employment” means, in relevant part, the gross income derived by an individual from any trade or business carried on by such individual less deductions allowed attributable to such trade or business. See IRC 1402(a). With regard to post-BAPCPA Chapter 11 cases, neither Bankruptcy Code 1115 nor IRC 1398 addresses the application of the self-employment tax to the earnings from the individual debtor’s continuing services. Because the debtor continues to derive gross income from the performance of services as a self-employed individual after the commencement of the bankruptcy case, the debtor must continue to report on Schedule SE of the debtor’s individual income tax return the self-employment income earned post-petition, which includes the attributable deductions, and must pay the resulting self-employment tax imposed by IRC 1401.
- (20) Even though, as a result of the enactment of 11 USC 1115 for Chapter 11 cases of individuals filed after October 17, 2005, post-petition wages earned by a debtor are generally treated for income tax purposes as gross income of the estate, rather than the debtor, the reporting and withholding obligations of a debtor’s employer have not changed. 11 USC 1115 has no effect on the determination of wages under the Federal Insurance Contributions Act (FICA), including application of the contribution and benefit base (as determined under section 230 of the Social Security Act). See IRC 3121(a). Similarly the enactment of 11 USC 1115 has no effect on the determination of wages for Federal Unemployment Tax Act (FUTA) tax or federal income tax withholding purposes. See IRC 3306(b) and IRC 3401(a). Since 11 USC 1115 does not affect the application of FICA tax, FUTA tax, or federal income tax withholding with respect to the wages of a Chapter 11 debtor, an employer should continue to reflect such wages and accompanying tax withholdings on a Form W-2 issued to the debtor under the debtor’s name and social security number.
- (21) For Chapter 11 cases of individuals filed on or after October 17, 2005, when an employer issues a Form W-2 to a Chapter 11 debtor reporting all of the debtor’s wages, salary or other compensation to the debtor for a calendar year, and a portion of the wages, salary, or other compensation represents earnings from post-petition services includible in the estate’s gross income, an allocation of the amounts reported on the Form W-2 must be made. The debtor in possession, or the trustee, if one is appointed, must allocate in a reasonable manner wages, salary, or other compensation reported in Box 1 and the withheld income tax reported in Box 2 of Form W-2 between the debtor and the estate. The allocations must reflect that the debtor’s gross earnings from post-petition services and gross income from post-petition property are, in general, includible in the bankruptcy estate’s gross income, rather than in the debtor’s gross income. If reasonable, the debtor and trustee may use a simple percentage method for allocating income and withheld income tax between the

debtor and the estate. The same method used to allocate income must be used to allocate withheld income tax. For example, if one-sixth of the wages reported on Form W-2 for the calendar year ending December 31 2005, was earned after the commencement of the case and must therefore be included in the estate's gross income, one-sixth of the withheld income tax reported on Form W-2 must be claimed as a credit on the estate's income tax return and five-sixths of the withheld income tax must be claimed as a credit on the debtor's income tax return. See IRC 3121(a).

- (22) In some post-BAPCPA cases (cases filed after October 17, 2005), persons filing information returns may report to the debtor gross income, gross proceeds, or other reportable payments that should have been reported to the bankruptcy estate using Form 1099-INT, Form 1099-DIV, Form 1099-MISC, Schedule K-1 or other information returns. This may occur, for instance, if the debtor in possession fails to notify the payor of the bankruptcy estate's EIN as explained above. In these cases, the debtor in possession, or the trustee, must allocate the improperly reported income in a reasonable manner between the debtor and the estate. In general, the allocation must ensure that any income (and any income tax withheld) attributable to the post-petition period is reported on the estate's return and any income (and income tax withheld) attributable to the pre-petition period is reported on the debtor's return. The debtor must attach a statement to his or her income tax return stating that he or she filed a Chapter 11 bankruptcy case.
- (23) The statement must reflect the foregoing allocations of income and withheld income tax and must describe the method used to allocate income and withheld tax between the debtor and the estate. The statement should list the following:
 - Filing date of the bankruptcy case
 - The bankruptcy court in which the case is pending
 - The bankruptcy court case number
 - The bankruptcy estate's EIN

Note: The debtor in possession or trustee must attach a similar statement to the income tax return of the estate.
- (24) Transfers of assets from the debtor to the estate or from the estate to the debtor are not taxable events unless they constitute a sale or exchange. See IRC 1398(f).
- (25) The estate may deduct any administrative expenses allowed under Bankruptcy Code 503. This includes the debtor's accounting, legal, and other professional service expenses necessary to preserve the estate and paid by the estate. See IRC 1398(h).
- (26) Certain expenses may be nondeductible under other provisions of the IRC.
 - a. Federal income tax: Federal income tax cannot be deducted (IRC 275, *Certain Taxes*).
 - b. Capital expenditures: Capital expenditures must be carried on the books, depreciated, or amortized (IRC 263, *Capital Expenditures*).
 - c. Administrative expense: If the estate's administrative expense deduction would hypothetically increase or create a net operating loss (NOL) for the current year, it can be carried back and / or carried forward to income tax years per the NOL deduction rules in IRC 172, *Net Operating Loss*

Deduction Rules. This deduction cannot be carried to any tax returns of the debtor. This deduction is “stacked” after the deduction for the NOL. See IRC 1398(h)(2).

- (27) Upon commencement of the bankruptcy, the estate succeeds to the debtor’s tax attributes. Any net operating loss (NOL) that the debtor generated before the commencement date but did not fully utilize becomes a tax attribute of the estate. Applicable IRC 172 rules apply. See IRC 1398(g).
- (28) A new NOL generated by the estate during its administration also may be carried back and / or forward for the number of tax years allowable per IRC 172. If the estate did not exist for the allowable number of carryback years, the corresponding returns of the debtor can be substituted. Any unused NOL at the end of a tax year is subject to reduction for debts discharged during the year. IRC 108(b), *Income From Discharge of Indebtedness*. They are first used to reduce the current years’ taxable income and then become subject to reduction. See IRC 108(b)(4) and IRC 108(d)(8).
- (29) Other tax attributes to which the estate succeeds are charitable contribution carryovers, credit carryovers, capital loss carryovers, bases, holding periods, character of assets, method of accounting, and suspended passive activity losses and credits. See IRC 1398(g).
- (30) On termination of the bankruptcy estate, the debtor succeeds to the same attributes as succeeded to by the estate except for the estate’s method of accounting. See IRC 1398(i).
- (31) A reduction of the tax attributes by the amount of the debtor’s discharge of indebtedness in the bankruptcy case may be required. Generally, under IRC 108, the debts discharged are excluded from gross income but the estate’s tax attributes must be reduced by the discharged amount. The tax attributes are generally reduced while in the hands of the estate. See IRC 108(d)(8).
- (32) Under IRC 108(b)(2), tax attributes are reduced in the following order:
 - 1. Any NOL for the year of discharge, and any NOL carryover to this taxable year,
 - 2. Any general business credit carryover to or from the taxable year of discharge,
 - 3. Any minimum tax credit at the beginning of the taxable year immediately after discharge,
 - 4. Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year,
 - 5. Basis of all depreciable and non-depreciable property, except property that is exempt under the bankruptcy code,
 - 6. Any passive activity loss and credit carryover of the taxpayer from the taxable year of the discharge, and
 - 7. Any foreign tax credit carryover to or from the taxable year of discharge.
- (33) Alternatively, under IRC 108(b)(5) the debtor may elect to first reduce the basis of depreciable property (not non-depreciable property) and then reduce tax attributes in the order shown above. However, the amount of the basis reduction cannot exceed the aggregate adjusted bases of the depreciable property held at the beginning of the taxable year after the year of the discharge. See IRC 108(b)(5)(B). If the debtor does not make the IRC 108 election, then when calculating the attribute reduction required under IRC 108(b)(2)(E) the bases of

property (not limited to depreciable property) cannot be reduced below the excess of the aggregate bases of the property over the aggregate amount of the individual debtor's remaining liabilities. IRC 1017(b)(2). For reductions made under IRC 108(b)(2)(E) or (b)(5), no reduction is made to any property exempt under the Bankruptcy Code. IRC 1017(c)(1). Note that under IRC 108(b)(3) all reductions in tax attributes are one dollar for each dollar excluded except to tax credits (including passive activity credit carryovers) which are 33 1/3 cents for each dollar.

- (34) In general, the effective date of the reduction to tax attributes is the beginning of the first taxable year after the year of the discharge of indebtedness. See IRC 108(b)(4)(A) and IRC 1017(a). Thus, for calendar year taxpayers, if the discharge order is entered in 2008, the reduction of tax attributes occurs as of January 1, 2009.
- (35) The reduction of tax attributes is reported on a Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*. In an individual Chapter 7 or 11 case, the trustee or debtor-in-possession reports any reduction of tax attributes other than basis on Form 982 and attaches it to the bankruptcy estate's Form 1041. The individual debtor may inspect the bankruptcy estate's Form 1041. The debtor's reduction of basis is reported on Form 982 and attached to the individual Form 1040. Pub 908, *Bankruptcy Tax Guide*.
- (36) In all other bankruptcy cases, the debtor reports any reduction of tax attributes, including basis, on Form 982 and attaches it to the entity's regular tax return. A separate taxable entity is not created and no Form 1041 is required. Pub 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments*.

4.8.2.11.4.4.3.1
(04-14-2015)

**Tax Equity Fiscal
Responsibility Act
(TEFRA) Partnership
Control System (PCS)**

- (1) Upon confirmation that a bankrupt partner is also a TEFRA investor, or a Partnership Investor Control Code (PICF-CD) is present on AMDISA, the Technical Service bankruptcy coordinator will contact the TEFRA coordinator to determine the proper handling of the case. Refer to IRM 4.31.7, *Pass Through Entity Handbook—TEFRA Bankruptcy*.
- (2) If the linked taxpayer is still in bankruptcy and non-TEFRA issues are resolved, note instructions on Form 3198, "Forward to Technical Services," check the box "TEFRA Investor" and check the box "Other" and write "Agreed case with unresolved TEFRA issues-Bankruptcy" or similar instructions as appropriate. The TEFRA coordinator will determine if the one-year assessment date has been input in the PCS system, advise the Campus TEFRA Function and coordinate with the TS bankruptcy coordinator for disposition of the case.
- (3) A partnership may file bankruptcy. The automatic stay of Bankruptcy Code 362 does not prevent the Service from issuing a Final Partnership Administrative Adjustment, FPAA.
- (4) If the bankrupt investor is also the tax matters partner (TMP), the TMP status is terminated. See Treas. Reg. 301.6231(a)(7)-1(l)(1)(iv) and Treas. Reg. 301.6231(c)-7(a).
- (5) Conversion of TEFRA debtor partner partnership items to non-partnership items: The Service has administratively determined that the treatment of items as partnership items with respect to a partner named as debtor in a bankruptcy proceeding will interfere with the effective and efficient enforcement of the internal revenue laws. See IRC 6231(c) and Treas. Reg. 301.6231(c)-7(a). The

partner may no longer remain a part of the TEFRA proceedings. IRC 6226(d)(1)(A). The Service will proceed separately against a partner that has been removed from the TEFRA proceeding with respect to partnership items.

- (6) There are two overlapping requirements that must be met before partnership items will convert:
- The government must be able to file in the bankruptcy proceeding a claim (secured, administrative, priority, or general unsecured) for income tax.
 - The items must arise in a taxable year of the partnership which ended on or before the last day of the latest taxable year of the partner for which a claim could be filed. IRM 4.31.7.6.1, *Analyze Case and Determine Which Partnership Tax Years Convert*. After determination of the partnership items converted, the examination must be completed and closed, agreed or no-change, or a notice of deficiency issued within one year from the bankruptcy petition date under IRC 6229(f) or within the partner's IRC 6501 limitations period if longer. The statute may be extended using Form 872-F, *Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership That Have Converted Under Section 6231(b) of the Internal Revenue Code* or Form 872 (October 2009 version or later), *Consent to Extend the Time to Assess Tax*.

Note: If the case is unagreed, the normal statutory notice of deficiency instead of an FPAA must be issued prior to the expiration of the 1-year date (or unextended IRC 6501 period) in order to trigger the suspension of the statute under IRC 6503(a)(1). The period of limitations pursuant to IRC 6501 will be suspended under IRC 6503(a)(1) for the period debtor is prohibited from filing a petition in U.S. Tax Court. The one year is computed by using the date of the bankruptcy filing plus one year, less one day.

- (7) If a spouse files a joint return with a partner, the spouse becomes a "partner" to the TEFRA procedures. See IRC 6231(a)(2)(B). If the partnership items of the spouse that holds an interest in the partnership convert to nonpartnership items (e.g., because of a bankruptcy), then the spouse who does not hold an interest in the partnership will no longer be treated as a partner. Treas. Reg. 301.6231(a)(2)-1(a)(4)(ii). However, if the non-bankrupt spouse holds a separate interest in the partnership, then the non-bankrupt spouse's partnership items will not convert to nonpartnership items. Treas. Reg. 301.6231(a)(2)-1(a)(4)(i).
- (8) If the TEFRA partnership proceeding is completed (i.e., the FPAA has been issued and the decision is final) but the assessment has not been made, there is no conversion of partnership items. Deficiency procedures do not apply. Accordingly, the suspension of the statute of limitations of IRC 6503(h) generally is not applicable. The period for assessment will expire one year from the date of the FPAA default or the decision of the court becomes final. See IRC 6229(d).
- (9) Issue Letter 1005, *Deficiency Letter in Bankruptcy & Receivership Cases*.

4.8.2.11.4.5
(06-27-2013)

Prompt Determinations

- (1) The trustee may request a prompt determination of any unpaid tax liability of the bankruptcy estate under Bankruptcy Code 505(b)(2). See Rev. Proc. 2006-24. Prompt determinations are handled by PSP. The bankruptcy coordinator in TS may receive inquiries from various partners. See IRM 4.27.5.2, *Prompt Determination Requests*.
- (2) Requests are initially sent to centralized insolvency operation (CIO) in the Philadelphia Campus by the trustee.
- (3) CIO forwards the prompt determination requests to PSP. PSP has 60 days from the date of receipt of a request to advise the trustee by letter of the decision to examine an estate tax return or accept it as filed.
- (4) A bankruptcy estate selected for examination is controlled and assigned by PSP. The trustee or debtor in possession must be notified by an examination report of any tax due within 180 days from the date of receipt of the prompt determination request.
- (5) The examiner must forward a copy of the examination report to Insolvency so that an administrative claim can be filed. See IRM 4.8.2.11.4.7.2.4.
- (6) The following sources can provide additional information, if needed:
 - a. IRM 4.27.5.2, *Prompt Determination Requests*.
 - b. The Prompt Determination coordinator in PSP may be located at <http://mysbse.web.irs.gov/exam/mis/contacts/default.aspx>.

4.8.2.11.4.6
(06-27-2013)

Requests for Determinations of the Tax Effects of Proposed Chapter 12 Plans

- (1) BAPCPA amended Bankruptcy Code 1231, to provide that a proponent of a Chapter 12 plan may request a determination of the tax effects of a proposed plan. Rev. Proc. 2006-52, 2006-2 C.B 995. Bankruptcy Code 1231 now allows the bankruptcy court to authorize the proponent of a Chapter 12 plan to request a determination, limited to questions of law, of the federal income tax effects of the plan. The bankruptcy court may declare the tax effects of a proposed plan after the earlier of the date the Service responds to the request or 270 days after the request. The revenue procedure directs the request for determination to be sent to CIO, which forwards it to the appropriate area TS bankruptcy coordinator.
- (2) The bankruptcy coordinator will work the request for determination along with bankruptcy counsel assigned the case. Counsel will direct the contents of the determination letter issued on SB/SE letterhead from TS. The TS manager is delegated the authority to sign the determination letter. See Delegation Order 25-3 per IRM 1.2.52.4, *Delegation Order 25-3 (formerly DO-51, Rev. 9)*.
- (3) Upon examination of the request for determination by TS and Area Counsel, if it is determined that the request is actually a prompt determination request, the request is sent to PSP.

4.8.2.11.4.7
(06-27-2013)

Bankruptcy Coordination

- (1) SB/SE Collection Insolvency is responsible for notifying Examination of bankruptcy filings.
- (2) The automatic insolvency system (AIS) inputs TC 520 on IDRS with bankruptcy condition codes on those cases that meet insolvency bankruptcy criteria. The condition codes are listed in Document 6209, *IRS Processing Codes and Information*, Section 11.8(8), *TC 520 Closing Code Chart*.

- (3) Examiners / reviewers, as a rule, examine and analyze a return's transcript in processing any assigned case. The bankruptcy indicators on IDRS are:
 - IMFOLI will indicate a litigation entity freeze of "-V" or "--W".
 - TC 520 will be on one or more of the taxpayer pre-petition years.
 - AMDISA print may reflect a bankruptcy freeze "U" or "X".
- (4) Insolvency inquiries via telephone calls and e-mail will be received requesting / notifying of ongoing examinations in area groups, campuses, or under reporter units. These inquiries are received soon after the filing of a bankruptcy petition because Insolvency must file a proof of claim in bankruptcy court.
- (5) SB/SE Counsel, Department of Justice, and the U.S. Attorney will also make requests and inquiries concerning bankruptcy court litigation.
- (6) When examiners, while developing an examination case and / or interviewing a taxpayer, learn of bankruptcy, they should contact the TS bankruptcy coordinator.
- (7) Revenue agents assigned the examination of a prompt determination of a bankruptcy estate, Form 1041 and related taxpayer's Form 1040, should also contact the TS bankruptcy coordinator.
- (8) Taxpayers in bankruptcy may respond to TS after receipt of a statutory notice of deficiency.

4.8.2.11.4.7.1
(06-27-2013)

Tools

- (1) IDRS, AIS, and PACER are common electronic tools used in bankruptcy coordination.
- (2) To access these systems, complete an *Online 5081* request. Once processed, an account ID and password will be issued.

4.8.2.11.4.7.1.1
(04-14-2015)

Tools and Definitions

- (1) The Service, as a creditor of a debtor, files a proof of claim with the bankruptcy court asserting a right of payment from the bankruptcy estate for pre-petition debts. This includes unpaid balances on the debtor's master file, unassessed deficiencies for ongoing examinations, and potential liability for unfiled returns.
- (2) Whoever is holding a case at the time of bankruptcy discovery (Examination, PSP, TS, Campus, Appeals) is responsible for advising Insolvency of any pending tax and penalty amounts 30 days prior to the bar date. These amounts may need to be estimated.
- (3) The "bar date" (i.e., the date by which a creditor must file a proof of claim) is fixed by the court if it is a Chapter 9 or Chapter 11 case or by Federal Bankruptcy Rule 3002(c) if it is a Chapter 7, Chapter 12, or Chapter 13 case. The Service is generally allowed a minimum of 180 days after the order of relief in which to file a proof of claim. Extensions are granted for cause.
- (4) The "first meeting of creditors" (FMC) is the meeting at which the debtor is required to testify under oath about its financial affairs and to respond to questions from creditors and the trustee. It is usually held within 20 to 50 days after the case is commenced depending on the type of case. See Federal Bankruptcy Rule 2003(a) for specifics. It is also referred to as the "341 Hearing."

4.8.2.11.4.7.1.2
(06-27-2013)

**Integrated Data Retrieval
System (IDRS)**

- (1) As previously discussed, a TC 520 is input on IDRS by Insolvency after a bankruptcy petition has been filed and a proof of claim (POC) has been submitted. The TC 520 condition codes will assist in identifying bankruptcy. Examination's role:
 - a. Bankruptcy closing codes determine Service restrictions, i.e. restrict closing a debtor case in unagreed Disposal Code 10.
 - b. Proceeding codes are numeric indicators that represent the bankruptcy chapter.
 - c. Claim indicators represent the type of bankruptcy claim.
- (2) A TC 521 on IDRS is input to reverse a TC 520. The TC 521 is input to document the discharge and / or dismissal of bankruptcy proceedings. The TC 521 closing codes operate independently of each other and have different purposes.

Reminder: Insolvency will not necessarily input the TC 521 when litigation ceases. This is **not a reliable indicator** for examination to determine the bankruptcy is closed. The TC 521 may also be input by Insolvency after collection's criteria have been met. The bankruptcy litigation may not be closed.

- (3) A TC 640 on IDRS indicates a bankruptcy discharge of debt. Sometimes a TC 971 with a bankruptcy closing code indicates bankruptcy discharge of debt.

4.8.2.11.4.7.1.3
(06-27-2013)

**Automated Insolvency
System (AIS)**

- (1) The AIS is an ORACLE database maintained by Insolvency. Its many functions work together to allow Insolvency to manage all of the bankruptcy cases in Insolvency inventory. AIS contains information that is used in the processing of bankruptcy and other insolvency proceedings. AIS is used to prepare and file proofs of claim with the court.
- (2) AIS is useful for determining the following:
 - Detail of name, address and SSN
 - Date petition filed
 - Where / who is assigned the case - Consolidated Insolvency Unit (CIU) or Field Insolvency Technician
 - Which Bankruptcy district filed and docket number
 - Meeting of creditors
 - Bar date
 - Amount and date of any proof of claim
 - Re-filing of applications for bankruptcy
 - History comments (case history includes taxpayer responses, insolvency actions, and any litigation proceedings)
 - Updates to applicable screens such as plans, confirmation dates
 - Dismissal / discharge date

4.8.2.11.4.7.1.4
(06-27-2013)

**Public Access to Court
Electronic Records
(PACER)**

- (1) PACER allows electronic access to federal court records. It is public information. AIS is a Service database designed to meet insolvency bankruptcy needs, not examination bankruptcy criteria. Bankruptcy coordinators must access PACER to obtain accurate and current bankruptcy court records. PACER is utilized to query bankruptcy information not reflected on IDRS and / or AIS.
- (2) PACER allows the following:

- a. National search of all bankruptcy districts.
- b. Spouse / ex-spouse searches.
- c. Access to docket reports to investigate and audit.
- d. Comprehensive search for multiple filings.
- e. Access to court record dates and transactions necessary to protect the statute.
- f. Access to associated / key case information.

4.8.2.11.4.7.2
(06-27-2013)
Partner Examination

- (1) Examiners who, during an examination, identify a bankruptcy case by any of the notification processes identified previously will confirm the following with the bankruptcy coordinator:
 - Date of filing
 - Bar date
 - Bankruptcy chapter
 - Serial Filer-confirm automatic stay
 - Filing includes / excludes a spouse
- (2) The examiner will also update AIMS bankruptcy project codes when applicable. See the AIMS web site for bankruptcy project codes at <http://mysbse.web.irs.gov/exam/mis/default.aspx>
- (3) Proceed with the examination applying all established bankruptcy procedures.
- (4) Continue the examination as usual if bankruptcy has been discharged or dismissed.
- (5) Protect the normal three-year statute of limitations provided by IRC 6501. A consent to extend the statutory period may be solicited.

4.8.2.11.4.7.2.1
(06-27-2013)
TEFRA / PCS

- (1) Alert the area TEFRA and bankruptcy coordinator when a TEFRA investor or Partnership Investor Control Code (PICF-CD) is present on AMDISA.
- (2) Only the TEFRA / PCS coordinator can remove the PICF-CD codes.
- (3) The TEFRA / PCS coordinator will coordinate key case issues with examiner and Insolvency.
- (4) An unagreed case with non-TEFRA issues resolved should be directed to the TS bankruptcy coordinator.

4.8.2.11.4.7.2.2
(06-27-2013)
Significant Case

- (1) Contact bankruptcy coordination and / or counsel when identifying a significant bankruptcy case. The definition is found in IRM 4.27.1.3.1, *Significant Bankruptcy Case Issues*. Counsel and / or Insolvency may first identify the significant case criteria and contact the examiner.

4.8.2.11.4.7.2.3
(06-27-2013)
Liquidation Corporation Examination

- (1) A bankruptcy Chapter 7, corporate liquidation, examination must be coordinated closely with Insolvency and Counsel. Bankruptcy issues include collectibility, trust fund taxes, consolidated group income taxes, controlled group pension excise taxes, undisclosed potential tax refunds, and overpayments. A member of a controlled group may file bankruptcy independently of the group. The corporate debtor would, for all practical purposes, cease to exist at the conclusion of a Chapter 7.

- 4.8.2.11.4.7.2.4
(06-27-2013)
Agreed Closing From Group
- (1) *Bankruptcy cases filed on or after October 22, 1994:* Examination groups may close agreed, survey, no-change cases, and overassessment / refund cases directly to CCP. The AIMS "X" bankruptcy freeze will not prohibit a case closing in a disposal code other than 10 or 12. Refer to IRM 4.27.2.4, *Closing Procedures For Agreed Closures*, and IRM 4.27.2.5, *Closing Procedures—Unagreed Cases with Automatic Stay*. The bankruptcy coordinator will address the AIMS freeze "X" bankruptcy as appropriate.
- 4.8.2.11.4.7.2.5
(06-27-2013)
Unagreed / Appeals Protest Closing From Group
- (1) A taxpayer who disagrees with the deficiency determination, including penalties and interest, may file a written protest and request an appeals conference. The bankruptcy stay does not extend the IRC 6501 statute for purposes of an appeals conference. Appeals should contact the TS bankruptcy coordinator before assessing a defaulted notice of deficiency when the bankruptcy freeze is in place.
- 4.8.2.11.4.7.3
(06-27-2013)
Partner-Insolvency
- (1) Requests from insolvency are as unique as the individual bankruptcy districts served and the skill of the particular insolvency group.
- (2) Insolvency may request assistance for the following:
- Filing a proof of claim
 - Reviewing delinquent or questionable returns
 - Analyzing the income tax or the petition financial statement
 - Preparing for the 341 Hearing
 - Explaining the tax law behind an assessment
- (3) Proof of claim referrals may be forwarded directly to PSP who processes bankruptcy proofs of claim in PSP Status Code 06 or Status Code 08, as well as group Status Code 10 or Status Code 12. Procedures for classification and assignment of any returns requiring immediate statutory procedures can be found in IRM 4.27.3.2, *Examination Coordination With Insolvency*.
- (4) Requests of income tax law assistance require development and explanation by the TS bankruptcy coordinator.
- (5) Some returns submitted to insolvency by debtors are questionable.
- a. Insolvency may request an examination review of a questionable tax return by forwarding it along with a Form 3449, *Referral Report*, to area PSP. The referral must meet the criteria of IRM 4.27.3.2.1.1, *Returns Eligible For Review*, list the bar date, and have more than 45 days remaining before the bar date.
 - b. PSP may select the return for examination or may survey it. If selected, the return will be assigned to an examination group. In the case of some information returns, PSP may assign the tax return directly to a TS manager for preparation and issuance of a statutory notice of deficiency.
- 4.8.2.11.4.7.4
(06-27-2013)
Litigation
- (1) Counsel may request assistance with a bankruptcy court litigation matter.
- (2) Such requests may relate to the following:
- a. Unassessed on-going examinations or suspense cases in various units of the Service.

- b. Assessments of previous examinations, including Automated Substitute For Return assessments (ASFR).
 - c. Requests for audit reconsideration.
 - d. Requests for abatement of tax, and eventual re-assessment of tax, inappropriately assessed during the automatic stay.
- (3) A request for a cooperating agent to assist the bankruptcy court, DOJ, and / or Counsel for factual development or to prepare tax computations is a litigation request. Upon receipt of the request, the TS bankruptcy coordinator will review the appropriateness, prepare Form 3449, notate the bar date or other bankruptcy court directive, and forward to PSP. See IRM 4.27.1.3.2, *Inquiries From Department of Justice*.
- (4) Many miscellaneous challenged proofs of claim may be forwarded to the appropriate Service unit such as the audit reconsideration and adjustments unit of campuses. Others must be developed and concluded by the TS bankruptcy coordinator.

4.8.2.11.4.8
(06-27-2013)
**Bankruptcy Statutory
Notice of Deficiency**

- (1) Before preparing a notice of deficiency, the reviewer should look for indications that the taxpayer is in bankruptcy.
- (2) Look for bankruptcy indicators such as an AIMS "X" freeze on AMDISA, a Transaction Code (TC) 520 and / or a freeze code "-V" on master file. Check the examiner's notes for indications of bankruptcy as well.
- (3) Upon finding a bankruptcy indicator or suspecting a taxpayer is in bankruptcy, contact the examination bankruptcy coordinator to see if the taxpayer is actually in bankruptcy. In addition, check the spouse's bankruptcy status, if a return is jointly filed.
- (4) The examination bankruptcy coordinator will confirm the status of the bankruptcy and the status of the automatic stay using PACER.
- (5) It is possible for the automatic stay to have lifted or not be in place, even when the taxpayer is in bankruptcy (i.e., serial filers and post-petition tax years falling under BAPCPA).
- (6) The examination bankruptcy coordinator will provide a copy of the PACER record.

4.8.2.11.4.8.1
(06-27-2013)
**Automatic Stay -
Individuals Filing
Chapter 11**

- (1) For Chapter 11 bankruptcy cases of individuals filed before October 17, 2005, the automatic stay is usually operative the day the petition is filed until the day the plan is confirmed.
- (2) For Chapter 11 cases of individuals filed on or after October 17, 2005, the stay is usually operative from the day the petition is filed until the plan is completed.
- (3) A Letter 531, *Notice of Deficiency*, and Notice 1421, *How Bankruptcy Affects Your Rights to File a Petition in Tax Court in Response to a Notice of Deficiency*, are issued to an individual Chapter 11 debtor during the operation of the stay.

4.8.2.11.4.8.2
(06-27-2013)
**Income Tax Periods and
the Bankruptcy Filing
Date**

- (1) The notice of deficiency reviewer must determine the pre-bankruptcy and post-bankruptcy petition income tax periods for those bankruptcy filings on or after October 17, 2005 (BAPCPA 2005) in order to determine operation of the automatic stay and the statutory procedures applicable.
- (2) An income tax is a pre-petition debt if the last day of the tax year ended before the bankruptcy petition was filed because an income tax is incurred on the last day of the tax year. (Penalties and excise taxes are incurred when the act that gave rise to the penalty occurred.) Whether an income tax is a pre-petition liability or a post-petition liability does not depend on when the return was due or filed, or when it was assessed.
- (3) Post-petition income tax periods are the periods ending on or after the date the bankruptcy petition is filed.

4.8.2.11.4.8.3
(06-27-2013)
**Assessment Statute
Expiration Date:
Bankruptcy Petitions
Filed on or After
October 22, 1994**

- (1) For cases filed on or after October 22, 1994, the automatic stay does not prohibit the making of an assessment. However, the stay still prohibits the commencement or continuation of a Tax Court case, so the assessment statute will be tolled indirectly if the Service has issued a statutory notice of deficiency since the stay will toll the debtor's time to file a Tax Court petition.
- (2) The notice of deficiency for a bankrupt taxpayer must be issued within the assessment statute period as defined or extended by law.

4.8.2.11.4.8.4
(06-27-2013)
**Notice of Deficiency
Letter**

- (1) Letter 531 and Notice 1421 are issued to a taxpayer in a bankruptcy case when the bankruptcy stay will affect a U.S. Tax court petition.
- (2) Letter 531 is issued to a taxpayer in a bankruptcy case when the bankruptcy stay will not affect a Tax Court petition.

4.8.2.11.4.8.5
(06-27-2013)
**Bankruptcy Notification
After Issuance and
Default of Notice of
Deficiency**

- (1) For cases begun on or after October 22, 1994, if the notice of deficiency was issued and the 90 day period expired prior to the bankruptcy petition date, the tax must be assessed. The bankruptcy stay does not prohibit the Service from assessing tax. It prohibits a petition to Tax Court.

4.8.2.11.4.8.6
(06-27-2013)
**Notice of Deficiency Not
Required**

- (1) Bankruptcy examinations not subject to deficiency procedures of IRC 6211, *Definition of a Deficiency*, et. al., including certain employment tax and excise tax cases, should be immediately assessed, whether agreed or unagreed.

4.8.2.11.4.8.7
(06-27-2013)
Bankruptcy Review

- (1) The reviewer must first determine the assessment statute expiration date (ASED). Do not rely on ERCS or AIMS printouts. Use a combination of sources to determine the correct ASED, such as the original tax return, IDRS transcripts, date-received stamps, postmarks on envelopes, Form 872 and Form 895. If any changes are made to the ASED, a completed and approved Form 895 should be attached to the outside of the case file.
- (2) The examination report should be reviewed for accuracy. Reconcile the report to the transcript to ensure all previous adjustments have been considered, including unpostable assessments that have not been deleted. Ensure agreements are properly executed with the correct forms and signatures (e.g.,

reports, waivers, and statute extensions). Cases requiring further development should be returned to the group with a Form 3990, *Reviewers Report*, explaining necessary corrective action.

- (3) The reviewer will review the examination files for bankruptcy issues and take appropriate action:
 - a. If the taxpayer has requested an installment agreement, notify Insolvency to determine how to proceed.
 - b. Provide a copy of the RAR to Insolvency for a bankruptcy claim unless the case history indicates the RAR has previously been provided. If the report is revised, send Insolvency a copy of the revised report.

4.8.2.11.4.8.8
(06-27-2013)
**Bankruptcy Notice of
Deficiency Case File
Cover Sheet**

- (1) When a bankruptcy case subject to deficiency procedures is identified, a case file cover sheet should be added to the file to alert the notice suspense unit (90 / 150 day unit) of the bankruptcy status.
- (2) The cover sheet should clearly indicate the case should not be assessed upon default, but should be returned to the bankruptcy coordinator. Additionally, the following information may also be included on the cover sheet:
 - Taxpayer Name(s)
 - Taxpayer TIN
 - Docket No.
 - District
 - Date Filed
 - Bankruptcy Chapter
 - Joint / Single Return / Joint / Single Bankruptcy Filing
 - Bankruptcy Coordinator's Name, Address, RGS Group ID, Telephone Number
- (3) Exhibit 4.8.2-4 is a sample cover sheet that may be used for this purpose.

Caution: For cases involving a non-bankrupt spouse, the case should be returned to the reviewer to proceed with the separate spousal assessment before forwarding the case to the bankruptcy coordinator for bankruptcy suspense when there are fewer than six months remaining on the statute. When six months or more remain on the statute, then the case should be forwarded to the bankruptcy coordinator to make the spousal assessment.

4.8.2.11.4.8.9
(06-27-2013)
**Individuals Filing
Chapter 7, 11, or 13 on
or After October 17,
2005**

- (1) Letter 531 and Notice 1421 will be issued for **pre-petition** tax years of individual taxpayers where their Chapter 7 or 13 bankruptcy falls under BAPCPA (bankruptcy petitions filed on or after October 17, 2005).
- (2) Letter 531 will be issued for post-petition tax years.
- (3) If the case includes both pre-petition and post-petition years, the case will need to be separated into two files, one for pre-petition years and the other for post-petition years. Do not include both pre-petition and post-petition years on one notice of deficiency letter. Only pre-petition tax years require a bankruptcy notice of deficiency case file cover sheet. Post-petition tax years falling under BAPCPA are not affected by the automatic stay and should not be placed into bankruptcy suspense.

- 4.8.2.11.4.8.10
(06-27-2013)
Individuals Filing Chapters 7, 11, and 13 on or After October 22, 1994
- (1) For bankruptcy cases filed on or after October 22, 1994, the automatic stay does not prohibit the making of an assessment. But the assessment period will be tolled indirectly if a statutory notice of deficiency is issued and the 90 day period is tolled by the bankruptcy stay against the commencement of a Tax Court case. So, for cases filed on or after October 22, 1994, the notice of deficiency must be prepared and issued on or before the ASER. For bankruptcy cases of individuals filed before October 17, 2005, the stay against the commencement of a Tax Court case applies to both pre-petition and post-petition income tax periods. For bankruptcy cases of individuals filed on or after October 17, 2005, the stay applies only to pre-petition income tax periods.
- 4.8.2.11.4.8.11
(06-27-2013)
Individual Chapters 7 and 11 Bankruptcy Estate
- (1) TS will issue Letter 1005 to the trustee. Letter 1005 offers appeal rights allowable only when adequate time is available on the assessment statute. Letter 1005 does not extend the statute under IRC 6213(a). An unprotested Letter 1005 should be assessed within 60 days of issuance.
- (2) A bankruptcy notice of deficiency case file cover sheet is not required.
- 4.8.2.11.4.8.12
(06-27-2013)
Corporations and Notices of Deficiency
- (1) A corporate Chapter 11 bankruptcy filed on or after October 22, 1994, requires issuance of a notice of deficiency on or before the ASER.
- (2) If the Chapter 11 plan has not been confirmed, Letter 531 and Notice 1421 are issued for pre-petition and post-petition income tax years. A bankruptcy notice of deficiency case file cover sheet is required.
- (3) If the Chapter 11 plan has been confirmed, the stay is no longer operative. Letter 531 is issued for pre-petition and post-petition income tax periods. A bankruptcy notice of deficiency case file cover sheet is not required.
- (4) If a Chapter 7 corporation bankruptcy was filed on or after October 22, 1994, a Letter 531 is issued to the trustee for pre-petition and post-petition tax periods. A bankruptcy notice of deficiency case file cover sheet is required.
- Note:** BAPCPA did not affect corporate notice of deficiency procedures.
- 4.8.2.11.4.8.13
(06-27-2013)
Bankruptcy Court Determination
- (1) A tax determined by the bankruptcy court may be assessed notwithstanding deficiency procedures once the bankruptcy court's determination has become final. See IRC 6871(b) and Bankruptcy Code 505(c). To make this assessment, a bankruptcy notice of deficiency case file cover sheet is not required.
- 4.8.2.11.4.8.14
(06-27-2013)
Bankruptcy Court / Tax Court Special Considerations
- (1) A bankrupt taxpayer may request the Bankruptcy Court lift the automatic stay so that they may petition the Tax Court.
- (2) If the bankrupt taxpayer files a petition to the Tax Court during the notice of deficiency suspense period, without authorization from the Bankruptcy Court, Area Counsel will request the Tax Court to dismiss the petition for lack of jurisdiction. The case will then be placed into bankruptcy suspense.
- 4.8.2.11.4.8.15
(06-27-2013)
Notice of Deficiency When Only One Spouse Is In Bankruptcy
- (1) With regard to a jointly filed tax return where only one spouse is in bankruptcy, issue a Letter 531 to both spouses and include Notice 1421 with the copy to the bankrupt spouse.

- (2) An assessment against the non-bankrupt spouse should be made timely using MFT 31. The bankruptcy automatic stay has no effect on the non-bankrupt spouse's assessment statute. The assessment should be made before forwarding the case to the bankruptcy coordinator for suspense when six months or less remain on the assessment statute.

Caution: Do not change the ASER to Alpha Code "KK" until the separate spousal assessment has posted.

4.8.2.11.4.8.15.1
(03-29-2017)

Joint Return - One Spouse in Bankruptcy - Community Property Considerations

- (1) The automatic stay against the commencement or continuation of a Tax Court case does not apply to the non-debtor spouse, even in community property states.
- (2) Generally, a joint Letter 531 and Notice 1421 are issued. A bankruptcy notice of deficiency case file cover sheet is required.
- (3) Create MFT 31 accounts for both spouses. Organize the case file for a subsequent split spousal assessment.
- (4) See IRM 25.18.4.13, *Community Property and Bankruptcy*.

4.8.2.11.4.8.15.2
(03-29-2017)

Separate Spousal Assessment When Only One Spouse Is In Bankruptcy

- (1) If only one spouse filed bankruptcy, special handling is required. Assessments will need to be made on MFT 31 accounts set up for each spouse. Since the automatic stay has no effect on the non-bankrupt spouse, the assessment will need to be made within the normal assessment statute period after default of the notice of deficiency. Later, when the bankrupt spouse is out of bankruptcy and the notice of deficiency has defaulted, that spouse will be assessed on his / her own MFT 31. Refer to IRM 4.10.8.12.3, *Separate Assessments on Joint Taxpayers*.
- (2) For cases with six months or less on the assessment statute, the reviewer will complete the split spousal assessment using the MFT 31 Exam / appeals / AUR process. See IRM 4.8.2.11.4.8.15.3 for procedures. For cases with more than six months left on the assessment statute, the case will be sent to the bankruptcy coordinator to complete the split spousal assessment using the MFT 31 mirroring process. See IRM 4.8.2.11.4.8.15.4.

Caution: The reviewer should search for a NMF assessment before proceeding. Refer to NMF discussion at IRM 4.8.2.11.4.8.15.5.

4.8.2.11.4.8.15.3
(03-29-2017)

MFT 31 Creation, Exam / Appeals / AUR Process

- (1) These procedures are used for split spousal assessments when there is six months or less on the assessment statute. The procedures are performed by the reviewer who prepared the statutory notice of deficiency.
- (2) Follow these steps to create the MFT 31 accounts and have the accounts assessed upon default:
- Complete a Form 3177, *Notice of Action for Entry on Master File*, for both spouses. List the primary TIN at the top of both forms.
 - Add Transaction Code (TC) 971 in the box provided. In the MFT code column, put "30". Do not put "31".

- c. List the tax year under the Taxable Period column. Next to "Other," enter "Action Code 103, XREF SSN." Enter the TIN of the primary spouse on one Form 3177 and the secondary TIN of the other spouse on the other Form 3177.
 - d. Fax both forms to the Field Office Resource Team (FORT) and monitor for the creation of the two MFT 31 accounts.
 - e. Once the MFT 31s have been created, prepare two new Form 3177s. Notate on each Form 3177 that TC 971, Action Code 110 needs to be input on the MFT 31 account. The other spouse's SSN should be the XREF SSN on this transaction.
- (3) The assessment needs to be completed on the non-bankrupt spouse.
- a. Contact the bankruptcy coordinator to have the AIMS X freeze code removed so the assessment can be made. The coordinator will provide you with a Form 5348.
 - b. Assemble the package to fax to the FORT. It should include the Form 3198, Form 5344, first page of the Letter 531, and the Form 5278 or Form 4549A.
 - c. Form 3198: In the Special Features section, check off "MFT 31 Adjustment" and then in the Other Instructions section state "Assess non-bankrupt spouse on MFT 31. Do not final close. The case will be held in Bankruptcy Suspense".
 - d. Form 5344: Use Disposal Code 10.
 - Indicate which spouse to assess by putting a "P" for primary or "S" for secondary at the top of the Form 5344 in Item 56.
 - Add in Item 57 the name control of the secondary taxpayer if you are assessing the secondary taxpayer. Otherwise, leave it blank.
 - Indicate in the comments section that you are requesting a separate spousal assessment.

Example: "Assess non-bankrupt primary taxpayer husband on MFT 31." Or "Assess non-bankrupt secondary taxpayer wife on MFT 31." This Form 5344 should only reference those transactions which create or abate tax, penalties, and interest as well as add or reduce withholding (e.g., Transaction Codes 160, 300, 336, 765, 806, etc.).

- (4) Once the reviewer receives a Document Locator Number (DLN) showing the assessment has been input to the non-bankrupt spouse's MFT 31 account, the case is ready to forward to the bankruptcy coordinator for bankruptcy suspense. A TXMODA or an IMFOLT showing the MFT 31 assessment should be attached to the front of the joint tax return. The ASER will now be controlled by the bankruptcy spouse. Update to Status Code 21.

4.8.2.11.4.8.15.4
(03-29-2017)
**MFT 31 Creation,
Mirroring Process**

- (1) MFT 31 creation, mirroring process is used for split spousal assessments when there is more than six months on the assessment statute. This is performed by the bankruptcy coordinator.
- (2) Contact AIMS / ERCS analyst to request the master file "L" freeze (open exam freeze) be reversed so that CIO may create mirrored MFT 31 accounts. The request should include the taxpayer's names, TINs (primary and secondary), MFTs and years.
- (3) Check to ensure that the "L" freeze has been removed from the master file. You will also see an AIMS "Y" freeze.

- (4) Once the "L" freeze has been removed, send an e-mail to the CIO mail box (*CIOISSUES) requesting mirroring. Include the taxpayer's names, TINs (primary and secondary), MFTs and years.
- (5) CIO will notify when the mirroring is completed. Contact the AIMS / ERCS analyst to reverse the "Y" freeze and to put the "L" freeze back on. If you receive contact that CIO cannot mirror then contact the AIMS / ERCS analyst to have the "L" freeze put back on and then the MFT 31 Creation, Exam / Appeals / AUR process will have to be used.
- (6) The assessment needs to be completed on the non-bankrupt spouse.
 - a. Prepare Form 5348 to have the AIMS "X" freeze code removed so the assessment may be made.
 - b. Assemble the package to fax to the FORT. It should include the Form 3198, Form 5344, first page of the Letter 531, and the Form 5278 or Form 4549A.
 - c. Form 3198: In the Special Features section, check off "MFT 31 Adjustment" and then in the Other Instructions section, state "Assess non-bankrupt spouse on MFT 31. Do not final close. Case will be held in Bankruptcy Suspense".
 - d. Form 5344:
 - Use Disposal Code 10
 - Indicate which spouse to assess by putting a "P" for primary or "S" for secondary at the top of Form 5344 in Item 56.
 - Add in Item 57 the name control of the secondary taxpayer if you are assessing the secondary taxpayer. Otherwise, leave it blank.
 - Indicate in the comments section that you are requesting a separate spousal assessment.

Example: "Assess non-bankrupt primary taxpayer husband on MFT 31".
 Or "Assess non-bankrupt secondary taxpayer wife on MFT 31."
 This Form 5344 should only reference those transactions which create or abate tax, penalties, and interest as well as add or reduce withholding (e.g., TC 160, 300, 336, 765, 806, etc.)
- (7) Once the bankruptcy coordinator receives a DLN showing the assessment has been input to the non-bankrupt spouse's MFT 31 account, the case is ready for suspense. A TXMODA or an IMFOLT showing the MFT 31 assessment should be attached to the front of the joint tax return. The ASED will now be controlled by the bankrupt spouse.

Caution: The ASED should not be updated until the bankrupt spouse's assessment has posted.

4.8.2.11.4.8.15.5
(03-29-2017)

**Joint Return - One
Spouse in Bankruptcy -
Non-Master File (NMF),
Document 10978**

- (1) Non-debtor spousal assessments, split assessments, should be assessed using MFT 31 procedures. However, a non-master file (NMF) assessment may be necessary for any of the other stipulated reasons given in IRM 21.7.12.3, *NMF Adjustments Research*. Since 2005, MFT 31 assessments are required for separate spousal debtor assessments.
- (2) Review and inspect the master file transcript and case file to determine if there is a possible NMF assessment on a non-debtor spouse.

- (3) The reviewer may request the NMF unit to research for accounts already on NMF and print and forward NMF transcripts. The request may be made via fax or telephone.
- (4) The centralized NMF unit is located in Cincinnati Submission Processing Campus. The telephone number and fax number are located at <http://mysbse.web.irs.gov/exam/mis/contacts/default.aspx>.

4.8.2.11.4.8.16
(06-27-2013)
**Notice of Deficiency
Default**

- (1) Upon default of the notice of deficiency, the 90 day suspense unit forwards the case to the bankruptcy suspense coordinator as indicated on the bankruptcy notice of deficiency case file cover sheet.

4.8.2.11.4.9
(03-29-2017)
Bankruptcy Suspense

- (1) Suspense criteria are applicable to federal income tax cases subject to deficiency procedures of IRC 6211 and IRC 6212. The bankruptcy automatic stay may prevent the commencement or continuation of a Tax Court proceeding.

Note: For unagreed cases, where a bankruptcy petition has been filed, the issuance of a statutory notice of deficiency by the Service suspends the assessment period indirectly since the stay suspends the debtor's time to file a Tax Court petition, and time to file a Tax Court petition is suspended if the stay prevents the taxpayer from commencing a Tax Court case. Of course, for indirect suspension to occur, the stay must apply to the tax periods at issue in the statutory notice of deficiency.

- (2) The *Bankruptcy Suspense Review Checklist*, Exhibit 4.8.2-7, should be completed before deciding to place a return into suspense. The examination bankruptcy coordinator is responsible for reviewing each case to ensure the following:
 - a. A notice of deficiency has been issued in accordance with IRC 6212, within the statute of limitations.
 - b. The automatic stay is in effect. Refer to the earlier discussion of automatic stay.
 - c. On joint returns, determine if one or both spouses have filed for bankruptcy.

4.8.2.11.4.9.1
(06-27-2013)
**Cases Requiring
Suspense Procedures**

- (1) A case must be held in suspense during the bankruptcy stay only after issuance of a statutory notice of deficiency that has not defaulted prior to the filing of a bankruptcy petition for tax periods for which the taxpayer cannot commence or continue a Tax Court proceeding.

4.8.2.11.4.9.2
(06-27-2013)
**Cases Assessed From
Suspense During the
Automatic Stay**

- (1) The Service can assess a tax deficiency, notwithstanding normal deficiency procedures, if the tax is determined by the bankruptcy court.

4.8.2.11.4.9.3
(03-29-2017)
**Establish Suspense
Criteria**

- (1) Review the case to ensure the automatic stay is in effect.
 - a. Research the bankruptcy status using AIS, PACER, and IDRS. Refer to previous discussion of bankruptcy tools.

- b. Scrutinize the return, transcript (TXMODA, IMFOL / BMFOL), and case file to verify that the normal statute of limitation under IRC 6501 is adequately protected for all assigned tax periods, including related returns.
 - c. Verify information on the petition with the bankruptcy court or any local systems in place and update as necessary. Determine the correct details of bankruptcy filing(s): name, SSN / EIN, petition date, bankruptcy chapter, location / court, docket number, serial filings, community property state, and joint / single filer.
- (2) The reviewer will research AIMS / ERCS, verifying that a full master file or non-master file record is established on both systems. Ensure the AIMS record properly reflects name of taxpayer, identification number (SSN / EIN), open tax period(s) compared to period(s) contained in the case, regular statute dates, organization code, status code, and project code. The following project codes should be added if they are not shown on AIMS. Tracking codes should be added according to TS guidelines.

Bankruptcy Chapter	Project Code
7	0663
11	0664
12	0665
13	0666

- (3) Complete a bankruptcy suspense case file cover sheet or other similar document with AIMS / ERCS data. Exhibit 4.8.2-5 must be used for this purpose, using the AIMS / ERCS codes reflected in Exhibit 4.8.2-1, *Technical Services Status Codes and Related Review and Suspense Type Codes*.

4.8.2.11.4.9.4
(03-29-2017)

Bankruptcy Suspense Statute Considerations

- (1) Ensure Form 895 is completed and attached to the case. Indicate the following:
 - Notice of deficiency mailing date
 - Bankruptcy filing date
 - Serial filing listing with comments of effective date of stay
 - Docket number, bankruptcy court district
 - Bankruptcy filing, joint or separate, name of the spouse
 - MFT 31 / NMF assessment actions
 - The discharge, dismissal, or closed date, when applicable
 - Managerial approval
- (2) Use of alpha code "KK" is provided in IRM 25.6.23, *Examination Process – Assessment Statute of Limitations Controls*.
 - a. As a general rule, "KK" alpha code should not be entered on AIMS and statute control records prior to 180 days before expiration of the normal statutory period for assessment.

Caution: A non-bankrupt spouse should be assessed prior to updating an ASER to alpha "KK".
 - b. An unfiled return requiring suspense should remain alpha code "EE".

- c. Only those employees managing bankruptcy suspense cases should use alpha code "KK".
- d. The alpha code replaces the "DD" in the MMDDYYYY position. "YYYY" is the calendar year of the normal statutory period for assessment.
- e. The group manager should complete the *Bankruptcy Suspense Managerial Checksheet*. See Exhibit 4.8.2-8.

Caution: For those joint returns involving a non-bankrupt spouse, do not update to alpha "KK" until the non-bankrupt spouse has been assessed.

- (3) Refer to IRM Exhibit 25.6.23-3, *Instructions for Updating the Statute on AIMS*, for further details on the use of alpha statutes.

4.8.2.11.4.9.5

(06-27-2013)

Suspense Case File Criteria

- (1) The suspense case file must contain:
 - a. A valid statutory notice of deficiency
 - b. A completed Form 5344
 - c. A compliance check sheet
 - d. Form 4549, *Income Tax Examination Changes*, or similar examination report
 - e. The tax return, RTVUE / BRTVUE, or MACS print, and supporting workpapers
- (2) The bankruptcy suspense coordinator will conduct a limited review of the case file. The limited review will include the following:
 - a. Verify the report represents all issues reflected in the workpapers and the computation of the tax has been correctly determined for all periods.
 - b. Reconcile the report to the transcript to ensure all previous adjustments have been considered, including unpostable assessments which have not been deleted.
 - c. Consider the required special handling for joint returns with non-bankrupt spouse and related returns. MFT 31 procedures may be required. See MFT 31 procedures in this document.
 - d. Ensure that any agreements which require processing are properly executed with the correct forms and signatures, e.g., waivers, statute extensions, etc.
 - e. Assessments made prematurely, before the notice of deficiency has defaulted should be abated.
 - f. Cases requiring further development or correction should be returned to the examination group with Form 3990 explaining necessary actions.
- (3) Ensure the correct disposal code is reflected on the RGS CEAS record (10, 12, 13, etc.).
- (4) Move the RGS CEAS record to Fileserver(Suspend) while in bankruptcy suspense.

4.8.2.11.4.9.6

(03-29-2017)

Monthly Suspense Monitoring

- (1) There are several tools available to the coordinator that may be utilized in monitoring the status of bankruptcy cases. Access permission and a password may be obtained using the online 5081 system.
- (2) PACER is a third-party service that provides detailed up-to-date information on the status of bankruptcy cases. It is a fee-based service and requires a password for access.

- (3) AIS is the inventory control system used by the Insolvency unit. This database provides case assignment information, detailed history, etc. Obtain the ORACLE user guide from Insolvency.
- (4) On a monthly basis, PACER should be accessed to determine the bankruptcy status for all cases held in bankruptcy suspense. It may be necessary to access more than one system when conflicting or incomplete information is found. A word search in the PACER docket is suggested to review to see if there is any activity of the court that would trigger the lifting of the stay. A search of the following words is recommended: dismiss, discharge, denied, denial, terminate, stay, closed and confirmed.

Note: AIMS can be checked to see if Insolvency has lifted the “X” freeze which would lead to further research to see if there was a triggering event to lift the stay.

- (5) Record the date of the monthly monitoring on the *Bankruptcy Suspense Monthly PACER Check File Coversheet*. See Exhibit 4.8.2-5.
- (6) Reviewers will need to contact the appropriate campus staff for any questions / issues related to Centralized Insolvency Chapter 7 and confirmed Chapter 13 cases.

4.8.2.11.4.9.7
(03-29-2017)
**Monthly Suspense
Monitoring - ERCS**

- (1) If research indicates the automatic stay is still in effect, an entry should be made in the suspense case file cover / case file activity record or similar document to reflect this fact. Though not currently mandatory, an entry may also be made on ERCS as follows:
 - Using ERCS, a re-entry of the TS Suspense Code 593, on the date of monthly monitoring, will update the action date of the ERCS suspense report.
 - The ERCS record will record the monthly monitoring action date. The subsequent suspense report will serve as notification of action necessary every month.
- (2) The TS group manager for the bankruptcy coordinator will monitor the action dates to ensure that all procedures are followed properly to ensure timely actions are being taken. The bankruptcy cases will remain in Review Type 48 through the suspense process.

4.8.2.11.4.9.8
(06-27-2013)
Substitute for Returns

- (1) The bankruptcy suspense coordinator will obtain transcripts for bankruptcy suspense cases in Alpha Code “EE”, twice a year, to check for transactions that may indicate a tax return has been filed (e.g., TC 976 or 977). An ESTAB of the appropriate DLN may need to be requested to determine if a return has been filed and how it compares to the notice of deficiency. A supplemental report will need to be issued. If no agreed closure, continue with the monthly monitoring of the bankruptcy status. Be sure to update the ASED to the live ASED or to Alpha Code “KK”, as appropriate.

4.8.2.11.4.10
(03-29-2017)
**Post Bankruptcy Tax
Court Suspense and
Closing Procedures**

- (1) After it is determined the automatic stay is lifted, the “post bankruptcy Tax Court petition period default” date is computed, after which the ASED is recomputed. See Exhibit 4.8.2-6 for a detailed discussion and examples of computing the ASED and various default dates. See Exhibit 4.8.2-6 for the computation sheet to compute the new ASED and default date. The Technical

Service bankruptcy coordinator will take the following actions:

- a. Update the statute on ERCS and Form 895 to reflect the IRC 6501 statute.
 - b. Update the statute on the Form 5344 and case information in RGS.
 - c. Record the post bankruptcy Tax Court petition period default date on the Form 895.
- (2) The AIMS / ERCS status should be updated to Status Code 24 and ERCS Suspense Type 534 or 535. Do not update the review type. It should carry Review Type 48 throughout the process. The action date may be overwritten to record the new default date.
 - (3) The post bankruptcy Tax Court petition period case is suspended until the default date.
 - (4) The suspense coordinator may maintain the file or return the case to the 90 / 150 day suspense unit.

4.8.2.11.4.10.1
(06-27-2013)

**Closing Procedures For
Cases Without a Split
Spousal Assessment**

- (1) Upon expiration of post bankruptcy Tax Court petition period, prepare to assess in Disposal Code 10, unagreed. Obtain an AMDISA and current transcripts to confirm there have been no secondary actions, particularly another bankruptcy filing.
- (2) A bankruptcy AIMS "X" freeze present on AMDISA will prevent an unagreed assessment. Due to Insolvency procedures, the TC 520 and AIMS bankruptcy freeze may remain, although the automatic stay is no longer operative.
- (3) TS must address all AIMS freeze codes, which includes, but is not limited to, contacting the bankruptcy suspense coordinator before requesting the freeze be lifted.
 - a. Prepare Form 5348, requesting removal of the "X" bankruptcy freeze. It is not an entity freeze and must be requested for all years that are being closed.
 - b. After managerial approval, forward the Form 5348 to the AIMS / ERCS Unit for input.
 - c. Once a copy of Form 5348 is executed and returned, it should be placed behind the Form 3198 on the front of the case file.
- (4) Forward the case to CCP for closing.

Note: The TC 520 with certain bankruptcy closing codes is tweaked to create the AIMS bankruptcy freeze on AMDISA, preventing a case closing in Disposal Code 10 or 12, an improper assessment. Examination may only remove the AIMS freeze, not the master file freeze of "-V" and "-W" created by the TC 520 with bankruptcy closing codes. If the TC 520 remains on master file, the AIMS "X" freeze will reset. When CCP prepares to close the case and the AIMS freeze has reappeared, CCP is provided evidence by inclusion of the Form 5348 that TS has addressed the freeze code. CCP will remove the AIMS freeze to facilitate closing the unagreed case.

4.8.2.11.4.10.2
(03-29-2017)

**Closing Procedures For
Cases With a Split
Spousal Assessment**

- (1) Upon expiration of the period to petition Tax Court, prepare to assess the bankruptcy spouse on MFT 31 and prepare the final closure for the MFT 30 account.
- (2) A bankruptcy AIMS "X" freeze present on AMDISA will prevent an unagreed assessment from posting. Due to Insolvency procedures, the TC 520 and AIMS bankruptcy freeze may remain, although the automatic stay is no longer operative.
- (3) TS must address all AIMS freeze codes. The bankruptcy coordinator is responsible for addressing the AIMS "X" freeze. The bankruptcy coordinator will determine if the AIMS "X" freeze may be lifted. If the AIMS "X" freeze may be lifted, the bankruptcy coordinator will:
 - a. Prepare Form 5348, requesting removal of the "X" bankruptcy freeze code. It is not an entity freeze code and must be requested for all years that are being closed.
 - b. Secure managerial approval.
 - c. Have the Form 5348 processed by a tax examiner.
 - d. Forward a copy of the Form 5348 to the reviewer. The reviewer should attach a copy of the Form 5348 directly behind the Form 3198.
- (4) Prepare the Form 5344 for the MFT 31 of the bankrupt spouse's assessment.
 - a. Use Disposal Code 10.
 - b. Indicate which spouse to assess by putting a "P" for primary or "S" for secondary at the top of the Form 5344 in Item 56.
 - c. Add in Item 57 the name control of the secondary taxpayer if you are assessing the secondary taxpayer. Otherwise, leave it blank. Indicate in the comments section that you are requesting a separate spousal assessment.

Example: "Assess non-bankrupt primary taxpayer husband on MFT 31." Or "Assess non-bankrupt secondary taxpayer wife on MFT 31." This Form 5344 should only reference those transactions which create or abate tax, penalties and interest as well as add or reduce withholding (e.g., TC 160, 300, 336, 765, 806, etc.)
- (5) Prepare a second Form 5344 for the MFT 30 closure.
 - a. Use Disposal Code 08.
 - b. Manually cross out the tax, credits and penalties sections.
 - c. Indicate in the comment section "For Final Closure".
 - d. This Form 5344 will show the TC 888 and TC 886, reference codes that do not create additional tax. These codes will ensure the MFT 30 account will reflect the correct AGI and TI amounts.
- (6) Prepare a Form 3198.
 - a. In the Special Features section, check "MFT 31 Adjustment".
 - b. In the Other Instructions section state "Manual Closure Second MFT 31 assessment required, then final closure Disposal Code 08 to input AGI, TXI reference codes on MFT 30".

4.8.2.11.5
(06-27-2013)
General Suspense

- (1) Numerous conditions occur at the area level that require temporary suspense of other cases. If closing or other administrative action is delayed or suspended, the case file may be placed in designated suspense for safekeeping and statute protection.
- (2) Listed are some of the other types of cases placed in suspense and their corresponding codes:

Type of Suspense	Status Code	Review Type	Suspense Type
Protective Claims	38	49	594
IRC 1033	38	50	595
Headquarters Suspense	38	53	594
Combat Zone	38	55	594

4.8.2.11.5.1
(03-29-2017)
Placing a Case in Suspense

- (1) When placing a case in suspense always:
 - a. Verify the statutes are properly protected. There must be at least one year left on the statute. If there is an inadequate amount of time left on the statute, return the case to the originating group with the instruction to secure a statute extension or otherwise protect the statute.
 - b. Verify any partial agreements, if applicable, have been assessed by the examiner. If not, the case should be returned to the examiner to complete the appropriate actions. Alternatively, the reviewer may determine to complete the following actions. The Form 5344, Form 3198, the first two pages of the RAR and the necessary agreement form should be faxed to the appropriate CCP site for immediate assessment. CCP will fax a copy of Form 5344 with a screen print of IDRS showing "Request Completed" back to TS to indicate the partial assessment was completed.
 - c. Verify the issues in the case qualify the case for suspension. If any issues cannot be placed in suspense, return the case to the originating group for further development and / or solicitation of a partial agreement. Advise the group that if the issues that cannot be suspended are not resolved, the case may not be placed in suspense. If a partial agreement cannot be secured and the taxpayer does not exercise their right to an appeal, a notice of deficiency will need to be issued on all issues.
 - d. Verify the case has been developed to the fullest extent possible. A revenue agent report (RAR) should be in the case file listing the adjustments being suspended.
- (2) Once it is determined the case can be placed into suspense, update the case on ERCS and AIMS to the correct status code.
- (3) When action is suspended on cases because the same issues are pending in Appeals, notify Appeals and supply them with the information on the suspended cases.

4.8.2.11.5.2
(06-27-2013)
**Monitoring a Case in
Suspense**

- (1) Each month, check the statutes of suspense cases. If there are 210 days or less on a statute, solicit a statute extension from the taxpayer. If the taxpayer is not willing to extend the statute, you may need to forward the case for issuance of a notice of deficiency or for immediate assessment.
- (2) Based on the type of case, pull each case at least every six months and research to determine if the issue causing the case to be suspended is still unresolved. If the issue has been resolved, return the case to the originating group for further development and / or closure. In some instances, you may be able to forward the case for closure yourself; for example, acceptance of a protective claim.

4.8.2.11.5.3
(06-27-2013)
Closing the Case

- (1) When the suspense issues are resolved, send the case back to the examination group to prepare and issue the final report to the taxpayer to attempt to obtain his or her agreement. In some instances, the reviewer will be able to directly forward the case for closure.
- (2) If additional case development is required, return the case to the originating group. If the case was never assigned to a group, it should be sent to PSP to assign to a group for further development and closure. The coordinator will attach a cover memorandum to the case explaining that the issue needs to be resolved.

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Exhibit 4.8.2-1 (03-29-2017)**Technical Services Status Codes and Related Review and Suspense Type Codes**

Status	Description / Definition		Review Type	Suspense Codes	Days	Suspense Type Mandatory or Optional
20 Mandatory Review / Special Processing	Employee Audits		01	520	45	Optional
	Special Processing, i.e. Form 906		see "other review types"	504	30	Optional
	OVDI / VDP		63	519	15	Optional
	Criminal Restitution		See IRM Exhibit 4.8.6-1			
21 In-Transit	Transfer from Field to TS (a TS code must be present to update a case to Status 21)		none	none	21	<i>*Comes from the field in this status</i>
22 Protest to Appeals and 30 / 60 Day Letter	Protested to Appeals		32	501	10	Optional
	Taxpayer Advocate		22	503	10	Optional
	Interest / Penalty Abatement 30 Day Cases		08	528	45	Optional
	Innocent Spouse 30 Day Cases		02	531	45	Optional
	OIC 30 Day Cases		10	532	45	Optional
23 Sample Review	EQMS		33	500	5	Optional
	LQMS		15	502	15	Optional
24 90 Day Suspense	Innocent Spouse-Final Determination		02	537	105	Mandatory
	Interest Penalty Abatement		08	529	195	Optional
	Statutory Notice Issued-Field		34	534	105	Mandatory
	Statutory Notice Issued-Office		35	535	105	Mandatory
	Statutory Notice Issued-Field-Outside USA		34	540	165	Mandatory
	Statutory Notice Issued-Office-Outside USA		35	541	165	Mandatory
	Section 7436 Final Notice Determination		38	538	105	Mandatory

Exhibit 4.8.2-1 (Cont. 1) (03-29-2017)**Technical Services Status Codes and Related Review and Suspense Type Codes**

Status	Description / Definition		Review Type	Suspense Codes	Days	Suspense Type Mandatory or Optional
25 Pre 90 Day	Statutory Notice Preparation - Field		34	508	60	Optional
	Statutory Notice Preparation - Office		35	506	45	Optional
	Section 7436 Notice Preparation		38	544	45	Optional
	Sent to Counsel for Review		42	542	45	Mandatory
	Return from Appeals / Counsel		24	519	15	Optional
	Criminal Restitution		See IRM Exhibit 4.8.6-1			
26 Joint Committee	Joint Committee		04	none	none	
27 In Process TEFRA / non-TEFRA Review	New TEFRA Case Assigned		25	570	5	Optional
	Non TEFRA Flow Through and Related Inv.		26	571	15	Optional
	Agreed-RA secured all partner agreements		75	572	30	Optional
	No Change within 45 days / Letter 1864		76	572	30	Optional
	No Change within 45 days / Letter 2621		77	573	45	Optional
	60 Day Letter Preparation		78	573	45	Optional
	FPAA Preparation		81	573	45	Optional
	TEFRA Investor - Notice of Deficiency Prep		85	573	45	Mandatory
	TEFRA - Other Action Required		87	573	45	Mandatory
	AAR Review		40	573	45	Optional

Exhibit 4.8.2-1 (Cont. 2) (03-29-2017)

Technical Services Status Codes and Related Review and Suspense Type Codes

Status	Description / Definition		Review Type	Suspense Codes	Days	Suspense Type Mandatory or Optional
28 TEFRA Letters Issued	60 Day Letter Issued		80	575	75	Mandatory
	AAR Disallowance Letter Issued		82	573	45	Mandatory
	FPAA Issued		83	577	165	Mandatory
	TEFRA Investor - Notice of Deficiency issued		86	576	105	Mandatory
29 TEFRA Suspense	Waiting for Campus to issue letter		79	573	45	Mandatory
	To Area Counsel for FPAA / SND review		42	573	45	Mandatory
	Waiting for Campus to complete a process		84	573	45	Mandatory
	TEFRA - Waiting for CCP		88	571	15	Mandatory
	TEFRA - Waiting for TP / POA		89	571	15	Optional
30 1254 Suspense or Criminal Res-titution	Form 1254 Suspense Cases		44	590	365	Optional
	Criminal Restitution		See IRM Exhibit 4.8.6-1			
31 Other TEFRA Suspense	Suspended Under Litiga-tion Strategy Memo		31	578	180	Optional
32 General Fraud	Fraud		45	591	180	Mandatory
	Fugitive Cases		43	591	180	Mandatory
35 Criminal Restitution	Criminal Restitution		See IRM Exhibit 4.8.6-1			
36 Grand Jury	Grand Jury		46	592	180	Mandatory
	Fugitive Cases		43	592	180	Mandatory

Exhibit 4.8.2-1 (Cont. 3) (03-29-2017)**Technical Services Status Codes and Related Review and Suspense Type Codes**

Status	Description / Definition		Review Type	Suspense Codes	Days	Suspense Type Mandatory or Optional
38 Other Suspense	Joint Committee		04	none	none	Optional
	COP (Conditions of Probation)		11	See IRM 4.8.11.5.2.3.2		
	Rev. Proc. 92-29		41	595	365	Mandatory
	Hobby Losses - 183		47	595	365	Mandatory
	Protective Claims		49	594	180	Mandatory
	IRC 1033		50	595	365	Mandatory
	Headquarters Suspense		53	594	180	Mandatory
	Claim for Refund Suits		54	none	none	Optional
	Combat Zone		55	594	180	Optional
	NPC Key Case		60	594	180	Optional
	NPC Investor		61	none	none	Optional
	Domestic Trusts		62	none	none	Optional
39 Bankruptcy	Bankruptcy		48	593	30	Optional
	Suspense Release		48	504	30	Optional
Other Suspense Types Not Tied to a Specific Status Code and Review Type	10 Day Suspense		Various	518	10	Optional
	15 Day Suspense		Various	519	15	Optional
	30 Day Suspense		Various	504	30	Optional
	45 Day Suspense		Various	506	45	Optional
	60 Day Suspense		Various	508	60	Optional
	90 Day Suspense		Various	510	90	Optional
	105 Day Suspense		Various	524	105	Optional
	180 Day Suspense		Various	525	180	Optional
	365 Day Suspense		Various	526	365	Optional

Exhibit 4.8.2-1 (Cont. 4) (03-29-2017)

Technical Services Status Codes and Related Review and Suspense Type Codes

Status	Description / Definition		Review Type	Suspense Codes	Days	Suspense Type Mandatory or Optional
Other Review Types Not Listed Above	NRP		03			
	Political Appointees		05			
	Barred Statutes		06			
	Reconsideration / Claims		07			
	Restricted Interest		09			
	COP and / or Restitution (Mandatory Review of COP / restitution-based assessment issues)		11			
	Closing Agreements (non GSI)		12			
	Informant Claims		13			
	Jeopardy / Terminations		14			
	Field Assistance		16			
	SME Duties		17			
	Training - TS Personnel		18			
	Penalties - Preparer		19			
	EITC (Earned Income Tax Credit)		20			
	Transferee / Transferor		21			
	Employment Tax		23			
	Agreed SOB (Son of Boss)		30			
	POPS		36			
	PICO		37			
	ADA		39			
	Appeals and Counsel Assistance		51			
	Non-AIMS Case Review		56			
	Technical Coordinator		57			
	Third Party Contact		58			
	Executive Compensation		59			

Exhibit 4.8.2-1 (Cont. 5) (03-29-2017)**Technical Services Status Codes and Related Review and Suspense Type Codes**

Status	Description / Definition		Review Type	Suspense Codes	Days	Suspense Type Mandatory or Optional
	S Corporations / ESOPS		64			
	IRC 419		65			
	Notice 2003-81		66			
	VI EDC		67			
	OEL		68			
	Home Based Business		69			
	LCCI / OVCI		70			
	Conservation Easement		71			
	Supporting Organization Settlement		72			
	Reserved (Alternative Resolution Implementation - (ARI))		73			
	Global Settlement Initiative (GSI)		74			
	Court Ordered Restitution		91			
	Restitution Assessment Process Completed - Civil Action Initiated		92			
	Restitution Assessment Process Completed - No Civil Action Warranted		93			
	Restitution Not Assessable		94			
	Restitution is BMF related		95			
	Restitution is RPP related		96			
	Restitution Not Payable to the Service		97			
	All Other Cases Not Listed Above		99			

Exhibit 4.8.2-2 (03-30-2012)**Examiner's Responsibilities - Customer Service and Timelines**

The following time frames are established to facilitate timely actions in the review process. Status reports and other communications may be made by fax or e-mail. Examination groups may consult the TS web site for current *Technical Services contact information*.

Action	Responsible Party	Time Frame for Response by group	Follow-up Action (if time frame not met)	Reference
Formal inquiry from TS (Form 3990)	TS group manager / reviewer	Respond within 60 days of receipt	Provide status report to TS every 60 days	IRM 4.8.2.9.3
Informal Inquiry from TS (by telephone or e-mail)	Reviewer	Initial response within 3 working days	Provide status report to TS every 30 days	IRM 4.8.2.9.5

Document movement of cases outside the group with Form 3210, *Document Transmittal*. Monitor the acknowledgement of Form 3210 and make inquiries into any unacknowledged Form 3210 after 21 calendar days.

*If a TS case has a special priority, such as a short statute of limitations, taxpayer hardship or other program deadline, the Examination group will fax an advance copy of the Form 3210 to the appropriate TS coordinator and state the reason for the priority on the Form 3210 to inform the coordinator of the pending arrival of the case. This assists in workload planning. In non-priority cases, faxing the Form 3210 is optional.

Exhibit 4.8.2-3 (03-29-2017)**Assessment and Suspension Summary**

Pre-Petition Income Tax Periods		Post-Petition Income Tax Periods
<p>Post BAPCPA (On or after 10/17/2005) Letter 531 and Notice 1421 are issued for the notice of deficiency. All unagreed cases are suspended, whether individual or corporate. Agreed, no change, delinquent, or amended returns and claims are assessed immediately.</p>	<p>Bankruptcy Filing Date</p>	<p>Post BAPCPA (On or after 10/17/2005) Letter 531 for the notice of deficiency is issued. Individual cases are not suspended. Unagreed Form 1040 cases are assessed when the notice of deficiency has defaulted. Unagreed corporate notices of deficiency cases are suspended for Chapter 7 bankruptcy. Pre-confirmation Chapter 11 cases are suspended. Agreed, no change, delinquent, or amended returns and claims are assessed immediately.</p>
<p>BRA 1994 - Pre-BAPCPA (10/22/1994 - 10/16/2005) Letter 531 and Notice 1421 are issued for the notice of deficiency. Unagreed cases are suspended. Unagreed corporate Chapter 7 cases are suspended. Pre confirmation Chapter 11 cases are suspended. Agreed, no change, delinquent, or amended returns and claims are assessed immediately.</p>		<p>BRA 1994 - Pre-BAPCPA (10/22/1994 - 10/16/2005) Letter 531 and Notice 1421 are issued for the notice of deficiency. Unagreed cases are suspended. Unagreed corporate Chapter 7 cases are suspended. Pre confirmation Chapter 11 cases are suspended. Agreed, no change, delinquent, or amended returns and claims are assessed immediately.</p>

Exhibit 4.8.2-4 (03-29-2017)**Bankruptcy Notice of Deficiency Coversheet**

Technical Services
Bankruptcy Notice of Deficiency Case File Case
Taxpayer Name:
EIN:
Docket No.:
Territory:
Date Filed:
Chapter:
Claim Comments: Claim Input ____ and / or RAR to Insolvency _____
Joint Return / Joint Bankruptcy Filing: _____
Comment: MFT 31 procedures apply to non-debtor spouse [First name Last name]
Bankruptcy Notice of Deficiency Case
Upon Default Do Not Assess
Return to Bankruptcy, Technical Services
Coordinator Name:
Address:
RGS:
Phone:

Exhibit 4.8.2-5 (03-29-2017)**Bankruptcy Suspense Monthly PACER Check Case File Coversheet**

Bankruptcy Suspense Monthly PACER Check Case File Cover								
Primary Taxpayer:					Primary TIN:			
Secondary Taxpayer:					Secondary TIN:			
Related Taxpayer:					MFT:			
Statute Summary - YR/Filing ST	YR	FS	YR	FS	YR	FS	YR	FS
Regular three year ASED								
Form 872 ASED								
SND Issued								
SND Default								
SND Extended ASED								
Bankruptcy "KK" Statute								

bankruptcy Summary at check in	Chapter	TP Primary / TP Secondary	File Date	Docket #	Territory
Chapter and File Date					
bankruptcy History during suspense					
Serial Filer: Yes ____ No ____		Counsel Contact:		Date Contacted:	
Advice Received:			Status of stay:		
Comments:					

Bankruptcy Suspense Monthly PACER Check Case File Coversheet

[illegible]

Exhibit 4.8.2-6 (03-29-2017)**Bankruptcy Statute of Limitations Computation**

Bankruptcy Statute Calculation (BAPCA ONLY)	
Statute Recomputation Worksheet (use for checking in all bankruptcy cases and when the automatic stay lifts to compute a new statute)	
Taxpayer Name:	Date Calculated:
Tax Year:	
<p>Use to determine:</p> <ul style="list-style-type: none"> • Whether the tax year is pre- or post-petition; • Whether bankruptcy date is after the last day to petition - assess: • In the case when the bankruptcy petition occurs after the last day to petition Tax Court, proceed to immediate assessment; • To update a statute while a pre-petition year is in bankruptcy suspense; • When the bankruptcy automatic stay is lifted to determine the new statute. <p>Do not use to recompute statutes for bankrupt TEFRA investors or for bankruptcies where taxpayers have foreign addresses.</p> <p>If there are more than 150 days between a bankruptcy dismissal and a new petition, do not consider subsequent bankruptcies in the recomputation.</p> <p>If the taxpayer is a serial filer and the SNOD is issued after the first or second bankruptcy dismissal, do not use to recompute the updated statute.</p>	

	MM/DD/YYYY or Number
Step 1 - Data Entry	
Tax Year	
File Date	
Statute of limitations including any valid Forms 872	
First bankruptcy petition date	
Notice of deficiency date	
First dismissal date (automatic stay lifted / today's date for worst case scenario)	
Second bankruptcy petition date	
Second bankruptcy dismissed (closed or term - no discharge)	
30 day automatic stay (there should be no instances where the automatic stay terminates before the 31st day.	
Third bankruptcy filed	
If stay was granted and the court is silent on the effective date, then the effective date of the stay is the date the stay is granted.	

Exhibit 4.8.2-6 (Cont. 1) (03-29-2017)**Bankruptcy Statute of Limitations Computation**

	MM/DD/YYYY or Number
Date of granting the third bankruptcy stay	
Third bankruptcy dismissed	
Normal last day to petition Tax Court	
Step 2 - Pre- or Post-Petition Determination:	
This is a pre-petition tax year. Proceed to Step 3.	
Step 3 - Check to determine if bankruptcy petition date is after the last day to petition Tax Court	
Proceed to Step 5	
Step 4 - Additional warning not to rely on any dates below when the bankruptcy petition date is on / after the notice petition date.	
Step 5 - Computed Fields	
Is this a serial filer? (serial filer - one or more bankruptcy petitions within one year)	
Later of the bankruptcy petition date or the notice date	
Number of prohibited days (the prohibition on assessing tax due to the unexpired notice of days and the lifting of the bankruptcy stay)	
Expired number of IRC 6213(a) days	
Add: 60 days (IRC 6503(a))	
Add: 60 days to petition Bankruptcy Court (6213(f))	
Number of remaining days to petition Tax Court (IRC 6213(a))	
Recomputed Statute (Last day to assess) [IRC 6501(a) + prohibited periods + IRC 6503(a) + IRC 6213(f) + IRC 6213(a)]	
check	
STOP - if check is not equal to re-computed statute	
Last day to petition Tax Court lifting of the automatic stay + IRC 6213(f) + IRC 6213(a)	
Purge date Send to CCP by this date (last day to petition Tax Court plus 15 days).	

Exhibit 4.8.2-6 (Cont. 2) (03-29-2017)**Bankruptcy Statute of Limitations Computation**

	MM/DD/YYYY or Number
Stay lifted: exp. IRC 6213(a) / If the sum is greater than 90, then all 6213(a) days have expired n.b. If 3rd bankruptcy, then days above count toward IRC 6213(a) days from the lifting of the second stay to granting of the third stay, if greater than 60. Maximum of 90 IRC 6213(a) days.	2nd: 1st: 3rd: _____ Max 90 days

Bankruptcy Statute Calculation (BAPCA ONLY)	
Statute Recomputation Worksheet (use for all pre-petition bankruptcy cases to compute a new statute where the taxpayer signs a waiver agreeing to an assessment)	
Taxpayer Name:	Date Calculated:
Tax Year:	
Use to determine: <ul style="list-style-type: none"> • Whether the tax year is pre- or post-petition; • Whether bankruptcy date is after the last day to petition - assess; • In the case when the bankruptcy petition occurs after the last day to petition Tax Court, proceed to immediate assessment; • To update a statute while a pre-petition year is in bankruptcy suspense; • When the bankruptcy automatic stay is lifted to determine the new statute. 	

	MM/DD/YYYY or Number
Step 1 - Data Entry	
Tax Year	
File Date	
Statute of limitations including any valid Forms 872	
First bankruptcy petition date	
Notice of deficiency date	
Agreed date	
Second bankruptcy petition date	
Agreed date	
30 day automatic stay (there should be no instances where the automatic stay terminates before the 31st day.	

Exhibit 4.8.2-6 (Cont. 3) (03-29-2017)**Bankruptcy Statute of Limitations Computation**

	MM/DD/YYYY or Number
Third bankruptcy filed	
If stay was granted and the court is silent on the effective date, then the effective date of the stay is the date the stay is granted.	
Date of granting the third bankruptcy stay	
Agreed date	
Step 2 - Pre- or Post-Petition Determination:	
This is a pre-petition tax year. Proceed to Step 3.	
Step 3 - Check to determine if bankruptcy petition date is after the last day to petition Tax Court	
Proceed to Step 5	
Step 4 - Additional warning not to rely on any dates below when the bankruptcy petition date is on / after the notice petition date.	
Step 5 - Computed Fields	
Is this a serial filer? (serial filer - one or more bankruptcy petitions within one year)	
Later of the bankruptcy petition date or the notice date	
Number of prohibited days (the prohibition on assessing tax due to the unexpired notice of days and the lifting of the bankruptcy stay)	
Add: 60 days (IRC 6503(a))	
Recomputed Statute (Last day to assess) [IRC 6501(a) + prohibited periods + IRC 6503(a) + IRC 6213(f)]	
check	
STOP - if check is not equal to re-computed statute	
Agreed date	2nd:
exp. IRC 6213(a) / If the sum is greater than 90, then all 6213(a) days have expired	1st:
	3rd:
n.b. If 3rd bankruptcy, then days above count toward IRC 6213(a) days from the lifting of the second stay to granting of the third stay, if greater than 60. Maximum of 90 IRC 6213(a) days.	_____
	Max 90 days

Exhibit 4.8.2-7 (03-29-2017)**Bankruptcy Suspense Review Checksheet**

SB/SE Bankruptcy Suspense Review Checksheet					
TS Reviewer:				Date:	
Primary Taxpayer:				Primary TIN:	
Secondary Taxpayer (if applicable):				Secondary TIN:	
Related Taxpayer (if applicable):				MFT:	
Tax Year	Tax Year End Date	Pre-Petition or Post-Petition	Return Filed Date	Regular three year ASER	Form 872 Statute

See IRM 4.27 and IRM 4.8.2.10.4	Yes	No	N/A	Remarks
1. Unagreed Case: Is this an unagreed case? If no, forward the case to CCP for closure.				Disposal Code:
<p>2. BAPCPA Individual Cases only (not a non-individual): For bankruptcy petitions filed on or after 10/17/2005, BAPCPA applies and only pre-petition years should be placed into suspense.</p> <p>Are any of the tax years post-petition tax years? Post-petition tax years are tax years that have not yet ended at the time the bankruptcy petition was filed. For example, tax year 201012 ends 12/31/2010. If the bankruptcy petition was filed on 11/01/2010, 201012 would be considered a post-petition tax year. Post-petition years DO NOT GO into suspense. If yes, forward the post-petition tax years to CCP for assessment and closure.</p> <ul style="list-style-type: none"> Follow quick assessment procedures if applicable. Separate post-petition tax years from case file. Separate post-petition tax years on RGS. Release "X" freeze. <p>Note: This does not apply to BRA cases. (Bankruptcy petitions filed before 10/17/2005) For BRA cases, consult the IRM. Reference 11 U.S.C. section 362(a)(8).</p>				<p>For bankruptcy petitions filed before 10/17/2005 refer to IRM 4.8.2.10</p> <p>List post-petition tax years and default dates:</p>

Exhibit 4.8.2-7 (Cont. 1) (03-29-2017)
Bankruptcy Suspense Review Checksheet

See IRM 4.27 and IRM 4.8.2.10.4	Yes	No	N/A	Remarks
<p>3. Notice of Deficiency: Has a notice of deficiency been issued? If no, return the case to Technical Services or issue the notice. If yes,</p> <ul style="list-style-type: none"> • Pull IDRS prints INOLES, AMIDSA, TXMODA • Pull PACER - print first screen (Bankruptcy Party Search Result), case summary pages, and docket report. (Leave PACER open for subsequent use.) • Review case file - check to make sure name and address are correct. Check to make sure that taxable income and tax return match and ensure they are legally enforceable. IRM 4.8.9.2 • Is the case assigned to our group on RGS? • Does the notice match the saved Form 5344 on RGS? • Is the related return info correct on Form 5344? • Re-validate the Form 5344 so that at closing there is no problem. <p>Was the bankruptcy petition filed after the last day to petition the US Tax Court? If no, continue to Step 4. If yes, case can be closed to CCP. Release the X freeze.</p>				SNOD issued date: SNOD period: 90 days: 150 days Last day to petition per SNOD: Date of bankruptcy petition:
<p>4. Nonfiler Cases or Amended Returns: Does master file reflect a "-A" freeze (TXMODA, IMFOLT or BMFOLT) and / or is there evidence that a tax return has been filed but not considered and / or processed? If yes, return the case to the example group.</p> <ul style="list-style-type: none"> • Prepare a Form 3990 advising the exam group to: <ul style="list-style-type: none"> -- Resolve master file "-A" freeze. -- Consider tax return filed. -- Process tax return if applicable. • Provide exam group with the bankruptcy status and proper routing upon re-closure. <ul style="list-style-type: none"> -- IRM Exhibit 4.8.2-3 may be used. 				TC 976 date: TC 599 date: TC 971 AC 282 date: CIS print date: ASED per master file:

Exhibit 4.8.2-7 (Cont. 2) (03-29-2017)
Bankruptcy Suspense Review Checksheet

See IRM 4.27 and IRM 4.8.2.10.4	Yes	No	N/A	Remarks
5. Single Filing Status: did the taxpayer file single, MFS, or H of H? Was the taxpayer in bankruptcy at any time during the notice of deficiency period? If no, forward the case to CCP for assessment and closure upon default of the notice of deficiency. • Release "X" freeze See IRM 4.27 and IRM 4.8.2.10.4				SNOD issued date: Last date to petition: Bankruptcy petition date: Chapter _____
6. Joint Filing Status: Did the taxpayer file a joint tax return? Check both SSNs. Were either of the TPs in bankruptcy at any time during the notice of deficiency period? Is this a joint bankruptcy? If no, see Step 12 before continuing to Step 7. If yes, continue to Step 7.				SNOD issued date: Last date to petition: Bankruptcy petition date: Chapter:
7. Serial Filers (BAPCPA only for individuals): Do bankruptcy court records reflect any bankruptcy petitions dismissed within the preceding one year period beginning with the filing of the current bankruptcy petition? Special Note: If this is a joint filing status case, check for bankruptcy petitions filed by each spouse.				Use the space below to copy and paste information from PACER (the chapters, date petitions were filed and dates of dismissal(s).)

Exhibit 4.8.2-7 (Cont. 3) (03-29-2017)
Bankruptcy Suspense Review Checksheet

See IRM 4.27 and IRM 4.8.2.10.4	Yes	No	N/A	Remarks
<p>If there is one dismissal or anything other than a discharge that is less than a year from the current bankruptcy, the automatic stay terminates on the 30th day after the filing of the second case unless the taxpayer requests an additional stay past the 30 days and the extension is approved by the court.</p> <p>If there are two or more dismissals or anything other than a discharge that are less than a year from the current bankruptcy filing, there would be no automatic stay. The taxpayer would need to request the imposition of the automatic stay and it would need to be approved by the court.</p> <p>If the automatic stay is not extended, determine the SNOD default date and assessment date. The date the automatic stay ended would be considered the dismissal or discharge date in the statute computation.</p> <p>Note: If a bankruptcy received a discharge and the taxpayer later files another bankruptcy petition or more within the one year period, serial filer rules do not apply.</p>				<p>Date stay continued by court:</p> <p>Print the order that granted the stay from PACER.</p> <p>Order date:</p>
<p>Special Note: Dismissed Chapter 7 individual debtor cases, where the reason for dismissal was solely because the individual did not meet the means test for filing a Chapter 7, who later file within one year of the dismissal a new bankruptcy petition under Chapter 7, 11, or 13, note that the automatic stay will remain in effect for the pendency of the bankruptcy absent any court orders specifically lifting the automatic stay.</p> <p>A stay may be extended to all creditors or only to specified creditors. Check the Court order.</p> <p>Reminder: If there is any doubt as to the serial filer status of a taxpayer, contact Counsel for confirmation of the status of the automatic stay. Reference: 11 U.S.C. section 362(c)(3) - (4) and 362(j) and section 707(b).</p>				<p>Date Counsel was contacted:</p> <p>Counsel's advice:</p>

Bankruptcy Suspense Review Checksheet

See IRM 4.27 and IRM 4.8.2.10.4	Yes	No	N/A	Remarks
<p>8. Chapter 11 Non-Individual Taxpayers Pre and Post BAPCPA / Chapter 11 Individual Taxpayers Pre BAPCPA: Is this a Chapter 11 non-individual or Pre-BAPCPA individual? If no, skip to Step 9. The automatic stay applies to tax years ending before the confirmation of the Chapter 11 plan and it lifts upon confirmation of the Chapter 11 plan. Look on PACER and AIS for the confirmation date. Has the plan been confirmed? If yes, follow the closing procedures.</p> <ul style="list-style-type: none"> Follow quick assessment procedures, if applicable. Release “X” freeze. <p>Reference: 11 U.S.C. section 362(a)(8) and section 1141.</p>				Confirmation date:
<p>9. Chapter 7 Non-Individual (Corporate) Taxpayers: Is this a Chapter 7 non-individual? If no, skip to Step 10. Typically the automatic stay applies to all Tax Court proceedings during the administration of a Chapter 7 case. It is recommended that Counsel be contacted to determine the status of an automatic stay for a Chapter 7 non-individual. (Attach Counsel response to checksheet reference #10 below) If questionable, request a Counsel opinion based on the facts (e.g., any kind of conversions, consolidations, administrated closures). Generally non-individual Chapter 7 bankruptcies are “closed”. You will probably not see a “dismissal” or “discharge” when looking at the bankruptcy docket. Reference: 11 U.S.C. section 362(a)(8) and IRM 35.2.1.1.8.</p>				<p>Status of automatic stay:</p> <p>Date Stay lifted:</p>

Exhibit 4.8.2-7 (Cont. 5) (03-29-2017)
Bankruptcy Suspense Review Checksheet

See IRM 4.27 and IRM 4.8.2.10.4	Yes	No	N/A	Remarks
<p>10. Court Ordered Lifting of Automatic Stay: Was discharge granted, denied, waived or was stay lifted? Look for key words in the docket report that may indicate the automatic stay was lifted. Key words to search for are “closed, confirmed, denial, denied, deny, dismissal, discharge, Internal Revenue Service, I.R.S., IRS, joint, stay, settle, terminated, vacate, waive, waiver and withheld”.</p> <p>Note: When jointly administered, determine which docket number will be researched.</p> <p>If yes, was the automatic stay reinstated by bankruptcy court?</p> <p>Reminder: Bankruptcy Court may “reinstate” a previously dismissed case. This does not mean the automatic stay was also reinstated. Bankruptcy Court must, as a general rule, “order” the operation of the automatic stay. Unless the court order states the stay is in effect, contact Counsel.</p> <p>If no, the automatic stay was NOT reinstated by the Bankruptcy Court. Re-calculate the ASED and new default date. Refer to IRM 4.27.4 and IRM Exhibit 4.8.2-6.</p> <p>Note: Has there been a court order approving the debtor’s waiving the right to discharge? This also lifts the automatic stay.</p> <p>IF IN DOUBT ABOUT THE AUTOMATIC STAY OR DETERMINATION OF THE ASED AND DEFAULT DATE, CONTACT COUNSEL FOR THEIR ASSISTANCE. DOCUMENT ALL CONTACTS WITH COUNSEL.</p> <p>Notes:</p>				<p>Automatic stay lifted date:</p> <p>Dismissed case reinstated date:</p> <p>Stay ordered back into operation date:</p> <p>Counsel contacted date:</p> <p>Counsel’s advice received:</p>

Exhibit 4.8.2-7 (Cont. 6) (03-29-2017)**Bankruptcy Suspense Review Checksheet**

See IRM 4.27 and IRM 4.8.2.10.4	Yes	No	N/A	Remarks
11. Send Insolvency deficiency information: Insolvency Contact: Notes:				Date Sent:
12. Separate Spousal Assessment Procedures: Are separate spousal assessments necessary? IRM 4.8.2.11.4.8.15.2 and IRM 4.10.8.12.3. If only one spouse is in bankruptcy, the non-bankrupt spouse needs to be assessed upon default of the notice of deficiency. The bankruptcy automatic stay has no effect on the ASED of the non-bankruptcy spouse. The non-bankrupt spouse should be assessed after their right to petition Tax Court has expired. Caution: Do not change the MFT 30 ASED until after the non-bankrupt spouse has been assessed. Make sure the 23C date and DLN of the assessment are noted. <ul style="list-style-type: none"> Establish MFT 31 accounts for each spouse. Assess the non-bankrupt spouse. Mirror payments so that both spouses will receive credit for payments made by either spouse. After the non-bankrupt spouse has been assessed, follow Bankruptcy Suspense Procedures above. Update ASED, if applicable.				MFT 31 accounts requested: Primary _____ Secondary _____ MFT 31 accounts created: Primary _____ Secondary _____ TC 971 / AC 110 requested: Primary _____ Secondary _____ TC 971 / AC 110 posted: Primary _____ Secondary _____ Non-bankrupt spouse assessment: Requested: _____ 23C Date: _____ DLN: _____
13. ERCS Coding and Time Charges: Initial Receipt of Bankruptcy Case: <ul style="list-style-type: none"> Update to Status Code 20, Reviewer ID, Review Type 48 Charge time to TIN of return with Second Segment Code 641 Suspense and Monthly Monitoring: <ul style="list-style-type: none"> ERCS Coding - Update to Status Code 39, Review Type 48, Suspense Code 593 (optional) Monitor status of bankruptcy every 30 days to determine if automatic stay has lifted. IRM 4.8.2.10.4.9.7(4). Charge time below the line to 587-048. For non-filer cases, check for a delinquently filed tax return every six months. IRM 4.8.2.11.4.9.8. Case closing after automatic stay lifts: <ul style="list-style-type: none"> Update to Status Code 24, Review Type 48, Suspense Code 534 / 535 / 540 / 541, as applicable. Charge time to TIN of return with Second Segment Code 641. 				

Exhibit 4.8.2-7 (Cont. 7) (03-29-2017)
Bankruptcy Suspense Review Checksheet

See IRM 4.27 and IRM 4.8.2.10.4	Yes	No	N/A	Remarks
Comments / Notes:				

Exhibit 4.8.2-8 (03-29-2017)**Bankruptcy Suspense Managerial Checksheet Review**

For use prior to manager approval of statute update.	
Manager Name:	Date:
Primary Taxpayer:	Primary TIN:
Secondary Taxpayer:	Secondary TIN:

IRM 4.8.2.11.4.9.4 and IRM 25.6.23	Yes	No	N/A	Remarks
Manager's Review (Managers ONLY)				
<p>1. For BAPCPA individual cases, is this a post-petition year? If yes, then this case should NOT be in suspense and should be forwarded to CCP for closure.</p> <p>Note: A post-petition year is a tax year that ends after the filing of the bankruptcy petition.</p>				
<p>2. For a joint return, are both taxpayers in bankruptcy? If not, there should be MFT 31 accounts established for both taxpayers and the non-bankrupt spouse should have a fully posted assessment before changing the statute to "KK".</p>				
<p>3. Did the bankruptcy coordinator document the automatic stay is in place?</p> <p>a. Does the PACER summary page show the taxpayer filed another bankruptcy within 12 months of a previously dismissed bankruptcy? If yes, have the serial rules been considered?</p> <p>b. Are there any flags reflected on the docket (usually found on the top right of the docket) that should be considered? (e.g., DISCHDENIED, NODISCH, NODIS, CLOSED, DISMISSED, WAIVED) If any exist, then make sure the coordinator has considered and made a determination that the automatic stay is still in place.</p> <p>c. Was the taxpayer in bankruptcy any time during the Statutory Notice of Deficiency 90 / 150 day period? If not, then the case should not be held in suspense.</p>				

Exhibit 4.8.2-8 (Cont. 1) (03-29-2017)**Bankruptcy Suspense Managerial Checksheet Review**

4. Are the critical dates on the initial check sheet correct? a. Verify return filed date. b. Are there any valid statute extensions? c. Verify SNOD issuance date. d. Verify bankruptcy filing date.				
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