



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.9.10

OCTOBER 28, 2022

EFFECTIVE DATE

(10-28-2022)

PURPOSE

- (1) This transmits a revised IRM 5.9.10, Processing Chapter 13 Bankruptcy Cases..

MATERIAL CHANGES

- (1) IRM 5.9.10.3.2 Aspects of the Initial Case Review. Incorporates IPU: 20U1197, 21U0355, 21U1181 and 22U0606 issued 11-03-2020 through 05-10-2022.

IRM	Change
IPU 20U1194 issued 11-03-2020 IRM 5.9.10.6.1(4)	Updated to provide clarity about the content of the summary history. Eliminate the impression that a summary history for streamline case is different from a regular case. Remove potential fraud from the sample summary history.
IPU 21U0355 issued 03-08-2021 IRM 5.9.10.3.1(1)	Incorporate language to standardize initial contact time frames.
IPU 21U0355 issued 03-08-2021 IRM 5.9.10.9(5)	Incorporate letter 3927 as an option to address post-petition tax liabilities.
IPU 21U0355 issued 03-08-2021 IRM 5.9.10.9(5) (Note)	Advise do not input TC 971 AC 043 when a request for IA is received while debtor is in bankruptcy.
IPU 21U1181 issued 10-18-2021 IRM 5.9.10.3.2(2)	Provide consistency in the procedures on how caseworkers will address unfiled returns.
IPU 21U1181 issued 10-18-2021 IRM 5.9.10.6.1(6)	Add guidance about what actions should be taken when a caseworker amends a claim to zero.
IPU 22U0606 issued 05-10-2022 IRM 5.9.10.2(1)	Update debt limits for individuals filing bankruptcy under chapter 13 as well as the effective date.
IPU 22U0606 issued 05-10-2022 Changes throughout	Editorial changes were made throughout this section to add clarity and to update, correct, add citations and correct broken links.

EFFECT ON OTHER DOCUMENTS

IRM 5.9.10, dated 08/17/2018 is superseded. The following IRM Procedural Updates (IPUs), issued from November 11, 2020 through May 10, 2022, have been incorporated into this IRM: 20U1194, 21U0355, 21U1181 and 22U0606.

AUDIENCE

Small Business/Self-Employed, Specialty Collection Insolvency

Kareem Williams Director, Collection Policy

5.9.10

Processing Chapter 13 Bankruptcy Cases

Table of Contents

5.9.10.1 Program Scope and Objectives

5.9.10.1.1 Background

5.9.10.1.2 Authority

5.9.10.1.3 Responsibilities

5.9.10.1.4 Program Management and Review

5.9.10.1.5 Program Controls

5.9.10.1.6 Terms/Definitions/Acronyms

5.9.10.1.7 Related Resources

5.9.10.2 Chapter 13 Eligibility

5.9.10.3 Initial Case Review for Chapter 13 Bankruptcy

5.9.10.3.1 Initial Case Review Time Frames

5.9.10.3.2 Aspects of the Initial Case Review

5.9.10.4 Pre-Confirmation Compliance Efforts

5.9.10.5 The Chapter 13 Plan

5.9.10.5.1 Notice of Plan and Hearing

5.9.10.5.2 Plan Requirements

5.9.10.5.2.1 Interest in the Post-BAPCPA Case

5.9.10.5.3 Plan Review

5.9.10.5.4 Objecting to a Plan

5.9.10.5.5 Reasons to Object

5.9.10.5.6 Chapter 13 Plans and Criminal Restitution Assessments

5.9.10.6 Transfer of Chapter 13 Cases from Field Insolvency (FI) to the Centralized Insolvency Operation (CIO)

5.9.10.6.1 Field Insolvency (FI) Actions Prior to Case Transfer

5.9.10.6.2 Centralized Insolvency Operation (CIO) Case Actions

5.9.10.7 After Confirmation

5.9.10.7.1 Modification of Plan

5.9.10.7.2 Impact of the Automatic Stay

5.9.10.8 Monitoring the Chapter 13 Plan

5.9.10.8.1 Property of the Estate after Confirmation

5.9.10.9 Post-Petition Tax Liabilities

5.9.10.9.1 Collection from Specific Assets

5.9.10.9.2 11 USC Section 1305 Claims

5.9.10.10 Court Intervention

5.9.10.10.1 Conversion

-
- 5.9.10.11 Distribution of Funds
 - 5.9.10.12 Trustee Audit
 - 5.9.10.13 Chapter 13 and the Individual Shared Responsibility Payment (SRP) Liability
 - 5.9.10.13.1 Proofs of Claim and Individual SRP Liabilities
 - 5.9.10.13.2 Setoffs and Individual SRP Liabilities
 - 5.9.10.13.3 Closing Chapter 13 Cases with SRP Liabilities
 - 5.9.10.13.3.1 Addressing the Pre-Petition Installment Agreement (IA) at Case Closure When there is a SRP Liability
 - 5.9.10.14 Chapter 13 and the Employer Shared Responsibility Payment (ESRP) Liability
 - 5.9.10.14.1 Proofs of Claim and ESRP Liabilities
 - 5.9.10.14.2 Closing Chapter 13 Cases with ESRP Liabilities

5.9.10.1
(08-07-2018)
Program Scope and Objectives

- (1) **Purpose.** This Internal Revenue Manual (IRM) section contains guidance for Insolvency employees related to processing bankruptcy cases filed under Chapter 13 of the United States Bankruptcy Code, known as Title 11 of the United States Code (USC).
- (2) **Audience.** This IRM section is designed for use by Specialty Collection Insolvency (SCI) caseworkers and management in the Centralized Insolvency Operation (CIO) and Field Insolvency (FI). This IRM section may be referred to by other operations when dealing with a taxpayer that has filed Chapter 13 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 stakeholder is SB/SE Collection, Specialty Collection Insolvency.
- (6) **Program Goals.** The goal of this IRM is to provide fundamental knowledge and procedural guidance for working Chapter 13 cases, facilitating effective monitoring and timely closure actions on behalf of the government's interest while ensuring taxpayer rights are protected. Following the guidance in this IRM will ensure cases are worked in accordance with bankruptcy laws and regulations.

5.9.10.1.1
(08-07-2018)
Background

- (1) **Reorganization of Debts for Individuals.** A Chapter 13 bankruptcy represents a voluntary reorganization of debts for individuals. The debtors, who usually retain all of their assets, commit a portion of their future income to repay creditors. Cases normally remain open for 36 to 60 months, with 60 months being the maximum and most common time frame. Under the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), for bankruptcies commencing on or after October 17, 2005, the plan length is determined by the relationship of the debtor's income to the median income in the state where the debtor filed the bankruptcy petition (11 USC 1322(d)). This chapter is not available to corporations, Limited Liability Companies (LLCs), or partnerships. Chapter 13 is available only to individuals (wage earners and sole proprietors) with regular income.
- (2) **Chapter 13 Trustee Contact.** A court-appointed trustee oversees the administration of a Chapter 13 bankruptcy case. Generally, FI caseworkers make direct contact with trustees. Limited contact between CIO and the trustee may be necessary, usually to resolve payment posting issues.
- (3) **Trustee Duties.** The Chapter 13 trustee:
 - a. Acts as an agent of the court.
 - b. Oversees the fair and economical administration of cases.
 - c. Ensures all creditors receive an equitable distribution.
 - d. Receives periodic payments from the debtor.
 - e. Distributes periodic payments to creditors.
- (4) **Protection of the Government's Interests.** Sometimes, the interests of other creditors compete with the interests of the IRS. Because confirmation hearings take place early in Chapter 13 cases, Insolvency must address case issues at

a pace sufficient to protect the interests of the Government. Confirmation hearings usually take place within two to three months from the petition date.

5.9.10.1.2
(08-07-2018)
Authority

- (1) The Insolvency program operates within the guidelines of the Title 11 United States Code (11 USC) and the Federal Rules of Bankruptcy Procedure.
- (2) IRM 5.9.3.1.2, Authority, contains Insolvency caseworkers' authority in the Insolvency program.

5.9.10.1.3
(08-07-2018)
Responsibilities

- (1) IRM 5.9.3.1.3, Responsibilities, contains Insolvency caseworkers' responsibilities in the Insolvency program.
- (2) IRM 5.9.1.4, The Role of Insolvency, provides a list of titles and responsibilities with an explanation of their roles and authority.
- (3) **Centralized Insolvency Operation (CIO).** CIO loads Chapter 13 cases onto the Automated Insolvency System (AIS), runs the Insolvency Interface Program (IIP), and works any errors, including the Potentially Invalid TIN (PIT) list. CIO works all Chapter 13 status reports. CIO monitors Chapter 13 cases for confirmation of the plan after the case is transferred from FI to CIO, and processes Chapter 13 trustee payments. Upon closure of a Chapter 13 case by the bankruptcy court, CIO makes any necessary account adjustments and closes the case on AIS. CIO handles the toll-free and internal phones for most Chapter 13 bankruptcy case inquiries.
- (4) **Field Insolvency (FI).** FI completes the initial case review in Chapter 13 cases and ensures that any required proofs of claim are completed and acknowledged. If there are no field issues, the case is generally transferred to CIO to monitor for confirmation. FI caseworkers review schedules and plans in some Chapter 13 cases, make referrals to Counsel, attend first meetings of creditors, participate in outreach efforts, and negotiate with debtors or their representatives. FI handles calls received on Chapter 13 cases currently assigned to a FI group and on complex Chapter 13 cases.
- (5) **Counsel.** Certain issues in a Chapter 13 case may be referred to Associate Area Counsel or directly to the U.S. Attorney's Office (USAO). Within this IRM, the term "Counsel" refers to Associate Area Counsel or the USAO, whichever is appropriate. For more information on referrals, see the following subsections in IRM 5.9.4, Common Bankruptcy Issues:
 - IRM 5.9.4.15, Referrals-Representing IRM in Bankruptcy Court
 - IRM 5.9.4.15.1, Direct Referrals
 - IRM 5.9.4.15.2, Referrals to Counsel (Non- Direct Referrals)
 - IRM 5.9.4.15.3, Significant Bankruptcy Case Referrals
 - IRM 5.9.4.15.4, Referrals Tolerances

5.9.10.1.4
(08-07-2018)
Program Management and Review

- (1) **Program Management.** IRM 1.4.51.8.3, Case Management Tool, IRM 5.9.12, Insolvency Automated Process, 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) **Quality Reviews.** National quality reviews and consistency reviews are conducted on a consistent basis. See IRM 1.4.51.16.1, NQRS, and IRM 1.4.51.16.2, EQ Consistency Review, for more information.
- (3) **Program Reviews.** Operational and Program reviews are conducted on a yearly basis. See IRM 1.4.51.17.2, Operational Reviews, and IRM 1.4.51.17.5, Program Reviews, for more information.
- 5.9.10.1.5
(08-07-2018)
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 use the AIS for case management, assignment, and documentation of all insolvency and non-bankruptcy insolvency cases. See IRM 5.9.3.2, Automated Insolvency System (AIS).
- 5.9.10.1.6
(08-07-2018)
**Terms/Definitions/
Acronyms**
- (1) A glossary of terms used by Insolvency can be found in Exhibit 5.9.1-1, Glossary of Commons Insolvency Terms.
- (2) Common acronyms acceptable for use in the Automated Insolvency System (AIS) history are listed in Exhibit 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: <http://rnet.web.irs.gov/Resources/Acronymbdb.aspx>
- 5.9.10.1.7
(08-07-2018)
Related Resources
- (1) Procedural guidance on Insolvencies can be found throughout IRM 5.9, Bankruptcy and Other Related Insolvencies.
- (2) The United States Bankruptcy Code and Rules, including Local Bankruptcy Court Rules.
- (3) Applicable Case Law.
- (4) AIS User Guide, Document 13219.
- (5) My SB/SE Insolvency/Bankruptcy page: <http://mysbse.web.irs.gov/collection/insolvency/default.aspx>
- 5.9.10.2
(05-10-2022)
Chapter 13 Eligibility
- (1) **Criteria.** 11 USC 109(e) describes the criteria the debtor must meet to file a Chapter 13 bankruptcy case:
- The debtor must be an individual, or an individual and spouse, who can file a joint bankruptcy petition. An individual who is a stockbroker or a commodities broker cannot be a debtor in a Chapter 13 case;
 - The debtor must have regular income (including income from self-employment);
 - Non-contingent, liquidated, secured debts must total less than \$1,395,875; and
 - Non-contingent, liquidated, unsecured debts must total less than \$465,275.
- Note:** These limitations became effective April 1, 2022. The debt ceilings are for the total of all debts, not just tax debts.

- e. BAPCPA established a fifth criteria under 11 USC 109 for Chapter 13 bankruptcies filed on or after October 17, 2005. Debtors must undergo credit counseling within the 180 days prior to the filing of the bankruptcy petition, unless specific exceptions are met. For those exceptions, see 11 USC 109(h).

- (2) **Eligibility/Automatic Adjustments.** As required under 11 USC 104(b), the Chapter 13 dollar amounts are automatically adjusted at three-year intervals to reflect changes in the Consumer Price Index. As required under 11 USC 104(b), the next three-year automatic adjustments of the dollar amounts affecting the eligibility of a debtor to file Chapter 13 will occur on April 1, 2025.

5.9.10.3
(06-25-2013)
**Initial Case Review for
Chapter 13 Bankruptcy**

- (1) **Initial Actions.** Upon notification of a Chapter 13 filing, Insolvency must follow the processing procedures outlined in IRM 5.9.5, Opening a Bankruptcy Case. IRM 5.9.10.3.1, Initial Case Review Time Frame, discusses the acceptable time frame for completion of the initial case review by FI caseworkers. Aspects of the initial case review are discussed in IRM 5.9.10.3.2, Aspects of the Initial Case Review.

5.9.10.3.1
(03-08-2021)
**Initial Case Review Time
Frames**

- (1) **General Time Frame.** FI caseworker must conduct an initial case review at least five calendar days prior to the 341 Meeting of Creditors. The review must be completed within 30 calendar days of assignment when the case is not received at least five calendar days prior to the 341 meeting or 30 calendar days from APOC run date when APOC is down due to the dead cycles. Primary case actions must be taken during the initial case review.

Caution: Expeditious action is needed to protect the bar date when the case is received less than 30 days before the bar date.

- (2) **Aspects of the Review that are Required Earlier.** Certain elements of the initial case review are required sooner. Some of these elements are:
 - Resolving stay violations
 - Responding to pending motions or defensive litigation
 - Addressing adequate protection when the Service has a pre-petition Notice of Federal Tax Lien (NFTL) on file
- (3) **Aspects of the Review Requiring Action within Five Calendar Days.** The caseworker must address APOC flags within five calendar days of APOC identifying a potential violation of the stay. See IRM 5.9.14.2.7, APOC Flags Condition Time Frame Requirement.. Flags that identify possible stay violations are the “Credits Posted After Petition Date” and “Lien Recorded Date Blank” flags.

5.9.10.3.2
(10-18-2021)
**Aspects of the Initial
Case Review**

- (1) **Bankruptcy Petition, Schedules, and SOFA.** Numerous electronic tools are available to assist the FI caseworker with an initial case review. The bankruptcy petition, bankruptcy schedules, and Statement of Financial Affairs (SOFA) are available electronically on the Public Access to Court Electronic Records (PACER). Research should include a review and analysis of the debtor’s bankruptcy petition available on PACER, including the SOFA and bankruptcy schedules. The debtor’s attorney may also mail these documents to the Service. Actions taken during the initial case review will depend on the facts and circumstances in the case. The case with a large outstanding liability

will require a more in-depth review than a case with a small balance due. See IRM 5.9.5.4, Automated Insolvency System (AIS) Documentation, that contains a listing of what AIS histories must include on each case reviewed.

Note: The Director, Specialty Collection Insolvency (SCI), may provide “streamlined procedures” for FI caseworkers to follow in certain cases. Certain aspects of the initial case review within this IRM may not be required in the “streamlined” case.

Issues requiring clarification at the 341 meeting of creditors may be identified as the caseworker completes the initial case review. The caseworker may also determine that there are no issues for discussion at the 341. The caseworker must document the AIS history clearly with any issues that require a discussion at the 341. If there are no issues to be discussed at the 341, document the AIS history accordingly. The caseworker must document whether or not they will attend the 341 meeting of creditors. If the debtor has a business, the caseworker can gather information regarding the taxpayer’s business prior to the 341 by sending the debtor Form 13648, Request for Business Information.

(2) **IDRS.** A review of IDRS will assist the caseworker in determining if the debtor is compliant with tax laws. The review will also assist the caseworker in determining:

- Filing requirements and return filing history

Note: When a caseworker’s initial case review or APOC processing indicates a debtor is responsible for unfiled returns with tax potential, the caseworker must attempt to secure the unfiled returns by following the guidelines described in IRM 5.9.10.4, Pre-Confirmation Compliance Efforts and IRM 5.9.13.18.2, Addressing Unfiled Returns.

- Current balances due and delinquent returns
- The latest period for which a Form 940, Form 941, or Form 943 was filed, if applicable
- Requirements for federal tax deposits (FTDs), if applicable
- Failure to make any FTDs, if applicable
- Currency in making estimated tax payments, when applicable
- Current or previously accepted offer in compromise (see IRM 5.8.10.2, Bankruptcy)

(3) **Pre-Bankruptcy Collection Actions.** Activity in other Service functions may be pending or ongoing when the bankruptcy is filed (for example, a revenue officer may have outstanding levies). Coordination between Insolvency and the functions taking collection or examination action helps the IRS comply with the provisions of the automatic stay.

- The Service must protect taxpayer rights by avoiding actions in violation of the automatic stay.
- If a violation of the stay occurs, the IRS may be liable for damages and attorney’s fees, but not punitive damages.

(4) **Levy Issues.** In general, the Service should release all levies on an account immediately upon learning that the taxpayer has filed bankruptcy and that the automatic stay is in effect (but, see 11 USC 362(c)(3) and (4) in cases where the taxpayer has filed multiple bankruptcies). Any funds levied upon but not paid over, or property seized but not yet sold, are property of the bankruptcy estate. The property should be turned over to the debtor or the bankruptcy

trustee, if ordered by the court. FI caseworkers should contact Counsel on a case-by-case basis when serious levy issues arise. (See IRM 5.9.5.8, Levies and Bankruptcy.) The FI caseworker must take appropriate actions to address any outstanding pre-petition levies, including issuing a release of levy, when needed.

- (5) **Adequate Protection.** Although used infrequently in a Chapter 13 bankruptcy case, adequate protection may be considered in cases where pre-levied funds are significant and the trustee may claim preference per 11 USC 547 or when the IRS claim is not fully provided for in the plan. Alternately, FI may propose a request to lift the stay if a debtor's ability to complete the plan is questionable. FI must confer with Counsel on unusual situations of this nature.

Note: A detailed discussion of adequate protection and cash collateral, more common in Chapter 11 cases than in Chapter 13, can be found in IRM 5.9.8.6, Adequate Protection, and IRM 5.9.8.8, Cash Collateral/Property Depreciation of the Estate.

- (6) **Automatic Stay Review.** Cases should be reviewed for dismissals of previous bankruptcies within one year of the current bankruptcy. See the following IRM subsections and Exhibits within IRM 5.9.5, Opening a Bankruptcy Case, for guidance on conducting the review and correct actions that should be taken depending upon the results of the review:

- IRM 5.9.5.7, Serial Filers
- IRM 5.9.5.7.1, Systemic Identification of Serial Filer Cases
- Exhibit 5.9.5-4, Common Processing Steps in Serial Filer Cases
- Exhibit 5.9.5-5, Processing the Serial Filer Case When the Stay Terminates After 30 Days
- Exhibit 5.9.5-6, Processing Serial Filer Cases When No Stay Goes in Effect

- (7) **Discharge Limitations.** In Chapter 13 cases, debtors may not be eligible to receive a discharge in the current bankruptcy case when they received a discharge in a prior bankruptcy case. Courts have held that eligibility for discharge depends on the petition date of the prior bankruptcy case and the petition date of the current bankruptcy case, as well as the type of prior bankruptcy case filed by the debtor. See:

- In re Sanders, 551 F.3d 397 (6th Cir. 2008)
- In re Bateman, 515 F.3d 272, 280 (4th Cir. 2008)
- In re Gagne, 394 B.R. 219, 230 (1st Cir. BAP 2008)

But, see In re Sidebottom, 430 F.3d 893, 897 n.1 (7th Cir. 2005) (dicta that eligibility depends on discharge date in prior bankruptcy). Failure to adhere to the minimum time limitation may result in the debtor's liabilities being non-dischargeable (11 USC 1328(f)). IRM 5.9.5.7.1(5), Systemic Identification in Serial Filer Cases, Discharge Limitations, and Exhibit 5.9.5-3, Allowable Elapse Time Between Bankruptcy Filing and Discharges, provide instructions for reviewing accounts to determine if the debtor is eligible to receive a discharge in the current bankruptcy case based on the petition date in the prior case and the petition date in the current case.

- (8) **NFTL Refile Determinations.** The caseworker assigned the Chapter 13 case must review IDRS for any periods where a Notice of Federal Tax Lien (NFTL) has been filed to determine if a NFTL refile is appropriate. IRM 5.9.5.9.2,

Refiling Notice Of Federal Tax Lien, explains the window for refiling NFTLs and provides guidance for determining if a NFTL should be refiled. A NFTL refile review is required for Chapter 13 accounts only during initial case reviews.

- (9) **Letter to Non-Debtor Spouse.** Upon initial Chapter 13 case review, Letter 4521, Non-Debtor Letter, must be sent to non-debtor spouses who owe joint liabilities with the individual Chapter 13 debtor. The liability may not be fully abated for the non-debtor spouse when included in the debtor's bankruptcy filing.
- (10) **CSED Protection.** Per IRC 6503(h), the running of the statutory period for collection, known as the Collection Statute Expiration Date (CSED), is suspended and collection is prohibited while the debtor is in bankruptcy, plus six months after. This suspension only applies to the debtor. If only one spouse files bankruptcy but joint income tax returns were filed, the caseworker is required to review the CSED and address any imminent CSED's. See IRM 5.9.4.3, ASER/CSED, for additional information.
- (11) **Exam Issues.** IRM 5.9.4.4, Examination and Insolvency, provides guidance for addressing examination issues. A review of AMDISA and contact with the revenue agent or examiner may be required.
- (12) **TFRP Issues.** A review of the bankruptcy schedules or SOFA may reveal that the debtor is an officer of a corporation, a member of a LLC, or a partner in a partnership. If the corporation, LLC, or partnership has unpaid withholding or excise taxes, the Chapter 13 debtor may be responsible for the Trust Fund Recovery Penalty (TFRP). A review of the Automated Trust Fund Recovery (ATFR) program is necessary to determine what periods may have a TFRP proposed but not yet assessed against the debtor. These unassessed liabilities must be added manually to the proof of claim. Information on parties that may be assessed a TFRP can be found in:
 - IRM 5.7.3.3.1, Establishing Responsibility
 - IRM 5.9.8.4.2(18), Aspect of The Initial Case Review in the Chapter 11 Case, TFRP Issues
 - IRM 5.15.1.13, Business Entity and Collection
- (13) **Debtor is a Member of a LLC.** When reviewing the debtor's bankruptcy schedules, SOFA, or IDRS, the caseworker may discover that the debtor has an interest in a LLC. If the Chapter 13 debtor is the single member in a LLC, the debtor may be personally liable for certain employment tax debts under the EIN of the LLC. The debtor may also be liable for the TFRP when a LLC has unpaid trust fund taxes due to unpaid excise tax incurred after January 1, 2008, or withholding taxes incurred after January 1, 2009. See IRM 5.9.13.14, Limited Liability Companies (LLC), and subsections, for additional information.

Note: Manual intervention is required in these cases to determine the responsibility of the debtor and if the liabilities must be included on the proof of claim.
- (14) **Additional Aspects.** Facts and circumstances in the case may warrant additional research, especially in the "large dollar" Chapter 13 case. Additional research that may be necessary include:
 - A review of prior AIS histories when AIS identified prior bankruptcy filings.
 - A review and analysis of locator services, such as Accurant.

- A review of any available online courthouse records.
- A review of IDRS command code (cc) IRPTL for possible mortgage interest paid for identification of real property ownership.
- A review of Department of Motor Vehicle (DMV) records when expensive or collectible vehicles are listed in the bankruptcy schedules.

5.9.10.4
(08-07-2018)

Pre-Confirmation Compliance Efforts

- (1) **In-Business Monitoring.** In jurisdictions experiencing substantial delays prior to confirmation, FI should monitor in-business taxpayers prior to confirmation. Business Master File (BMF) liabilities can be tracked systemically using TC 136. If the confirmation occurs very soon after the filing of Chapter 13 bankruptcy, the use of TC 136 may not be warranted. (See 5.9.8.13, Post-petition/Pre-confirmation BMF Monitoring.)
- (2) **Unfiled Returns.** Effective October 17, 2005, no later than the day before the 341 meeting is first scheduled, the debtor must file all tax returns “with the appropriate tax authorities” that are due under applicable non-bankruptcy law for taxable periods ending during the four year period prior to, or on, the date of the filing of the bankruptcy petition (11 USC 1308(a)). After FI has made a reasonable attempt to resolve the non-compliance administratively, if tax returns remain unfiled by the 341 meeting, the case may be referred to Counsel for conversion or dismissal (11 USC 1307(e)) and/or for objection to confirmation of the plan, subject to the tolerances established in IRM 5.9.4.15.4, Referral Tolerances. IRM 5.9.13.18.2, Addressing Unfiled Returns, explains the use of Letter 1714 and proofs of claims to alert the trustee to debtor non-compliance. Also, see 11 USC 1325(a)(9) which makes filing the returns a requirement for confirmation.

Note: It is the Service’s policy to address filing compliance for the six years prior to the filing of the bankruptcy petition.

- (3) **Delaying the 341 Meeting.** The trustee may hold open the 341 meeting to provide the debtor an opportunity to file tax returns. For returns that are not past due as of the petition date, such time may be no more than the later of:
 - 120 days after the date the first meeting is held or
 - The return due date plus timely filed extensions.

For returns that are past due as of the petition date, delay of the 341 meeting cannot extend beyond 120 days after the date of the first meeting of creditors. After notice and a hearing and before the tolling period for filing the return(s) terminates, the bankruptcy court may extend the trustee’s filing period, but the extension may not exceed 30 days for delinquent returns or the extended due date for returns that are not yet due.

5.9.10.5
(10-01-2015)

The Chapter 13 Plan

- (1) **Time Limitations.** In a Chapter 13 bankruptcy case, the plan may be filed concurrently with the petition. If this is not the case, the debtor must file a plan within 14 days of the petition date (Bankruptcy Rule 3015(b)). 11 USC 1326(a)(1) requires plan payments to begin within 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, unless the court orders otherwise.
- (2) **Basic Plan Requirements.** In general, the plan should specify:
 - a. The length of the plan;

- b. The monthly payment amount;
- c. The percentage of the claims being paid to each class of creditors;
- d. The rate of interest, if applicable, as set forth in IRC 6621; and
- e. Other conditions that affect the treatment of each creditor.

For cases filed prior to October 17, 2005, if all plan requirements are met, the court must grant the debtor a “super discharge” of all debts provided for in the plan at the end of the Chapter 13 proceeding. Certain taxes in cases filed on or after October 17, 2005, are excepted from discharge. If a debtor fails to complete the plan payments, the court may still grant a “hardship” discharge. For more information on discharge in a Chapter 13 case, see the following subsections in IRM 5.9.17, Closing a Bankruptcy Case:

- IRM 5.9.17.8, Discharge and Exceptions to Discharge, including subsections
- IRM 5.9.17.15, Chapter 13 Discharge Pre-BAPCPA
- IRM 5.9.17.15.1, Chapter 13 Discharge Under BAPCPA
- IRM 5.9.17.15.2, Chapter 13 Hardship Discharge

5.9.10.5.1
(08-07-2018)
**Notice of Plan and
Hearing**

- (1) **Court Notification to Creditors.** Bankruptcy Rule 3015 provides that the clerk of the court shall mail a copy of the plan or a summary of the plan to each creditor, along with the notice of the confirmation hearing. Bankruptcy Rule 2002(b)(3) provides for 28 days notice to creditors for the hearing to consider confirmation of a Chapter 13 plan. For cases where the IRS is listed as a creditor, the plans are mailed to the CIO’s post office box. The CIO does not forward the plan to FI. It is placed in classified waste. The FI caseworker must review the plan electronically on PACER. (See Exhibit 5.9.11-2, Mail Direct to Classified Waste, for additional information.)

Note: An objection can be filed if a creditor receives less than 28 days notice.

- (2) **Confirmation Hearing.** The confirmation hearing for Chapter 13 cases may not be held earlier than 20 days and no later than 45 days after the 341 meeting, unless it is in the best interests of both the creditors and the estate to hold the hearing at an earlier date and no objection is filed (11 USC 1324(b)).

5.9.10.5.2
(06-25-2013)
Plan Requirements

- (1) **Necessary Plan Provisions.** An adequate Chapter 13 plan will:
- a. Provide the trustee all, or a portion of, the debtor’s future earnings for the repayment of debts;
 - b. Provide for full payment of all priority claims under 11 USC 507 in deferred cash payments unless the creditor agrees to a different treatment; and
 - c. Provide all claims in the same class receive equal treatment.
- (2) **BAPCPA Amendments.** In addition to the requirements of an adequate plan listed in paragraph (1) above, for cases filed on or after October 17, 2005, BAPCPA has added two provisions to 11 USC 1322 that may affect the Service.
- a. **Payment of Interest.** The debtor may provide for the payment of interest on unsecured claims that are non-dischargeable under 11 USC 1328(a) if the debtor has disposable income sufficient to pay interest after making provisions for the full payment of all allowed claims. See IRM

5.9.10.5.2.1, Interest in the Post-BAPCPA Case, below for additional information.

- b. Length of Plan. The allowable length of a plan is determined by comparing the debtor's current monthly household income (times 12) to the annual median income of the debtor's state (11 USC 1322(d)). Extensions of plan length can be granted by the court, but the court may not approve a period longer than five years.

(3) **Additional Provisions.** 11 USC 1322(b) sets forth permissive actions that may be incorporated in the plan, including:

- a. Modifying the rights of secured creditors (for example, paying a secured creditor the amount of its claim in deferred payments instead of having the debtor surrender the collateral); and
- b. Making provisions for certain post-petition claims.

Caution: Vague or ambiguous language in plans should be flagged for possible objections. Seek Counsel's input, if necessary.

(4) **Plan Confirmation Conditions.** 11 USC 1325(a) states the court shall confirm a plan if the enumerated requirements are met. The requirements include:

- a. All provisions contained in the Bankruptcy Code are met and all fees are paid;
- b. The plan is proposed in good faith;
- c. Unsecured creditors will receive at least the amount to which they would be entitled in a Chapter 7 bankruptcy;
- d. Secured creditors will receive their collateral, or the amount of their claim with interest, if paid in installments;

Note: 11 USC 1325(a)(5)(B)(i) provides the lien securing the claim must be retained until the earlier of the time the underlying debt is paid or the time a discharge is granted. Also, the plan must provide for the retention of the lien if the case is dismissed or converted without completion of the plan.

- e. The plan is feasible (i.e., the debtor will be able to make all plan payments and comply with the plan); and
- f. The debtor has filed all applicable Federal, State, and local tax returns as required by 11 USC 1308.

5.9.10.5.2.1
(08-07-2018)
**Interest in the
Post-BAPCPA Case**

(1) **Interest Provisions.** In the Chapter 13 case filed on or after October 17, 2005, the Service may be entitled to the payment of accrued post-confirmation interest during the life of the plan. FI caseworkers must review the plan for interest provisions. Any interest rate provided for in the plan "locks in" at the rate and type provided for in the plan during the life of the plan. If the plan provides for the payment of accrued interest, but does not specify the interest type, treat the interest type as "Daily Compounded" as provided for by IRC 6621. If the plan provides for the payment of simple interest, "Simple" should be the interest type on the Confirmed Plan Monitoring (CPM) Screen on AIS. At no time should "IDRS Compounded" be the interest type on the CPM Screen on AIS.

(2) **Interest on Secured Claims.** The Service is entitled to the payment of interest on a claim at the IRC 6621 rate during the month of confirmation (See 11 USC 511) during the life of the plan, unless the plan is confirmed with another specified rate, or states "no interest". If the plan is silent on the payment of

interest, it is the position of the Service that the Service is entitled to compound interest at the IRC rate on the confirmation date during the life of the plan.

- (3) **Interest on Unsecured Claims.** Generally, the Bankruptcy Code has no provision for the payment of accrued interest on dischargeable unsecured liabilities. The plan may provide for interest on non-dischargeable unsecured liabilities when the debtor has disposable income available to pay such interest after providing for full payment of all allowed claims (11 USC 1322(b)(10)). If the plan provides for interest on the unsecured claim, the Service will not litigate the interest rate. If the plan provides for interest, but does not specify if the plan interest is “simple” or “compound” interest, treat the interest type as “Daily Compounded.”

5.9.10.5.3
(08-07-2018)
Plan Review

- (1) **Timely Review of Plan.** FI caseworkers have sole responsibility for reviewing Chapter 13 plans and plan amendments. Absent extenuating circumstances, FI caseworkers must review plans prior to the deadline for objection to confirmation. This ensures if an objection is necessary, the referral will be made in time for the Service to be represented in bankruptcy court. The FI caseworker must access the plan on the court’s electronic site or contact the court or debtor’s attorney to have a copy sent directly to the FI office address.
- (2) **Pre-BAPCPA Reviews.** For cases filed prior to October 17, 2005, once a plan is confirmed, the provisions of the confirmed plan bind the IRS as a creditor, whether or not the plan provides for payment of the proof of claim filed by the Service.
- (3) **BAPCPA Reviews.** The implementation of BAPCPA provisions for cases filed on or after October 17, 2005, does not lessen the need for thorough review of Chapter 13 plans. However, BAPCPA has codified some plan requirements and exceptions to discharge that protect creditors and, if appropriately adhered to in the plan, reduce the Service’s need to request that objections to confirmation be filed:
- Periodic payments to secured creditors must be in equal monthly amounts.
 - If a case is dismissed or converted before completion of a plan, the Service retains its liens (if any) to the extent recognized by non-bankruptcy law.
 - Liabilities on unfiled returns, or late returns filed after two years before the petition date, are non-dischargeable.
- (4) **Pre-Confirmation Trustee Plan Review.** The Chapter 13 trustee reviews plans and claims prior to confirmation. The Service should file proofs of claim as soon as possible after a Chapter 13 petition is filed. (See 11 USC 1324(b), IRM 5.9.10.5.4, Objecting to a Plan, and IRM 5.9.10.5.5, Reason to Object, for additional information concerning plan objections.)
- (5) **Provides for – Plan Provision Problem.** Frequently, Chapter 13 plans include a provision stating all priority debts under 11 USC 507 will be paid in full. Some courts have held such a provision adequately “provides for” priority tax debts; consequently, they must be discharged under 11 USC 1328(a), even if the plan does not actually provide for any payments on the tax debt.
- (6) **Timely Claims.** The Service should file a claim prior to the general bar date, or preferably by the confirmation date (should confirmation occur first),

whenever possible. This protects the interests of the Government by ensuring priority and other tax claims will be included and paid under the plan.

Note: For cases filed on or after October 17, 2005, trust fund taxes are excepted from discharge, even if the Service files an untimely claim or does not file any claim (11 USC 1328(a)(2)). Therefore, it is in the Service's best interest to file an untimely claim, if necessary, as the debtor may modify the plan to provide for the liability.

(7) **Unacceptable Plan.** If the plan does not provide for appropriate payment of the Service's claims, the FI caseworker should follow the guidance in IRM 5.9.10.5.4, Objecting to a Plan, below.

5.9.10.5.4
(08-07-2018)
Objecting to a Plan

(1) **Objection/Negotiations.** When a FI bankruptcy caseworker judges a plan to be inadequate, an objection must be considered. The objection may be raised by:

- a. Insolvency negotiating acceptable plan terms with the debtor's attorney prior to confirmation to avoid potential litigation;
- b. Raising concerns with the plan at the 11 USC 341 meeting; or
- c. Making a referral to Counsel, requesting that Counsel file a formal objection to confirmation of the proposed plan, subject to the referral tolerances in IRM 5.9.4.15.4, Referral Tolerances.

(2) **Referral System.** FI and Counsel should work together to coordinate an efficient system for routing referrals, allowing for adequate control and timely actions through use of the AIS "referral" screen. All referrals must include the debtor's Taxpayer Identification Number(s) TIN(s). All referrals to Counsel must be documented on the AIS referral screen.

Reminder: Referrals to local Counsel should address case-specific questions, not policy or procedural issues set forth by the National Office.

(3) **Insolvency Responsibilities.** When an objection is in order, the FI caseworker should:

- a. Refer to the local bankruptcy court rules controlling the case for time frames to object;
- b. Make prompt contact with the debtor's attorney to attempt informal resolution; and,
- c. If appropriate, consult with Counsel on the proper method for a formal objection.

(4) **Objection to Plan Factors.** Besides IRM 5.9.4.15.4 criteria, special circumstances and local guidelines may be established to control the number of plan objections.

(5) **Timely Objections.** Once a FI caseworker has decided to refer an objection to confirmation to Counsel, the referral must be made timely to give Counsel adequate notice to prepare a quality objection to the plan. Counsel can advise local offices of the number of days in advance Counsel needs to receive a referral to prepare an adequate objection.

- (6) **Outreach Efforts.** Outreach to Insolvency stakeholders should be an integral part of the local Insolvency program. Personal interactions with trustees and bar association members can foster cooperation of all parties and address issues of mutual concern.

5.9.10.5.5
(08-07-2018)
Reasons to Object

- (1) **Protection of the Government's Interests.** In many jurisdictions, the Chapter 13 trustee assures the court that the plan meets the conditions listed under 11 USC 1325. However, the trustee might not object to a plan that adversely affects an IRS claim. The IRS should object to a plan when appropriate to protect the Government's interests while tax accounts are under the jurisdiction of the bankruptcy court. (See IRM 5.9.10.7, After Confirmation.)
- (2) **Ineligibility.** One ground for filing a motion to dismiss the case and an objection to the plan is "ineligibility." A debtor may be ineligible for Chapter 13 relief for several reasons. The most common reason a debtor is ineligible for Chapter 13 relief is that their liabilities exceed the dollar limitations for a Chapter 13 case. The following examples demonstrate debtors that are ineligible to file Chapter 13. The list is not all inclusive:
- a. The total of the debtor's secured or unsecured debts exceed the limitation for secured or unsecured debt in a Chapter 13 bankruptcy.
 - b. The entity's name on the petition is the name of a partnership, which research confirms; but, a partnership is not eligible to file Chapter 13.
 - c. The debtor's occupation is listed in court filings as a stockbroker or a commodities broker. Neither is eligible to file a Chapter 13 bankruptcy case.
- (3) **Plan Concerns.** Additionally, the Service may object to confirmation because the plan:
- a. Fails to meet the requirements of 11 USC 1322 and 1325 (for example, priority and secured claims will not be paid in full).
 - b. Is not feasible given the debtor's current income, expenses, and future tax obligations.
 - c. Proposes a balloon payment.
 - d. Discriminates against the IRS by treating the Service's claims differently than other creditors in the same classification.
 - e. Proposes payments outside the plan with an exception for cases with restitution assessments (see IRM 5.9.10.5.6, Chapter 13 Plans and Criminal Restitution Assessments).
 - f. Proposes to abandon collateral to the Government or proposes to distribute property in lieu of cash.
 - g. Is to be modified by the debtor after confirmation if such a modification could impair the Government's claim.
 - h. Proposes less than full payment of all unsecured general tax claims and provides for less than all of the debtor's disposable income, as defined in 11 USC 1325(b), to fund the plan.
 - i. Contains language discharging liabilities that are non-dischargeable per the Bankruptcy Code.
 - j. Contains language that would require the release of liens for non-dischargeable liabilities or that would require the release of liens from property that was excluded from the bankruptcy estate.
 - k. Contains language requesting the avoidance of liens securing taxes under section 522(f). Bankruptcy Rule 4003 allows debtors to request avoidance of liens that impair exemptions under section 522(f) within a Chapter 13

plan but that rule does not apply to tax liens and should not apply to judgment liens obtained by the Department of Justice (DOJ) either.

- I. Proposes a provision to unnecessarily retain property in the bankruptcy estate and thereby restricts post-petition creditors, including the IRS, since property that remains in the estate is protected by the automatic stay.

Caution: Per Bankruptcy Rule 3012(c), a request to determine the amount of a secured claim of a government unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.

- (4) **Deficient Plans - Exceptions.** In exceptional cases, the Chapter 13 debtor may be unable to pay the Service's claims as required under the Bankruptcy Code and it is in the taxpayer's and the Government's best interests not to have the case converted or dismissed.

Example: A taxpayer files a Chapter 13 bankruptcy petition to prevent foreclosure on the family residence. Conversion to a Chapter 7 case will result in minimal or no payments toward the Service's priority or secured claim. It may be in the best interest of the Service and the debtor to agree to partial payment of the Service's claims; then, exempt the claims from discharge under the terms of the plan. When the bankruptcy is closed after completion of the plan, the taxpayer may submit an administrative OIC for the remaining tax liabilities. A deficient plan in this instance is better than a conversion to a Chapter 7 case, which will result in minimal or no payments towards the Service's priority or secured claims.

- (5) **Unacceptable Deficient Plans.** Under no circumstances will the IRS accept less than would be recoverable in a Chapter 7 case. Nor, will the IRS consider a plan providing for payment of less than is statutorily required unless the following is true:

- The plan does not provide for the payment of claims with lower priority than those of the IRS.
- All income not necessary for the health and welfare of the debtor's family or the production of income is committed to the plan.

- (6) **Factors for Evaluating Deficient Plans.** The following considerations should be weighed before deciding to agree to treatment of the Service's claims in the proposed plan that does not meet the requirements for confirmation in the Bankruptcy Code:

- Debtor's ability to pay the IRS's claim as required by the Bankruptcy Code.
- Debtor's compliance with filing requirements.
- Probability the plan will pay the IRS more than if the case is dismissed or converted to a Chapter 7 liquidation.
- Debtor's probable ability to continue making payments over the time remaining on the CSED.
- Feasibility of the proposed plan of reorganization.
- Existence of factors precluding the debtor from dismissing the bankruptcy and submitting an administrative offer in compromise.

Example: The IRS is the only priority creditor in the case.

- Dischargeability of the tax liabilities.

- Agreement by other creditors with the same priority, such as state taxing authorities, to receive less than full payment of their claims.

(7) **Acceptance of Deficient Plans.** If a debtor demonstrates that it is in the Government's best interest to accept less favorable treatment than is required under the Bankruptcy Code, the specific payment terms must be incorporated into the debtor's plan. The debtor's plan is subject to the approval of the bankruptcy court. The plan must also provide statements asserting:

- a. The Service has affirmatively agreed to a lesser treatment of its claim than is required under the Bankruptcy Code;
- b. The debtor will comply with all filing, withholding, and estimated tax payment requirements during the life of the plan; and
- c. The Government's right to collect upon a default in plan payments.

Note: The AIS history must reflect the factors considered in the decision to accept treatment of the Service's claims, irrespective of Bankruptcy Code requirements.

(8) **Burden Falls to the Debtor.** The case should be referred to Counsel to file an objection to the plan unless:

- The Chapter 13 debtor timely provides information to Insolvency that demonstrates the ability to pay the Service's claim as required by the Bankruptcy Code.
- Conversion or dismissal of the case is not in the best interest of the Government.
- The case does not meet referral tolerances in IRM 5.9.4.15.4, Referral Tolerances.

(9) **Contents of Objection Referral.** The referral to Counsel objecting to the plan must state the actions taken to resolve plan deficiencies with debtor's counsel. These may include the following:

- The debtor did not demonstrate acceptance of a deficient plan is in the Government's best interest.
- The debtor did not provide sufficient information to make such a determination.
- The debtor's payment proposal is not feasible.
- The tax claims are non-dischargeable and full collection is likely outside of bankruptcy.

Reminder: The referral to Counsel must contain the complete TIN of the debtor. FI caseworkers can refer to IRM 5.9.4.15(3), Pattern Referrals, which contains a weblink to pattern referral forms.

5.9.10.5.6
(08-07-2018)
**Chapter 13 Plans and
Criminal Restitution
Assessments**

(1) **General Information.** A debtor may file Chapter 13 bankruptcy and owe a liability for a criminal restitution assessment. Chapter 13 cases with criminal restitution assessments are generally treated in the same manner as Chapter 11 cases with criminal restitution assessments. For general information on criminal restitution assessments, see IRM 5.9.4.22, Criminal Restitution Assessments, and IRM 5.9.4.22.1, Working Criminal Restitution Cases. All cases with criminal restitution assessments are classified and assigned in the same manner.

- **Case Classification** - When a Revenue Officer (RO) or Advisor learns that a taxpayer against whom a criminal restitution assessment has been made has filed bankruptcy, the RO or Advisor will contact the CIO. The CIO caseworker inputs a "CRIMREST" classification on the AIS case classification screen and notes the information provided by the RO or Advisor in the AIS case history. If the FI caseworker becomes aware of the criminal restitution assessment, and there is no "CRIMREST" case classification on AIS, the FI caseworker adds the classification to AIS.
- **Case Assignment** - FI works all cases with criminal restitution assessments. A criminal restitution assessment is considered a "complex" issue. These cases are not transferred from FI to CIO. They must remain in FI until the bankruptcy case is closed.

- (2) **Proofs of Claim in Chapter 13 Cases with Criminal Restitution Assessments.** For information about filing proofs of claim in cases with criminal restitution assessments, see IRM 5.9.13.18.5, Restitution Assessments.
- (3) **Chapter 13 Plans.** Debtors may pay criminal restitution assessments in the Chapter 13 plan or outside the Chapter 13 plan. FI caseworkers should not object to the proposed plan for the sole reason that the criminal restitution assessment is being paid outside the Chapter 13 plan. However, the FI caseworker may object to confirmation of the plan for other reasons. Since Chapter 13 cases with criminal restitution assessments are treated in the same manner as Chapter 11 cases with criminal restitution assessments, see the following subsections in IRM 5.9.8, Processing Chapter 11 Bankruptcy Cases, for additional information:
 - IRM 5.9.8.17.2., Chapter 11 Plans and Restitution Assessment
 - IRM 5.9.8.17.2.1, Restitution Assessment Paid Outside the Chapter 11 Plan
 - IRM 5.9.8.17.2.2, Restitution Assessment Paid in the Chapter 11 Plan
- (4) **Discharge and Criminal Restitution Assessments in Chapter 13 Cases.** For general information regarding restitution assessments and dischargeability, see IRM 5.9.17.8.8, Discharge and Restitution Assessment.

5.9.10.6
(08-07-2018)

Transfer of Chapter 13 Cases from Field Insolvency (FI) to the Centralized Insolvency Operation (CIO)

- (1) **Case Transfer from FI to CIO.** There is no longer a requirement for Chapter 13 cases to remain in FI until the Chapter 13 plan is confirmed. CIO now monitors for confirmation of the Chapter 13 plan and updates the case with the plan confirmation date. This may require the CIO to change the confirmation date of 2/2/2222 to the court listed plan confirmation date. Unless there are "complex" or "non-complex" issues that require the case to remain in FI (IRM 5.9.1.4, Overview of Bankruptcy, The Role of Insolvency), Chapter 13 cases are transferred from FI to CIO when:
 - a. The initial case review has been completed by FI;
 - b. All proofs of claim have been completed and acknowledged by the Bankruptcy Court; and,
 - c. There is no follow-up action that requires the case to remain in FI.

See IRM 5.9.5.4.3(2), Chapter 13 Summary Histories, General Transfer Criteria, for additional information. See IRM 5.9.10.6.1, Field Insolvency (FI) Action Prior to Case Transfer, for actions required of FI prior to case transfer. IRM 5.9.10.6.2, Centralized Insolvency Operation (CIO) Case Actions,

discusses actions taken by CIO to monitor for confirmation and the actions taken by CIO at confirmation.

5.9.10.6.1
(10-18-2021)
**Field Insolvency (FI)
Actions Prior to Case
Transfer**

- (1) **Determine the Age of the Case.** When a case qualifies for transfer from FI to CIO (see above), actions taken on the case by FI depend upon the age of the case. If the case has a petition date more than 180 days prior to the current date, FI caseworkers follow the procedures for Older Cases, below. If the petition date is less than 180 days before the current date, FI caseworkers follow the procedures for Newer Cases, below.
- (2) **Older Cases.** If the petition date is more than 180 days prior to the current date, the FI caseworker must check PACER to see if the Chapter 13 plan has been confirmed. If PACER research shows that the plan has been confirmed:
 - a. Add the “CPM” Payment Screen to AIS, if not previously added. See Exhibit 5.9.8-1, Adding the Confirmed Plan to AIS, for guidance on adding the “CPM” Payment Screen to AIS.

Note: If a “CPM” screen was previously added to AIS, ensure the plan is updated with the terms of the confirmed plan.
 - b. Add the confirmation date to the “Confirmed” field on the Taxpayer Screen on AIS.
 - c. Add the confirmation date in the “Effective” date field on the CPM screen.
 - d. Recompute (verify) the plan to ensure payments are applied per the confirmed plan and to allow for the accrual of interest from the true confirmation date.
 - e. If recomputing (verifying) the plan results in a need for adjustments, prepare any necessary adjustment documents. (See IRM 5.9.5.10, Adjusting Bankruptcy Accounts.) Schedule a follow-up to ensure adjustments post to IDRS prior to the transfer of the case to CIO. Do not transfer the case to CIO until the adjustments have posted to IDRS and the follow-ups are closed.
 - f. If the **Plan Verified** box is not systemically checked when the plan is loaded, the caseworker must check the **Verified Period** box for each period, which will automatically populate the “Plan Verified” box at the top of the “CPM” Screen.
 - g. Add a “SUMMARY History” to AIS (see below and IRM 5.9.5.4.3, Chapter 13 Summary Histories).
 - h. Add any case classifications necessary to identify issues that must be addressed at case closure. Add case classifications that identify streamlined cases. See IRM 5.9.5.4.1, Case Classifications, for additional information.
 - i. Ensure any follow-ups on the Letter Screen have been worked and closed.
 - j. Reassign the case to CIO.

If PACER research shows that the plan has not been confirmed:

- a. Notate in the AIS history, “FI reviewed PACER. Case not yet confirmed.”
- b. Enter 2/2/2222 as the plan confirmation date in the “Confirmed” field on the “Taxpayer Screen” on AIS.
- c. Add the “CPM” Payment Screen to AIS, if no plan screen was previously added. (See Exhibit 5.9.8-1, Adding the Confirmed Plan to AIS, for details on adding the “CPM” Payment Screen.) If the plan payment amount is

- known, enter the payment amount on the “CPM” Screen. If the payment amount is not known, enter a low dollar amount (e.g., \$1.00).
- d. Add 2/2/2222 in the effective date field on the “CPM” Screen.
 - e. If the “Plan Verified” box is not systemically checked when the plan is loaded, the caseworker must check the “Verified Plan” box for each tax period, which will automatically populate the “Plan Verified” box at the top of the “CPM” Screen.
 - f. Add a “SUMMARY History” to AIS (see below and IRM 5.9.5.4.3, Chapter 13 Summary Histories).
 - g. Add any case classifications necessary to identify issues that must be addressed at case closure. Add case classifications that identify streamlined cases. See IRM 5.9.5.4.1, Case Classifications, for additional information.
 - h. Ensure any follow-ups on the Letter Screen have been worked and closed.
 - i. Reassign the case to CIO.
- (3) **Newer Cases.** If the petition date is less than 180 days prior to the current date, the FI caseworker is not required to check PACER to see if the plan has been confirmed. Follow steps b) through i) above for older cases where the plan has not been confirmed.
- (4) *******Summary***** Histories.** Before a case is transferred to the CIO, the FI caseworker must input a summary history on AIS. If specific information is lengthy, the summary can reference previous history entries by date. Summary histories are discussed in IRM 5.9.5.4.2, Summary Histories, and in IRM 5.9.5.4.3, Chapter 13 Summary Histories. The summary should be identified by *****SUMMARY***** in upper case letters. Sample minimum summaries must include the applicable aspects from the sample summary history listed below,
- Unfiled returns, including MFTs and periods (e.g., “Unfiled 30-201512”).
 - Refund turnover orders (e.g., “Refund turnover order, trustee John Doe” or “Refund order, see history 4/2/2017”).
 - Pending exam or reassessment (e.g., “Exam on 30-201412” or “Reassessment of TC 300 for 30-201312 at closure of bk”).
 - Unusual plan provisions (e.g., “Plan does not provide for secured periods. Do not discharge 30-201312.”)
 - Lack of legal notice of the bankruptcy to the Service.
 - A previous discharge that prevents a discharge in the current case.
 - Any special treatment regarding 11 USC 1305 claims.
 - Issues that impact the Assessment Statute Expiration Date (ASED), CSED, automatic stay, or tolling because the debtor is a serial filer, including instructions to input a TC 520 cc 6X using the confirmation date upon confirmation of the plan.
 - Instructions for the application of plan payments to criminal restitution assessments, or guidance regarding discharge, when there is a criminal restitution assessment present. Cases with a criminal restitution assessment are identified by a “CRIMREST” case classification.
 - Instructions regarding the non-dischargeability of taxes when a determination has been made that the debtor willfully evaded the payment of the taxes and the “WILLFUL” case classification is present in the case.

Note: If no issues exist, the summary should simply state “No Issues”.

(5) **Case Classifications.** When there are issues that must be addressed at case closure, or the case meets streamlined criteria, FI must open the appropriate “Case Classification” on AIS. Once CIO addresses the “Case Classification,” the caseworker will close the classification. See IRM 5.9.5.4.1, Case Classifications, for a complete list of case classifications. The list defines the classifications and identifies if the classification prevents case closure.

(6) **Amended Claims and Plans.**

- a. Amended Claims and Plans. FI caseworkers must update the “CPM” Payment Screen when an amended claim is filed and allowed by the court.

Caution: Failure to update the “CPM” payment screen when a proof of claim is amended may result in the misapplication of plan payments.

- b. Zero Amendment. The Electronic Proofs of Claim (EPOC) system does not allow for electronic withdrawal of claims. Because of this, for most courts a claim is withdrawn by filing an amended claim for \$0.00. When amending a claim to \$0.00, the caseworker must select the appropriate POC statement to indicate the claim is being withdrawn.

Caution: This POC statement should only be used when the **whole** claim is being withdrawn and should not be used when only specific periods are being amended to \$0.00. AIS 5 contains several claim statements that display the word withdraw. Not all the statements are appropriate for situations that involve amending a claim to zero, therefore review the claim statement prior to sending the POC to the court.

A few courts do not accept this method as a withdrawal of the claim, and require the IRS to send a letter instructing the court to remove a specific claim from the claims register. For those courts, caseworkers can generate Letter 3931, Request to Withdraw Proof of Claim, on AIS for mailing to the court.

Note: After finalizing the process of amending the claim to zero, caseworkers must remember to close/delete the CPM and then proceed to take appropriate closing actions such as reversing all TC 520 (if there are no other issues to address).

5.9.10.6.2
(08-07-2018)
**Centralized Insolvency
Operation (CIO) Case
Actions**

(1) **Confirmation Orders.** The CIO may receive a confirmation order via paper notification or through an e-mail from the Bankruptcy Noticing Center (BNC). When CIO receives a confirmation order on a case that is open on AIS, CIO will:

- a. Enter the confirmation date from the confirmation order or notice to the “Confirmed” date field on the AIS Taxpayer Screen. This may require changing the confirmation date of 2/2/2222 to the date on the confirmation order.

Note: Do not update the confirmation date unless the original date on the AIS Taxpayer Screen is 2/2/2222 (or a similar variation of that date). If there is any other date present in the AIS Taxpayer Screen Confirmed field, do not change the date.

- b. Access the CPM Screen and enter the confirmation date in the “Effective” and “Due” fields on the CPM Screen only when the 2/2/2222 dates are shown.
 - c. CIO will run the **Unpostable Payments** report off AIS. CIO will fix unpostable payments within their control. If additional actions are needed, including any IDRS adjustments or Proof of Claim / CPM updates, CIO will transfer the case to FI. FI will take corrective actions to resolve any payments not posted to the CPM screen on AIS and ensure AIS and IDRS payments applied match. FI will prepare the necessary forms and forward to Centralized Case Processing (CCP).
 - d. Add an AIS history stating, “Received order confirming Chapter 13 plan. Input confirmation date.”
- (2) **Chapter 13 Confirmed Case Report.** In January and July of each year, CIO generates a report to capture all open Chapter 13 cases in CIO inventory that reflect a confirmation date of 2/2/2222 and 18 months or more have passed since the 341 meeting date. The CIO accesses PACER and checks the Case Summary screen on PACER for each case. Actions taken by CIO depend upon the findings on PACER. See the If/Then chart below for required actions for the CIO based on the case status on PACER:

IF:	THEN:
Confirmation hearing field has date or pending status field shows plan confirmed,	<ol style="list-style-type: none"> 1. Access the “History/Document” menu and “run query” to access document list. 2. Locate “Order Confirming Chapter 13 Plan” (or similar language). 3. Find date of confirmation in “Dates” column. 4. Follow the guidance below.

IF:	THEN:
The case has been confirmed on PACER,	<ol style="list-style-type: none"> 1. Update AIS with the actual confirmation date on the Taxpayer Screen. <p>Note: Do not update the confirmation date unless the original date on the AIS Taxpayer Screen is 2/2/2222 (or a similar variation of that date). If there is any other date present in the AIS Taxpayer Screen Confirmed field, do not change the date.</p> <ol style="list-style-type: none"> 2. Add the confirmation date in the “Effective” and “Due” fields on the CPM Screen only when the 2/2/2222 dates are shown. 3. Add a history to AIS stating, “Per PACER plan confirmed. Input confirmation date.” 4. Note report with action(s) taken. 5. CIO will run the “Unpostable Payments” report on AIS. CIO will fix unpostable payments within their control. If additional actions are needed, including any IDRS adjustments or Proof of Claim / CPM updates, CIO will transfer the case to FI. FI will take corrective actions to resolve any payments not posted to the CPM screen on AIS and ensure AIS and IDRS payments applied match. FI will prepare the necessary forms and forward to Centralized Case Processing (CCP).
The case has been dismissed on PACER,	<ol style="list-style-type: none"> 1. Update AIS with the dismissed and noticed dates. 2. Add history item to document actions. 3. Note report with action(s) taken.
The case is discharged on PACER,	<ol style="list-style-type: none"> 1. Update AIS with the discharge date and noticed dates. 2. Add history item to document actions. 3. Note report with action(s) taken.

IF:	THEN:
The case has been converted on PACER,	<ol style="list-style-type: none"> 1. Input the conversion date on the Taxpayer Screen. 2. Update the 341 meeting date, bar date, chapter type, and trustee information. 3. Reassign the case to the appropriate FI employee using the "Assign CAG" button. 4. Add history item to document actions. 5. Note report with action(s) taken.
The case is not converted, not confirmed, and not dismissed or discharged,	<p>Check the Applied Amt field on the AIS CPM Screen to determine if any plan payments have been received and take action based on findings:</p> <p>Plan Payments have been received:</p> <ul style="list-style-type: none"> • Document history, "Plan not confirmed but payments received from trustee. No other action at this time." • Note report with action(s) taken. <p>No plan payments have been received:</p> <ul style="list-style-type: none"> • Reassign case to a FI caseworker using the "Assign CAG" button or manually assign, as appropriate. • Add a history item stating, "Chapter 13 case remains unconfirmed. Reassigned to FI caseworker to pursue confirmation." • Note report with action(s) taken.

5.9.10.7
(01-01-2006)

After Confirmation

- (1) **Property of the Estate.** 11 USC 1327 explains the effects of confirmation. All pre-petition property of the estate vests in the debtor upon confirmation unless the plan or order confirming the plan provides for different treatment. Except as otherwise provided in the plan, property that vests in the debtor is free of any claim or interest provided for in the plan.
- (2) **Terms Binding.** The IRS is bound by the terms of a confirmed plan even if it provides for less than full payment of the Service's claims. But, IRS should object to a plan if the terms conflict with the Service's rights under the bankruptcy code (e.g., discharge of taxes resulting from a fraudulent return is prohibited for cases filed on or after October 17, 2005).

Reminder: Objecting to a plan before confirmation is critical when an objection is appropriate.

- (3) **Modifications.** The IRS may be able to move for modification of the plan to obtain an increase in payment of its unsecured general claims when the debtor's disposable income has increased.

5.9.10.7.1
(08-07-2018)
Modification of Plan

- (1) **Plan Modified.** The plan may be modified after confirmation but before full payment to increase or reduce the amount of payments, to extend or reduce the time for such payments, or to alter the amount of the distribution to a creditor.
- a. For cases filed prior to October 17, 2005, payments may not extend beyond three years after the date the first payment is remitted under the original confirmed plan or beyond the extended five-year period as approved by the court.
- Note:** The length of the plan period for cases filed on or after October 17, 2005, is tied to the debtor's income in relation to the median income of the state in which the debtor resides (11 USC 1322(d)).
- b. 11 USC 1329(a) provides the debtor, the trustee, or an unsecured creditor may request modification of a confirmed plan.
- c. Insolvency should scrutinize a plan modification as carefully as an original plan.
- d. If modification is not acceptable to the Service and IRM 5.9.4.15.4, Referral Tolerance, criteria for referral to Counsel are met, a timely objection to the modified plan should be raised. FI should consult Counsel for advice, as necessary.

Caution: In many jurisdictions, post-confirmation modifications will not be considered when an objection should have been raised prior to confirmation. Once confirmation has occurred, the court is less inclined to allow a change in the plan unless some significant change has developed since confirmation. (See IRM 5.9.10.9 , Post-Petition Tax Liabilities, and IRM 5.9.10.9.2 , 11 USC Section 1305 Claims, for additional information.)

- (2) **Orders Modifying or Amending Plans.** When a Chapter 13 plan is amended or modified, the court enters an order approving the modification or amendment. The modification does not change the original confirmation date. The amended or modified plan does not change the plan terms from the original confirmation date until the entry of the order approving the modified plan or the amended plan. As such, do **not** change the confirmation date on the AIS Taxpayer Screen or the Confirmed Plan Monitoring (CPM) Screen on AIS to the date of the order approving the plan modification or amendment. Instead, notate the date of the order approving the modification or amendment in the AIS history. Also, note the terms of the amended or modified plan in the AIS history.

5.9.10.7.2
(08-07-2018)
Impact of the Automatic Stay

- (1) **Duration of the Automatic Stay.** For cases filed prior to October 17, 2005, the automatic stay is not lifted until the case is dismissed, the debtor receives a discharge, the discharge is denied, or the case is closed by the court. Therefore, contacting the debtor for demand of payment and collection of pre-petition liabilities may be prohibited. See IRM 5.9.10.8, Monitoring the Chapter 13 Plan, and IRM 5.9.10.9, Post-Petition Tax Liabilities. For cases filed on or after October 17, 2005, the automatic stay may be impacted by prior bankruptcy filings for "serial filers". The automatic stay against the debtor or property of the debtor that is not property of the bankruptcy estate may

terminate 30 days after the petition date when the debtor had a prior bankruptcy case dismissed within 365 days of the current petition date.

Note: Notwithstanding the termination of the stay in all other respects, the stay against property of the estate remains in place in this situation until such property is no longer property of the estate.

Per Bankruptcy Rule 3015(g)(2) upon confirmation of a Chapter 13 plan **any** request **in** the plan to terminate the stay imposed by Bankruptcy Code 362(a) and 1301(a) **is granted**. The automatic stay, including the stay against property of the estate, may not arise at all when the debtor had two prior dismissals within 365 days of the current petition date. For additional information, see IRM 5.9.3.5, Automatic Stay, and the following subsections and exhibits in IRM 5.9.5, Opening a Bankruptcy Case:

- IRM 5.9.5.7, Serial Filers
- IRM 5.9.5.7.1, Systemic Identification in Serial Filer Cases
- Exhibit 5.9.5-4, Common Processing Steps in Serial Filer Cases
- Exhibit 5.9.5-5, Processing the Serial Filer Case When the Stay Terminates After 30 Days
- Exhibit 5.9.5-6, Processing the Serial Filer Case When No Stay Goes into Effect

Note: The stay may be lifted to grant a creditor temporary relief from the stay regardless of the petition date.

- (2) **Domestic Support Obligations.** For bankruptcies commencing on or after October 17, 2005, 11 USC 362(b)(2)(F) excepts from the automatic stay the interception of tax refunds to pay any past due domestic support obligations. (See IRM 5.9.4.5.3.1(3), BPI 07 for offset bypass indicators.)
- (3) **Post-Petition Payments for Pre-Petition Taxes.** Acceptance of post-petition payments in a Chapter 13 bankruptcy proceeding for pre-petition taxes may violate the automatic stay. Thus, post-petition tax payments for pre-petition taxes should usually be made through the Chapter 13 trustee. FI may confer with Counsel if this matter arises.
- (4) **Pre-Petition Installment Agreements.** Payments from a debtor on a pre-petition installment agreement generally should not be accepted from a Chapter 13 debtor after the debtor has filed for bankruptcy. Counsel may provide guidance, as needed.
- (5) **Debtor Spouse and Non-Debtor Spouse/Joint Return.** To minimize chances of a violation of the Bankruptcy Code occurring, a TC 520 freeze code should be input on the jointly-filed balance due account even when only one of the spouses is in bankruptcy. See IRM 5.9.4.3(5)e, CSED Indicator Codes. However, Insolvency must address issues relating to debtor and non-debtor situations (for example, CSED concerns and community property issues). Advice from Counsel should be sought, as necessary.
- (6) **CSED Issues and Considerations.** Periodic CSED monitoring of the non-debtor spouse must be conducted by Insolvency.
 - a. Insolvency may issue an "Other Investigation" (OI) to a field revenue officer group to determine collection potential from the non-debtor spouse or to protect the CSED, if the collection statute is a concern.

- b. The delinquent account could be addressed in the debtor's plan.
- c. The non-debtor spouse may continue with a previously-approved payment agreement with the Service (if applicable).
- d. If the non-debtor spouse makes payments on the joint tax liability in addition to the debtor spouse making plan payments through the trustee, FI must amend the Service's claim periodically or send a credit letter to the trustee to update the claim amount(s) for the court.

Note: If a CSED for a non-debtor spouse is imminent or has passed, management must be informed.

- (7) **Decision to Retain or Return Payment.** A payment may be received by the Service from a source other than the trustee after the bankruptcy filing. If research indicates a balance due account on a joint liability, yet only one spouse is in bankruptcy, Insolvency should:
- a. Determine who submitted the payment (the debtor or the non-debtor spouse);
 - b. Try to determine the designation or intent of the payment to decide if IRS has a right to retain the funds (for example, the funds may be from the non-debtor spouse who wants to continue with a pre-petition installment agreement);
 - c. Take precautionary measures so the debtor's rights are not violated; and
 - d. Consult Counsel when legal advice is required.
- (8) **Revenue Officer Contact with Insolvency.** Revenue Officers may not take any collection action after a taxpayer has filed Chapter 13 unless such action is cleared with Insolvency. Caseworkers in Field Collection (FC) must contact Insolvency promptly after a taxpayer has filed a bankruptcy to determine if any information or advice is needed. If necessary, Insolvency will elevate complex or unusual situations to Counsel. (See IRM 5.9.3.9, Revenue Officers and Insolvency, for additional information.)

Caution: On cases where the automatic stay is in effect, collection must be stayed on any pre-petition tax debt. Every effort must be made to prevent enforcement actions against the debtor (e.g., notice, NFTL filing, and/or levy) for pre-petition periods while the debtor is under the protection of the automatic stay.

5.9.10.8
(08-07-2018)
**Monitoring the Chapter
13 Plan**

- (1) **Monitoring of Plans.** In most jurisdictions, trustees provide their own plan payment monitoring systems to default Chapter 13 debtors who fail to make payments. CIO may choose to use the "Delinquent" Payment Monitoring Report on AIS to determine if payments are being received as promised. Post-petition tax obligations are best monitored through the weekly generation of Litigation Transcript System (LTS) "New Assessment" reports. Post-petition tax obligations may also be monitored using the "LAMS Post-Petition Case Listing" report on AIS. For additional information, see the following:
- IRM 5.9.16.2, Litigation Transcript System
 - IRM 5.9.16.2.2, New Assessment Reports
 - IRM 5.9.16.4.3, LAMS Post-Petition Listing
- (2) **Debtor Compliance.** 11 USC 521(j) provides that if a debtor who files bankruptcy on or after October 17, 2005 fails to file a post-petition tax return or properly file for an extension, the Service may request the court convert or

dismiss the case. The court must convert or dismiss the case if the debtor fails to satisfy the requirement within 90 days of the request by the Service. FI should refer a request to Counsel for a motion to convert or dismiss, subject to referral tolerances.

- (3) **Collection Actions Prohibited.** Systemic notices and collection actions for pre-petition taxes are not appropriate in a Chapter 13 proceeding unless the automatic stay is lifted or not imposed. However, one informational notice of a pre-petition balance due is allowed.
- (4) **Post-Petition Liabilities and Property of the Estate.** Collection of post-petition tax liabilities of a Chapter 13 debtor is complicated by a division among courts concerning what is considered “property of the estate” after confirmation. Some court cases have granted IRS the right to take collection action on post-petition debts in Chapter 13 proceedings when earnings or income used to fund the plan are not adversely impacted.
- (5) **TC 520 Input on Post-Petition Modules.** To prevent inadvertent collection actions on post-petition liabilities from property of the bankruptcy estate, a TC 520 cc 84 should be input to post-petition modules on IDRS as soon as Insolvency becomes aware of the post-petition liability. Whichever Insolvency function (FI or CIO) becomes aware of the liability should input the TC 520 cc 84 to IDRS. The TC 520 cc 84 will alert Service employees to contact Insolvency before taking any collection action on post-petition liabilities. Insolvency may become aware of post-petition liabilities in many ways. This includes, but is not limited to:
 - The debtor contacting IRS regarding a notice received on a post-petition liability,
 - The debtor contacting IRS and requesting an IA on a post-petition liability,
 - The caseworker finding the post-petition liability when working the LAMS Post-Petition Case Listing (see IRM 5.9.16.4.3), or
 - The Litigation Transcript System (LTS) generating a “New Assessment” LTS transcript on the post-petition module. See IRM 5.9.16.2, Litigation Transcript System, and IRM 5.9.16.2.2, New Assessment Reports, for additional information.
- (6) **Impact of Bankruptcy Estate Interpretations.** After consultation with Counsel, as necessary, FI must determine the most appropriate and effective actions to be taken regarding post-petition tax liabilities within the boundaries, if any, imposed by the court. The legal interpretation of the “bankruptcy estate” in a given area will determine the course of action taken by the Service.
- (7) **Conversion/Dismissal Considerations.** When Insolvency determines a debtor is not adhering to the plan and the plan is not modified, Insolvency may consider referring the case to Counsel to request a motion for dismissal or conversion, particularly in cases of egregious non-compliance. No action should be taken until FI has contacted the trustee to attempt to resolve the plan problems and issues. Counsel may be consulted on an “as needed” basis before the formal referral is forwarded. The bankruptcy court is more likely to give favorable consideration to the Service’s conversion or dismissal motion if the motion is filed in the early stages of the bankruptcy rather than toward the end of the plan.

5.9.10.8.1
(08-07-2018)
**Property of the Estate
after Confirmation**

- (1) **Bankruptcy Code Guidelines.** Three sections of the Bankruptcy Code affecting the determination of “property of the estate” after confirmation are:
 - a. 11 USC 541. The property of the estate includes virtually all property in which the debtor has an interest at the time the petition is filed, including property in another’s possession and community property.
 - b. 11 USC 1306. Included in property of the estate is any property acquired after the petition date but before the case is closed, dismissed, or converted, including both 541 property, wages, and other income.
 - c. 11 USC 1327. Assets revert in the debtor at confirmation, unless otherwise specified in the plan or confirmation order.
 - (2) **Service Position – Property of the Estate in a Chapter 13 Proceeding.** The general position of the Service is that after confirmation, the bankruptcy estate is limited to the portion of the debtor’s income or other earnings necessary to fund the plan.
 - a. Case law reflects various other positions on this issue. The two most common are the position that all of the debtor’s property remains in the estate post-confirmation and the position that only property acquired post-confirmation remains in the estate.
 - b. The plan can provide that property remains in the estate.
 - c. Counsel’s advice should be sought when clarification is required on this subject.
 - (3) **Community Property.** In community property locations, property of the estate includes post-petition community property acquired by the non-debtor spouse. IRM 5.9.3.5.1.1, Community Property, provides additional information on this topic.
 - (4) **No Separate Taxable Entity in a Chapter 13.** Although the bankruptcy estate is a separate taxable entity upon the filing of petitions by individuals under Chapters 7 and 11, no separate taxable entity exists in a Chapter 13 case (IRC 1398 and IRC 1399). As a result, separate tax returns (Form 1041) are not filed in Chapter 13 cases.
 - (5) **Allowed/Disallowed Post-Confirmation Actions.** After confirmation, the Service can generally file NFTLs for post-petition taxes. In some jurisdictions, the Service can administratively seize real estate or tangible property to collect post-petition liabilities, but cannot take collection against property committed to the plan or needed by the debtor to make payments to the trustee. Wage levies should exclude the amount needed to fund the monthly plan. See IRM 5.9.5.9.3 , Notice of Federal Tax Lien (NFTL) filing by Insolvency, for guidance on filing NFTL’s.
- Caution:** The Service must be wary of taking collection actions that interfere with funding the Chapter 13 plan. Even if assets are not property of the estate, collection may impair the debtor’s ability to fund the plan (for example, seizure of a debtor’s business) and may be prohibited by the Bankruptcy Code.
- (6) **When Property Remains Property of the Estate.** Where local law provides all property remains property of the estate after confirmation, no collection action for post-petition taxes is permitted unless relief is obtained from the

automatic stay. Or, if the debtor's plan provides all property remains property of the estate after confirmation, no collection action may be taken against such property.

Note: Setting off post-petition overpayments against post-petition liabilities does not violate the automatic stay.

- (7) **Seek Counsel Advice.** If any collection action is contemplated against a Chapter 13 debtor (or any debtor in a bankruptcy) while the stay is in effect, FI should seek the advice of Counsel prior to taking distraint action. The debtor is under the protection of the bankruptcy court and the debtor's rights must be protected.

5.9.10.9
(03-08-2021)
**Post-Petition Tax
Liabilities**

- (1) **Post-Petition Tax Liabilities.** Taxes incurred after the date of the bankruptcy filing are considered to be post-petition tax liabilities. The Service's position is the accrual date, not the date of the assessment nor the date the tax was payable, determines whether a 1040 account is considered a pre-petition or a post-petition liability. Income taxes are incurred on the last day of the taxable period, which is usually December 31st of the respective tax year. Employment taxes accrue when the wages of the debtor's employees are earned. Thus, when a debtor files bankruptcy during the middle of a quarter, and the debtor has employment tax filing requirements, the taxes on wages earned prior to the petition date are pre-petition. Taxes on wages earned after the petition date are post-petition.

Example: A 2014 income tax (balance due) return has a year ending of December 31, 2014. Taxpayer filed bankruptcy on December 30, 2014. The tax was assessed on April 30, 2015. The resulting balance due account is considered a post-petition tax liability, because the tax liability accrued on December 31, 2014, one day after the petition was filed.

Example: A debtor filed bankruptcy on April 30, 2014. The tax on wages the debtor's employees earned from April 1, 2014 through April 30, 2014 are pre-petition. The tax on the wages the debtor's employees earned from May 1, 2014 through June 30, 2014 are post-petition.

- (2) **Factors and Considerations.** Post-petition tax liabilities are handled in various ways by FI groups throughout the country. In all cases, Automated Collection System (ACS) caseworkers or Revenue Officers should contact CIO to confirm that the actions they are contemplating against debtors in bankruptcy are appropriate. If the case is assigned to a FI caseworker, CIO will refer the caller to FI.
- (3) **Important Considerations.** The Service can deal with post-petition tax liabilities in several ways. In determining which option to exercise, FI caseworkers must consider:
- If the automatic stay is in effect, and if the CSED is tolled or running;
 - The amount owed;
 - The debtor's ability to pay;
 - The debtor's past compliance history; and
 - If the plan is just beginning or has progressed to later stages.

(4) **Local Level Considerations.** At the local level, the following factors may play a role in determining how FI caseworkers handle post-petition liabilities:

- a. Local FI staffing and resources.
- b. Local Field Collection (FC) staffing and resources.
- c. Counsel's staffing, resources, and recommendations.
- d. The level of cooperation with the trustees and members of the local bar.
- e. The commitment, activity, and success of local outreach efforts.
- f. Established procedures and guidelines among the various Service functions and their effectiveness.
- g. The existence of local rules/agreements and standing orders.

(5) **Approaches.** FI groups may use various approaches when dealing with post-petition tax liabilities, including:

- Filing 11 USC 1305 claims — see paragraph (8) below and IRM 5.9.10.9.2, 11 USC Section 1305 Claims.
- Sending OIs to ROs for investigation and possible collection actions (may require lifting of stay).
- Filing a motion to lift the automatic stay for possible refund offset — may require court intervention.
- Referrals for motions to convert or dismiss — determined on a case-by-case basis (e.g., conversion due to ineligibility for Chapter 13 or dismissal due to non-compliance).
- Assertive actions by trustees — some trustees will initiate dismissal actions when debtors are accruing post-petition liabilities.
- Administrative collection against exempt property or property not used to fund the plan (collection from specific assets).
- Exploring alternatives with the debtor prior to distraint action(s). The caseworker should send Letter 3927, Post-Petition Liability, to advise the debtor of the unpaid tax liability. This letter encourages the debtor to contact the assigned caseworker when he/she can't pay the post-petition tax liability.
- Allowing the debtor to make voluntary payments but not entering into an installment agreement (IA) on the post-petition liabilities unless the liability qualifies for a guaranteed IA under IRC 6159(c). See IRM 5.14.5.3, Guaranteed Installment Agreements, for additional information. The debtor does not qualify for a guaranteed IA unless all six requirements in IRM 5.14.5.3(1) are met. In the rare instance that a post-petition liability qualifies for a guaranteed IA, Insolvency should pursue lifting of the automatic stay in jurisdictions where all property remains property of the bankruptcy estate until the bankruptcy case is closed. Once the stay is lifted, or it is determined that a lifting of the stay is not required, Insolvency will enter a history on Account Management Services (AMS) that lets functions outside of Insolvency know that the taxpayer's IA request is processable. For example, the history on AMS will state, "The taxpayer qualifies for a guaranteed IA on 30-20XX12. The IA request is processable even though the taxpayer is in bankruptcy."

Note: Generally, a request for an IA on post-petition liabilities is not processable when a taxpayer is in bankruptcy. Do not input a pending IA transaction (TC 971 AC 043) for any tax period covered in the IA request.

- Modification of the plan.

Caution: If the debtor refuses to modify the plan or is negligent in doing so, the Chapter 13 trustee may pursue modification in the bankruptcy court. The IRS also has the right to file such a motion, if necessary. Because courts may be reluctant to interfere with the terms of a confirmed Chapter 13 plan, creditors generally have limited success with such a request.

- Referring the case to Counsel to move for conversion or dismissal on bankruptcies commenced on or after October 17, 2005, when a post-petition tax return has not been filed (11 USC 521(j)).
- Pursuing collection from the non-debtor spouse on a joint income tax return filing (except in community property locations where this is disallowed). (See IRM 5.9.3.5.1.1, Community Property.)
- Local outreach efforts with the courts, trustees, and local bar associations.
- Waiting to pursue administrative collection outside of bankruptcy.

Note: All of these options may not be available in some jurisdictions.

(6) **Post-Petition Levy Action.** In a Chapter 13 case, if the plan does not provide for payment of a post-petition tax liability, generally the post-petition liabilities can be collected (including by use of levy action) from any asset not dedicated to the plan. See IRM 5.9.10.8.1, Property of the Estate After Confirmation, the debtor's other property may be considered estate property and be protected by the stay. In addition to monies required to fund the plan, the debtor is entitled to receive the exempt amounts from a wage levy accorded to taxpayers under the IRC. Further, FI must follow local rules or standing orders impacting this position.

- a. If wages and future earnings of the debtor are designated to fund the plan, and the IRS serves a wage levy against the debtor for post-petition debts, the levy must state it reaches only those wages which exceed the payments to the trustee.
- b. IRM 5.9.3.7, Collection Due Process Cases, provides information on debtors' rights, including pre-levy notice, when levy action is being considered for post-petition tax debts.

Caution: The automatic stay may prohibit some actions to collect post-petition tax liabilities after confirmation of the Chapter 13 plan. However, the filing of Notices of Federal Tax Lien (NFTL) and setting off post-petition overpayments against post-petition liabilities may not be violations of the automatic stay. Counsel should be consulted for legal advice because judicial districts differ as to which assets (if any) are protected property of the estate after confirmation. IRM 5.9.4.2, Property of the Estate, and IRM 5.9.10.8.1, Property of the Estate After Confirmation, give additional information on property of the estate.

Note: The same considerations regarding Chapter 13 post-petition levy actions apply to individual Chapter 11 cases filed on or after October 17, 2005.

(7) **Payments Made Outside the Plan.** The IRS may allow the debtor to make voluntary payments on post-petition liabilities outside the plan. However, IRS will not enter into an IA for these post-petition liabilities. An IA request for post-

petition liabilities is not processable when a taxpayer is in bankruptcy. See IRM 5.9.4.20.1, IA Request For Post Petition Liabilities Submitted During Bankruptcy, for actions that should be taken when a taxpayer requests an IA on post-petition liabilities when they are in bankruptcy. If the taxpayer has additional funds available, the debtor should use them to pay unsecured general claims. The debtor is expected to dedicate all disposable income to fund the plan per provisions of the Bankruptcy Code.

Note: In a small number of cases, the debtor taxpayer may qualify for a guaranteed installment agreement under IRC 6159(c). See IRM 5.14.5.3, Guaranteed Installment Agreements. See (5) above for additional guidance on processing the case when the debtor qualifies for a guaranteed IA.

(8) **Payment through the Trustee.** Insolvency may request payment of post-petition debt through the court by filing an 11 USC 1305 claim. Although 1305 claims may be accepted as filed, they are not always paid. Some debtors fail to modify the plan to include the post-petition liabilities, complicating the discharge process. In addition, CSED concerns can be created for the Service with the filing of 11 USC 1305 claims (IRM 5.9.10.9.2, 11 USC Section 1305 Claims).

(9) **Detailed Documentation Imperative.** Because the CIO technical units work Chapter 13 discharges for all jurisdictions, the action a FI caseworker takes on a post-petition module must be documented in detail, including instructions for discharge if an 11 USC 1305 claim has been filed. See the following subsections for additional guidance:

- IRM 5.9.5.4, Automated Insolvency System (AIS) Documentation
- IRM 5.9.5.4.2, Summary Histories
- IRM 5.9.5.4.3, Chapter 13 Summary Histories
- IRM 5.9.10.6.1 (4) , Field Insolvency (FI) Actions Prior to Case Transfer, *****Summary ***** Histories

Note: Depending on local court practice, some 11 USC 1305 claims must be discharged even if not paid.

(10) **CNC Accounts – 53’d.** A tax account may be put in a Currently Not Collectible (CNC) “53” status (completed by use of Form 53) only under strict IRM CNC guidelines. In a Chapter 13 bankruptcy with a joint return balance-due situation where only one of the spouses in bankruptcy, a “53” of a joint account, or any portion of the account, is not appropriate while the debtor spouse is under the court’s jurisdiction.

(11) **Post-Discharge Administrative Collection.** The Service may choose to do nothing to collect the post-petition tax debt(s) until the Chapter 13 debtor receives a discharge. The Service may then attempt to collect the tax administratively. Generally, post-petition taxes will not be discharged unless provided for in the plan. However, certain liabilities are not discharged in a post-BAPCPA case even when provided for in the plan. For additional information on discharge and exceptions to discharge, see the following subsections in IRM 5.9.17, Closing a Bankruptcy Case:

- IRM 5.9.17.8, Discharge and Exceptions to Discharge, and related subsections
- IRM 5.9.17.15, Chapter 13 Discharge Pre-BAPCPA

- IRM 5.9.17.15.1, Chapter 13 Discharge Changes Under BAPCPA
- IRM 5.9.17.15.2, Chapter 13 Hardship Discharge

When deciding if the Service will wait until the discharge to collect post-petition liabilities, IRS must consider the following:

- a. The debtor is disadvantaged if the IRS waits until discharge to collect post-petition liabilities because the liabilities continue to accrue interest and penalties during the bankruptcy.
- b. The debtor may be in a better financial position after discharge to pay the taxes due, but the reverse could be true.
- c. Serious collection statute complications and issues may arise.

Caution: The CSED may not be tolled by the bankruptcy since the automatic stay does not absolutely prohibit the collection of post-petition liabilities not provided for in the plan. Counsel can provide guidance.

- (12) **Discharge Provisions of 11 USC 1328(a).** Unless an exception applies, only pre-petition claims provided for by the plan which have been filed and allowed or disallowed, and post-petition 11 USC 1305 claims provided for by the plan, are discharged by 11 USC 1328(a).

5.9.10.9.1
(08-07-2018)

Collection from Specific Assets

- (1) **Other Investigations.** FI has the option to request an OI from FC when real property not specifically retained in the estate is available to effect collection.
- (2) **Retirement Plans.** FI may levy on some types of retirement plans without going through FC in order to collect post-petition liabilities when it has been determined that the plans were excluded from the bankruptcy estate. (See 5.9.17.5.4, Insolvency Levy Procedures for Excluded Retirement Plans)
- (3) **Benefits of Distraint Action.** FI may consider issuing a levy on excluded retirement plans or request an OI for distraint action with Counsel's guidance and concurrence, after alternatives have been considered. If a levy/seizure is to be done, lifting of the automatic stay may be required. The benefits of a distraint action may be:
 - Outstanding post-petition tax debts can be collected after confirmation and applied towards the taxpayer's tax debt(s) to reduce taxpayer burden
 - Stay violations can be minimized by taking collection action against targeted property which is not property of the estate
 - Future tax compliance can be promoted and encouraged by the deterrent effect
- (4) **Risks of Distraint Action.** The risks inherent in taking distraint actions are:
 - Generally, few assets merit collection activity in a typical Chapter 13 case.
 - Analysis can be time-consuming.
 - FI caseworkers may need to review each plan and confirmation order to ensure specific property was not retained as property of the estate.
 - Collection actions that may prevent the debtor from completing the plan may still be challenged (for example, a seizure of the debtor's business may be challenged in court because it has an adverse effect on completion of the confirmed plan).

- Collection personnel, unfamiliar with the bankruptcy case or provisions of the Bankruptcy Code, may violate the automatic stay by making a demand for payment of pre-petition taxes or by applying payments to pre-petition tax liabilities instead of to post-petition debts.
- Lifting of the stay, requiring court approval, may still have to be requested to avoid legal repercussions.

Reminder: A TC 520 cc 84 should be input on post-petition modules to alert IRS employees to contact Insolvency before taking any collection action on post-petition liabilities.

5.9.10.9.2
(08-07-2018)
**11 USC Section 1305
Claims**

- (1) **Post-Petition Tax liabilities — 11 USC 1305.** Chapter 13 specifically provides for post-petition debt in 11 USC 1305. This section of the Bankruptcy Code allows IRS to claim tax liabilities that accrue post-petition in Chapter 13 cases as well as for payment of the post-petition liability in the Chapter 13 plan.
- (2) **Who Can File.** Under 11 USC 1305, only tax claimants (for example, the IRS) and consumer debt creditors, whose debt is necessary to the Chapter 13 plan, have the authority to file a claim under 11 USC 1305 procedures.
- (3) **Classification.** An 11 USC 1305 claim is treated as a pre-petition claim. Claims for post-petition taxes should not be filed as administrative claims because the Service views post-petition taxes as constituting a liability of the debtor, rather than the estate.
- (4) **Interest and Penalties.** Local practice regarding claiming penalty and interest on 11 USC 1305 claims varies. In some locations, no penalty and interest is claimed. In other locations, penalty and interest are claimed up to the date the proof of claim is prepared. Follow the local practice in your area. If unsure of the practice in your area, consult with Counsel.
- (5) **Bar Date.** 11 USC 1305 claims have no bar date. Local procedures may set time limitations.
- (6) **Form to Use.** Counsel's assistance may be needed to determine the correct form to use in a particular FI area. However, the bankruptcy court **Official Form 410**, Proof of Claim, and **Official Form 410-A**, Proof of Claim Attachment, are usually completed for this purpose. A statement should be entered on each 11 USC 1305 claim to identify for the court the type of claim being filed.

Example: "THIS CLAIM IS BEING FILED UNDER THE AUTHORITY OF TITLE 11 USC 1305."

- (7) **Local Rules.** FI caseworkers must understand local rules and agreements or standing orders affecting the treatment of post-petition tax liabilities in their area. They should include a detailed summary in the AIS history so caseworkers in the CIO can take appropriate action upon discharge.
- (8) **Benefits of 11 USC 1305 Claims.** The IRS can benefit from filing 11 USC 1305 claims because:
 - The possibility of violating the stay is lessened.
 - Collection is achieved through the trustee.
 - Monitoring of payments can be done systemically using AIS.

- Full compliance may be achieved.
- Future tax compliance may be promoted.
- The Service will be paid as a priority creditor.
- Tax delinquencies may not “follow” the taxpayer out of bankruptcy to be collected post-discharge.
- The debtor is provided with a more thorough “fresh start”.

(9) **Risks of Filing 11 USC 1305 Claims.** Attendant with benefits are the following risks of 11 USC 1305 Claims:

- In most jurisdictions, the plan must be modified to provide for the additional claim. If debtors fail to do this, the discharge determination process is complicated.
- Once provided for in the plan, the tax liability may be dischargeable.
- Plan modification may lower the amount the Service’s pre-petition unsecured claims receive.
- The Service may receive little or nothing for interest and penalties.
- The trustee may not pay 11 USC 1305 claims because they are generally filed after plan confirmation and funds may not be available to pay post-petition debts.
- 11 USC 1305 claims require monitoring by Insolvency.
- Serious CSED issues may arise which generally result in Counsel involvement.
- 11 USC 1305 claims may not be accorded priority status and thus may be discharged without full payment unless excepted from discharge.

(10) **Filing an 11 USC 1305 Claim.** FI management sets local policy on filing 1305 claims based on economic feasibility.

Caution: Even though an 11 USC 1305 claim is technically allowed by the court, it does not always result in the IRS receiving payment(s) on its claim.

(11) **Modification of Plan Based on an 11 USC 1305 Claim.** The debtor may need to file a motion to modify the plan to include the 11 USC 1305 claim. The Service should send a written request to the debtor and the debtor’s attorney to advise of the need for a modification of the plan to provide for the payment of 1305 claims before the Service files a 1305 claim unless such claims are typically paid per local practice.

Reminder: In some areas, the Chapter 13 trustee may request the debtor to modify the plan to include post-petition tax liabilities. The trustee, as well as the IRS, can file a motion to modify the plan. Per 11 USC 1329, an unsecured creditor has the right to seek modification of the plan.

(12) **Field Insolvency (FI) Assignment.** If a FI caseworker files an 11 USC 1305 claim and modification of the plan is required before the Service can receive payments, the FI group must retain control of that case until the plan modification has been approved. Only after plan modification has been approved by the court should the case be transferred back to the CIO for monitoring. (See paragraph (14) below for an exception.)

(13) **Discharge under 11 USC 1305.** If a claim is filed under 11 USC 1305 and the debtor provides for the post-petition tax claim by modifying the plan, upon completion of the Chapter 13 plan, the debtor will receive a discharge of these

taxes under 11 USC 1328(a). Only through completing a Chapter 13 plan and receiving a discharge under 11 USC 1328(a) will the debtor obtain relief for these post-petition taxes.

Reminder: For BAPCPA cases, certain taxes will be excepted from discharge even if provided for in the plan.

- (14) **Plan Modification Not Required.** If the court or trustee does not require a plan to be modified to allow for 11 USC 1305 payments, the case can be transferred back to CIO once the 11 USC 1305 claim has been acknowledged by the court. The AIS documentation must specify under what circumstances the period(s) on the 11 USC 1305 claim can be discharged.

Example: “1305 claim filed on 30-2017. If 1305 claim not full paid, do not discharge.”

Example: “1305 claim filed on 30-2017. Liability not discharged because the return was filed late.”

- (15) **Collection Alternatives.** The IRS does not have to file such a claim and the debtor cannot file an 11 USC 1305 claim on behalf of the IRS.
- (16) **Adding the 11 USC 1305 Claim to AIS.** To facilitate systemic posting of payments to the 11 USC 1305 claim, the liability must be added to the “CPM” screen on AIS by selecting “Confirmed” as the plan type. **Do not use “Administrative” as the plan type.** Failure to add the 11 USC 1305 claim correctly to the “CPM” screen can result in payments being misapplied to unsecured general claims before the 11 USC 1305 claim.

5.9.10.10
(08-07-2018)
Court Intervention

- (1) **Motions before the Court.** In cases of serious post-petition non-compliance, court intervention may be an appropriate solution. Some of the court options the Service may consider include a motion to:

- a. Convert the case to a Chapter 7 proceeding;

Note: For cases filed on or after October 17, 2005, conversion to a Chapter 7 case might be subject to dismissal under the means test (11 USC 707(b)).

- b. Dismiss the case; or
c. Lift the automatic stay to allow distraint action.

Reminder: For certain cases filed on or after October 17, 2005, the stay may not be in effect; or with respect to the debtor and the debtor's property that is not property of the estate, the stay may terminate 30 days after the petition is filed. (See IRM 5.9.5.7, Serial Filers, and related subsections and exhibits.)

- (2) **Counsel Coordination.** Coordination with Counsel and adherence to IRM 5.9.4.15.4, Referral Tolerances, must be maintained since the volume of non-compliant debtors might overwhelm Counsel's ability to file motions and to argue and resolve issues. For the benefit of all parties, litigation should become an option only after all alternatives have been explored.
- (3) **Advantages of Court Intervention.** The Service may benefit from court intervention because:

- It may prove to be a positive influence on the debtor's tax compliance, present and future.
- It may allow the debtor to remain in bankruptcy longer, improving the debtor's overall finances and opportunity for a fresh start.
- The debtor is prohibited from filing another bankruptcy for 180 days after the debtor requests dismissal subsequent to a motion to lift the stay (11 USC 109(g)(2)).
- The debtor may lose protection of the automatic stay if another bankruptcy is filed within one year.
- Seeking relief through court action may be the only means not in violation of the automatic stay to address a debtor's non-compliance.
- Avoidance of damages against the Service due to the stay being lifted.

(4) **Risks of Court Intervention.** The downsides of asking the court for relief are it:

- May be expensive for the Government.
- Is time consuming for all parties concerned.
- May increase tax non-compliance due to delay (e.g., pyramiding of taxes could continue).
- Can delay collection actions due to pending legal action.

Note: Courts may be unwilling to grant such requests. If so, the Service's options are limited.

(5) **Protection of the Government's Interests.** In some cases, after a court motion is filed, modification of the plan to pay a post-petition claim may be an acceptable resolution. To protect the Government's interests in this event, aside from requiring a modification of the plan that does not have an adverse impact on pre-petition claims, the IRS should secure (as applicable) a provision requiring:

- a. Future compliance (for example, filing of required tax returns);

Reminder: For cases filed on or after October 17, 2005, non-compliance is grounds for conversion or dismissal (11 USC 1307(e)).

- b. Lifting of the stay to collect any future liabilities; and/or
- c. Proofs of deposit and/or estimated tax payments.

5.9.10.10.1 (03-01-2007) Conversion

(1) **Conversion to Another Chapter.** A debtor may convert from Chapter 13 to another chapter as long as the debtor is eligible to file under that chapter. A court order is not required for a voluntary conversion from Chapter 13 to Chapter 7. For cases filed prior to October 17, 2005, the debtor is required only to file a notice of conversion. The filing date of the notice is deemed to be the date of conversion to Chapter 7.

Reminder: For cases filed on or after October 17, 2005, conversion to a Chapter 7 filing might be subject to dismissal under the means test.

(2) **Creditor Election.** A creditor may also seek a conversion for cause, although this is not often done in Chapter 13.

(3) **U.S. Trustee.** The Chapter 13 trustee may seek a conversion for cause.

5.9.10.11
(08-07-2018)
Distribution of Funds

(1) **Application of Payments.** IRM 5.9.15, Payments in Bankruptcy, discusses the posting of bankruptcy payments in detail. Generally, funds received from the trustee are posted to AIS using the “Post Automatic Payment” option on the “Payment Monitoring Menu” on AIS. Occasionally, payments may be applied as “Partially Designated”, “Semi-Automatic”, or “Manual” payments. Unless designated differently by the court, payments are systemically applied to allowed claims, by category, as follows:

1. Secured claims. (Each secured period is paid in full, then payment is applied to accrued interest on that module before payments are applied to the next oldest module.)
2. Priority claims. (Only the tax and interest are paid.)
3. Unsecured claims. (Only the tax and interest are paid.)
4. Penalties on priority claims.
5. Penalties on unsecured general claims.

Note: The Service maintains its right to apply payments according to the best interests of the Government, which may not be reflected in the above list of order of payment application.

(2) **BAPCPA Payment Provision.** BAPCPA added 11 USC 524(i) which makes it a violation of the discharge injunction for any creditor to willfully fail to credit payments correctly which were received under a confirmed plan for bankruptcies commencing on or after October 17, 2005. If the debtor can prove misapplied payments caused material injury, the Service may be subject to damages and attorney’s fees under IRC 7433(e). The following are exceptions to this provision:

- The order confirming the plan is revoked.
- The plan is in default.
- The creditor has not received payments in the manner required by the plan.

If the creditor corrects the misapplication of payments before the discharge is granted, no violation of the discharge injunction is considered to have occurred.

(3) **Non-Plan Payments.** Occasionally, non-plan payments are received by the Service on a bankruptcy case that are not remitted through the Chapter 13 trustee. Insolvency must document all particulars surrounding receipt of such payments. If payments are retained, AIS should be updated to indicate a payment received outside the plan to reflect an accurate balance amount.

(4) **Payment Screening.** Insolvency should screen such a payment to determine if the Service is entitled to apply the payment as a credit to the debtor’s federal tax account.

- a. If Insolvency determines a payment should not be credited, timely actions must be taken to dispose of the funds appropriately. This may include returning the uncashed check to the remitter or preparing a manual refund request on Form 5792.
- b. If a payment has been received and deposited by the Service, and determination is made later the payment should be returned, Insolvency will initiate actions to generate a refund either to the Chapter 13 trustee or to the debtor, per local procedures.

- (5) **Proper Screening/Allowance of Payments.** Examples of payments that may be credited to the taxpayer's account and generally allowed to be credited to the debtor's account after proper screening is done by Insolvency (e.g., research conducted, advice obtained from Counsel, concurrence from trustee, if appropriate), are as follows:
- A voluntary payment from the debtor or co-debtor.
 - A payment received from the sale of property.
 - A payment received in exchange for a Certificate of Discharge of Property from Federal Tax Lien.
 - A payment from a non-debtor spouse on a joint return.
- (6) **Clarify Claim/Amend or Withdraw.** If such a payment is received, and the Service determines it is entitled to retain the payment, FI will amend or withdraw the proof of claim, as applicable, or send a credit letter to the trustee depending upon local procedures. This is necessary for claim clarification purposes.

5.9.10.12
(10-01-2015)
Trustee Audit

- (1) **Audit of Chapter 13 Debtors.** In 2006, a Chapter 13 debtor audit program was implemented. The U.S. Trustee randomly selects cases to be audited by private contractors who check for material misstatements in the debtors' statement of affairs and schedules. The auditors send notice with a list of material misstatements to the U.S. Trustee and parties in interest, including creditors. When received at the CIO, these notices will be forwarded to the assigned FI offices for review. FI may refer the case to Counsel for civil action. Where warranted, FI will consult with the Fraud Technical Advisor (FTA) concerning a criminal referral to CI.

5.9.10.13
(08-07-2018)
Chapter 13 and the Individual Shared Responsibility Payment (SRP) Liability

- (1) **Definition.** Under the Affordable Care Act (ACA), the Federal government, state governments, insurers, employers, and individuals are given shared responsibility to reform and improve the availability, quality, and affordability of health insurance coverage in the United States. Beginning in 2014, IRC 5000A required all individuals to have qualifying health care coverage (called minimum essential coverage or MEC) in each month of the year, qualify for an exemption, or make an individual shared responsibility payment (SRP) when they file their tax return for the year.
- (2) **General Information.** See IRM 5.9.4.19.1, Individual Shared Responsibility, for general information regarding the Individual Shared Responsibility Payment (SRP). The individual SRP is taken from the appropriate line of the debtor's Federal income tax return, when the debtor's gross income reportable on the Federal income tax return meets the threshold requiring the debtor to file a Federal income tax return. The SRP liability is reported on the Form 1040 , **U.S. Individual Income Tax Return.**
- (3) **Enforcement.** The SRP liability is not subject to penalties or the filing of a Notice of Federal Tax Lien (NFTL). The Service will not levy on any property of the taxpayer for failure to pay the SRP liability. However, interest accrues on the SRP liability until the total SRP liability is paid. Unless the taxpayer is in bankruptcy, the Service may offset Federal income tax refunds to SRP liabilities until the liability is paid unless the refund is derived from a levy or lien action.
- (4) **Pre-Petition or Post-Petition.** The SRP liability follows the Federal income tax return information from which it arose for the taxable period. If the Federal

income tax is pre-petition, the SRP liability for that taxable period is also pre-petition. If the Federal income tax is post-petition, the SRP liability for that taxable period is also post-petition.

5.9.10.13.1
(08-07-2018)
**Proofs of Claim and
Individual SRP Liabilities**

- (1) **Assessment and Treatment in Bankruptcy.** Individual SRP liabilities for pre-petition and post-petition periods are claimable as an excise tax on the Service's proof of claim. For additional information on claiming these liabilities, see IRM 5.9.13.18.6(1), IRC 5000A - Individual Shared Responsibility Provision.

5.9.10.13.2
(10-01-2015)
**Setoffs and Individual
SRP Liabilities**

- (1) **Setoffs and Pre-Petition Individual SRP Liabilities.** Although the Bankruptcy Code allows setoff of pre-petition income tax refunds to pre-petition income tax liabilities without a lifting of the stay, this does not apply to individual SRP liabilities. Setoffs are not permitted between pre-petition SRP modules. Setoffs are not permitted between pre-petition income tax modules and pre-petition SRP liabilities. To setoff any pre-petition credit and pre-petition liability where both are not income tax requires a lifting of the stay.
- (2) **Setoffs and Post-Petition Individual SRP Liabilities.** Setoffs between post-petition income tax modules and post-petition SRP liabilities are permitted, as they are not prohibited by the Bankruptcy Code. No lifting of the stay is required.

5.9.10.13.3
(10-28-2022)
**Closing Chapter 13
Cases with SRP
Liabilities**

- (1) **Dismissal and SRP Liability Modules.** When there is a joint liability and the bankruptcy was a joint bankruptcy case, the dismissal will be processed through routine Insolvency Interface Program (IIP) processing. When there is a joint income tax liability and only one spouse filed bankruptcy, IIP processes the dismissal and the joint module is systemically mirrored establishing two separate accounts. Mirroring of SRP liability modules was implemented in January 2016. See (3) below for additional information about mirroring of SRP liability modules when only one spouse filed bankruptcy.
- (2) **Discharge and SRP Liabilities.** As mentioned previously, the SRP liability is treated as an excise tax under 11 USC 507(a)(8)(E) for bankruptcy purposes. Since the liability for the SRP is taken from the appropriate line on the debtor's Federal income tax return (see IRM 5.9.10.13.2, Setoffs and Individual SRP Liabilities), certain information from the debtor's income tax return is used in determining dischargeability of the SRP liability. The debtor must be eligible to receive a discharge in the bankruptcy case. The rules for determining discharge are determined by the type of discharge received by the debtor - a discharge upon completion of the plan under 11 USC 1328(a) or a hardship discharge under 11 USC 1328(b). All rules for determining the dischargeability of income tax are used when determining dischargeability of the SRP liability except the "240 day rule" and the "unassessed but assessable rule" set forth in 11 USC 507(a)(8)(A)(ii) and (iii).
 - a. **Eligibility for Discharge.** An individual or joint debtor may not be eligible to receive a discharge in the current Chapter 13 case if they received a discharge in a prior bankruptcy case. Eligibility is determined by the type of prior bankruptcy filed and the petition date of the prior bankruptcy. See Exhibit 5.9.5-3, Allowable Elapsed Time Between Bankruptcy Filings and Discharges, and IRM 5.9.10.3.2 (7), Discharge Limitations, for additional information. Discharge may also depend on whether or not IRS was properly noticed in the bankruptcy case. See IRM 5.9.17.8.9, Procedures

for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case.

- b. Chapter 13 Plan Completion Discharge. When a debtor receives a discharge upon completion of a Chapter 13 bankruptcy plan under 11 USC 1328(a), the remaining balance of debts “provided for” by the bankruptcy plan are generally discharged unless they are an exception to discharge. The dischargeable liability may be a pre-petition debt or a post-petition debt included on an 11 USC 1305 claim that was provided for by the Chapter 13 plan.

Note: The following are exceptions to discharge for the SRP liability when the Chapter 13 debtor receives a discharge upon completion of the bankruptcy plan:

The SRP liability may be non-dischargeable	The tax on the income tax return is non-dischargeable due to willful evasion or fraud. However, IRS must be able to show that the debtor willfully evaded the SRP liability. When the SRP liability may be non-dischargeable due to willful evasion or fraud, refer the case to Counsel for guidance. See IRM 5.9.17.8.2(1), Exception to Discharge.
The SRP liability is non-dischargeable	The tax on the income tax return is non-dischargeable because the tax was assessed before the return was filed. See IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared, for more information on SFRs.
The SRP liability is non-dischargeable	The income tax return was filed late and after the date that is two-years before the date of the bankruptcy petition. This includes post-petition SRP liabilities included on an 11 USC 1305 claim and the related income tax returns were not timely filed. Reminder: The two-year period with regard to late filed returns is tolled during a prior bankruptcy. See IRM 5.9.13.19.3(4), BAPCPA Tolling, for additional information.

Reminder: The two-year period with regard to late filed returns is tolled during a prior bankruptcy. See IRM 5.9.13.19.3(4), BAPCPA Tolling, for additional information.

- c. Chapter 13 Hardship Discharge. In addition to the exceptions to discharge listed above, the SRP liability may also be excepted from discharge if the income tax return was due, with extensions, within the three-years prior to the bankruptcy petition date and the debtor received a hardship discharge.

Reminder: The three-year “look-back” provision in 11 USC 507(a)(8) and two-year period with regard to late filed returns are automatically tolled during a prior bankruptcy while the automatic stay is in effect. See IRM 5.9.13.19.3(4), BAPCPA Tolling, for additional information.

- (3) **Mirroring and SRP Liabilities.** When there is a joint SRP liability and only one spouse filed bankruptcy, the SRP liability will be mirrored. Mirroring of joint SRP liabilities was implemented in January 2016. Prior to January 2016 CIO caseworkers utilized the following procedures:

- a. Dismissed Cases. IIP generated a Process J error when there is a joint SRP liability, only one spouse filed bankruptcy, and there is a TC 520 on the module with a CSED indicator of P or S. IIP systemically input an “ACA CD 36” case classification on AIS. The case classification prohibited systemic closure of the case on AIS until the module could be mirrored. The caseworker routed the Process J error to the CIO Operation Support Unit for monitoring of the case until January 2016. Once mirroring was implemented in 2016, the joint SRP liability was manually mirrored and the case closed.
- b. Discharged Cases. ADS generated a Discharge Determination Report (DDR) when there was a joint SRP liability, only one spouse filed bankruptcy, and there is a TC 520 on the module with a CSED indicator of P or S. ADS systemically input an “ACA CD 36” case classification on AIS. The case classification prohibited systemic closure of the case on AIS until the module could be mirrored. The caseworker routed the case to the CIO Operation Support Unit for monitoring of the case until January 2016. Once mirroring was implemented in 2016, the joint SRP liability was manually mirrored. Any dischargeable amounts were adjusted for the debtor spouse.

5.9.10.13.3.1
(10-28-2022)
**Addressing the
Pre-Petition Installment
Agreement (IA) at Case
Closure When there is a
SRP Liability**

- (1) **Addressing the Suspended IA at Case Closure.** When a taxpayer has an IA and files bankruptcy, the IA is suspended but not terminated by the bankruptcy. When the bankruptcy case is dismissed or discharged, and there are outstanding liabilities that survive the bankruptcy, the caseworker must address the prior IA at case closure. The IA must be reinstated or the taxpayer notified of proposed termination when the IA cannot be reinstated. See IRM 5.9.17.24, Addressing Prior Installment Agreements When Closing a Case, for additional information.
- (2) **Installment Agreement Cannot Be Reinstated.** Normally, when the taxpayer has incurred an additional liability that was not included in the original IA, the IA cannot be reinstated. For the purpose of IA reinstatements, SRP liabilities

are **not** considered additional liabilities. Income tax (MFT 30) liabilities or other taxes are additional liabilities when not included in the original IA.

Example: John Doe had an IA for 30-201412 and 30-201512 when the bankruptcy was filed on 03/14/2016. John's IA was suspended by the bankruptcy. During the bankruptcy, John accrued a liability for 30-201612. The bankruptcy case was dismissed on 05/01/2017. Since the 30-201612 liability was not included in the original IA, the IA cannot be reinstated.

Example: John Doe had an IA for 30-201612 taxes when the bankruptcy was filed on 05/15/2017. John's IA was suspended by the bankruptcy. During the bankruptcy, he accrues a liability for 30-201712 and a SRP liability for 201712. When his bankruptcy case is dismissed on 06/01/2018, John's IA cannot be reinstated. The additional income tax liability on 30-201712, not the SRP liability, is the reason the IA cannot be reinstated.

When the IA is not reinstated, the Service is terminating the IA. The taxpayer must be notified of the proposed termination and given appeal rights. Send Letter 2975-C, Intent to Terminate Installment Agreement, to the taxpayer to give notice of proposed termination and appeal rights. Include any additional income tax liabilities not included in the original IA in Paragraph C of the letter. If the debtor has also incurred a SRP liability, check Paragraph A on the Letter 2975-C. Paragraph A states: "The shared responsibility payment (SRP) amount that you owe is assessed payment for not having minimum essential health coverage for you and, if applicable, your dependents per Internal Revenue Code Section 5000A - Individual Shared Responsibility Payment. The SRP amount that you owe is not subject to penalties or to lien or levy enforcement actions. However, interest will continue to accrue until you pay the total SRP balance due. We may apply your federal tax refunds to the SRP amount that you owe until it is paid in full." See IRM 5.9.17.24.1(3), Letter 2975-C, and Exhibit 5.9.17-5, Installment Agreement Cannot be Reinstated, for additional information.

- (3) **Installment Agreement Can be Reinstated.** When a bankruptcy case is closed and the debtor has not incurred any additional liability, or the only additional liability is a SRP liability, the debtor's installment agreement must be reinstated. The following example illustrates a case with a prior IA and the only additional liability is a SRP liability:

Example: John Doe had an IA for 30-201612 taxes when the bankruptcy was filed on 05/15/2017. John's IA was suspended by the bankruptcy. During the bankruptcy, he accrues a SRP liability for 201712, but no additional income tax liability. When his bankruptcy case is dismissed on 06/01/2018, the IA must be reinstated. There is no additional liability for IA reinstatement purposes.

To reinstate an IA when there is no additional liability, follow the guidance in:

- IRM 5.9.17.24, Addressing Prior Installment Agreement When Closing a Case
- IRM 5.9.17.24.1, Installment Agreement Letters Used During Case Closure
- Exhibit 5.9.17-2, Regular Installment Agreement Reinstatements
- Exhibit 5.9.17-3, Reinstating Direct Debit or Payroll Deduction Installment Agreement as Regular Installment Agreement

- Exhibit 5.9.17-4, Procedures For Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)

(4) **Reinstating the Suspended IA When the Only Additional Liability is the SRP Liability.** In most instances, IAs suspended by bankruptcy no longer have the original IA terms available on IDRS. Therefore, “reinstatements” are input to IDRS as new IAs, waiving the User Fee. IDRS requires all balances due which are not in ST 72 to be included when an IA is input.

- **Modules to be Included.** If a SRP liability was included in the original IA, the module will be included in the IA reinstatement. If a SRP liability was not included in the original IA, it cannot be included in the reinstatement.
- **CIO Reinstatement Procedures.** CIO is responsible for reinstating all IAs during case closure when reinstatement criteria are met. When the only additional debt is the SRP liability, CIO will take the following steps to reinstate the IA at case closure:
 - a. If not already present, add an “IA Issues” case classification to the case on AIS.
 - b. Input a TC 520 cc 64 to any SRP liability modules not included in the original IA using the bankruptcy petition date. This will put the SRP liability module into ST 72 on IDRS.
 - c. Input a TC 971 ac 063 to all modules included in the IA reinstatement.

Caution: Do not input a TC 971 ac 063 to the SRP liability modules unless they were included in the original IA.

- d. Reverse the TC 520 cc 6X on the pre-petition modules using the dismissal or discharge date. Do not reverse the TC 520 cc 64 on the SRP liability modules unless they were included in the original IA being reinstated.
- e. Input the IA to IDRS for only the modules included in the original IA. Do not include the SRP liability modules unless they were included in the original IA. Follow the guidance in Exhibit 5.9.17-2 through Exhibit 5.9.17-4, as applicable.
- f. Once the pre-petition modules are in ST 60 on IDRS, reverse the TC 520 cc 64 on the SRP liability modules using a TC 522. The TC 522 will take the SRP liability modules out of ST 72.
- g. Input a TC 530 cc 35 to the SRP liability modules with a 2-cycle posting delay if the SRP liability modules do not systemically return to ST 53.
- h. Add all TC 520, TC 521, TC 522, and TC 971 transactions to the Freeze Screen on AIS.
- i. Document all actions taken on the case in the AIS history.
- j. Close the case on AIS.

5.9.10.14
(08-07-2018)
**Chapter 13 and the
Employer Shared
Responsibility Payment
(ESRP) Liability**

- (1) **Definition.** The Affordable Care Act required applicable large employers (ALE) to offer affordable, minimum value health coverage to full-time employees (and their dependents) or potentially be liable for an Employer Shared Responsibility Payment (ESRP) under IRC 4980H.
- (2) **Classification.** An ESRP MFT 43 liability classification is determined when the Service issues Letter 226-J, ESRP Preliminary Contact, to an employer notifying them that one of their employees was allowed the premium tax credit (PTC).

- If the Letter 226-J date is before the bankruptcy petition date it is considered pre-petition.
- If the Letter 226-J date is after the bankruptcy petition date it is considered post-petition.

The date of Letter 226-J is determined by the date of the TC 971 AC 782 on the ESRP MFT 43 module on IDRS. An ESRP MFT 43 liability may be pre-petition, post-petition/pre-confirmation, or post-confirmation based on when the Letter 226-J was issued.

- (3) **Eligible.** Only individuals or an individual and their spouse are eligible to file a Chapter 13 case. Non-individual debtors are ineligible to file Chapter 13. When the debtor in a Chapter 13 bankruptcy case is the sole-proprietor of a business classified as an ALE, a post-petition ESRP MFT 43 liability may be assessed against the debtor. The individual as the sole-proprietor may be held personally liable for the debt.
- (4) **Post-Petition Liabilities.** Similar to post-petition income tax liabilities, the Service may treat post-petition ESRP MFT 43 liabilities of the Chapter 13 in various ways. At the local level, FI determines how FI caseworkers handle post-petition liabilities. One option FI may choose is to request a modification of the Chapter 13 bankruptcy plan so the post-petition liability can be paid through the plan and file a 11 USC 1305 claim for the post-petition ESRP MFT 43 liability. If an 11 USC 1305 claim is filed, FI caseworkers should include the proof of claim statement "This claim is being filed under the authority of 11 USC section 1305" on the claim. Additionally, to clarify that the ESRP MFT 43 liability is post-petition, proof of claim statement "Z9" should also be included on the claim to state "ESRP is post-petition since Letter 226-J was issued post-petition". When the post-petition ESRP MFT 43 liability is not included on an 11 USC 1305 claim, a TC 520 cc 84 should be input to the post-petition ESRP MFT 43 liability. The TC 520 cc 84 will alert IRS employees to contact Insolvency before taking collection action on post-petition liabilities as certain assets may remain property of the bankruptcy estate throughout the life of the Chapter 13 plan.

Note: If the Chapter 13 estate, rather than the debtor, filed employment tax returns, it is possible that the estate rather than the debtor incurred the ESRP. Contact Counsel to determine if an administrative expense claim should be filed if the estate had filed employment tax returns.

5.9.10.14.1
(08-07-2018)
**Proofs of Claim and
ESRP Liabilities**

- (1) **Assessment and Treatment in Bankruptcy.** When applicable, the Employer Shared Responsibility Payment (ESRP) liability will be assessed under MFT 43. The ESRP will be treated as an excise tax under 11 USC 507(a)(8)(E)(ii). See IRM 5.9.13.18.6(3), IRC 4980H - Employer Shared Responsibility Provision.

5.9.10.14.2
(08-07-2018)
**Closing Chapter 13
Cases with ESRP
Liabilities**

- (1) **Discharge and ESRP Liabilities.** ESRP MFT 43 liabilities are treated as excise taxes under 11 USC 507(a)(8)(E)(ii). A return is not required or filed for ESRP MFT 43 liabilities. ESRP MFT 43 liabilities arise when the Service issues Letter 226-J to an applicable large employer (ALE). When Letter 226-J is issued to a debtor during the three years immediately preceding the date of the filing of their bankruptcy petition, the ESRP MFT 43 liability is a priority excise tax debt.

- a. **Eligibility for Discharge.** For a debtor to receive a discharge, the debtor must be eligible to receive a discharge. Individual debtors may not be eligible to receive a discharge in their current Chapter 13 bankruptcy case if they received a discharge in a prior bankruptcy case. Individuals may receive a discharge upon completion of the Chapter 13 plan. They may also receive a hardship discharge when they cannot complete the Chapter 13 plan.
- b. **Notice of Bankruptcy Filing to IRS.** Regardless of chapter, the IRS must receive timely notice of an individual bankruptcy case for debts to be discharged. For additional information on individual Chapter 13 cases, see IRM 5.9.17.8.9, Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in Asset Case.
- c. **Chapter 13 Plan Completion Discharge.** When a debtor receives a discharge upon completion of a Chapter 13 plan under 11 USC 1328(a), the remaining balance of debts “provided for” by the bankruptcy plan are discharged unless there is an applicable exception to discharge. The dischargeable liability may be a pre-petition debt or a post-petition debt included on an 11 USC 1305 claim that was “provided for” by the debtor’s plan. Pre-petition ESRP MFT 43 liabilities are generally dischargeable when the debtor received a discharge upon completion of the Chapter 13 plan. Post-petition ESRP MFT 43 liabilities are generally dischargeable when the debtor received a discharge upon completion of the Chapter 13 plan, the post-petition ESRP MFT 43 liability was included on an 11 USC 1305 claim, **and** the plan “provided for” the post-petition ESRP MFT 43 liability. Post-petition ESRP MFT 43 liabilities are generally non-dischargeable when the Chapter 13 plan was not amended to “provide for” post-petition ESRP MFT 43 liabilities whether or not the liabilities were included on an 11 USC 1305 claim.
- d. **Hardship Discharge.** Chapter 13 debtors may receive a hardship discharge under 11 USC 1328(b). The exceptions to discharge in the Chapter 13 hardship case are the same as the exceptions to discharge in an individual Chapter 7 case under 11 USC 727 pursuant to 11 USC 523(a)(1)(A). With the concurrence of Area Counsel, pre-petition ESRP MFT 43 liabilities may also be excepted from discharge due to willful evasion under 11 USC § 523(a)(1)(C) if the debtor willfully evaded the assessment or collection of ESRP MFT 43 liabilities. For more information on determining dischargeability of ESRP MFT 43 liabilities in Chapter 13 hardship cases, follow the Chapter 7 dischargeability guidance. When individual debtors are liable for pre-petition ESRP MFT 43 liabilities, the ESRP MFT 43 liabilities are non-dischargeable when the Letter 226-J was issued within the 3-years prior to the bankruptcy petition date. If the Letter 226-J was issued more than 3-years prior to the bankruptcy petition date, the ESRP MFT 43 liabilities are dischargeable unless Area Counsel agrees that they are non-dischargeable due to the willful evasion exception to discharge. As mentioned above, liabilities may also be non-dischargeable if the IRS was not notified timely of the bankruptcy case. There is no discharge of post-petition ESRP MFT 43 liabilities in a Chapter 13 hardship discharge case.
- e. **Fraud.** As there is no return filed for ESRP MFT 43 liabilities, there is generally no exception to discharge for fraud. However, if the debtor willfully evaded the assessment or collection of ESRP MFT 43 liabilities, with the agreement on Area Counsel, the ESRP MFT 43 liabilities may be excepted from discharge due to willful evasion. As mentioned previ-

ously, Chapter 13 debts may be non-dischargeable if IRS was not notified timely of the bankruptcy case.