



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.27.1

FEBRUARY 2, 2018

EFFECTIVE DATE

(02-02-2018)

PURPOSE

- (1) This transmits revised IRM 4.27.1, Bankruptcy, Bankruptcy Petitions.

MATERIAL CHANGES

(1)

IRM Reference	Description of Change
	Minor editorial changes have been made throughout this IRM. Website addresses, legal references and IRM references were reviewed and updated as necessary.
4.27.1.1	Has been expanded to include IRM 1.11.2.2.5, Address Management and Internal Controls, and give examiners broader perspective of how bankruptcy may affect the examination.
4.27.1.1.1	Added a background subsection.
4.27.1.1.2	Added an authority subsection.
4.27.1.1.3	Added a subsection for Bankruptcy Court.
4.27.1.1.4	Added a responsibilities subsection.
4.27.1.1.5	Added a program reports subsection.
4.27.1.1.6	Added an acronym and codes subsection.
4.27.1.1.7	Added a terms subsection.
4.27.1.1.8	Added a related resources subsection.
4.27.1.2	Updated guidance.
4.27.1.3.1	Expanded and updated guidance regarding significant bankruptcy case issues.
4.27.1-1	Deleted exhibit. IRM 4.27.1.3 should be referenced as the checklist.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.27.1, dated August 25, 2009.

AUDIENCE

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4.27.1

Bankruptcy Petitions

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4.27.1.1
(02-02-2018)
Program Scope and Objectives

- (1) *Purpose.* This IRM section is an introduction and outline of examiner's responsibilities regarding bankruptcy petitions.
- (2) *Audience.* These procedures apply to all SB/SE Field and Specialty examiners, excluding Estate and Gift Tax.
- (3) *Policy Owner.* The Director, Examination Field and Campus Policy, which is under the Director, Headquarters Examination.
- (4) *IRM Owner.* Field Examination Special Processes, which is under the Director, Examination Field and Campus Policy.
- (5) *Primary Stakeholders.* SB/SE is the primary stakeholder of the examination Bankruptcy Program.
- (6) *Contact Information.* To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.

4.27.1.1.1
(02-02-2018)
Background

- (1) Principle of Bankruptcy - The general underlying principle of bankruptcy is to provide a debtor an avenue to pay what the debtor can afford while receiving forgiveness for debt that cannot be satisfied.
- (2) Automatic Stay - Prior to October 17, 2005, when a debtor filed a petition in bankruptcy court, a stay of collection actions went into effect in every case and immediately stopped ongoing and future (during the pendency of the bankruptcy) attempts by creditors to collect pre-petition debts owed by the debtor or otherwise exercise control over property of the estate or the debtor (11 USC § 362). This essential feature of bankruptcy law created what is known as the automatic stay. For most debtors, the automatic stay remains in effect during the pendency of the bankruptcy. But, for debtors who file bankruptcy on or after October 17, 2005 and have had one or more bankruptcy cases dismissed within the preceding twelve month period, the automatic stay may either terminate within 30 days with respect to the debtor and the debtor's property that is not property of the bankruptcy estate, or not go into effect at all. See IRM 5.9.5.7, Serial Filers, for more information.
- (3) Debtor - Most bankruptcy cases begin when the debtor files a petition in bankruptcy court seeking financial relief from creditors. Individuals, corporations, partnerships, LLCs, railroads, municipalities, and other forms of government have the right to file bankruptcy.
- (4) Advantages to Debtors - When negotiations with creditors to pay debts fail, debtors may be faced with immediate garnishment of salaries and repossession of their assets. Business debtors may have their businesses closed through repossession or foreclosure. Bankruptcy is attractive to debtors because it can offer:
 - a. Immediate temporary relief from creditor pressure by staying all creditor actions against the debtor;
 - b. Long-term relief by allowing a debtor to extend the time for payment of a debt; and
 - c. Permanent relief by discharging debts. The relief provisions of the Bankruptcy Code can give the debtor a "fresh start".

- (5) **Creditor** - Creditors include persons and entities who have claims against the debtor, usually for debts incurred before the bankruptcy was filed (pre-petition debts). Because bankruptcy estates may continue to incur debts after the bankruptcy petition date, entities can also hold post-petition administrative expense claims against the bankruptcy estate. In certain circumstances, creditors can force debtors into bankruptcy by involuntary means.
- (6) **Advantages to Creditors** - Bankruptcy offers advantages to creditors, such as the following:
 - a. A greater recovery on creditors' claims. Traditional debtor/creditor remedies may lead to piecemeal dismantling of the debtor's business through repossession and sale of the debtor's assets. Such actions by creditors may cause a business to fail.
 - b. The potential to preserve the going-concern value of a business which can exceed its liquidation value.
 - c. Allowing the sale of a business as an operating enterprise and restraining creditors from precipitous actions.
 - d. Distributing an equitable share of the available funds to each creditor.

4.27.1.1.2
(02-02-2018)
Authority

- (1) **Authority** - The U.S. Constitution grants Congress authority to enact federal bankruptcy laws. The Bankruptcy Act of 1898 formed the basis of federal bankruptcy law until 1979, when enactment of the Bankruptcy Code (11 USC) repealed the old law and codified procedures making the bankruptcy process less burdensome for the debtor. The Bankruptcy Reform Act of 1994 (BRA 94) brought about a major amendment to the Bankruptcy Code affecting the government's treatment of debtors, notably granting permission to assess taxes while the debtor is under the protection of the automatic stay.
- (2) **Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)** - On April 20, 2005, the BAPCPA was signed into law. Most of the provisions of this act became effective October 17, 2005, although some provisions, such as those dealing with Chapter 12 bankruptcies, were effective upon the date of enactment.
- (3) **Bankruptcy Code** - The Bankruptcy Code provides an orderly method for the debtor's financial rehabilitation (Chapters 11, 12, and 13) or the liquidation and distribution of a debtor's assets (Chapter 7). This federal law is intended to be applied uniformly among all states and possessions.
- (4) **Jurisdiction** - Bankruptcy courts generally have jurisdiction over all matters concerning payment of a debtor's financial obligations under the Bankruptcy Code and administration of the bankruptcy estate. Bankruptcy court jurisdiction includes the authority to determine the amount of tax due by the debtor or estate and what taxes will be discharged, meaning the debtor no longer will be personally liable. The bankruptcy court also has jurisdiction over any matters concerning collection of tax debts at issue in the bankruptcy case or collection from any property of the estate.
- (5) **Bankruptcy Judges** - Bankruptcy judges are appointed by the appellate circuit courts for a term of 14 years, as provided under Article I of the U.S. Constitution.

4.27.1.1.3
(02-02-2018)
Responsibilities

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for field employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.3.5, Headquarters Examination, for additional information.
- (2) The Director, Examination Field and Campus Policy (formerly known as the Director, Examination AUR/Policy), reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the field examination process. See IRM 1.1.16.3.5.1, Exam/AUR Policy, for additional information.
- (3) Field Examination Special Processes (FESP), which is under the Director, Examination - Field and Campus Policy, is the group responsible for providing oversight and policy and procedural guidance on specialized examination processes to SB/SE field examiners and group managers. See IRM 1.1.16.3.5.1.2, Examination-Field and Special Processes.

4.27.1.1.4
(02-02-2018)
Program Reports

- (1) Periodic program reviews are conducted by FESP to:
 - Assess the effectiveness of specific programs within Examination or across the organization,
 - Determine if procedures are being followed,
 - Validate policies and procedures, and
 - Identify and share best/proven practices.

4.27.1.1.5
(02-02-2018)
Acronyms and Codes

- (1) The following table lists commonly used acronyms and command codes with their definitions as used throughout this IRM:

Acronym/Code	Definition
AIMS	Audit Information Management System
AMDIS	Audit Management Display Information System
BRA94	The Bankruptcy Reform Act of 1994
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
CIC	Coordinated Industry Case
DIP	Debtor-in-Possession
DOJ	Department of Justice
FESP	Field Exam Special Processes
IDRS	Integrated Data Retrieval System
IRPTR	Information Returns Processing Transcript Requests
LLC	Limited Liability Corporation
OIC	Offer in Compromise
PSP	Planning and Special Programs
TC	Transaction Code

4.27.1.1.6
(02-02-2018)
Terms

- (1) The following table lists commonly used terms and associated definitions as referenced throughout this IRM:

Term	Definition
Administrative Expense	A liability incurred by the bankruptcy estate for actual, necessary expenses of preserving the estate. This generally includes tax liabilities for periods ending post-petition and before discharge or dismissal for which the estate is liable. The IRS is entitled to payment of these taxes from the estate as a priority tax (generally paid at time of confirmation). 11 USC § 503 defines allowable administrative expenses and IRC § 1398(h) explains the proper handling of these expenses on the bankruptcy estate's tax return.
Bankruptcy	Refers to a judicial process to resolve a debtor's problems in paying debts incurred by the debtor. The term <i>bankruptcy</i> is used in connection with the federal bankruptcy laws enacted by Congress. <i>Bankruptcy case</i> refers to a case filed in a federal bankruptcy court under one of the chapters of the Bankruptcy Code (Title 11). The terms <i>insolvency proceeding</i> and <i>receivership</i> refer to proceedings brought under state laws and supervised by the state courts. A bankruptcy can either be voluntary or involuntary. 11 USC § 303 provides the requirements to file an involuntary petition.
Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)	An act that amended the Bankruptcy Code. Most of the provisions of BAPCPA are effective for cases filed on or after October 17, 2005. However, some BAPCPA provisions, such as certain provisions relating to Chapter 12 debtors, took effect on April 20, 2005, the date of enactment. Many provisions of BAPCPA are intended to keep debtors from abusing the bankruptcy system. Such provisions may limit the imposition of the automatic stay in cases of serial filings, require tax compliance from individual debtors, and establish a means test for Chapter 7 debtors. BAPCPA also added a new Chapter 15 to deal with cross-border bankruptcies.
Bankruptcy Code	The laws of bankruptcy codified under Title 11, USC §§ 101 through 1532.
Bankruptcy Court	U.S. District Courts have standing orders referring all cases arising under Title 11 to bankruptcy judges, which are referred to as bankruptcy courts. See 28 USC § 157.
Bankruptcy Estate	See Estate.
Bankruptcy Petition	The form filed by the debtor (or against the debtor by creditors in an involuntary bankruptcy) with the bankruptcy court requesting relief from debts. It is filed to commence a case under a specific chapter of the Bankruptcy Code.
Bankruptcy Plan	A proposed method of payment filed in Bankruptcy Court by debtors in Chapters 11, 12, and 13 cases, and/or by other interested parties in Chapter 11 cases, and sent to creditors for review and approval. In the case of Chapter 11 reorganization plan, creditors have the right to accept or reject, and/or object to the plan. Creditors may object to bankruptcy plans filed in cases under Chapters 12 and 13.

Term	Definition
Bankruptcy Reform Act of 1994 (BRA 94)	An act that amended the Bankruptcy Code, signed into law and effective for all bankruptcy cases filed on or after October 22, 1994. It made changes to the bankruptcy law such as permitting assessments and issuing notice and demand during the automatic stay and the filing of late proofs of claim in Chapter 7 cases.
Bankruptcy Rules	Rules of procedure that govern the practice and procedure in bankruptcy cases.
Bar Date	The date fixed by the court or by statute as the date by which a creditor must file a proof of claim. In general, a claim of a governmental unit, including the Service, is considered timely if it is filed before 180 days after the order of relief (11 USC § 502(b)(9)).
Chapter 7	A case filed under Chapter 7 of the Bankruptcy Code by an individual, business, or other entity, where creditors are paid by liquidation and distribution of the debtor's available assets.
Chapter 9	A bankruptcy case for a governmental unit. In order to qualify as a debtor under Chapter 9, an entity must, among other things: be a municipality, be authorized to be a debtor by state law, be insolvent or unable to meet its debts as they mature, and desire to effect a plan to adjust such debts.
Chapter 11	A reorganization case filed under Chapter 11 of the Bankruptcy Code by an individual, business, or other entity. The case is intended to result in a reorganization plan, although Chapter 11 plans can provide for the liquidation of the debtor's assets, as well. A plan can last several years; however, a large percentage eventually liquidate. Unless the court orders otherwise for cause, an individual debtor may receive a discharge upon completion of all payments under the Chapter 11 plan. If an individual debtor is unable to complete all the plan payments, the court may grant the debtor a hardship discharge in certain instances. In general, a non individual debtor receives a discharge upon plan confirmation.
Chapter 12	This chapter applies to family farmers and fishermen. It closely resembles a Chapter 13 but without a <i>super discharge</i> that was available to Chapter 13 debtors in bankruptcies filed prior to October 17, 2005. Creditors are paid pursuant to a plan. Plan payments are paid through a trustee who handles all disbursements. Plan payments may be paid seasonally. The debtor may receive a discharge upon completion of all payments under the Chapter 12 plan. If a debtor is unable to complete all the plan payments, the court may grant the debtor a "hardship discharge" in certain instances.
Chapter 13	This chapter applies to individuals with regular income, including wage earners, sole proprietors, and other self-employed individuals. Chapter 13 is a case where creditors are paid pursuant to a plan. The debtor may receive a discharge upon completion of all payments under the Chapter 13 plan. If a debtor is unable to complete all the plan payments, the court may grant the debtor a "hardship discharge" in certain instances.

Term	Definition
Chapter 15	This chapter applies when (1) a foreign court or a foreign representative seeks assistance in the United States in connection with a foreign insolvency proceeding; (2) assistance is requested in a foreign country in connection with a case under 11 USC; (3) a foreign insolvency proceeding and a domestic bankruptcy for the same debtor are pending concurrently; or (4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under Title 11 USC.
Claim	A right to payment, even if un-liquidated, contingent, or disputed. Proofs of claim may include tax liabilities which have not been assessed. Also, see <i>Proof of Claim</i> .
Confirmation	The time when the court grants final approval to the debtor's plan. Applicable only in Chapters 11, 12, and 13 bankruptcies.
Consumer Debt	A debt incurred by an individual primarily for personal, family, or household purposes. <i>Does not include taxes.</i>
Creditor	Person or entity with a claim against the debtor and/or property of the debtor at the time the bankruptcy petition is filed.
Debtor	The individual or entity (corporation, partnership, municipality) that: (1) files a voluntary petition, or (2) has an order of relief entered against it when an involuntary petition is filed with the bankruptcy court.
Debtor-in-Possession (DIP)	The debtor in a Chapter 11 reorganization is known as a debtor-in-possession (DIP) of the assets of the estate unless a trustee is appointed. The DIP has the rights and powers of a bankruptcy trustee.
Discharge	A court order that prohibits the collection of many pre-petition debts as a personal liability of the debtor. It is the event that triggers forgiveness of debt in a bankruptcy case. Generally, a discharge is granted: <ul style="list-style-type: none"> a. In an individual debtor's Chapter 7 case, after the time for challenging discharge has expired and/or after all timely challenges to discharge have been resolved; b. In a Chapter 11 case of a corporation when the plan is confirmed; c. In a Chapter 11 case of an individual when the plan is completed or when the court grants a hardship discharge; and d. In Chapter 12 and 13 cases, when the plan is completed (3-5 years) or when the court grants a hardship discharge to the debtor.
Discharge Date	The date the court records the discharge.
Discharge, Denial of	The situation in which a debtor goes through a bankruptcy case but is not granted a discharge.
Disclosure Statement	In a Chapter 11 case, an approved disclosure statement must generally accompany the proposed plan of reorganization before the plan is confirmed. The disclosure statement must contain adequate information concerning the affairs of the debtor to allow the creditors to make an informed judgment about the plan. However, for post-BAPCPA cases, electing small businesses may be subject to less stringent disclosure statement requirements (11 USC § 1125(f)).

Term	Definition
Estate	<p>A bankruptcy estate is created upon the commencement of the bankruptcy case which is generally when the petition is filed. It generally consists of all of the debtor's interests in any property at the time the case is filed, plus property acquired by the estate after the petition is filed.</p> <p>Note: The estate may also include a non-debtor spouse's community property interests.</p> <p>In an <i>individual</i> Chapter 7 or 11 case, the bankruptcy estate is a separate taxable entity (IRC § 1398). In Chapter 13 cases and in individual Chapter 11 cases filed on or after October 17, 2005, certain assets acquired by the debtor post-petition may also be included in the estate along with post-petition earnings from services performed by the debtor (11 USC §§ 1306 and 1115).</p>
Examiner	An examiner may be appointed in a Chapter 11 case to investigate the financial affairs of the debtor. An examiner does not replace the debtor-in-possession as a Chapter 11 trustee does.
Excluded Asset	A property interest of the debtor that does not become property of the bankruptcy estate upon the filing of the petition. A pre-petition Notice of Federal Tax Lien (NFTL) is not required to collect discharged taxes from excluded property, although a statutory lien is required. Non-dischargeable taxes may also be collected from excluded assets.
Fresh Start	Refers to the goal of bankruptcy to give the debtor a new financial life free from many past debts.
Individual Debtor	A person who files bankruptcy as an individual rather than as a partnership, limited liability company (LLC) or corporation. The individual debtor may file singularly or jointly with a spouse.
Insider	If the debtor is an individual, an insider includes a relative or partner of the debtor, a partnership in which the debtor is a general partner, a general partner of the debtor, or a corporation of which the debtor is a director, officer, or person in control. If the debtor is a corporation, an insider includes a director of the debtor, officer of the debtor or a person in control of the debtor (11 USC § 101(31)). An insider may be subject to different treatment under the Bankruptcy Code. For example, the time period for recovering preferential transfers to an insider is one year as opposed to 90 days for transfers made to non-insiders.
Insolvency	Generally, understood to mean an inability to pay debts as they become due. However, the Bankruptcy Code refers to an insolvent entity as one whose debts are greater than the fair market value of its assets (11 USC § 101(32)). A debtor need not be insolvent to file bankruptcy. See <i>Bankruptcy</i> .
Liquidation	The act of reducing tangible and intangible assets to cash. This applies to Chapter 7 cases in which the business ceases to exist and its assets are sold. For individuals, the liquidation is limited to non-exempt assets. Some debtors liquidate through a Chapter 11 bankruptcy case.

Term	Definition
Objection to Claim	A motion filed with the bankruptcy court by a debtor, creditor, or trustee to object to all or parts of a claim. A hearing will be held to resolve the dispute. Most bankruptcy court litigation, including objections to claim, are brought by motion pursuant to the less formal contested matter procedures.
Petition Date	The date the bankruptcy petition was filed in the bankruptcy court.
Post-confirmation	The period that occurs after the plan of reorganization is confirmed.
Post-petition	The period after the bankruptcy petition is filed.
Pre-packaged Bankruptcies	A Chapter 11 plan of reorganization that the debtor and primary creditors negotiate and accept <i>prior</i> to the filing of the bankruptcy petition.
Pre-petition	The period of time before the bankruptcy petition was filed.
Pre-petition Taxes	Taxes incurred, whether or not assessed, prior to the filing of the bankruptcy petition. Income taxes are incurred on the last day of the income tax year.
Proof of Claim	A document a creditor files with the bankruptcy court to assert a right of payment from the bankruptcy estate for pre-petition debts. A claim can also be filed for post-petition debts in some instances (11 USC § 1305 claims in Chapter 13).
Reorganization	The process through which a Chapter 11 debtor promises to resolve or pay creditors' claims.
Schedules	After a bankruptcy is filed, all debtors must timely file: (1) schedules of assets and liabilities, (2) a schedule of current income and current expenditures, and (3) a statement of financial affairs.

Term	Definition
Trustee	<p>In a case under Chapters 7, 12, or 13, the trustee is the officer appointed by the United States Trustee to administer the bankruptcy estate. The trustee is the representative of the bankruptcy estate and has a fiduciary duty to unsecured creditors. In a case under Chapter 11, the debtor-in-possession (DIP) generally has the rights and powers of a trustee unless the court orders a trustee be appointed.</p> <p>Listed are several definitions of a trustee and the corresponding Chapter(s) of bankruptcy:</p> <ul style="list-style-type: none"> •Chapter 7 trustee: A disinterested person appointed by the United States Trustee or elected by creditors to administer the Chapter 7 case. Referred to as a panel trustee or case trustee. The Chapter 7 trustee is responsible for a particular Chapter 7 case. •Chapter 11 trustee: The court can order the appointment of a Chapter 11 trustee to replace the debtor-in-possession. The DIP, or the Chapter 11 trustee, is a fiduciary responsible for administering the Chapter 11 case. The United States Trustee or a party in interest may request the court appoint a Chapter 11 trustee for cause. •Chapter 12 trustee: A trustee is appointed in every Chapter 12 case. Referred to as a standing trustee, the trustee typically reviews the debtor's proposed plan and recommends modifications, as needed. After confirmation, the trustee typically serves as disbursing agent of the debtor's payments under the plan. •Chapter 13 trustee: A trustee is appointed in every Chapter 13 case. Referred to as a standing trustee, the trustee typically reviews the debtor's proposed plan and recommends modifications, as needed. After confirmation, the trustee typically serves as disbursing agent of the debtor's payments under the plan.

4.27.1.1.7
(02-02-2018)

Related Resources

- (1) Procedural guidance on bankruptcies can be found throughout IRM 4.27, Bankruptcy, and IRM 5.9, Bankruptcy and Other Insolvencies.
- (2) Document 13219, Automated Insolvency System - User Guide.
- (3) My SB/SE Bankruptcy webpage <http://mysbse.web.irs.gov/examination/tip/bankruptcy/default.aspx>.
- (4) The following table contains related IRMs which cover additional procedures that examiners may use in bankruptcy procedures and are referenced throughout this IRM:

IRM	Title
IRM 4.20	Examination Collectibility
IRM 5.9.1	Overview of Bankruptcy
IRM 5.9.2	The Bankruptcy Code and Collection
IRM 5.9.3	Debtor's Delinquent Accounts
IRM 5.9.4	Common Bankruptcy Issues

IRM	Title
IRM 5.9.13	Manual Proofs of Claim and Common Claim Issues
IRM 25.1.2.6	Bankruptcy Fraud

4.27.1.2
(02-02-2018)
Introduction

- (1) Individuals, partnerships, corporations, and limited liability companies may file for debt relief by filing a bankruptcy petition with the Bankruptcy Court. Bankruptcy laws, enacted by Congress, began with the Bankruptcy Act of 1800. Currently, the bankruptcy code, with amendments, can be found in Title 11 of the U.S. Code. The Bankruptcy Reform Act of 1994 (BRA 94) brought about major changes to the code affecting debtor treatment, and the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) was signed into law on April 20, 2005. For additional information about federal bankruptcy laws, refer to IRM 5.9.1.2, Federal Bankruptcy Law. Bankruptcy law has three primary objectives:
 - a. To relieve debtors from pre-bankruptcy financial burdens (where there are insufficient assets to satisfy debts owed to creditors);
 - b. To rehabilitate debtors and give them a “fresh start” by allowing them to retain assets necessary for subsistence which are exempt from creditors’ reach; and
 - c. To protect creditors by establishing an orderly and equitable system of satisfying their claims out of existing assets and/or future income and earnings.
- (2) The Bankruptcy Code combined with BRA 94 and BAPCPA provides the laws under which bankruptcy cases are commenced, administered, and closed. There are six types of bankruptcies which can be filed, Chapters 7, 9, 11, 12, 13 and 15. Refer to IRM 5.9.2.4, Chapters in Bankruptcy, for definitions of each bankruptcy chapter.
- (3) When a taxpayer advises they have filed for bankruptcy or if you suspect this may be the case, contact your Examination Bankruptcy Coordinator in Technical Services.
 - a. To find your Examination Bankruptcy Coordinator in Technical Services, look to the Find an Expert section of the MySB/SE webpage <http://mysbse.web.irs.gov/examination/tip/bankruptcy/contacts/12268.aspx>.
 - b. A check of TXMODA or IMFOLT for individuals and BMFOLT for partnerships and corporations may reflect a TC 520, closing code 60, 61, 62, 63, 64, 65, 66, 67, 81, 83, 84, 85, 86, 87, 88, or 89. See IRM 5.9.5.6.1, Closing Codes for more information. AMDISA should reflect an “X” freeze for petitions filed after October 21, 1994, and a “U” freeze for petitions filed before October 22, 1994. You may simply see the word “bankruptcy” reflected on the AMDISA print. If you do not see these indicators, advise your Examination Bankruptcy Coordinator in Technical Services.
 - c. It is imperative that examiners contact Insolvency as soon as they are aware that a taxpayer under examination has filed for bankruptcy. Your Examination Bankruptcy Coordinator in Technical Services will provide the name of the Insolvency Bankruptcy Specialist. Insolvency needs to advise Bankruptcy Court by a specific date, known as the **bar date**, of all IRS tax debt of a taxpayer. You will need to provide to Insolvency any potential

deficiencies, penalties, and interest. Provide Insolvency with a copy of the report of adjustments; if requested. Estimate any amounts if you have not completed the examination. Refer to IRM 5.9.13, Manual Proofs of Claim and Common Claim Issues. If you later change the amounts, provide a revised report to Insolvency. Advise Insolvency when you close the case and how it is being closed (no-change, agreed, forwarded to Appeals or to Technical Services for issuance of deficiency).

- d. Examiners must consider collectibility during the pre-planning phase and throughout the examination. Refer to IRM 4.20, Examination Collectibility. If you decide to survey the return, please advise Insolvency.

- (4) In order to better comprehend bankruptcy law and effectively examine bankruptcy cases, familiarity with bankruptcy terminology is essential. See IRM Exhibit 5.9.1-1, Glossary of Common Insolvency Terms, for common bankruptcy definitions and concepts. For commonly used acronyms, refer to IRM Exhibit 5.9.1-2, Acronyms and Abbreviations.

4.27.1.3
(08-25-2009)
**Involvement of Area
Counsel**

- (1) Examiners should contact their Associate Area Counsel for case specific legal advice and guidance. For more information about the role of Counsel, refer to IRM 5.9.1.3.1, Associate Area Counsel.
- (2) Examination will promptly inform Associate Area Counsel and Insolvency when:
 - a. A case meets referral criteria for significant bankruptcy case processing procedures;
 - b. Litigation is brought against the IRS in the bankruptcy proceedings, such as when an objection to proof of claim is filed;
 - c. Contemplating assertion of taxpayer's tax liabilities against a transferee of the taxpayer's assets;
 - d. Receiving an administrative offer in compromise (OIC) based on doubt as to liability. As a rule, the IRS will not consider an OIC from a taxpayer in bankruptcy; however, we may work with the taxpayer outside of the context of an administrative offer in compromise when it is in the best interest of the IRS and the taxpayer to do so. See IRM 5.9.4.10, Offers in Compromise and Bankruptcy; or
 - e. Assets transferred outside of the ordinary course of business within 90 days before filing of the bankruptcy petition or within 1 year to an insider.
- (3) It is the responsibility of Examination to promptly respond to all requests from both Area Counsel and Insolvency with any supporting data, documents, or other examination information from the administrative file. Examination should be aware of and comply with the deadlines and requirements imposed by the Bankruptcy Court that affect the examination process.
- (4) Examiners who suspect bankruptcy fraud should contact their fraud technical advisor for assistance and guidance. Refer to IRM 25.1.2.6, Bankruptcy Fraud.

4.27.1.3.1
(02-02-2018)
**Significant Bankruptcy
Case Issues**

- (1) All cases which meet the referral criteria listed in IRM 5.9.4.14.3, Significant Bankruptcy Case Referrals, should be immediately referred to Associate Area Counsel. This is for the purpose of permitting identification of those cases that may require coordination on a more expedited or more extensive basis. The referral criteria should be applied to all taxable years of the taxpayer that have ended prior to the petition date and any known tax transactions that have occurred in the current year but prior to the petition date. It is not mandatory

that every tax year be opened and included in the examination. Normal examination criteria should be used to determine which tax year will be included in the audit.

- (2) The following types of cases should be referred to Area Counsel immediately:
 - a. All cases for which a criminal tax prosecution is being considered or is pending.
 - b. All cases involving taxpayers with assets of \$50 million or more. The referral must state if indications suggest, through audit or otherwise, more than nominal tax may be due. IDRS command BRTVU gives specific BMF return information. Line codes are edited from Forms 941, 943, 940, and 1120.
 - c. All cases in which the outstanding assessed liability exceeds \$10 million.
 - d. All cases for which the potential deficiency to the tax liability exceeds \$1 million (income, excise and other) and taking into account all open tax years.
 - e. Cases raising difficult or significant post-confirmation tax issues in the disclosure statement, the Chapter 11 plan, or in related documents, such as the Liquidating Trust Agreement.
 - f. All cases with potential tax liabilities for which significant publicity may be generated. The economic impact of the bankruptcy to the geographical area or the taxpayer's industry should be considered.
 - g. All cases in which technical advice or ruling requests are pending, including requests for change of method of accounting, if the outcome of the request has a significant tax impact on the taxpayer or on the taxpayer's industry.
 - h. All CIC under examination.
 - i. All taxpayers for which an Industry Specialization Program issue is present.
 - j. Presently or previously consolidated subsidiaries that file for bankruptcy for which the parent and/or sibling entities fall within the above criteria.
 - k. Parent corporations filing for bankruptcy in which consolidated subsidiaries fall within the above criteria.
 - l. Pre-packaged bankruptcies; a bankruptcy which includes a plan of reorganization the creditors negotiated and accepted prior to the filing of the bankruptcy petition.
 - m. Cases which do not fall within the above criteria but for which referral may be deemed to be in the best interests of the government.
- (3) Special care must be taken when only part of a consolidated corporate taxpayer files for protection under the reorganization provisions of the Bankruptcy Code. Members of the group are severally liable; therefore, referral should be based on an analysis of the consolidated corporate taxpayer and not just the debtor company.
- (4) The identification of particular taxpayers using the referral criteria is not intended to make these cases subject to mandatory examinations. However, Examination should give due consideration to the views of Counsel about whether to survey or audit the taxpayer and should consider the finality of a decision not to survey or audit a taxpayer's recent tax years before the claim's bar date.
- (5) The employee responsible for the case at the time the bankruptcy proceeding is identified will prepare the referral, and forward it to Associate Area Counsel through the Examination Bankruptcy Coordinator in Technical Services, as

soon as one or more of the above criteria are found to be present. The referral should be in writing, such as a memorandum, and labeled "Significant Corporate Bankruptcy Referral."

- (6) The Examination Bankruptcy Coordinator in Technical Services will ensure that the referral is forwarded to the Associate Area Counsel, with a copy sent to Insolvency, in order for a timely proof of claim to be filed with the Bankruptcy Court.
- (7) Within 3 days, Counsel will provide Examination with a written response as to whether the facts and circumstances warrant expedited examination procedures.
 - a. Upon receipt of a referral, a determination will be made as to which Counsel office and which attorney(s) will be selected as coordinators for the issues of the debtor taxpayer.
 - b. Counsel will also provide oral and written advice as to whether issuance of a statutory notice of deficiency will be authorized.
 - c. Counsel will establish a liaison with DOJ attorneys who have responsibility for the case.
- (8) If Counsel confirms that a case warrants expedited examination procedures, a meeting will be held with all Service personnel involved in the case to review Counsel's written response, discuss the case, and establish an action plan.
 - a. The meeting will be coordinated by the Examination Bankruptcy Coordinator in Technical Services and should include representatives from Insolvency (for further information regarding claim bar dates, filing proofs of claims, and other bankruptcy procedures) and from Tax Exempt and Government Entities (if pension plan problems are known to exist or may be indicated by the debtor's schedules). Consideration should also be given to inviting DOJ attorneys who have responsibility for the bankruptcy case. The plan should set forth the actions to be taken by Counsel and each affected function of the Area office, with copies given to each party. Monthly updates should be made.
 - b. At the meeting, it should be established which area will control particular aspects of the case. With CIC cases, the area where the CIC examination is controlled will probably also control claim assertion and claim defense strategies. Each case will be handled by the "team approach." All tax years included in the examination are to be viewed as a single unit.
 - c. All settlements of tax years or specific issues should be reviewed by the Counsel attorneys handling the case to assess the impact of the settlement on all open tax years.
 - d. The debtor should be informed of the coordinated effort and the urgency needed to expedite years under examination. The notification should be in writing and an acknowledged copy should become part of the audit file.
 - e. All contact with the taxpayer should be documented. This is especially important when assessing taxpayer's timely response and good faith cooperation with respect to information document requests.
- (9) If in the course of the examination, issues are addressed which have a tax effect on subsequent year returns, copies of Form 906, Closing Agreement on Final Determination Covering Specific Matters, or other agreements and relevant workpapers should be sent by the examiner or Appeals Officer to the Area PSP Manager before the case is closed. This information should be processed using Form 5346, Examination Information Report. Any future audit

issues identified by Counsel should be similarly processed through the Area PSP Manager, and followed-up by an appropriate survey and/or audit of the former debtor's future tax year returns when filed.

4.27.1.3.2
(08-25-2009)
**Inquiries from
Department of Justice**

- (1) The Examination Bankruptcy Coordinator in Technical Services will review DOJ Bankruptcy referrals.
- (2) If the Examination Bankruptcy Coordinator determines an examination is not warranted, they will advise DOJ of their decision.
- (3) If the Examination Bankruptcy Coordinator determines an examination may be warranted, they will make a referral to PSP. The referral will be made using Form 5346, Examination Information Report, and notate the bar date or any other response date needed at the top of the form.
- (4) Technical Services will advise DOJ of PSPs decision.

4.27.1.4
(08-25-2009)
**Bankruptcy Estate and
Filing Requirements**

- (1) The filing of a bankruptcy petition under any chapter creates a bankruptcy estate. However, for purposes of federal tax liability, only an individual Chapter 7 or 11 bankruptcy estate creates a separate taxable entity. The trustee or DIP of an individual bankruptcy estate is required to file tax returns and to pay any tax which may be due if the estate has gross income that meets or exceeds the amount required for filing. See IRC 1398(c), for more information. This amount is the total of the personal exemption amount and the basic standard deduction for a married individual filing separately. The trustee or DIP must obtain a taxpayer identification number for the estate. The filing of a tax return for the bankruptcy estate does not relieve the individual debtor of his or her tax filing requirement.
- (2) No separate taxable entity shall result from the commencement of a bankruptcy case involving a partnership or corporation. See IRC 1398, IRC 1399, IRC 6012(b)(3), and Title 11 of the United States Code (11 USC), also known as the United States Bankruptcy Code, Chapter 3, Subchapter IV, § 362 for applicable law.
- (3) Certain tax attributes of the estate must be reduced by any excluded income from cancellation of debt occurring in a bankruptcy proceeding. The amount of debt cancellation (debt discharged) and the amount to be offset against the estate's tax attributes are shown by filing Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (And Section 1082 Basis Adjustment), in the year of discharge. This form should be attached to the tax return of the bankruptcy estate. Tax attributes remaining under IRC 1398(i), at the time the case is closed by the Bankruptcy Court revert to the debtor in that year. It may be several years after the discharge date depending on the complexity of the case. The tax attributes are not available for the taxpayer's use during this period prior to the close of the case. For additional information concerning passive activity losses, credits, and at risk amounts, see Treas. Reg. section 1.1398-1 and Treas. Reg. section 1.1398-2.
- (4) There are special rules for the deductibility of administrative expenses of the bankruptcy estate, allowance of net operating losses, and carryback of tax attributes arising in post-petition taxable years. See IRC 1398, and Notice 2006-83, 2006-40 I.R.B. 596.

