



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

5.9.2

JUNE 20, 2025

## EFFECTIVE DATE

(06-20-2025)

## PURPOSE

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

## MATERIAL CHANGES

- (1) IRM 5.9.2.1.3, updated section to read Roles and Responsibilities.
- (2) IRM 5.9.2.1.3(2), updated name of Associate Area Counsel (SB/SE) to Associate Area Counsel (L&A) to reflect name change to Litigation & Advisory.
- (3) IRM 5.9.2.1.4(3), updated IRM title for Operational Review to be Operational Reviews and Employee Engagement.
- (4) IRM 5.9.2.1.6(3), updated web address for ReferenceNet Acronym Database.
- (5) IRM 5.9.2.1.6(4), added title to acronym table, included IRS and NFTL in table.
- (6) IRM 5.9.2.1.7(4), updated web address for Insolvency Knowledge Base Home Page.
- (7) IRM 5.2.8(1) Note, added link for web address to the BLARE website.
- (8) IRM 5.9.2.10 table, table content was updated to align with BAPCPA modified provisions of 11 U.S.C. 1112(B)(4)(I) and 11 U.S.C. 1115(a)(2).
- (9) IMD has been updated to comply with January 2025 Executive Orders and OPM guidance.
- (10) Editorial changes were made throughout this section to add clarity and to update citations.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.9.2, dated January 13, 2023.

## AUDIENCE

All Operating Divisions

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5.9.2

The Bankruptcy Code and Collection

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5.9.2.1  
(06-20-2025)  
**Program Scope and Objectives**

- (1) **Purpose.** Internal Revenue Manual 5.9.2, The Bankruptcy Code and Collection, is the section within IRM 5.9, Bankruptcy and Other Insolvencies, which introduces the reader to the U.S. Bankruptcy Code (USBC).
- (2) **Audience.** This IRM section is used primarily by Insolvency caseworkers and management in Specialty Collection Insolvency (SCI), which consists of Field Insolvency (FI) and the Centralized Insolvency Operation (CIO). It may be referred to by other SB/SE caseworkers such as revenue officers (ROs) and advisors. However, caseworkers in other functions may also refer to this subsection when dealing with a taxpayer that has filed bankruptcy.
- (3) **Policy Owner.** The Director of Collection Policy is responsible for issuing policy for the Insolvency program.
- (4) **Program Owner.** The program owner is Collection Policy, Insolvency an organization within the Small Business Self Employed (SB/SE) division.
- (5) **Primary Stakeholders.** The primary stakeholders of this section are SCI and SB/SE Collection caseworkers.
- (6) **Program Goals.** The goal of this IRM is to discuss the effect the filing of a bankruptcy petition has on collection.

5.9.2.1.1  
(01-13-2023)  
**Background**

- (1) IRM 5.9, Bankruptcy and Other Insolvencies, contains the IRS's position, procedures, information, instructions, guidance, and references concerning bankruptcy cases, stockbroker insolvencies, receiverships, assignments for the benefit of creditors, corporate dissolutions, and bulk sales.

5.9.2.1.2  
(01-13-2023)  
**Authority**

- (1) The Insolvency program operates within the guidelines of the US Bankruptcy Code (11 USC) and the Federal Rules of Bankruptcy Procedure.

5.9.2.1.3  
(06-20-2025)  
**Roles and Responsibilities**

- (1) **Roles and Responsibilities.** SCI implements bankruptcy procedural guidelines, controls and monitors bankruptcy cases for the IRS, and takes appropriate case actions on all of the bankruptcy cases assigned to Insolvency. FI also works receiverships, Securities Investor Protection Act (SIPA) proceedings, and assignments for the benefit of creditors. IRM 5.9.1.4, The Role of Insolvency, contains a detailed explanation of the roles and responsibilities of Insolvency.
- (2) **Contacts.** Insolvency caseworkers deal directly with Associate Area Counsel Litigation and Advisory (L&A), Department of Justice, Assistant US Attorneys, Bankruptcy Court employees, trustees, debtors and their attorneys, and IRS caseworkers in other functions throughout the IRS.
- (3) **Advice and Guidance.** Insolvency caseworkers are trained in specific areas of bankruptcy law that deal with tax administration and debtor protection. When confronted with bankruptcy issues beyond the scope of their knowledge and expertise, they are to seek guidance from Counsel.
- (4) **Directions from Insolvency.** Insolvency caseworkers provide directions on bankruptcies to other IRS functions. When IRS personnel contact Insolvency regarding a bankruptcy-related issue, they will comply with the advice and guidance given by Insolvency. If additional assistance is required, Insolvency

caseworkers will contact Counsel on behalf of other IRS personnel. See IRM 5.9.1.4, The Role of Insolvency, for a detailed explanation of the roles and responsibilities of Insolvency.

5.9.2.1.4  
(06-20-2025)

#### Program Management and Review

- (1) IRM 1.4.51.8.3, Case Management Tools, IRM 5.9.12, Insolvency Automated Processes, and IRM 5.9.16, Insolvency Case Monitoring, contain a list of required reports for caseworkers and managers to utilize for inventory management and review of case inventories. These sections also include the frequency and purpose of each report.
- (2) National quality reviews and consistency reviews are conducted on a regular basis. See IRM 1.4.51.16.1, NQRS, and IRM 1.4.51.16.2, EQ Consistency Reviews, for more information.
- (3) Operational reviews are conducted on a yearly basis. See IRM 1.4.51.17, Operational Reviews and Employee Engagement, for more information.

5.9.2.1.5  
(01-13-2023)

#### Program Controls

- (1) Managers are required to follow program management procedures and controls addressed in IRM 1.4.51.5.2, Reviews (Overview), IRM 1.4.51.15, Controls, and IRM 1.4.51.16, Quality.
- (2) Caseworkers and managers utilize the Automated Insolvency System (AIS) for case management, assignment and documentation of all insolvency and non-bankruptcy insolvency cases. See IRM 5.9.3.2, Automated Insolvency Systems (AIS).

5.9.2.1.6  
(06-20-2025)

#### Terms and Acronyms

- (1) A glossary of terms used by Insolvency can be found in IRM 5.9.1-1, Glossary of Common Insolvency Terms.
- (2) Common acronyms acceptable for use in the Automated Insolvency System (AIS) history are listed in IRM 5.9.1-2, Acronyms and Abbreviations.
- (3) Additional acceptable acronyms and abbreviations are found in the ReferenceNet Acronym Database, which may be viewed at: *ReferenceNet Legal and Tax Research*.
- (4) Acronyms used specifically in this IRM section are listed below:

#### ***Acronyms Used***

| Acronyms | Definitions   |
|----------|---|
| AIS      | Automated Insolvency System                             |
| BAPCPA   | Bankruptcy Abuse Prevention and Consumer Protection Act |
| CIO      | Centralized Insolvency Operation                        |
| EAEP     | Exempt, Abandoned, or Excluded Property                 |
| FI       | Field Insolvency  |
| IRS      | Internal Revenue Service                                |

| Acronyms | Definitions                     |
|----------|---------------------------------|
| NFTL     | Notice of Federal Tax Lien      |
| SCI      | Specialty Collection Insolvency |
| TBOR     | Taxpayer Bill of Rights         |
| USBC     | United States Bankruptcy Code   |

5.9.2.1.7  
(06-20-2025)  
**Related Resources**

- (1) Procedural guidance on insolvencies can be found throughout IRM 5.9, Bankruptcy and Other Insolvencies.
- (2) The US Bankruptcy Code and Rules Booklet.
- (3) AIS User Guide, Document 13219.
- (4) Insolvency Knowledge Base Home Page can be found at *Insolvency Knowledge Base Home Page*.
- (5) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them in 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about TBOR, see *Taxpayer Bill of Rights*.

5.9.2.2  
(06-20-2025)  
**Introduction to the Bankruptcy Code – 11 USC**

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

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

- (2) **The Bankruptcy Code.** Initially, individual states, not the federal government, enacted insolvency laws. Bankruptcy law is now codified in Title 11 of the United States Code (11 USC) and is known as the Bankruptcy Code, which establishes the law under which bankruptcy proceedings are commenced, administered, and closed.
- (3) **Chapters of the Bankruptcy Code.** The Bankruptcy Code is divided into chapters:
  - Chapters 1, 3, and 5 contain general provisions applicable to all types of bankruptcies
  - Chapter 7 deals with liquidating bankruptcies
  - Chapter 9 concerns debts of a municipality
  - Chapter 11 provides information on reorganizations of individuals and businesses, including corporations, partnerships, and Limited Liability Companies (LLCs)

- Chapter 12 concerns family farmer and family fisherman reorganizations
- Chapter 13 deals with reorganizations of individuals with regular income
- Chapter 15 addresses cross-border bankruptcies

(4) **Adjustments of Dollar Amounts in Bankruptcy Code.** At three-year intervals, automatic adjustments of dollar amounts in effect under certain sections of the Bankruptcy Code are made to reflect changes in the Consumer Price Index (11 USC 104(a)). The last automatic adjustments went into effect on April 1, 2022. Future adjustments will continue at each three-year period ending on April 1, thereafter. The next scheduled adjustments will be on April 1, 2025. The various sections of the Bankruptcy Code affected include:

- 101(18A) & (19A) - debt limits under definition of family farmer and family fisherman
- 101(51D) - definition of small business debtor
- 109(e) - allowable debt limits for filing under Chapter 13
- 507(a) - priority claims
- 522 - exemptions allowed to the debtor
- 707(b) - means testing provisions
- 1322(d) - current monthly income levels for determining duration of Chapter 13 plans
- 1325(2) - definition of disposable income

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

### 5.9.2.3

(08-05-2016)

#### **Bankruptcy Code Chapter Organization**

(1) **Organization.** Chapters 1, 3, and 5 of the Bankruptcy Code apply to all proceedings unless modified by a specific provision under a proceeding type. The Bankruptcy Code sections listed under each chapter are not all inclusive but have been added as a general reference.

(2) **Chapter 1, General Provisions.**

- Section 101, Definitions
- Section 105, Power of Court
- Section 106, Waiver of Sovereign Immunity
- Section 109, Who May be a Debtor

(3) **Chapter 3, Case Administration.**

- Section 302, Joint Cases
- Section 361, Adequate Protection
- Section 362, Automatic Stay

(4) **Chapter 5, Creditors, Debtor, and the Estate.**

- Section 507, Priorities
- Section 522, Exemptions
- Section 523, Exceptions to Discharge
- Section 524, Effect of Discharge
- Section 541, Property of the Estate
- Section 542, Turnover of Property to the Estate
- Section 547, Preferences
- Section 553, Setoff



## 5.9.2.4

(08-05-2016)

**Chapters in Bankruptcy**

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

5.9.2.5  
(06-20-2025)  
**First Meeting of  
Creditors**

- (1) **Section 341 Meeting.** The debtor must attend the first meeting of creditors (often called the 341 meeting or hearing) if held, to be questioned under oath by creditors and the trustee concerning financial affairs, debts, and property issues. The IRS can obtain pertinent information at the 341 meeting on specific tax matters. (See paragraph (5) below.)
- (2) **Order Not to Hold 341 Meeting.** For cases filed on or after October 17, 2005, the court may, after notice and hearing, order the trustee not to hold a 341 meeting if:
  - a. A party in interest requests no meeting be held;
  - b. The debtor has filed a plan; and
  - c. The debtor has solicited acceptances to the plan from the creditors prior to the commencement of the case.

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

- (3) **Insolvency Attendance.** FI caseworkers will attend any 341 meetings, including hearings for cases assigned to the CIO, if warranted. Arrangements to attend the 341 meetings must be made when the caseworker determines that attendance is necessary. This may involve coordination with the FI manager in situations where a case is assigned outside of the caseworker's physical jurisdiction and/or authorized travel area. Some courts will not permit Insolvency caseworkers to question the debtor at the 341 meeting. BAPCPA has not changed this limitation. If an Insolvency caseworker feels they will not be allowed to question the debtor, the case will be referred to Counsel to ask for legal representation at the hearing.
- (4) **CIO Cases.** If a CIO caseworker determines attendance at the 341 meeting is warranted for a Chapter 7 case assigned to the CIO, a CIO manager will contact the appropriate FI manager in order to have a FI caseworker assigned to question the taxpayer.
  - a. The CIO will document the issues that need to be questioned at the 341 meeting in the AIS history.
  - b. The FI caseworker that attended the hearing will update the AIS history with the information secured at the meeting.
  - c. The CIO caseworker will take action based on the information provided by FI.
- (5) **Possible 341 Meeting Issues.** After reviewing available information, an IRS representative may determine attendance at a 341 meeting is warranted. They can pursue information such as:
  - Potential Trust Fund Recovery Penalty (TFRP) liability (including names, duties, and responsibilities of officers)
  - Employment tax obligations
  - Self-employment tax issues
  - Assets not disclosed or undervalued on the schedules
  - Fraud referral potential
  - Deadlines for unfiled tax returns
  - Unreported income

- Improperly scheduled items; such as, scheduling the IRS's secured liability as unsecured or listing excluded property as exempt on Schedule C - Property Claimed as Exempt

- (6) **Questioning Debtors.** Caseworkers questioning debtors during the 341 meeting or when providing testimony, must communicate clearly, efficiently, and professionally so they may obtain information necessary to develop their cases while protecting the confidentiality of tax return information. Questions to the debtors should be open-ended to prompt full disclosure on the issues raised.
- (7) **Publication 1.** If a representative of the IRS attends a 341 meeting to question a debtor, and the debtor has no current outstanding liabilities (for example, the IRS is there to secure unfiled tax returns), the IRS employee will present the debtor with a copy of Pub 1, Your Rights as a Taxpayer, at the time of the hearing, if one has not been mailed to the debtor before the 341 meeting. Do not assume that the debtor has previously received Pub 1.

5.9.2.6  
(06-20-2025)  
**Applicable Sections of  
the Bankruptcy Code**

- (1) **Introduction.** Particular sections of the Bankruptcy Code impact the IRS's position during the pendency of a bankruptcy. The IRS's awareness of debtor rights increases when caseworkers are knowledgeable of the provisions of the Bankruptcy Code. Caseworkers must ensure debtor rights are not violated while the debtors are under the protection of the bankruptcy court. The IRS can be held liable for damages if a debtor's rights are violated.
- (2) **Section 106, Sovereign Immunity.** The doctrine of sovereign immunity asserts the United States cannot be sued unless it specifically waives its exemption from suit, such as by passing a statute permitting a damages suit against the United States. In certain situations listed therein, 11 USC 106 waives the sovereign immunity of the IRS and other governmental units.
- (3) **Section 362, Automatic Stay.** This provision of the Bankruptcy Code imposes an automatic stay (prohibition) on certain actions of creditors, including the United States, as of the petition date.
  - a. Some of the acts prohibited under the stay include acts to collect debts incurred before the filing of the bankruptcy petition and acts to take possession of, or exercise control over, property of the estate and the debtor.
  - b. Exceptions to the automatic stay are found in 11 USC 362(b). The Bankruptcy Reform Act of 1994 (BRA 94) expanded the list of exceptions to include: assessment of tax, issuance of notices of deficiencies, audits to determine tax liability, solicitation of tax returns, and the issuance of a notice and demand for payment of an assessment. BAPCPA added exceptions for the setoff of pre-petition income tax refunds against pre-petition income tax liabilities and the interception of income tax refunds for setoff against past due domestic support obligations.
  - c. BAPCPA restricts the duration of the stay in certain individual "serial filer" cases where the debtor had a prior bankruptcy dismissed for reasons other than failure to pass the means test. If the individual debtor had one prior bankruptcy dismissed within the preceding one year period of the current case, the stay will terminate on the 30th day in the current case, unless the court extends the stay. (See 11 USC 362(c)(3).) If the individual debtor had two or more prior bankruptcies dismissed within the previous year of the current case, the stay will not go into effect in the current case. (See 11 USC 362(c)(4).) In either instance, the stay against the debtor and property of the debtor that is not property of the estate

may be affected. The stay remains in effect on property of the estate, except for cases where the stay does not go into effect at all due to multiple prior bankruptcies. Where uncertainty exists regarding the stay, Insolvency will refer the case to Counsel to seek an order confirming the status of the stay. (See IRM 5.9.5.7, Serial Filers, for additional information.)

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

- (4) **Section 507, Priorities.** This section provides expenses and claims that are entitled to priority status and the order of priority. 11 USC 507(a)(8) defines pre-petition taxes entitled to priority status. See IRM 5.9.13.19.3, Unsecured Priority for additional information.
- (5) **Section 522, Exemptions.** This section of the code provides property exemptions a debtor may select. The federal exemptions apply unless the state in which the debtor is domiciled has enacted specific legislation authorizing or mandating the use of state exempted property limitations.
  - a. Under 11 USC 362, collection may not be pursued against property exempt under 11 USC 522 while the automatic stay is in effect because such property is still considered to be property of the debtor.
  - b. Upon discharge, exempt property is subject to collection of dischargeable taxes for which a Notice of Federal Tax Lien (NFTL) was filed prior to the petition date.

**Note:** Exempted property is not subject to liquidation by the court.

- (6) **Section 523, Exceptions to Discharge.** Exceptions to discharge for individual debtors' tax liabilities are listed in 11 USC 523(a)(1). Pre-petition tax liabilities given priority status by 11 USC 507 are not discharged. In addition, non-dischargeable taxes include taxes for which a return was not filed, taxes due on a late return filed after two years before the date of the bankruptcy petition, a fraudulent return, and taxes the debtor willfully attempted to evade or defeat. Liabilities for restitution-based assessments are also excepted from discharge. (See IRM 5.9.17.8.8, Discharge and Restitution Assessments, for additional information.)

**Note:** In a Chapter 13 bankruptcy filed prior to October 17, 2005, an individual may qualify for a "super discharge" of all pre-petition tax debts without regard to 11 USC 523 exceptions. BAPCPA establishes exceptions to Chapter 13 discharge for bankruptcies filed on or after October 17, 2005. BAPCPA limited the "super discharge" of all tax liabilities in Chapter 13 cases by adding certain tax exceptions.

- (7) **Section 524, Effect of Discharge.** The collection of discharged tax liabilities as a personal liability of the debtor is prohibited by this code section. The IRS can be sued for damages, including attorney fees, for violating the discharge injunction under 11 USC 524. However, punitive damages cannot be awarded.
- (8) **Section 541, Property of the Estate.** The filing of a bankruptcy petition creates an estate comprised of all property of the debtor as of the commencement of the case. The estate comes under the court's jurisdiction as of the date a bankruptcy petition is filed.

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

5.9.2.7  
(06-20-2025)  
**Bankruptcy Rules**

- (1) **Bankruptcy Rules.** The Bankruptcy Rules and Forms govern procedures in cases under Title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms (e.g., Form B410, Proof of Claim). The Bankruptcy Rules were adopted to secure the just, speedy, and inexpensive determination of every case and proceeding as stated in Bankruptcy Rule 1001. These rules provide a structure to the bankruptcy process by standardizing the formats, time frames, and methods to follow in the implementation of the Bankruptcy Code.
- (2) **Pertinent Bankruptcy Rules.** Insolvency caseworkers must familiarize themselves with the Bankruptcy Rules that pertain to the issues affecting the IRS. Examples of the relevant rules include:
  - a. Rule 1007. When a debtor files a petition (order for relief), certain schedules or statements must also be filed.
  - b. Rule 2002(a)(7). Creditors must receive notice of the bar date.
  - c. Rule 2002(j)(3). Notice of a Chapter 11 case must be mailed to the IRS address listed in the register maintained under Rule 5003(e) for the district in which the case is pending, whether or not the IRS is a creditor. See IRM 5.9.5.2.2, Mailing Matrix, for the address listed in Rule 5003(e).
  - d. Rule 5003(e). Register of mailing addresses for notifications sent to Federal and State Government units and certain taxing authorities.  
  
**Note:** Notice of Chapter 7, 12, and 13 cases must also be mailed to the IRS address specified under Rule 5003(e), when it is listed as a creditor in the debtor's schedules. (See Rule 2002(g)(2).)
  - e. Rule 2004. On motion of any party in interest, the court may order the examination of any entity. The term "entity" includes a person. (11 USC 101(15).)



- f. Rule 7001. Adversary Proceedings are subject to the formal procedural rules of Part VII of the Bankruptcy Rules; the rules in Part VII govern the procedural aspects of litigation involving the matters referred to in this rule.

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

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

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

5.9.2.8  
(06-20-2025)  
**Local Rules and  
Standing Orders**

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

**Note:** The CIO can research local rules regarding the disposition of credits by court on the Bankruptcy Law Advisory Rules Engine, *BLARE*, website found on SERP under the tab marked “Local/Sites/Other.” In addition, Insolvency caseworkers can research the local rules of any bankruptcy court at *US Courts* using the “Court Locator” feature.

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

5.9.2.9  
(01-13-2023)  
**Trustee**

- (1) **Bankruptcy Trustees.** Bankruptcy trustees have the fiduciary responsibility to administer the bankruptcy estate. The trustee ensures creditors are paid according to the provisions of the Bankruptcy Code and as reflected in the debtor’s plan in Chapter 11, 12, and 13 cases, and according to the provisions of the Bankruptcy Code in Chapter 7 cases; there is no plan in a Chapter 7 case. Trustees are appointed to serve in specific Chapter 7 cases as panel or case trustees. For Chapters 12 and 13, standing trustees are appointed to serve in all cases in the district. While a trustee may be appointed in a Chapter 11 case, the debtor-in-possession usually administers the bankruptcy estate. (See 11 USC 1104 and 1107.)
- (2) **The United States Trustee.** The United States Trustee (employed by the Justice Department) serves as a supervisory entity charged with, among other things, monitoring:

- The performance of all Chapter 7 trustees
- The performance of each Chapter 12 and 13 standing trustee
- Certain matters in Chapter 11 cases

**Note:** IRM 5.9.1-1, Glossary of Common Insolvency Terms, and other specific sections of this IRM, define the role of trustees in the different chapters of bankruptcy.

5.9.2.10

(06-20-2025)

**The Effect of Bankruptcy  
on Collection**

- (1) **Bankruptcy and the Collection of Taxes.** The filing of a bankruptcy petition immediately affects the collection of taxes. The actions the IRS may take depends on various factors, including but not limited to, the:
  - a. Debtor's being an individual, corporation, LLC, or partnership;
  - b. Chapter of bankruptcy filed;
  - c. Petition date;
  - d. Presence of complex or unusual issues, such as trust fund, adequate protection, or pyramiding of taxes;
  - e. Tax liabilities' being for pre-petition or post-petition periods;
  - f. Progress of the case as it moves through the bankruptcy processing stream; and
  - g. Debtor's prior history of filing bankruptcy, for cases filed on or after October 17, 2005.
- (2) **Impact on Collection.** The following table demonstrates the impact bankruptcy has on collection actions. Because of the variation of permissible actions among the courts, guidance on all possible actions cannot be provided in this IRM. Actions that are a violation of the automatic stay, and actions that are not a violation of the automatic stay, are discussed further in IRM 5.9.3.5, Automatic Stay, and its subsections. The automatic stay in serial filer cases is discussed in detail in IRM 5.9.5.7, Serial Filers, and its related exhibits.

**Note:** IRS employees should contact Insolvency, who, in turn, may consult with Counsel when assistance is required on complex bankruptcy-related issues.

*Impact on Collection*

| Event  | Chapter          | Pre-BAPCPA   | Post-BAPCPA  | 11 USC Section  |
|--|------------------|--|--|---|
| <b>Bankruptcy petition filed with no previous bankruptcies dismissed within the past one year period</b> | <b>All Cases</b> | <p>The automatic stay is imposed upon the filing of the petition. All actions against the property of the estate must be suspended, and all actions to collect pre-petition liabilities must be suspended as of the date the bankruptcy petition is filed.</p> <p>The Collection Statute Expiration Date (CSED) is suspended for the time period during which the automatic stay prohibits the IRS from collecting, plus six months.</p> | No change, except offsets of pre-petition income tax refunds against pre-petition income tax liabilities are not stayed. | <p>362, Automatic Stay; 541, Property of the Estate; 1306, Property of the Estate (Chapter 13s only); 1115, Property of the Estate</p> <p><b>Note:</b> Property of the estate has been expanded by BAPCPA for individual Chapter 11s.</p> |



| Event  | Chapter                             | Pre-BAPCPA     | Post-BAPCPA  | 11 USC Section                |
|--|-------------------------------------|----------------|--|-------------------------------|
| <b>Petition filed by an individual in a Chapter 7, 11, or 13 bankruptcy, less than 12 months after having been dismissed from one individual Chapter 7, 11, or 13 bankruptcy</b> | <b>Chapter 7, 11, 13 Individual</b> | Not applicable | <p>The stay will terminate with respect to the debtor and the debtor's property that is not property of the bankruptcy estate on the 30th day after the filing of the later case unless:</p> <ul style="list-style-type: none"> <li>• a party in interest demonstrates the filing in the latest case is in good faith or</li> <li>• 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.</li> </ul> <p>The stay only terminates as to actions by any creditor to collect a debt against the debtor personally or against the debtor's property securing such debt, unless that property is property of the estate. The stay does not terminate as to property of the estate. The termination applies to any creditor whether or not such creditor had taken any pre-petition collection action.</p> | 362(c)(3)-(4), Automatic Stay |

| Event   | Chapter                                    | Pre-BAPCPA  | Post-BAPCPA  | 11 USC Section   |
|---|--|---|--|--|
| <b>Petition filed by an individual in a Chapter 7, 11, 12, or 13 bankruptcy less than 12 months after having been dismissed from more than one individual Chapter 7, 11, 12, or 13 bankruptcy</b> | <b>Chapter 7, 11, 12, or 13 Individual</b> | Not applicable  | The stay will not go into effect at all unless a party in interest demonstrates, by clear and convincing evidence, the filing in the latest case is in good faith or if the previous case was a Chapter 7 dismissed because of the means test. | 362(c)(4), Automatic Stay  |
| <b>Case dismissed</b>   | <b>All Cases</b>                           | <p>Collection may be pursued for any tax and against any property after the order of dismissal is final. A debtor generally is allowed fourteen days to file an appeal of a dismissal order.</p> <p>The CSED is suspended for the time period during which the automatic stay prohibits the IRS from collecting, plus six months.</p> <p>The CSED may also be suspended after confirmation of a Chapter 11 plan until dismissal.</p> <p><b>Caution:</b> Counsel should be consulted on Chapter 11 cases with confirmed plans.</p> | No change  | 362(c), Automatic Stay; 707, Dismissal (Chapter 7); 1112, Conversion or Dismissal (Chapter 11); 1208, Conversion or Dismissal (Chapter 12); 1307, Conversion or Dismissal (Chapter 13) |

| Event  | Chapter  | Pre-BAPCPA   | Post-BAPCPA  | 11 USC Section  |
|--|--|--|--|---|
| <b>Case awaiting confirmation for bankruptcy petition filed more than one year since any preceding dismissal</b>   | <b>Chapter 11, 12, and 13</b>                                      | Automatic stay remains in effect. In Chapter 11 or 12 cases, substantial liability may accrue between the petition date and the filing of the plan and its confirmation. In Chapter 13 cases, the delay is usually limited. Insolvency will monitor these bankruptcy cases to take steps to reduce pyramiding of delinquent post-petition tax liabilities. | No change  | 503, Allowance of Admin. Expenses (Chapter 11); 1305 post-petition claim (Chapter 13); 1112(b)(4)(I), Conversion or Dismissal |
| <b>Individual case awaiting confirmation with one dismissal of a previous individual Chapter 7, 11, or 13 bankruptcy within the last 12 months before the petition date.</b>               | <b>Chapter 11 Individual, Chapter 13</b>                           | Automatic stay remains in effect until case closure.   | Automatic stay remains in effect for 30 days after the petition date, unless extended by the court due to evidence it was filed in good faith, or if the previous case was a Chapter 7 dismissed because of the means test. The stay will not terminate as to property of the bankruptcy estate. | 362(c)(3), Automatic Stay   |
| <b>Individual case awaiting confirmation with more than one dismissal of a previous individual Chapter 7, 11, 12, or 13 bankruptcy within the last 12 months before the petition date.</b> | <b>Chapter 11 Individual, Chapter 12 Individual, or Chapter 13</b> | Automatic stay remains in effect until case closure.   | Automatic stay will not go into effect at all unless a party in interest demonstrates, by clear and convincing evidence, the filing in the latest case is in good faith, or if the previous case was a Chapter 7 dismissed because of the means test.  | 362(c) (4), Automatic Stay  |

| Event                  | Chapter                    | Pre-BAPCPA  | Post-BAPCPA  | 11 USC Section               |
|------------------------|----------------------------|---|--|------------------------------|
| <b>At confirmation</b> | <b>Chapter 11 Business</b> | <p>The automatic stay is lifted unless the plan provides otherwise.</p> <ul style="list-style-type: none"> <li><b>Pre-petition</b> taxes are paid through the plan</li> </ul> | <p><b>Post-petition</b> taxes, that are administrative expense taxes, should generally be paid when due since the case is subject to conversion or dismissal under section 1112(b)(4)(I) if post-petition taxes are not timely paid. However, if the plan provides otherwise and the IRS did not object, the IRS may be bound by the plan.</p> | 1141, Effect of Confirmation |

| Event   | Chapter                      | Pre-BAPCPA   | Post-BAPCPA   | 11 USC Section  |
|---|------------------------------|--|---|---|
| <b>At confirmation for bankruptcy petition filed more than one year since any preceding dismissal</b> | <b>Chapter 11 Individual</b> | <p>The automatic stay is lifted unless the plan provides otherwise.</p> <ul style="list-style-type: none"> <li>• <b>Pre-petition</b> taxes are paid through the plan.</li> <li>• <b>Post-confirmation</b> taxes are fully collectible through the normal collection process.</li> </ul> <p><b>Caution:</b> Collection from property that remains property of the estate after confirmation is prohibited without first obtaining relief from the stay.</p> | <p>Unless otherwise ordered, the discharge is not granted until completion of all plan payments. The automatic stay remains in effect until the earlier of dismissal, discharge or closure of the case in court.</p> <ul style="list-style-type: none"> <li>• <b>Pre-petition</b> taxes are paid through the plan.</li> <li>• <b>Post-petition</b> taxes, should generally be paid when due since the case is subject to conversion or dismissal under section 1112(b)(4)(I) if post-petition taxes are not timely paid. If the IRS consents, these taxes may be paid in deferred installments under the terms of the plan.</li> <li>• <b>Defaulted plans:</b> Since the automatic stay is in effect the IRS may need to seek dismissal for collection of taxes.</li> </ul> | 1141, Effect of Confirmation, 1112(b)(4)(I), Conversion or Dismissal, 362(c)(2), Automatic Stay |

| Event | Chapter | Pre-BAPCPA | Post-BAPCPA  | 11 USC Section |
|-------|---------|------------|--|----------------|
|       |         |            | <ul style="list-style-type: none"> <li>• <b>Post-confirmation</b> taxes are fully collectible through the normal collection process on non estate assets. Collection from property of the estate is prohibited without first obtaining relief from the automatic stay.</li> </ul> <p><b>Note:</b> In some areas the case is closed in court after confirmation, which terminates the automatic stay.</p> |                |

| Event   | Chapter                       | Pre-BAPCPA   | Post-BAPCPA   | 11 USC Section  |
|---|-------------------------------|--|---|---|
| <b>At confirmation for bankruptcy petition filed more than one year since any preceding dismissal</b> | <b>Chapter 13, Chapter 12</b> | The automatic stay remains in effect after confirmation and during the entire pendency of the plan. Collection of all pre-petition taxes, and also post-petition taxes for which claims are filed under 11 USC 1305 and provided for in the plan, is limited to payments under the plan. Limited administrative collection of post-petition taxes may be possible depending on local law and practice. Counsel should be consulted to formulate the most effective legal means of dealing with post-petition non-compliance in a particular bankruptcy court jurisdiction. | No change to pre-petition taxes.<br><b>Note:</b> Unfiled post-petition tax returns are now grounds for dismissal. The taxing authority may request the court enter an order converting or dismissing the case. If the debtor fails to file a post-petition tax return, or fails to properly obtain an extension of the due date, within 90 days of the request, the court shall convert or dismiss the case. Failure to file pre-petition tax returns required by 11 USC 1308 is also grounds for conversion or dismissal pursuant to 11 USC 1307(e) in Chapter 13 cases. | 1227, Effect of Confirmation (Chapter 12); 1327, Effect of Confirmation (Chapter 13); 521(j), Debtor's Duties |

| Event        | Chapter   | Pre-BAPCPA  | Post-BAPCPA | 11 USC Section  |
|--------------|-----------|---|-------------|---|
| At discharge | Chapter 7 | <p>In an asset case, the trustee liquidates certain assets to pay pre-petition claims. The stay is lifted at discharge against all property – including exempt, or abandoned property, except for property that remains property of the estate (i.e., the property is being administered by the trustee).</p> <p><b>Note:</b> Excluded property is never property of the estate and therefore not subject to the automatic stay. However, the stay against collection of pre-petition debts could still apply to the collection from excluded property.</p> | No change.  | 727, Discharge; 522, Exemptions; 523, Exceptions to Discharge |



| Event | Chapter | Pre-BAPCPA  | Post-BAPCPA | 11 USC Section |
|-------|---------|---|-------------|----------------|
|       |         | <b>Caution:</b> Care must be taken when releasing either non-discharged pre-petition taxes or post-petition taxes to systemic collection procedures when the risk of attaching property that is being liquidated by the trustee exists. Local procedures may call for control of these cases through the use of Other Investigations (OIs). |             |                |

| Event               | Chapter                      | Pre-BAPCPA   | Post-BAPCPA   | 11 USC Section   |
|---------------------|------------------------------|--|---|--|
|                     |                              | <p>The principal difference between no asset and asset cases, for collection purposes is, usually no property will be distributed through the no asset bankruptcy, and the IRS will generally not participate in the case. At discharge, property exempted by the debtor is available to collect pre-petition discharged taxes for which a NFTL was filed before the filing of the petition. (This can be done in either Chapter 7 Asset or No Asset cases.) Abandoned or excluded property is available to collect pre-petition discharged taxes due to the IRS's statutory lien. The IRS can also pursue collection of non-dischargeable liabilities from any exempt, excluded, abandoned, non-administered, or after-acquired property of an individual debtor. In both asset and no asset cases, unless the taxes are excepted from discharge under 11 USC 523, all pre-petition debts are discharged.</p> |   |  |
| <b>At Discharge</b> | <b>Chapter 11 Individual</b> | <p>Discharge is generally granted after the plan has been confirmed and becomes effective.</p> <p><b>Reminder:</b> Confirmation does not discharge an individual debtor from certain taxes under 11 USC 523.</p>   | <p>The discharge is granted when all plan payments are complete unless the court ordered otherwise for cause. A hardship discharge may be granted to an individual who has not completed the plan, if certain conditions are met.</p> | <p>1141(d), Effect of Confirmation; 523(a), Exceptions to Discharge; 727(a), Discharge</p> |

| Event               | Chapter                    | Pre-BAPCPA   | Post-BAPCPA  | 11 USC Section  |
|---------------------|----------------------------|--|--|---|
| <b>At discharge</b> | <b>Chapter 11 Business</b> | Discharge is generally granted after the plan has been confirmed and becomes effective.<br><b>Note:</b> If the plan provides for liquidation of all or most of the property of the estate, confirmation will not result in a discharge.  | No change.   | 1141(d), Effect of Confirmation;<br>523(a), Exceptions to Discharge;<br>727(a), Discharge.    |
| <b>At Discharge</b> | <b>Chapter 12</b>          | Discharge is granted upon completion of payments. If the debtor cannot complete the plan, a hardship discharge is granted, which is similar to a Chapter 7 discharge. Certain debts are excepted under 11 USC 523.   | No change.   | 522, Exemptions;<br>523, Exceptions to Discharge;<br>1228 (a) and 1228 (b), Discharge         |
| <b>At Discharge</b> | <b>Chapter 13</b>          | With a super discharge, all pre-petition taxes and any post-petition taxes provided for in the plan are discharged. Post-petition taxes not provided for in the plan can be released to normal collection.<br>With a hardship discharge, all pre-petition debts, except for debts excepted from discharge under 11 USC 523, are discharged just as if the case were a Chapter 7. | Cases no longer receive a super discharge. Certain tax debts are excepted from discharge. (See IRM 5.9.17.8, Discharge and Exceptions to Discharge.) | 1328(a), Discharge; 522, Exemption; 523, Exceptions to Discharge; 1328(b), Hardship Discharge |

| Event          | Chapter          | Pre-BAPCPA   | Post-BAPCPA   | 11 USC Section               |
|----------------|------------------|--|---|------------------------------|
| <b>Closing</b> | <b>All Cases</b> | <p>Upon the closing of Chapter 7, 12, or 13 cases, and Chapter 11 cases of individuals, collection may be pursued from all non-discharged liabilities.</p> <p>Discharged liabilities may be collected from pre-petition exempt property, if the IRS filed a NFTL before the bankruptcy case was filed.</p> <p>Discharged liabilities may also be collected from abandoned or excluded property, for which the IRS has a statutory lien, but only to the extent of the property interest that existed pre-petition, even if a NFTL was not filed before the bankruptcy.</p> | <p>Pursuit of excluded, exempt, or abandoned property may increase for taxes excepted from discharge in Chapter 13 cases.</p> | 523, Exceptions to Discharge |

| Event | Chapter | Pre-BAPCPA   | Post-BAPCPA | 11 USC Section |
|-------|---------|--|-------------|----------------|
|       |         | <p><b>Exception:</b> In Chapter 11 cases of corporations that have closed, the IRS will generally be bound by the terms of a confirmed Chapter 11 plan with regard to all pre-confirmation liabilities unless the debtor has defaulted on the plan. If the debtor has defaulted on the plan, liabilities are considered to not be discharged to the extent the plan provided for their payment; the non-dischargeable portion of the liabilities can be collected.</p> |             |                |

5.9.2.10.1  
(06-20-2025)  
**Bankruptcy Discharges  
and Collection**

- (1) **Introduction.** The objective of a debtor's filing bankruptcy is to gain relief by being granted a discharge from debt. The discharge bars creditors from collecting discharged debts. IRM 5.9.17.8, Discharge and Exceptions to Discharge, deals in depth with discharge issues for the various bankruptcy chapters. Listed below are summaries of the overall impact of bankruptcy discharges on the IRS's collection process.
- (2) **Discharge - Individual Debtors.** The effects of discharge on individual debtors are listed below in chapter order.

- a. Chapter 7. The court grants a discharge, subject to the exceptions in 11 USC 523 for individual debtors (11 USC 727(a)). A court may deny a discharge if one of the criteria in 11 USC 727 is met.
- b. Chapter 11 Filed Prior to October 17, 2005. The confirmation of a plan discharges all pre-confirmation debts except for those listed in 11 USC 523 for individual debtors, regardless of whether a proof of claim has been filed. (11 USC 1141(d)(1).)

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

- c. Chapter 11 Filed on or after October 17, 2005. BAPCPA changed the rules of discharge for individuals filing Chapter 11 bankruptcies. Discharge takes place after all plan payments are completed. If a Chapter 11 individual debtor is unable to complete the plan payments, the debtor may still be able to obtain a hardship discharge under special circumstances (11 USC 1141(d)(5)(B)).
- d. Chapter 12. Once the debtor has completed payments under the plan, the court will issue a discharge of all debts provided for in the plan, except for those listed in 11 USC 523 (11 USC 1228(a)). In certain circumstances, a judge can issue a hardship discharge before the plan is completed (11 USC 1228(b)).
- e. Chapter 13 Filed Prior to October 17, 2005. When a debtor has completed plan payments, the court grants a super discharge (11 USC 1328(a)). All tax debts provided for in the plan and disallowed claims are discharged. After a plan is confirmed, but before it is completed, the court may grant a hardship discharge, subject to the exceptions in 11 USC 523.

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

- f. Chapter 13 Filed on or after October 17, 2005. BAPCPA changed the Chapter 13 discharge provisions to except from discharge trust fund taxes, taxes related to unfiled returns and certain late returns, taxes related to fraudulent returns, and willful attempts to evade or defeat taxes. These non-dischargeable taxes and related interest must be paid in full in the plan, or they will survive the bankruptcy. See IRM 5.9.17.15.1, Chapter 13 Discharge Changes under BAPCPA, for additional information.
- g. Chapter 13 and Consolidated Appropriations Act of 2021 (CAA): On December 27, 2020, CAA 2021 was signed into law. The CAA amends 11 USC 1328 of the Bankruptcy Code, adding subsection (i). After notice and hearing, 11 USC 1328(i) gives the bankruptcy court discretion to grant an early discharge to a Chapter 13 debtor under certain circumstances. Early discharge can be granted to a debtor who has defaulted on no more than three residential mortgage payments on or after March 13, 2020 because of a material financial hardship caused by the COVID-19 pandemic. Early discharge can be granted to a debtor whose

confirmed plan provides for curing defaults on a residential mortgage, and the debtor has entered into a qualifying loan modification or forbearance agreement with the lender.

**Reminder:** USC 1328(i) was in effect until December 27, 2021 and has not been extended beyond that date.

**Note:** It is important for Insolvency to monitor bankruptcy cases of debtors filing motions for discharge under 11 USC 1328(i), and to promptly refer such cases to Counsel.

**Caution:** Depending on a bankruptcy court's interpretation of section 1328(i), a debtor may be granted the broad discharge under 11 USC 1328(i) even though they have not made all of the plan payments, including payments to the IRS for its priority claims. The IRS could object to a proposed 11 USC 1328(i) discharge (before it is granted) on the basis that 11 USC 1328(i) should not be applied in a way that provides debtors with a discharge of unsecured debts that they could easily pay under the plan. 11 USC 1328(i) allows debtors to complete a plan notwithstanding certain problems making their mortgage payments. The debtor may not be allowed a discharge of unsecured debts they can afford to pay just because they modified their mortgage obligation.

- (3) **Discharge - Corporate Debtors.** The effects of discharge on corporate debtors are listed below in chapter order.
- a. Chapter 7. A discharge is not available for corporate debtors. (11 USC 727(a)(1).)
  - b. Chapter 11. For cases filed prior to October 17, 2005, a corporate discharge is a super discharge (11 USC 1141(d)(1)). For cases filed on or after October 17, 2005, a corporate debtor does not receive a discharge of any taxes for which it filed a fraudulent return or willfully attempted in any manner to evade or defeat the payment of tax. (11 USC 1141(d)(6).)
  - c. Liquidating Chapter 11. A corporation is not entitled to a discharge in a liquidating Chapter 11 proceeding. (11 USC 1141(d)(3).)
  - d. Chapter 12 (Family Farmer/Fisherman). Once the debtor has completed payments under the plan, the court will issue a discharge of all debts provided for in the plan. (11 USC 1228(a).)
- (4) **Exceptions from Discharge - Individuals.** Under 11 USC 523(a), the following taxes and related interest are not discharged in an individual Chapter 7, 11, or 12 bankruptcy:
- a. Priority tax claims (except priority administrative claims). (See IRM 5.9.13.19.3, Unsecured Priority.)
  - b. Taxes for which a return was not filed. 11 USC 523(a)(1)(B) denies a debtor a discharge of taxes when a return was not filed. See IRM 5.9.2.10.1.2, A Valid Tax Return, for an explanation on what does and does not constitute a valid tax return. Also, see IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in which a SFR was Prepared, IRM 5.9.17-6 and IRM 5.9.17-7, for additional information.
  - c. Taxes for which a late return was filed within two years of the bankruptcy filing.
  - d. Taxes for which the debtor filed a fraudulent return or willfully attempted to evade or defeat the tax.

## 5.9 Bankruptcy and Other Insolvencies

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

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

**Reminder:** These exceptions to discharge also apply to hardship Chapter 13 cases.

- (5) **Willful Evasion.** To judge actions as constituting willful evasion, the IRS must consider the following strictures:
- A preponderance of the evidence is the standard to prove willful evasion.
  - Failure to file and pay taxes is usually not enough to demonstrate willful evasion. But a debtor's voluntary, conscious, and intentional failure to file returns for an extended period of time, and a failure to pay taxes when the debtor had the ability to do so, may qualify as willful evasion under 11 USC 523(a)(1)(C).
  - Some courts require the IRS to prove some affirmative misconduct, such as concealed or fraudulently transferred assets.

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

### 5.9.2.10.1.1 (01-13-2023) Exempt or Excluded Property

- (1) **Exemptions and Exclusions.** Pursuant to 11 USC 522(b), an individual debtor may choose to exempt certain property from the bankruptcy estate. Except as provided by state law, the debtor can select either the state exemptions or the federal exemptions listed in 11 USC 522(d). Some of the debtor's property is excluded from the bankruptcy estate under 11 USC 541. Certain retirement savings accounts or pension plans are excluded from the bankruptcy estate under 11 USC 541(c)(2) if they contain enforceable anti-alienation provisions. IRM 5.9.17.5, Exempt, Abandoned or Excluded Property (EAEP), provides extensive information on exempt, abandoned, and excluded assets.
- (2) **Cases Filed in the 9th Circuit.** If the debtor filed bankruptcy in the 9th Circuit and listed excluded property as exempt on bankruptcy Schedule C - Property Claimed as Exempt, refer the case to Area Counsel for guidance on how to proceed in the case.

#### *Courts in the 9th Circuit*

|                        |
|------------------------|
| <b>Courts include:</b> |
| Alaska                 |
| Arizona                |
| California             |
| Guam                   |
| Hawaii                 |



|                          |
|--------------------------|
| <b>Courts include:</b>   |
| Idaho                    |
| Montana                  |
| Nevada                   |
| Northern Mariana Islands |
| Oregon                   |
| Washington               |

**Reminder:** In the 9th Circuit, claiming excluded property as exempt may impair the IRS's ability to collect dischargeable taxes from the excluded property when there was no valid NFTL filed prior to the petition date. No action is required when the IRS does not intend to pursue collection of the dischargeable liabilities from excluded property after the bankruptcy discharge. (See IRM 5.9.17.5, Exempt, Abandoned or Excluded Property (EAEP), and related subsections for information on exempt and excluded property.)

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

**Caution:** The IRS must follow established collection procedures while ensuring the provisions of the Bankruptcy Code are not violated.

- (4) **Statutory Lien.** The IRS' statutory lien survives the bankruptcy when there are abandoned or excluded assets to which the lien attaches. A NFTL is not required to pursue collection from the abandoned or excluded assets after the bankruptcy discharge. See IRM 5.9.17.5.2(1), Collection Determination, for additional information.

5.9.2.10.1.2  
(01-13-2023)  
**A Valid Tax Return**

- (1) **For Discharge Purposes.** 11 USC 523(a) was amended by BAPCPA to clarify that a tax return prepared by the IRS under IRC 6020(a) or a "written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal" is a return for the purpose of discharge, but a return prepared under IRC 6020(b) is not a return for the purpose of discharge.
- (2) **Revenue Ruling 74-203.** Before September 12, 2005, the IRS treated a signed Form 870 or Form 4549, as a return prepared under IRC 6020(a). (See Rev. Rul. 74-203.) Thus, situations in which these documents were signed are not subject to the SFR discharge exception under 11 USC 523(a)(1)(B)(i), although the other exceptions could apply.
- (3) **Revenue Ruling 2005-59.** Neither Form 870 nor Form 4549 signed on or after September 12, 2005, constitutes a return for purposes of IRC 6020(a) unless accompanied by some other document that is signed under penalties of perjury and purporting to be a return. (See Rev. Rul. 2005-59.) If the documents do not comply with Rev. Rul. 2005-59, then the discharge exception under 11 USC 523(a)(1)(B)(i) applies. Because it is not signed under penalties of

perjury, an agreed SFR where only a Form 4549 is signed by the taxpayer, is also not a valid return. A SFR with a TC 599 cc 89 is an agreed assessment, but it is not a return pursuant to IRC 6020(a) because it is not signed under penalties of perjury and does not purport to be a return. The IRS will not contest the dischargeability of a tax debt in bankruptcy on the basis that no return was filed, if the taxpayer submitted a signed Form 870, Waiver on Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, before the revocation of Rev. Rul. 74-203 on September 12, 2005. This position applies equally to Form 1902, Report of Individual Income Tax Audit Changes (obsoleted 1988), and Form 4549, Income Tax Examination Changes.

- (4) **Identifying Unagreed Substitutes for Return.** True SFRs can be difficult to identify. A tax module with an annotation “Substitute for Return” is not necessarily non-dischargeable, nor is it necessarily a true SFR. A true unagreed SFR that is non-dischargeable has a TC 150 of \$0.00, a TC 290 or a TC 300 with a debit dollar amount, a DLN blocking code of 54X or 64X, and a TC 599 cc 88 or no TC 599 present. (See IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared, for additional information.)
- (5) **Chief Counsel Notice CC-2010-016.** On September 2, 2010, the Office of Chief Counsel issued Chief Counsel Notice CC-2010-016, Litigating Position Regarding the Dischargeability in Bankruptcy of Tax Liabilities Reported on Late-Filed Returns and Returns Filed After Assessment, to set forth the IRS’s position regarding substitutes for return. The Chief Counsel Notice states that if the debtor files a Form 1040 after the IRS made an assessment, then it is only a return for bankruptcy purposes to the extent it reported new, previously un-assessed liabilities. If the debtor files a return after the assessment of a substitute for return under IRC 6020(b), only the additional income and tax on the return filed after the SFR is subject to discharge. For additional information refer to IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared, IRM 5.9.17-6 and IRM 5.9.17-7, when determining dischargeability and the IRS has assessed a substitute for return under IRC 6020(b).