EFFECTIVE DATE

(02-01-2023)

PURPOSE

(1) This transmits a revised IRM 5.9.8, Processing Chapter 11 Bankruptcy Cases.

MATERIAL CHANGES

(1) The content in IRM 5.9.8, Processing Chapter 11 Bankruptcy Cases, has been updated, expanded, and reformatted to provide clarification of existing material. The table below shows substantive changes within this IRM revision.

Number	IRM	Change
1	IRM 5.9.8.1(4)	Changed program owner to Collection Policy, Insolvency.
2	IRM 5.9.8.1.2(2)	Revised IRM title
3	IRM 5.9.8.1.3(1)	Added Responsibility IRM reference.
4	IRM 5.9.8.1.7(4)	Updated the site page to the Insolvency Knowledge Base Home Page.
5	IRM 5.9.8.1.7(6)	Updated TBOR site.
6	IRM 5.9.8.4.1	Change timeframe to work APOC flags from **calendar days** to **business days**.
7	IRM 5.9.8.4.2(2)	Divided paragraph (1). Moved 341 Meeting information into new paragraph (2). Included foreign assets as part of specific assets to question the debtor on at the 341 meeting.
8	IRM 5.9.8.4.2(4)	Added clarity on the definition of employee leasing.
9	IRM 5.9.8.4.2(12)	Added table to meet 508 compliance.
10	IRM 5.9.8.4.2(19)	Rearranged paragraph to meet 508 compliance. Changed to reflect FC may accept TFRP OI's if there is less than six months left on the ASED.
11	IRM 5.9.8.4.2(20)	Added review of FATCA data when applicable.
12	IRM 5.9.8.5	Removed pre-BAPCPA information. Removed paragraph (2).
13	IRM 5.9.8.5(1)	Updated the small business debtor debt limits.
14	IRM 5.9.8.5.1(1)	Updated section on new SBRA debt limits and timeframe.
15	IRM 5.9.8.5.1(2)	Updated to clarify the trustee's roles and when the their role ends.
16	IRM 5.9.8.9(4)	Updated title in paragraph (4).
17	IRM 5.9.8.9(6)	Added IRM reference on issuing an interagency offset.
18	IRM 5.9.8.9(8)	Updated SCI contact reference.

Number	IRM	Change
19	IRM 5.9.8.10	Removed information on pre-BAPCPA cases.
20	IRM 5.9.8.11(3)	Removed caution stating a case should not be sent to FC if there is six months left of the ASED.
21	IRM 5.9.8.10(3)	Updated paragraph to clarify difference between non-individual and individual debtor cases.
22	IRM 5.9.8.13(6)	Added IRM reference for FTD alerts.
23	IRM 5.9.8.14	Updated title in paragraph (2) and removed BAPCPA information.
24	IRM 5.9.8.14.1	Updated title in paragraph (2) and removed BAPCPA information.
25	IRM 5.9.8.16	Updated to reflect changes in how ESRP liabilities are handled.
26	IRM 5.9.8.17	Removed information on pre-BAPCPA cases.
27	IRM 5.9.8.17.1(1)	Added IRM reference for SBRA cases. Added timeframe for the plan to be filed in SBRA cases. Added note with exception to the 90 day plan filing requirement.
28	IRM 5.9.8.17.1(4)	Updated title of paragraph (b) and (j). Removed BAPCPA information throughout section, including removing paragraph (i). Rearranged paragraph for 508 compliance.
29	IRM 5.9.8.17.1(6)	Removed information on pre-BAPCPA cases.
30	IRM 5.9.8.17.2.2	Rearranged paragraph for 508 compliance.
31	IRM 5.9.8.18	Removed information on pre-BAPCPA cases.
32	IRM 5.9.8.18(4)	Clarified that an individual debtor can receive a discharge upon confirmation if the court orders it for cause.
33	IRM 5.9.8.19	Removed information on pre-BAPCPA cases. Updated title of paragraph (2).
34	IRM 5.9.8.19.2	Removed information on pre-BAPCPA cases.
35	IRM 5.9.8.19.3	Removed information on pre-BAPCPA cases and arranged section for 508 compliance.
36	IRM 5.9.8.19.4	Updated title and removed information on pre-BAPCPA cases.
37	IRM 5.9.8.19.4	Clarified that in the case of an individual debtor, the estate is liable for any tax liabilities arising from personal service income if that income is property of the estate.
38	IRM 5.9.8.19.4.1	Updated title and removed information on pre-BAPCPA cases.
39	IRM 5.9.8.19.4.2	Updated title and removed information on pre-BAPCPA cases.
40	Throughout	Removed outdated BAPCPA information.
41	Throughout	Editorial changes were made throughout this section to add clarity and to update, correct, or add citations and titles.
42	Throughout	Moved lists into tables, remove breaks, and rearranged sections to meet 508 compliance.

Number	IRM	Change
43	Throughout	Updated **Form 6338(A)** to**Form 6338(A)(C)**.
44	Throughout	Changed **Service** to **IRS**.
45	Throughout	Changed **Responsible parties** to **Responsible persons**.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.9.8 dated January 2, 2020.

AUDIENCE

All operating divisions

Kareem Williams
Director, Collection Policy

5.9.8
Processing Chapter 11 Bankruptcy Cases

Table of Contents

5.9.8.1
(02-01-2023)
Program Scope and Objectives

(1) **Purpose.** This IRM section contains guidance on processing bankruptcy cases filed under Chapter 11 of the United States Bankruptcy Code (USBC).

(2) **Audience.** Caseworkers and management in Field Insolvency (FI) within Specialty Collection - Insolvency (SCI) are the primary users of this section. Caseworkers at the Centralized Insolvency Operation (CIO) within SCI, Advisors, Revenue Officers, and other SB/SE employees may also refer to this section. Employees in other functions may also refer to this section when dealing with a taxpayer that has filed Chapter 11 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 Small Business Self Employed (SBSE) division.

(5) **Primary Stakeholders.** The primary stakeholders are SCI and SB/SE Collection.

(6) **Program Goals.** The goal is to provide fundamental knowledge and procedural guidance for working Chapter 11 cases. Following the guidance in this IRM will ensure cases are worked in accordance with bankruptcy laws and regulations.

5.9.8.1.1
(12-01-2017)
Background

(1) **Reorganization.** Chapter 11 bankruptcy is a rehabilitative case that gives the debtor a *breathing period* from the petition filing to plan confirmation, during which time business affairs can be reorganized and a plan devised for the orderly payment of creditors. Chapter 11 is frequently referred to as the *reorganization bankruptcy*. However, a debtor may choose to liquidate instead of reorganizing in a Chapter 11 bankruptcy.

- A Chapter 11 bankruptcy petition may be filed *voluntarily* by the debtor or *involuntarily* by creditors.
- An involuntary case may not be filed against a farmer or a noncommercial corporation.

Note: The IRS will not initiate or join in an action to request an involuntary bankruptcy for a taxpayer unless extraordinary circumstances are present. Insolvency will prepare a referral to Counsel to request the initiation or participation in the involuntary petition when qualifying circumstances are present.

(2) **Debtor-in-Possession (DIP)/Trustee.** In a Chapter 11 case, the debtor usually operates as a debtor-in-possession (DIP). However, a trustee or an examiner may be appointed for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case (11 USC 1104). For cases filed on or after October 17, 2005, the bankruptcy court may convert or dismiss a case for cause unless the court determines that appointment of a trustee or examiner is in the best interests of creditors and the estate (11 USC 1112(b)(1)). The duties of the trustee or DIP include administering the estate and operating the debtor's business (11 USC 1106 and 1108). In a timely fashion, the DIP or trustee must either:

a. File a plan or a report explaining why a plan will not be filed or
b. Recommend the case be converted to another chapter or be dismissed.

(3) **Complex/Long Duration.** Chapter 11 cases are ordinarily more labor-intensive to monitor and evaluate than other bankruptcies because of complexities of the restructuring efforts in the process. After a plan is confirmed, the creditors must monitor their receipt of payments under the terms of the plan. A Chapter 11 bankruptcy case can last for several years.

5.9.8.1.2
(02-01-2023)
Authority

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

(2) IRM 5.9.3.1.2, Authority also contain Insolvency caseworkers authority in the insolvency program.

5.9.8.1.3
(02-01-2023)
Responsibilities

(1) IRM 5.9.1.4, The Role of Insolvency and IRM 5.9.3.1.3 , Responsibilities, provides a list of titles and responsibilities with an explanation of their roles and authority.

(2) **Centralized Insolvency Operation (CIO).** CIO loads Chapter 11 cases onto the Automated Insolvency System (AIS), runs IIP and works the error, Potential Invalid TIN and status reports (except for status 22) for those cases. If a MFT 31 split for a non-debtor spouse is required for an individual Chapter 11 case, CIO Operation Support Team (OST), will perform all required mirroring actions. Chapter 11 mail received at the national mailing address in Philadelphia will be mailed, shipped overnight, or faxed to the FI group assigned the case depending on the urgency of the correspondence. (See IRM 5.9.11.4.2, Time Sensitive Mail, and IRM 5.9.11.4.3.1, Routine Notice Requiring Further Processing.)

(3) **Field Insolvency (FI) Responsibility.** With the exception of initial clerical processing and MFT 31 mirroring, Chapter 11 casework remains the responsibility of FI groups. Chapter 11 caseworkers should ask trustees or DIPs to send plans, schedules, disclosure statements, and payments directly to the local FI office.

(4) **Counsel.** Certain issues in a Chapter 11 case may be referred to Area Counsel or directly to the U.S. Attorney's Office (USAO). Within this IRM, the term "Counsel" refers to 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 IRS 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

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5.9.8.1.4
(02-01-2023)
Program Management and Review

(1) IRM 1.4.51.8.3, Case Management Tools, IRM 5.9.12, Insolvency Automated Processes, and IRM 5.9.16, Insolvency Case Monitoring, contain a list of required reports for caseworkers and managers to utilize for inventory management and review of case inventories. These sections also include the frequency and purpose of each report.

(2) National quality reviews and consistency reviews are conducted on a regular basis. See IRM 1.4.51.16.1, NQRS, and IRM 1.4.51.16.2, EQ Consistency Reviews, for more information.

(3) Operational 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.

5.9.8.1.5
(02-01-2023)
Program Controls

(1) Managers are required to follow program management procedures and controls addressed in IRM 1.4.51.5.2, Reviews (Overview), IRM 1.4.51.15, Controls, and IRM 1.4.51.16, Quality.

(2) Caseworkers and managers utilize the Automated Insolvency System (AIS) for case management, assignment and documentation of all insolvency and non-bankruptcy insolvency cases. See IRM 5.9.3.2, Automated Insolvency System (AIS).

5.9.8.1.6
(02-01-2023)
Terms and Acronyms

(1) A glossary of terms used by Insolvency can be found in Exhibit 5.9.1-1, Glossary of Common Insolvency Terms.

(2) Common acronyms acceptable for use in the Automated Insolvency System (AIS) history are listed in 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/Acronymdb.aspx*

(4) Acronyms used specifically in this IRM section are listed below:

Acronyms	**Definitions**
AIS	Automated Insolvency System
APOC	Automated Proofs of Claim
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
CIO	Centralized Insolvency Operation
CPM	Confirmed Plan Monitoring
DIP	Debtor-In-Possession
EPOC	Electronic Proofs of Claim
FI	Field Insolvency
IIP	Insolvency Interface Program
NFTL	Notice of Federal Tax Lien
PACER	Public Access to Court Electronic Records
POC	Proof of Claim
SBRA	Small Business Reorganization Act
SOFA	Schedule of Financial Affairs
USBC	United States Bankruptcy Court

5.9.8.1.7
(02-01-2023)
Related Resources

(1) Procedural guidance on insolvencies can be found throughout IRM 5.9, Bankruptcy and Other Insolvencies.

(2) The US Bankruptcy Code and Rules

(3) AIS User Guide, Document Number 13219

(4) Insolvency Knowledge Base Home Page *https://portal.ds.irsnet.gov/sites/vl114/pages/default.aspx*

(5) Service employees may also refer to IRM 5.17.10, Legal Reference Guide for Revenue Officers, Chapter 11 Bankruptcy (Reorganization), for additional information on Chapter 11 bankruptcies.

(6) Pub 5170, Taxpayer Bill of Rights and Taxpayer Bill of Rights page *https://www.irs.gov/taxpayer-bill-of-rights*

5.9.8.2
(02-01-2023)
The Chapter 11 Debtor

(1) **Eligibility.** Any entity eligible to file a Chapter 7 petition (individual, Limited Liability Company (LLC), partnership, or corporation) can file Chapter 11, *except* a stockbroker or a commodity broker. As in Chapter 7, certain banks, savings and loan associations, and insurance companies cannot file a Chapter 11 petition. A railroad, which cannot file a Chapter 7 petition, *may* file a Chapter 11 petition.

Note: While some entities may not file Chapter 11 petitions, a corporation that owns that entity may file Chapter 11 if it may otherwise be a debtor in a Chapter 11 case.

(2) **Main Chapter for Non-individual Debtors.** Chapter 11 is the primary reorganization chapter of the Bankruptcy Code for non-individual debtors. Ideally, a reorganizing Chapter 11 plan is acceptable to most of the debtor's creditors because the plan is more likely (over time) to pay a greater amount of the debtor's pre-bankruptcy debts than if the business were liquidated. A Chapter 11 bankruptcy allows the debtor to continue business operations through a plan of reorganization which meets statutory criteria (11 USC 1123 and 1129). Cooperation among the various interests is crucial to a successful reorganization. Generally, reorganization, by preserving jobs and assets, is preferable to liquidation. However, a debtor may choose to liquidate in a Chapter 11 bankruptcy instead of reorganizing.

(3) **Individuals and Chapter 11.** An individual is eligible to file Chapter 11 even if the individual is not engaged in a business.

(4) **Property of the Estate.** Property of the estate in a Chapter 11 case includes the property listed in 11 USC 541. When the Chapter 11 debtor is an individual , 11 USC 1115 provides that property of the estate also includes earnings from services performed by the debtor after the petition date until the case is dismissed, converted, or closed.

5.9.8.3
(02-01-2023)
Initial Processing

(1) **Notice.** The bankruptcy courts provide the IRS with notice of all Chapter 11 cases whether or not the IRS is listed as a creditor. This notice provides the date, time, and location of the first meeting of creditors, as required by 11 USC 341. The court may also provide copies of the debtor's schedules of assets and liabilities and the statement of financial affairs to the creditor.

(2) **First Meeting of Creditors and Pre-packaged Chapter 11 Cases.** The first meeting of creditors (also known as the 341 hearing) generally occurs 20-40 days after the filing of the petition. However, , under 11 USC 341(e), upon request of a party in interest and after notice and hearing, the court can order the US Trustee not to convene a meeting of creditors if the debtor files a pre-packaged Chapter 11. A pre-packaged Chapter 11 is where the debtor prepares a plan and solicits acceptance of the plan prior to the commencement of the case. FI, with Counsel's concurrence, may consider opposing the 11 USC 341(e) request if the lack of a 341 hearing will compromise the IRS's position.

(3) **Preventing Violations of Automatic Stay.** If FI research reveals no liabilities or pending assessments in a case, a TC 520 control should remain on the account until the potential for a violation of the USBC expires. The freeze also allows for monitoring of post-petition tax compliance.

(4) **Proof of Claim.** If the Automated Proof of Claim (APOC) system is unavailable and the debtor owes taxes above the tolerance specified in Exhibit 5.9.13-1, Manual Proofs of Claim and Common Bankruptcy Issues, Threshold for Claims, a manual claim should be prepared and timely filed in accordance with IRM 5.9.13, Manual Proofs of Claim and Common Claim Issues. Motions and hearings involving the IRS can begin early in Chapter 11 cases, so the IRS claim should be on record as soon as possible. The bar date for filing proofs of claim in Chapter 11 cases is set by the court, but the IRS has at least 180 days from the petition date pursuant to 11 USC 502(b)(9).

a. 11 USC 1111(a) provides a claim is deemed to be filed for any debt listed on the debtor's schedules, *except* a debt listed as disputed, contingent, or unliquidated.
b. There may be unfiled pre-petition returns when the claim is prepared. Show potential liabilities for any unfiled returns as "unassessed" (formerly listed as estimated).
c. APOC generates estimated claims systemically. When no basis is found for an estimated claim, APOC annotates the period as "Not Filed" and the dollar amount as "$100.00".

(5) **Proof of Claim Filing Criteria.** The IRS should not rely on being listed in the bankruptcy schedules. A proof of claim should be filed in every case meeting the tolerances specified in Exhibit 5.9.13-1. However, the tolerance criterion does not prohibit FI from filing claims where liabilities fall below the stated dollar amounts. Local practice may specify filing claims on all balance due accounts.

Note: APOC processing is not governed by Exhibit 5.9.13-1 criteria.

5.9.8.4
(12-01-2017)
Initial Case Review for Chapter 11

(1) **Initial Review.** A timely and thorough initial case review is necessary to protect the interest of the IRS in a Chapter 11 bankruptcy case. The review will identify issues that the caseworker needs to address at the Section 341 Meeting of Creditors. The caseworker must establish the frequency of post-petition monitoring based on the debtor's prior tax liabilities and compliance history.

Note: The Director of SCI may provide streamlined procedures for FI caseworkers to follow when the case meets the streamlined criteria. Certain aspects of the initial case review within this IRM may not be required in a streamlined case.

Caution: An initial case review is required even if there are no outstanding liabilities or delinquent returns.

5.9.8.4.1
(02-01-2023)
Initial Case Review Time Frames for the Chapter 11 Case

(1) **General Time Frame.** FI caseworkers must conduct an initial case review at least five calendar days prior to the 341 Meeting of Creditors. The review must be completed within 30 calendar days of assignment when the case is not received at least five calendar days prior to the 341 meeting or 30 calendar days from the 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 calendar days before the bar date.

(2) **Aspects of the Review that Are Required Earlier.** Certain elements of the initial case review are required sooner. Some of these elements are:

- Resolving stay violations
- Determining if the case is a pre-packaged Chapter 11 case
- Identifying cases that meet Significant Bankruptcy Case Program criteria
- Referral of the significant bankruptcy case to TEGE and Area Counsel
- Responding to pending motions or defensive litigation

(3) **Aspects of the Review Requiring Action within Five Business Days.** The caseworker must work Automated Proof of Claim (APOC) flags within five business days of APOC identifying a potential violation of the stay. (IRM 5.9.14.2.7, APOC Flag Condition Time Frame Requirements) Flags that identify possible stay violations are:

- Credits Posted After Petition Date
- Lien Recorded Date Blank

(4) **Aspects of the Review Requiring Action within Ten Calendar Days.** Issues that must be addressed within ten calendar days of assignment are:

- Adequate protection, when APOC identifies that the IRS has a NFTL on file. Caseworkers must work the “Secured Period” flagged condition within ten calendar days of APOC identifying the condition. (See IRM 5.9.14.2.7(1)(b), APOC Flag Condition Time Frame Requirements.)
- Determining if the case is a pre-packaged Chapter 11 case.
- Determining if the case meets “significant case” criteria requiring a referral to Area Counsel. (IRM 5.9.4.15.3, Significant Bankruptcy Case Referrals, and IRM 5.9.8.4.2(15),Significant Cases and Referrals to Counsel)
- Notice to TEGE when the case meets significant case criteria or the debtor is a nationally known company. (IRM 5.9.8.4.2(11), Notice to TEGE)

5.9.8.4.2
(02-01-2023)
Aspects of the Initial Case Review in the Chapter 11 Case

(1) **Bankruptcy Petition, Schedules, and SOFA.**. Numerous electronic tools are available to assist the caseworker with an initial case review. At minimum, the caseworker must review the debtor’s bankruptcy petition and bankruptcy Schedules A - J. Additionally, the Statement of Financial Affairs (SOFA) must be reviewed. The debtor’s attorney may mail the bankruptcy petition, schedules, and SOFA to the IRS. The petition, schedules, and SOFA are also available electronically on PACER.

(2) **341 Meeting.** 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 meeting. Document the AIS history clearly with any issues requiring a discussion at the 341 meeting. If there are no issues, state that there are no issues for discussion at the 341 meeting. The caseworker must document whether or not they will attend the 341 meeting. The following list contains examples of items that may be discussed at the 341 meeting(not all-inclusive):

- Give the taxpayer Publication 1, Your Rights as a Taxpayer, when not issued prior to the 341 meeting.
- In an individual or joint debtor case, discuss the debtor's responsibility to obtain an Employer Identification Number (EIN), report income on Form 1041, U.S. Income Tax Return for Estates and Trusts, and to provide the EIN to the caseworker shown on the Letter 4914, Notice to Individual Chapter 11 Debtor Regarding Income Tax Filing Responsibilities.
- Ask the debtor how they arrived at the value of assets listed in the bankruptcy schedules.
- Ask why specific assets (including foreign assets) are not listed in the bankruptcy schedules. This is important when research performed by the caseworker locates assets not disclosed in the bankruptcy schedules.
- Who are the persons that may be responsible for the TFRP?
- Is the debtor's business continuing to operate?
- How many employees does the business currently employ?
- Does the business pay employees weekly, bi-weekly, or monthly?
- What is the total wage expense per payroll period?
- Ask the debtor to file any delinquent tax returns by an established deadline. Then, advise the taxpayer of the consequences of non-compliance.
- Take the opportunity to discuss Federal Tax Deposit (FTD) requirements with the debtor. Ask if they understand FTD requirements.
- Ask if the debtor plans to reorganize or liquidate through the Chapter 11 proceeding.

Note: The caseworker can gather information regarding the taxpayer's business by sending Letter 3928 and Form 13648, Request for Business Information, to the taxpayer before the 341 meeting.

(3) **Determination of Compliance Monitoring Requirements.** During the initial case review, the caseworker must determine the debtor's filing requirements. The frequency of required Federal Tax Deposits (FTDs) and/or estimated tax payments must also be determined. Post-petition compliance monitoring must be scheduled based on the debtor's pre-petition requirements. (IRM 5.9.8.13, Post-petition/Pre-confirmation BMF Monitoring, and IRM 5.9.8.14.1, Post-petition Debts - Chapter 11 Individuals)

Caution: Monitoring is required in the "no liability" case. The "no liability" case cannot be closed until all the requirements in IRM 5.9.8.12, Closing Chapter 11 No Liability Cases, have been met. This includes a review of the proposed plan.

(4) **Employee Leasing.** The caseworker must determine if employee leasing relationships exist. Employee leasing is an arrangement between a business and a

staffing firm, who supplies workers. Coordination with Counsel is required if the business purportedly transfers some or all of its employees to another entity that leases them back to the original employer is suspected.

(5) **Exam Issues.** IRM 5.9.4.4, Examination and Insolvency, provides guidance for addressing examination issues including abusive tax shelters and employee plans. A review of IDRS cc AMDISA and contact with the revenue agent or examiner may be necessary.

(6) **IDRS.** The caseworker must review IDRS to clarify issues that will not be determined by the Automated Proof of Claim (APOC) program. These issues include the debtor's:

- Filing requirements and return filing history.
- Last quarter for which a Form 941 was filed, if applicable.
- Currency with making FTDs since the filing of the latest Form 941, if applicable.
- Failure to make any FTDs, if applicable.
- Currency with making estimated tax payments, when required.
- Ownership of real property as evidenced by the presence of mortgage interest paid on IDRS cc IRPTRL.

Note: A review of IDRS will determine the frequency of post-petition compliance monitoring. (See IRM 5.9.8.13, Post-petition/Pre-confirmation BMF Monitoring, and IRM 5.9.8.14.1, Post-petition Debts - Chapter 11 Individuals.)

(7) **Integrated Collection System (ICS).** Caseworkers must review any ICS history for prior Field Collection (FC) involvement. The caseworker may need to contact the Revenue Officer (RO).

(8) **Letters to Fiduciary.** To promote post-petition filing and paying compliance, the caseworker must issue the following letters to the DIP or Trustee, when applicable:

- Letter 982, Fiduciary Payment of Claim. This letter advises the DIP or Trustee of the basic requirements for the treatment of the IRS's claim in the bankruptcy plan for IRS to accept the proposed plan of reorganization.
- Letter 986, Letter to Fiduciary. This letter clarifies the fiduciary's obligation to file tax returns and pay taxes that become due during the pendency of the bankruptcy proceeding.

  Note: This letter must be issued for all cases with an open filing requirement for a tax form that may require Federal Tax Deposits (FTDs).

- Letter 4914, Notice to Individual Chapter 11 Debtor Regarding Income Tax Filing Responsibilities. This letter notifies the DIP in the individual or joint bankruptcy case that income tax filing and reporting requirements may have changed. In the joint bankruptcy case, send each individual a Letter 4914. The Form 1041 is not a joint income tax return. (See IRM 5.9.8.14, Internal Revenue Code 1398 Issues - The Bankruptcy Estate in the Individual Chapter 11 Case.)The Letter 4914 also instructs the debtor to notify the FI caseworker of their EIN, when secured. If the debtor has not provided the EIN within 60 days of issuance of the Letter 4914, contact the debtor to secure the EIN.

(9) **Letter to Non-Debtor Spouse.** The Letter 4521, Non-Debtor Letter, must be sent to non-debtor spouses who owe joint tax liabilities with the individual Chapter 11 debtor. The joint liability owed by the non-debtor spouse will not be abated for the non-debtor spouse, even though a discharge is entered in the bankruptcy case. Only the liability owed by the debtor spouse will be abated when the taxes are discharged in the Chapter 11 case. (See IRM 5.9.18.6.8, Community Property, for exceptions in community property locations.)

(10) **NFTL Refile and Adequate Protection.** The caseworker must determine if any Notices of Federal Tax Lien (NFTLs) require refiling. Request refiling of the NFTL during the initial case review when the review is conducted during the refile window. A follow-up is required to refile the NFTL when the refile window occurs later in the bankruptcy. The potential for adequate protection must be addressed during the initial case review when a NFTL was filed pre-petition. (See IRM 5.9.8.6, Adequate Protection.)

(11) **LLCs.** The caseworker must identify the presence of LLCs and determine how the LLC should be treated for tax and proof of claim filing purposes. Counsel may be consulted when issues arise that cannot be easily resolved. IRM 5.9.13.14, Limited Liability Companies (LLC), and IRM 5.9.14.2.8((4), Case Flag Conditions and Resolution, LLC Flags, provide more information about LLCs.

(12) **Notice to TEGE.** To protect the integrity of the employee plans of businesses that have declared bankruptcy, FI must notify the Employee Plan (EP) function of the Tax Exempt/Government Entity (TEGE) Division when:

- A Chapter 11 bankruptcy meeting “significant case” criteria is filed, or
- A nationally known company has filed bankruptcy.

Note: Notification to TEGE is required even though the company filing bankruptcy may not have a tax liability.

The caseworker must take the following steps within two business days of the identification of a significant case or within two business days upon learning that a nationally known company has filed bankruptcy:
1. Print a copy of the AIS“ Taxpayer” and “TINs” screen showing the debtor’s name, docket number, TIN, and petition date. 2. Prepare Form 3210, Document Transmittal, with the annotation, “The attached prints represent Chapter 11 bankruptcy filings which may impact employee plans.” 3. Mail the Form 3210 and attached AIS screen prints to: Internal Revenue Service EP Classification 9350 Flair Drive, 4th Floor El Monte, CA 91731-2885 4. Annotate the AIS history that an AIS print has been forwarded to EP for review.

If TEGE identifies an IRC 4971 liability due to underfunding of a pension plan, or if an IRC 4971 liability is assessed on IDRS, contact Counsel. (See IRM 5.17.10.6.3(2), Pensions and Penalties, and Chief Counsel Notice (CCN) 2006-007.)

(13) **Pre-packaged Chapter 11.** The caseworker must determine if the case is a pre-packaged bankruptcy. In the pre-packaged Chapter 11, the debtor solicits

the creditors' approval of a plan of reorganization prior to the filing of the bankruptcy petition. If the plan has been pre-packaged and the IRS was not part of the negotiations, the caseworker must secure a copy of the plan, review it expeditiously, and consult with Counsel.

(14) **Prior Bankruptcies.** The caseworker must check for evidence of prior bankruptcies. A prior case may affect tolling or the automatic stay in the case, may indicate possible lack of feasibility of the plan in the current case, or may prohibit the debtor from receiving a discharge in the current case. In some cases where a debtor has previously filed bankruptcy, the automatic stay may not apply or may terminate early with respect to the debtor and property of the debtor that is not property of the bankruptcy estate. (See 11 USC 362(c)(3) and (4) and 11 USC 362(n) in cases of repeat filers.) In some instances, debtors may contend that the bankruptcy plan in previous bankruptcy cases discharged certain liabilities in the prior bankruptcy case. See the following content in IRM 5.9.5, Opening a Bankruptcy Case, for additional information:

- IRM 5.9.5.7, Serial Filers
- IRM 5.9.5.7.1, Systemic Identification in Serial Filer Cases
- Exhibit 5.9.5-3, Allowable Elapsed Time Between Bankruptcy Filings and Discharges
- Exhibit 5.9.5-4, Common Processing Steps in Serial Filer Cases
- Exhibit 5.9.5-5, Processing the Serial Filer Case When the Stay Terminates After 30 Days
- Exhibit 5.9.5-6, Processing the Serial Filer Case When No Stay Goes into Effect

(15) **Refund Issues.** The caseworker must ensure the correct bankruptcy freeze code has been placed on the account and check for the presence of a "quickie" refund request. IRM 5.9.8.9, Quickie Refunds, provides guidance in addressing these refund requests.

(16) **Significant Cases and Referrals to Area Counsel.** As directed in IRM 5.9.4.15.3, Significant Bankruptcy Case Referrals, cases meeting the Significant Bankruptcy Case Program criteria must be referred to Area Counsel within two business days of notification. Upon referral, Area Counsel takes an active role in coordinating the IRS's efforts in these cases, which are usually Chapter 11 cases.

Reminder: Even if the debtor has no outstanding pre-petition tax liability, the caseworker must refer the case meeting "Significant Bankruptcy Case Program" criteria to Area Counsel and TEGE.

(17) **Stay Violations.** The caseworker must identify potential stay violations such as NFTLs recorded post-petition, levy proceeds received after the petition date, or notices sent in violation of the stay. IRM 5.9.8.7, Pre-petition Levies, provides guidance in addressing levies. Potential stay violations from enforced collections must be resolved.

(18) **Subsidiaries or Parent Company.** The caseworker must determine if the entity is a subsidiary of a parent company or is a parent company with subsidiaries. Subsidiary refunds or liabilities must be noted in the AIS history. Difficult setoff issues arise when refunds are owed to members of a consolidated group. If a refund is owed to a group or some of its members and members of the group also owe liabilities, FI should consult Counsel regarding the IRS's setoff rights.

Note: Members of a group can be severally liable for pension underfunding penalties under IRC 4971 as well as for income taxes.

(19) **TFRP Issues.** The TFRP may be proposed against:

- Officers or other responsible persons of a corporation
- Members of a multi-member LLC taxed as a partnership
- Members, managers, or other responsible persons of the LLC taxed as a corporation
- The single-member of a LLC with liabilities for withholding periods that began on or after January 1, 2009
- Another corporation
- Payroll Service Provider (PSP)
- Responsible persons within a PSP
- Professional Employer Organization (PEO)
- Responsible persons within a PEO
- Responsible persons within the common law employer (client of the PSP or PEO)

Note: See IRM 5.9.13.14, Limited Liability Companies (LLCs) for guidance on LLCs. See IRM 5.7.3.3.1, Establishing Responsibility, for additional information regarding perions that may be assessed the TFRP.

a. For corporations and some Limited Liability Companies (LLCs), caseworkers must conduct an Automated Trust Fund Recovery (ATFR) review to determine what periods, if any, are currently proposed. Determine which responsible persons have been proposed assertions of the TFRP. This information should be paired with the data on IDRS using command code UNLCER. The current RO assignment should be annotated in the AIS history.

b. Based on local procedures, the investigation may be conducted by a RO in FC or by a FI caseworker. If local practice is to refer the investigation to FC, and the case is not currently assigned to a RO, an OI must be issued to FC through ICS. Insolvency caseworkers should request the

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Fund Recovery Penalty, IRM 5.9.8.11, Trust Fund Considerations in Chapter 11, and IRM 5.9.13.13, TFRP Assessments - Priority Status, provide additional TFRP investigation information.

c. When requesting a TFRP investigation through an OI, provide the RO with information to assist them in completing the investigation. The information may be provided by updating the ICS case history. See Exhibit 1.4.51-31, Guide for Other Investigation (OI) F/U Report (Field Insolvency), and IRM 5.9.3.10, Trust Fund Recovery Penalty.

Caution: A RO may not work an OI to assert the TFRP if the ASED will expire within 6 months.

d. TFRP issues must be thoroughly documented in the AIS history. See IRM 5.9.5.4, Automated Insolvency System (AIS) Documentation. If the TFRP is not applicable, notate the AIS history accordingly. The TFRP may not be applicable because there are no outstanding trust fund liabilities or the outstanding trust fund liability is minimal.

(20) **Additional Aspects.** Facts and circumstances in the case may warrant additional research. Examples of additional research that may be necessary are:

- A review and analysis of locator services, such as Accurint.
- A review of any available on-line courthouse records.
- A review of the collection case history on ICS and contact with the RO previously assigned the case.
- A review of IDRS cc: AMDISA and contact with the revenue agent or examiner when there is evidence of activity by Exam (such as a TC 420 or L freeze on IDRS).
- A review of IDRS cc: IRPTRL for possible mortgage interest paid.
- A review of Department of Motor Vehicle (DMV) records when expensive or collectible vehicles are listed in the bankruptcy schedules.
- A review of Foreign Account Tax Compliance Act (FATCA) data (if applicable).

5.9.8.5
(02-01-2023)
Small Business Debtor

(1) **The Small Business Debtor.** A "fast track" Chapter 11 bankruptcy accelerates the plan confirmation process by an eligible small business debtor. The small business debtor provision is no longer optional for cases filed on or after October 17, 2005. Generally, the small business provisions will apply to Chapter 11 business debtors whose non contingent, liquidated debts do not exceed $3,024,725 (excluding any debts owed to affiliates and insiders):

- When the US Trustee has not appointed an unsecured creditors committee, or
- When the court has determined the committee of unsecured creditors is not sufficiently active and representative to provide oversight of the debtor.

(2) **"Fast Track" Bankruptcies.** For "fast track" cases, the debtor may file a plan within the first 180 days after the date of the order for relief. All plans must be filed *within 300 days* after the date of the order for relief. Under certain conditions, these time frames may be reduced or increased by the bankruptcy court (11 USC 1121(e)).

(3) **Court-Conditional Approval.** For all cases, the court can conditionally approve the disclosure statement, subject to final approval after notice and a hearing. The DIP may solicit acceptances and rejections of the plan based on the conditionally approved disclosure statement. . The conditionally approved disclosure statement must be mailed at least 25 days before the date of the plan confirmation hearing. For small business cases, a hearing on the disclosure statement may be combined with a hearing on confirmation, regardless of when the petition was filed. The court may determine the plan provides adequate information and a separate disclosure statement is not necessary. It may approve a disclosure statement submitted on standard forms approved by the court (11 USC 1125(f)).

(4) **Monitoring the Small Business Debtor.** Provisions applicable to the small business debtor are designed to be less cumbersome to these debtors. The provisions move the case more quickly to confirmation. Because BAPCPA has made the small business provisions mandatory, the IRS will receive more cases where:

- The debtor has solicited acceptances of a plan prior to filing the petition,
- The debtor has filed a request to eliminate the 341 hearing, or

- The court has determined that a separate disclosure statement is not necessary.

It is important that the caseworker monitor the debtor's case for post-petition tax compliance. The time frames in which the IRS can react have been greatly reduced.

Note: 11 USC 362(n) provides the automatic stay will not apply in certain small business debtor cases. Generally, the stay will not apply where the small business debtor had a previous case that was dismissed, or the plan was confirmed, within two years of the present case. (IRM 5.9.5.7, Serial Filers, and Exhibit 5.9.5-3, Allowable Elapsed Time between Bankruptcy Filings)

5.9.8.5.1
(02-01-2023)
Small Business Reorganization Act

(1) **Background.** On August 23, 2019, the President signed the Small Business Reorganization Act of 2019 (SBRA). The SBRA went into effect in February 2020 . The SBRA aims to make small business bankruptcies faster and less expensive by creating Subchapter V of Chapter 11 of the Bankruptcy Code specific to small businesses. The debt limit for the SBRA was $2,725,625 of non-contingent liquidated secured and unsecured debt, but was temporarily increased to $7,500,000 under the CARES Act from March 27, 2020 to March 27, 2022. On June 21, 2022, the Bankruptcy Threshold and Technical Corrections (BTATC) Act was signed and restored the $7,500,000 limit retroactively for cases commenced on or after March 27, 2020 through June 21, 2024 (two years after the date of enactment of the BTATC Act). A small business debtor must elect to proceed under Subchapter V of Chapter 11. The SBRA gives small business debtors the ability to maintain their ownership interests. But in exchange, they must pay for a period of three to five years pursuant to a court-confirmed plan of reorganization. During the Chapter 11 proceeding, the debtor's management will have the right to continue operating the business, but may be removed for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the company's affairs. Additionally, after the bankruptcy court approves the debtor's plan of reorganization, so long as "the plan does not discriminate unfairly, and is fair and equitable", the debtor will remain in possession of all property of the estate, which includes all of the property owned by the company before it filed for bankruptcy, and any property acquired by the debtor after filing, including earnings received from services.

(2) **Appointment of a Trustee.** A standing trustee will serve as the trustee for the small business's bankruptcy estate. Similar to Chapter 12 family farmer and fisherman bankruptcies, the SBRA provides that the trustee shall facilitate the small business debtor's reorganization and monitor the debtor's consummation of its plan of reorganization. Before the SBRA, in a small business case under Chapter 11, a bankruptcy trustee was only appointed if the debtor-in-possession (DIP) was abusing the bankruptcy system and a party in interest, such as a creditor, filed a motion and obtained a court order appointing a trustee to oversee the business. Under the SBRA, a trustee will be automatically appointed to oversee the case. The trustee will ensure that the debtor commences making timely payments required by a confirmed plan.If the confirmation is consensual (plan meets all requirements of 11 USC 1129(a)), the trustee's role ends when the confirmed plan has been substantially consummated (11 USC 1183(c)). If the confirmation is contested (cram-down plans), the trustee serves until the plan confirmed under 11 USC 1191(b) is completed, unless the plan or confirmation order states otherwise.

(3) **Streamlining the Reorganization Process.** Many of the deadlines contained in the SBRA are expedited. After filing a case, the court will hold the first status conference no later than 60 days after filing. A small business debtor under Subchapter V must file a public report with the court outlining the debtor's efforts to confirm a plan. The public report must be filed no later than 14 days before the first status conference and the debtor must file a plan no later than 90 days after filing the case. See sections 11 USC 1188 and 11 USC 1189 for filing deadlines. This time frame is much shorter than the prior Chapter 11 requirements in small business cases, which provided 300 days to file a plan. This time frame is also shorter than it is for individual or big-business Chapter 11 debtors who have no hard deadline to file a plan. Small business debtors do not have to obtain approval of a separate disclosure statement or solicit votes to confirm a plan. Unless the court orders otherwise, there are no unsecured creditors' committees.

(4) **Who May File a Plan.** Before the SBRA, for both traditional and small business cases, only debtors could file a plan during a limited time known as the exclusivity period; small business debtors' exclusivity period was 180 days, while traditional individual debtors' exclusivity period is 120 days. After the small business debtor's exclusivity period expired, any party (including any of the debtor's creditors), could file a Chapter 11 plan for the debtor, which, if confirmed, was binding on the debtor and all other parties. Under the SBRA, only the small business debtor may propose a plan for reorganization. 11 USC 1189. No other party may propose a plan for the debtor at any time.

(5) **Plan Content.** The plan is required to include the history of the debtor, financial analyses and projections, and a breakdown of how the debtor's property and/or future earnings and income will be transferred to the standing trustee to execute the plan. This information is normally included in a disclosure statement; however, the SBRA allows a small business to avoid the costs and expenses attendant with preparing and seeking court-approval of a disclosure statement before plan approval is solicited.

(6) **Ability to "Cram-Down" Creditors.** Small business debtors that elect Subchapter V treatment under the SBRA will have greater ability to confirm a plan over the objection of unsecured creditors, commonly known as "cram down" or significantly modifying the rights of the debtors' creditors. Undersecured creditors may still elect treatment under 11 USC 1111(b). As mentioned above, small business debtors under Subchapter V may have a plan confirmed (over the objection of unsecured creditors) so long as their plan is "fair and equitable". Under Subchapter V, a fair and equitable plan must pay all projected disposable income of the debtor for the first three or five years of the plan. This is a different definition of the term "fair and equitable" under prior law and will be easier for debtors to comply with. It is also similar to a Chapter 13 case, where plans are limited to five years at the maximum, and unlike existing Chapter 11 law, which has no maximum plan length.

(7) **The Fair and Equitable Requirement.** There are two ways for a debtor to comply with the "fair and equitable" requirement in the SBRA. 11 USC 1191(c).

a. The first option is for the debtor's advisors to identify the debtor's disposable income, meaning income that is not used to maintain and support the debtor or pay the debtor's necessary expenses. Thereafter, the plan of reorganization must explain how the disposable income will be distributed to the standing trustee during a three to five year period in order to make payments to creditors under the plan of reorganization. Casework-

ers should be mindful of plans that (i) state a very low amount of disposable income compared to the debtor's expenses, (ii) provide no explanation of how the disposable income will be distributed to the trustee during the life of the plan (or the provided explanation does not make sense), or (iii) provide for irregular proposed distributions, such as minimal distributions at the beginning of the plan with a large balloon payment near the end of the plan.

b. The second option is for the plan of reorganization to require the debtor to distribute some or all of its property to the standing trustee for the benefit of its creditors. The plan must demonstrate that such property "is not less" than the projected disposable income during the debtor's next three to five years. Caseworkers should be mindful of (i) plans that primarily or solely use property to satisfy required distributions per the proposed plan in lieu of using available disposable income, or (ii) plans with low-valued property that fails to clearly demonstrate that such property "is not less than" the projected disposable income during the life of the plan.

Caution: This requirement only applies to general unsecured tax claims. The rules for the treatment of priority and secured tax claims still apply.

Note: If circumstances change for the debtor after the plan of reorganization is confirmed by the bankruptcy court, after notice and a hearing, the plan may be modified by the debtor. A plan can be confirmed over the vote of creditors that disagree with the terms only if it complies with the "best interests of creditors" test under section 11 USC 1129(a)(7).

Note: See IRM 5.9.8.17.1, The Plan of Reorganization, for more information details on what to look for when reviewing a plan.

(8) **Delayed Payment of Administrative Expense Claims.** The SBRA removes the requirement that the debtor pay administrative expense claims, including those claims incurred by the debtor for post-petition goods and services, on the effective date of the plan. Unlike a typical Chapter 11, a small business debtor may now stretch payment of administrative expense claims out over the term of the plan. 11 USC 1191(e).

Note: All taxes entitled to administrative expense priority (except those being contested by appropriate proceedings being diligently prosecuted) still have to be paid when due. See 11 USC 1116(6), 1187(b). The IRS should continue to make certain that all post-petition administrative taxes (including potential deficiency claims), are either included on an administrative expense claim filed prior to any administrative bar date provided by court order or under the plan, or are excepted from discharge under the terms of the plan. Failure to file a timely administrative expense claim could result in the discharge of the liability even though 11 USC 1129(a)(9)(A) requires that administrative expense tax claims be paid in full under the plan.

(9) **Discharge Limitations.** The court must grant the debtor a discharge after completion of all payments due within the first three years of the plan, or a longer period as the court may fix (not to exceed five years).11 USC 1192. The discharge relieves the debtor of personal liability for all debts provided under the plan except any debt:

a. on which the payment is due after the first three years of the plan, or such other time as fixed by the court (not to exceed five years); or
b. that is otherwise non-dischargeable

All exceptions to discharge in 11 USC 523(a) of the Bankruptcy Code apply to the small business debtor. 11 USC 1192(2). This is a different from a typical corporate Chapter 11 case which has limited exceptions to discharge set forth in 11 USC 1141.

(10) **Debtor's Written Waiver of Discharge.** Under t 11 USC 1192, the court may approve a written waiver of discharge executed by the debtor after the order for relief. A signed waiver of discharge by the debtor would mean the discharge is denied and the automatic stay would terminate unless the court provides otherwise.

(11) **Property of the Estate.** Section 11 USC 1186 is similar to 11 USC 1115 in other Chapter 11 cases, 11 USC 1306 in Chapter 13 cases, and 11 USC 1207 in Chapter 12 cases. If a plan is confirmed under 11 USC 1191(b), property of the estate includes, in addition to the property specified in 11 USC 541:

a. all property of the kind specified in 11 USC 541 that the debtor acquires after the date of commencement of the case, but before the case is closed, dismissed, or converted to a case under Chapter 7, 12, or 13, whichever occurs first; and
b. earnings from services performed by the debtor after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under Chapter 7, 12, or 13 of this title, whichever occurs first.

5.9.8.6
(01-02-2020)
Adequate Protection

(1) **Protection for Secured Creditors.** Adequate protection safeguards a secured creditor against a decrease in the value of a creditor's collateral during the period *prior to confirmation* of the plan when a creditor is not receiving plan payments. Adequate protection may be requested based on IRM 5.9.4.15.4,

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property being used by the DIP and a valid Notice of Federal Tax Lien (NFTL) has been recorded (11 USC 361).

(2) **Initial Considerations for Adequate Protection.** The caseworker must first determine if schedules of assets and liabilities have been filed. If so, and the IRS does not have copies, the caseworker must contact the DIP or trustee to request the schedules along with an aged list of the business' accounts receivable. Schedules may also be viewed electronically through PACER. From this information, the caseworker can establish a rationale for requesting adequate protection. The IRS may be entitled to adequate protection when a pre-petition NFTL attaches to equity in assets which will depreciate during the bankruptcy proceeding or which may be consumed in the normal course of business, as is the case with cash collateral or inventory. If the debtor arranges for post-petition financing for property subject to the NFTL, the IRS may also be entitled to adequate protection of its interest. When determining priority of competing security interests, including the NFTL, the caseworker should consider the "45-Day Rule". See IRC 6323(c) and IRM 5.17.2.6.6.1, Commercial Transaction Financing Agreements, for additional information.

Note: If available, Accurint should be researched to identify related entities and to value assets.

(3) **Turnover/Adequate Protection.** A voluntary Chapter 11 filing is sometimes preceded by the IRS levying upon or seizing assets of the debtor. After filing bankruptcy the debtor may immediately file a motion with the bankruptcy court requesting a "turnover" order for the IRS to surrender the property to the debtor or to release a levy (11 USC 542). The Chapter 11 caseworker must ensure the debtor is providing adequate protection to the IRS for turnover of such property. Counsel guidance should be sought when holding levy funds in anticipation of an adequate protection order.

(4) **Most Common Types.** Adequate protection usually includes periodic cash payments (the most common form) on the secured claim and/or replacement liens on post-petition assets. SBSE Division Counsel has set minimum dollar criteria for pursuit of adequate protection with Area Counsel having leeway to adjust the dollar guidelines, if appropriate (IRM 5.9.4.15.4). FI offices must co-ordinate all adequate protection agreements with Counsel.

(5) **Sources of Adequate Protection.** Adequate protection can take the form of:

- Retaining a portion of any funds received
- Receiving monthly payments (with post-petition interest) before a plan is confirmed
- Obtaining replacement liens on after-acquired assets (for example, accounts receivable and inventory)
- Providing for post-petition tax compliance
- Any other appropriate relief

(6) **Adequate Protection Agreement.** The Adequate Protection Agreement should provide for protection to replace the property being released. This can include:

a. The IRS receiving all of, or a portion of, the cash (if cash is involved);
b. Periodic payments, including payment of post-petition interest;
c. A replacement lien on after-acquired assets, such as inventory or accounts receivable;
d. Requiring the debtor to file all delinquent returns, timely file all post-petition returns, and pay all post-petition tax obligations (11 USC 1112(b)(4)(I)); and
e. Default provisions. (See paragraph (7) below.)

(7) **Default Provisions.** Adequate protection agreements should include language outlining actions to be taken in the event of default. Those provisions can include:

a. Notice of default to the debtor and debtor's attorney with a short "cure" time frame;
b. A "drop dead" clause providing for unopposed conversion to Chapter 7 if the default is not cured;
c. An automatic lifting of the stay against collection if the default is not cured; or
d. Any other appropriate remedy.

(8) **Time Constraints.** Creditors, including the IRS, are only entitled to adequate protection if it is requested. If adequate protection is applicable, it must be requested before the assets are dissipated.

Note: The court can deny a request for adequate protection deeming the proposed arrangement to be unsatisfactory or inadequate. The proposal may be renegotiated with court approval.

5.9.8.7
(01-02-2020)
Pre-petition Levies

(1) **Intangible Property.** Under 11 USC 542, unless the automatic stay is lifted, the IRS must release pre-petition levies on bank accounts and accounts receivable when the debtor retains an interest in the cash or cash equivalent on the date of the petition (i.e., the IRS has not actually received the cash and applied it to the taxpayer's account). (See IRM 5.9.3.12.1, Third-party Contacts.)

(2) **Avoidance.** If the IRS receives payment before the petition date as a result of a levy and applies the payment to the taxpayer's account, the funds are no longer subject to turnover under 11 USC 542. However, they may be preferential transfers subject to *avoidance* under 11 USC 547, if the requirements of 11 USC 547 are met. (See IRM 5.9.4.7, Preferences.)

Note: Voluntary payments of the trust fund portion of employment taxes, and other payments of trust fund taxes made by persons other than the debtor, are not subject to avoidance. These payments are not transfers of property of the debtor.

(3) **Tangible Property.** Absent extenuating circumstances which allow the automatic stay to be lifted, the IRS is required to release pre-petition levies on tangible property. If seized pre-petition, the property generally must be turned over to the estate as long as the debtor retains an interest in the property on the date of the petition (e.g., the property has not yet been sold at a tax sale).

(4) **Right to Adequate Protection.** Although the property is generally required to be turned over, the IRS is entitled to adequate protection of its secured interest in the property if a pre-petition NFTL has been filed. (See IRM 5.9.8.8(2), Lien Rights.)

(5) **Release versus Referral.** Negotiations involving adequate protection are the responsibility of FI employees and they are generally conducted with the debtor's attorney. Counsel should be consulted, as needed, for local procedures.

a. Release. If the value of the property does not exceed the minimum dollar criteria for a referral for a motion for relief from the stay or adequate protection, the levy or seizure should be released immediately.
b. Referral. If the value exceeds the minimum amount, FI should refer the case expeditiously to Counsel to consider a motion for relief from the stay or adequate protection while the agreement is being negotiated with the debtor.

5.9.8.8
(02-01-2023)
Cash Collateral/Property Depreciation of the Estate

(1) "**Ordinary Course of Business.**" In a Chapter 11 case, the DIP typically wants to continue running the business until it can be reorganized or sold. The debtor may automatically continue its routine ("*ordinary course*") use, sale, or lease of most of its pre-petition property pursuant to 11 USC 363(c)(1) and 1107(a).

(2) **Lien Rights.** If the IRS has a secured claim, the IRS may be entitled to adequate protection when a NFTL, properly filed pre-petition, is still valid and attaches to equity in property and/or cash collateral. Consider the "45-Day Rule" when determining lien priority. IRC 6323(c).

(3) **Cash Collateral.** The Bankruptcy Code can significantly limit a debtor's ability to use its cash collateral without the consent of creditors with secured interests in such property. Cash collateral includes cash and cash equivalents, such as

negotiable instruments and funds in depository accounts. (See Exhibit 5.9.1-1, Glossary of Common Insolvency Terms.) The unauthorized use of cash collateral that is substantially harmful to one or more creditors is an express basis for conversion or dismissal of the case per 11 USC 1112(b)(4)(D).

Note: The limitations in the Bankruptcy Code on the debtor's use of cash collateral and restrictions are significant in Chapter 11 cases. This is because operating businesses in bankruptcy are found most typically in Chapter 11 cases and have the greatest need for immediate cash to continue running.

(4) **Superpriority Liens in a Chapter 11 Proceeding.** 11 USC 364 provides that the trustee or DIP may, with court approval, obtain post-petition financing. To induce lenders to grant this financing, superpriority liens can be offered. *Such liens become senior to all other liens.*

Note: In accordance with 11 USC 364(d), superpriority liens can be provided only if the holder of the previous lien, including the IRS, is adequately protected and agreements are negotiated.

(5) **Real Property and Adequate Protection.** Adequate protection is seldom sought by the IRS regarding real property due to its unlikely depreciation. However, unusual situations might arise making adequate protection necessary. At a minimum, the debtor should be required to maintain sufficient insurance on buildings and other improvements.

(6) **Insolvency Actions.** If the IRS is entitled to adequate protection based on lien equity, FI should:

1. Send AIS Letter 2173, Adequate Protection, or an equivalent local letter to the debtor with a copy to the debtor's attorney advising that the IRS does not consent to the use of the cash collateral;
2. Based on response(s) received, attempt to reach an agreement; negotiations for adequate protection of the government's lien interests will follow guidelines similar to those used when the IRS negotiates a pre-petition levy agreement; and
3. Make a prompt referral to Counsel, asking for a motion to provide adequate protection to the IRS if delay is experienced and/or nonproductive responses are received.

5.9.8.9 (02-01-2023) Quickie Refunds

(1) **Tentative Carryback Adjustments.** Taxpayers who have net losses can sometimes carry back the losses to previous years where they paid taxes to reduce the liability in the prior year and generate a refund. Such taxpayers may also make a special request for such a refund, known as a tentative carryback adjustment, also called a "quickie refund." To request a quickie refund, the taxpayer must file an application for the tentative carryback adjustment and the IRS must make a limited review of the application and issue the refund within 90 days.

(2) **IRS Offsets.** The IRS has the right to offset the quickie refund against federal tax liabilities of the taxpayer. This right of offset becomes particularly important when the taxpayer is in bankruptcy, because dollar amounts of quickie refunds can be large, and offset may be the only assured way of collecting liabilities owing from the taxpayer. Difficult mutuality issues are raised, however, when losses from post-petition periods are carried back to pre-petition years or when

a refund is owed to a consolidated group and the liabilities are owed by a single member of the group. FI should consult Counsel in such cases.

(3) **The Automatic Stay Against Setoffs.** While the automatic stay sometimes prevents the IRS from making the setoff by crediting the refund against the liability, the IRS may freeze the refund until the stay is lifted. FI caseworkers must consult Counsel if the debtor is owed a quickie refund and the IRS has a claim.

(4) **Pre-petition IRS Offsets .** 11 USC 362(b)(26) provides that the IRS can setoff a pre-petition *income* tax refund against a pre-petition *income* tax liability without a lift of the automatic stay. If the quickie refund comes from a post-petition period or the liability is not for income tax, a lift of stay or local rules/ standing orders allowing the offset are required regardless of the petition date.

(5) **Inappropriate Refunds.** To prevent these special refunds from going out to taxpayers who are in bankruptcy and owe federal taxes, procedures have been set in place to review the quickie refund claims expeditiously so Counsel may file a motion for lift stay for offset, if necessary.

(6) **Interagency Offset Requests.** The federal government is considered one creditor for purposes of offset. Upon becoming aware of a potential tax refund, a federal agency other than the IRS may seek to have the refund offset against its claim. However, the IRS does not have the authority to disclose the refund to another federal agency. If FI receives a request to freeze a refund on behalf of another federal agency, the caseworker assigned to the account must consult Counsel before taking any action. If an interagency offset is required, see IRM 5.9.4.5.3, Offset to Other Agencies.

(7) **TCB Units.** Tentative carrybacks for business returns originate from the filing of either a Form 1139, Corporation Application for Tentative Refund, or Form 1120-X, Amended U.S. Corporation Income Tax Return. For individuals, the appropriate forms are Form 1045, Application of Tentative Refund, or Form 1040-X, Amended U.S. Individual Income Tax Return. Tentative Carryback (TCB) Units responsible for processing the carryback requests are located at the Ogden and Cincinnati campuses. Generally, when the TCB Units determine a tentative carryback claim is processable, they research IDRS to see if the taxpayer owes federal taxes and if a bankruptcy freeze is on the account.

(8) **Insolvency Contact.** When a bankruptcy freeze is on an account, the TCB Unit must contact the FI caseworker assigned the case. The TCB unit should contact Insolvency by utilizing the contact information listed in the *Insolvency Field Liaisons* on SERP. The TCB Unit caseworker will advise the FI case-worker of the amount of the carryback credit and the processing time remaining.

(9) **Counsel Contact.** Following the IRM criteria for referrals to Counsel, when appropriate, the FI caseworker should advise Counsel of the tentative carryback through a referral asking for a motion to lift the stay to setoff the refund against the taxes owed. Also, as mentioned above, Counsel should be consulted before the setoff of a quickie refund arising from the carryback of losses from a post-petition year to a pre-petition year, or when the refund is owed to a consolidated group and the liabilities are owed by a single member of the group.

(10) **Interest Free Period.** Decisions to offset the tentative carryback credit or refund it to the debtor are under strict time constraints. By statute, quickie refunds must be issued within 90 days unless the government has a right of setoff. The statutory period during which the IRS is exempt from paying interest to the taxpayer is only 45 days from the date the quickie refund request is received by the IRS to the date of refund issuance. Therefore, if setoff is not appropriate under 11 USC 362(b)(26) because of the petition date or the period generating the refund, to minimize the amount of interest the IRS may have to pay the debtor, both the TCB Units and FI need to react quickly in determining if a lift of stay should be requested.

5.9.8.10 (02-01-2023) Collection Statute of Limitations and Chapter 11 Plans

(1) **Tax Collection Waivers.** Pursuant to IRC 6502(a), as amended by the IRS Restructuring and Reform Act of 1998 (RRA 98), the IRS can no longer obtain waivers of the statute of limitations for collection (Form 900) *except* in conjunction with IRC 6159 installment agreements or the release of a levy.

(2) **Chapter 11 Plans Are Not Installment Agreements.** Although Chapter 11 plans frequently require the debtor to make a series of periodic (installment) payments to the IRS, the Chapter 11 plan differs in many ways from an installment agreement. The Chapter 11 plan is not considered an installment agreement under IRC 6159.

(3) **Collection Statute Expiration Date (CSED) and Confirmed Plans.** The limitation period for collecting a tax *provided for* by a confirmed Chapter 11 plan is suspended automatically by IRC 6503(h)(2) during the time the IRS is prohibited by reason of the bankruptcy from collecting the tax. In a non-individual Chapter 11 case, the taxpayer in bankruptcy receives a discharge when the plan is confirmed. Although the automatic stay ends at discharge, the IRS is still prohibited from collecting while it is bound by the Chapter 11 plan. The limitation periods is therefore suspended via IRC 6503(h)(2) *while the taxpayer is current on Chapter 11 plan payments up to the time the taxpayer is in substantial default on the plan payments, plus six months.* In the individual case, the discharge no longer occurs at confirmation in most cases. The stay remains in place until completion of plan payments and entry of a discharge order by the court, unless the court closes the case at an earlier date.

(4) **Waiver Expiration Date.** Collection statute limitation waivers (Form 900) obtained from taxpayers before December 31, 1999, outside of the context of an installment agreement, expired automatically on or before December 31, 2002.

Note: The automatic suspension of the CSED pursuant to IRC 6503(h)(2) while the automatic stay and a confirmed Chapter 11 plan providing fully for the tax is in effect, is not shortened by a collection limitation waiver between the debtor and the IRS that expires at an earlier date.

(5) **CSED and Corporate Cases in Chapter 11.** In corporate cases and other cases where the debtor is not an individual, the IRS may generally rely on the suspension of the limitation period provided for in IRC 6503(h)(2) to collect tax payments after confirmation of Chapter 11 plans. The IRS should, nevertheless, insist Chapter 11 plans be paid in full within the time frames required by the Bankruptcy Code.

(6) **CSED and Individuals in Chapter 11.** As stated in paragraph (3) above, the stay against the collection of pre-petition debts stays in effect after confirmation

of the plan, unless the court orders otherwise for cause, for individuals . The IRS may generally rely on IRC 6503(h)(2) for the suspension of the collection period if the debtor is current on plan payments. *However, for cases filed before October 17, 2005, or for more recent cases where the court for cause allows the individual a discharge before completion of the plan (11 USC 1141(d)(5)), the IRS cannot rely on the IRC 6503(h)(2) suspension where the debtor is an individual with respect to taxes that are both (1) non-dischargeable and (2) for which full payment is not provided in the plan.*

(7) **CSED and Non-dischargeable Taxes in Individual Chapter 11.** In bankruptcy cases of individuals filed before October 17, 2005, where a confirmed Chapter 11 plan does not provide for full payment of non-dischargeable tax liabilities, such as priority tax claims, gap interest on those claims, penalties claimed as general unsecured for a return filed late within two years of the petition date, or others; or where surviving federal tax liens are not provided for fully by the confirmed plan, the IRS must consider the following:

a. CSED on Non-dischargeable Taxes in Plan. Collection, outside of the plan, of non-dischargeable liability not provided for in the plan, may be considered when the CSED will expire on the non-dischargeable period in question *before* the plan completion date.

b. Adverse Plan Language. The plan should be reviewed for language restricting property of the estate from being revested in the debtor at confirmation or providing the bankruptcy estate will retain control of the property to some future point after confirmation. Language restricting collection outside of the plan should be considered when contemplating collection of non-dischargeable, non-plan liability concurrently with plan payments. Whenever possible, the IRS should request deficient plans be modified prior to plan confirmation. The IRS should request that the plan provide for administrative remedies for collecting the debtor's unpaid taxes following a substantial default in the plan. Additionally, the IRS should request language in the plan which specifies that the Collection Statute Expiration Date (CSED) for tax debts is extended per IRC 6503(h)(2). Specifically, the CSED will be suspended as long as the plan is in effect, not in substantial default, and for six months thereafter. Alternatively, the IRS should request language that provides that the CSED will not expire for a reasonable period (as negotiated) after completion of plan payments or the plan falls into substantial default. Consultation with Counsel may be necessary to determine local practice with respect to default language. (See IRM 5.9.8.17.1(4), Plan Provisions.)

c. Post-Confirmation NFTL Filing on Non-plan Portion of Non-dischargeable Liability. 11 USC 1141(a) states that the provisions concerning non-dischargeability in 11 USC 1141(d)(2) and (3) are exceptions to the general rule that a confirmed plan binds debtors. As non-dischargeable taxes are excepted from the binding effect of a plan, the argument can be made that 11 USC 1141(a) does not bar the filing of a NFTL for non-dischargeable taxes. 11 USC1141(c) provides that after confirmation, all the property dealt with by a plan is free and clear of the claims of pre-petition creditors except as otherwise provided in the plan. Subsection (c) contains the same exception for subsections (d)(2) and (d)(3) as subsection (a). Therefore, it appears 1141(c) does not apply to non-dischargeable taxes and that it typically does not bar the filing of NFTLs, post-confirmation, for non-dischargeable taxes. However, property of the estate includes property acquired by the debtor post-petition (as it does in Chapter 13) if the debtor is an individual (11 USC 1115).

Caution: When filing any NFTL, Insolvency must ensure the debtor receives all rights required by law. (See IRM 5.12.2.2, Taxpayer Contact.)

d. Plan Defaults. The IRS should consider the impact collection of a non-dischargeable liability not provided for in the confirmed plan may have on the successful completion of the confirmed plan, but at the same time must take appropriate action when the CSED is no longer suspended after the automatic stay is lifted. Where the plan has already defaulted, this should not be a concern since the harm has already occurred.
e. Setoff. The IRS may use setoff opportunities to collect non-dischargeable, non-plan liability outside of the plan before the plan is in substantial default.
f. Secured Claims and Exempt, Abandoned, or Excluded Property (EAEP). Where the confirmed plan does not provide for full payment of the secured tax liability, the IRS takes the position that its pre-petition, perfected NFTLs remain enforceable against the debtor's exempted, excluded, or abandoned property outside of the plan.
g. Excluded Property. Retirement plans with spendthrift provisions are excluded from the bankruptcy estate pursuant to 11 USC 541. It is the position of the IRS that collection can be pursued from excluded property due to the statutory lien. This is true even when a NFTL is not on file to pay non-dischargeable periods with a CSED that will expire prior to plan completion. Collection may also be pursued against excluded property to enforce a pre-petition lien for dischargeable periods.
h. Revenue Officer Coordination. Where collection of any non-dischargeable, non-plan liability is being considered outside the plan, the caseworker may request the assistance of a RO through an OI.
i. Counsel Coordination. In any case where collection of non-dischargeable liability is proposed outside the plan for liabilities not provided for in the confirmed plan, the FI caseworker should consult Counsel to determine an appropriate course of action.
j. IDRS Status. Where the plan provides for partial payment of non-dischargeable liability, the account will be kept in IDRS status 72 until there is a substantial plan default or until the plan is completed.

(8) **CSED - Individuals and Secured Claims.** The IRS cannot rely on the suspension of the collection statute regarding secured claims if the plan does not provide for full payment of the secured claim. The following situations apply these principles:

a. The tax is non-dischargeable, and the IRS did not file a proof of claim (for example, the IRS was not aware of the liability before the bar date).
b. The tax or tax penalty is non-dischargeable but is not entitled to priority claim treatment (for example, non-priority taxes and tax penalties described in 11 USC 523(a)(1)(B), 523(a)(1)(C), or 523(a)(7), and the IRS filed a general unsecured claim for these taxes or penalties; the plan provided for less than full payment of these claims).
c. The tax, though otherwise dischargeable, was secured by property that was excluded or exempted from, or abandoned by, the bankruptcy estate.

Reminder: In individual Chapter 11 cases the stay against the collection of any pre-petition debt remains in effect after confirmation unless the court orders otherwise for cause.

5.9.8.11
(02-01-2023)
Trust Fund Considerations in Chapter 11

(1) **Policy Statement P-5-14.** Absent statute of limitations considerations, the general policy of the IRS is *to refrain from asserting the TFRP against non-debtor responsible persons in cases where the corporate debtor's Chapter 11 plan provides for full payment of trust fund taxes, as long as the plan is not in default* (IRS Policy Statement P-5-14).

(2) **RO Assigned Accounts.** When the trust fund balance due accounts (e.g., corporate Forms 941) are assigned to FC at the time of the bankruptcy petition, the RO manager is responsible for issuing an ICS *Other Investigation* to a RO to conduct the investigation as soon as possible. The RO should periodically update FI on the progress of the investigation.

(3) **Non-RO Assigned Balance Due Accounts.** FI is responsible for initiating the TFRP investigation in bankruptcies not involving balance due accounts already assigned to FC as of the bankruptcy petition filing date. FI may either issue an ICS Other Investigation or assign the TFRP investigation to a FI caseworker. Also, see IRM 5.9.3.10, Trust Fund Recovery Penalty, and IRM 5.9.8.4.2(18), TFRP Issues.

(4) **Tolerance Criteria for a TFRP Investigation.** Generally, FI should initiate a

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(5) **Withholding of TFRP Investigation.** If a TFRP investigation is withheld based on the above criteria, expiration of the assessment statute may be allowed without FI intervention. In that circumstance, established procedures must be followed and clearly documented on AIS explaining the reason the TFRP investigation was withheld.

(6) **In Chapter 11 – Withholding Assessment Against Responsible Persons.** For any case that exceeds tolerance criterion, the trust fund investigation must be conducted. If the corporate debtor has a confirmed reorganization plan *providing for full payment of the trust fund taxes*, assertion of the TFRP may be deferred. Each of the following conditions must be met to withhold assessment of the TFRP:

- The corporate debtor must have a confirmed plan,
- All payments under the confirmed plan are current, and
- Responsible persons have signed Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty. The waiver should extend the ASED of the responsible persons to one year beyond anticipated plan completion.

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fund investigation should be initiated during the initial case review. If the trust

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the TFRP investigation. At minimum, waivers should be secured to extend the ASED and Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment, completed during the TFRP investigation. The TFRP will not be assessed unless factors indicate ultimate collection is doubtful from the corporate debtor. Indicators of doubtful ultimate collections are:

- Potentially responsible persons will not sign Form 2750
- Additional unpaid liabilities pyramid after the petition date
- The corporation continues to operate at a loss

- Assets are liquidated
- Excessive compensation is paid to officers during the bankruptcy proceeding
- The debtor defaults on plan payments or is only paying on the plan sporadically

The caseworker must forward the TFRP file for assessment at anytime any of the above indicators occur.

Caution: The caseworker must monitor the ASED of the responsible persons closely to ensure that it does not expire while assessment of the TFRP is being held in forbearance.

(7) **Withholding Collection of Assessed TFRPs.** If the TFRP has been assessed against responsible persons, the IRS may withhold from collecting the TFRP from the persons unless factors indicate ultimate collection is doubtful from the corporate debtor. (See IRM 5.9.8.10(6), above.) The FI caseworker may withhold collection of the TFRP assessed against responsible persons by inputting a TC 470 cc 93 on the TFRP modules of the responsible persons. However, before inputting the TC 470 cc 93 on the accounts of the responsible persons, the caseworker must:

a. Make a NFTL filing determination against responsible persons. If appropriate, NFTLs should be filed. When filing any NFTL, Insolvency must ensure the debtor receives all rights required by law. (See IRM 5.12.2.2, Taxpayer Contact)
b. Determine if the responsible persons have the ability to pay from current assets or income.
c. In most cases, no action other than offsetting a Form 1040 refund to the TFRP, will be taken to collect from responsible persons while the corporate bankruptcy plan is current. However, if the responsible persons have the ability to pay and do not make plans to pay the TFRP from personal assets, other collection actions may be taken. Managerial concurrence must be secured prior to taking collection action.

Caution: If the confirmed plan of the non-individual Chapter 11 debtor contains language prohibiting the collection of the TFRP from corporate officers or other responsible persons, the IRS may not be permitted to offset the income tax refunds to the assessed TFRP. In these instances, a manual refund will be required. Consult with Counsel for guidance in these instances.

The TC 470 cc 93 will suspend the TFRP account(s) of the responsible persons in Status 53 on IDRS. If the IDRS status code is 19, 20, 21, 54, 56, or 58 when the TC 470 cc 93 is input, the TC 470 cc 93 will reverse systemically at the end of 26 cycles. The caseworker must schedule follow-ups on AIS to monitor the TFRP liabilities closely. A TC 470 cc 93 must be input on the TFRP modules before the 26 cycles expire. Otherwise, the modules will go back into collection status even though the corporate debtor is current on plan payments. When the TC 470 cc 93 is input to IDRS to suspend collection from responsible persons, input a history item on IDRS using IDRS cc ACTON to advise other functions that the TC 470 cc 93 was input by FI. The history item should advise other functions that only FI should reverse the TC 470 cc 93. If the Chapter 11 debtor defaults on plan payments, reverse the TC 470 cc 93

by inputting a TC 472 with no closing code. Input of the TC 472 will allow the TFRP account(s) of the responsible persons to enter back into collection status.

Note: The assigned FI caseworker must be alert to efforts by responsible persons who might be assessed TFRPs to persuade the court to prevent assessment and collection of the TFRP by the IRS, arguing they want to devote their time and attention to directing a successful Chapter 11 reorganization. The court cannot prevent collection from non-debtors.

(8) **Designation of Payments in Chapter 11 Plans.** In Chapter 11 cases, when a corporate debtor owes the IRS significant pre-petition trust fund taxes, the DIP may seek in its plan to designate IRS application of the earliest payments required under the plan to satisfy the corporation's outstanding trust fund taxes *first*.

a. A corporate debtor's designation of plan payments first to trust fund taxes can be an attempt to shift the risk of a failed Chapter 11 plan from the corporation's "responsible persons" onto the IRS. The DIP may be seeking to shield its "responsible persons" from the assertion and collection of a TFRP should the plan not be completed.
b. The Supreme Court has ruled bankruptcy courts can approve Chapter 11 plans which order the IRS to apply a Chapter 11 debtor's plan payments to trust fund taxes first *if the court concludes the designation of payments in this manner is necessary for the success of the reorganization plan*. (U.S. v. Energy Resources., Inc., 495 U.S. 545 (1990))
c. However, the IRS may challenge whether proposed designations of payments to trust fund taxes are necessary to the success of reorganizing Chapter 11 plans on the ground that the continued existence of personal liability for taxes of the debtor corporation provide an incentive for responsible officers to make the reorganization a success. Given the IRS's policy that, absent statute of limitations considerations, the IRS will generally refrain from asserting the TFRP against non-debtor responsible officers where the plan provides for full payment as long as the plan is not in default (Policy Statement P-5-14), designations should rarely be necessary. Courts remain split on if a bankruptcy court may designate the application of payments made under a Chapter 11 plan to trust fund taxes when the plan provides for the debtor's liquidation, rather than the debtor's continuation as a reorganized business. (In re Kare Kemical, Inc., 935 F.2d 243 (11th Cir. 1991) and In re Indiana Grocery Co., Inc., 136 B.R. 182 (Bankr. S.D. Ind., 1990))
d. *Application of the bankruptcy plan payments* will be made according to the Designated Payment Code (DPC) shown on the transaction as outlined in Document 6209. DPC 99 signifies the payment is "Miscellaneous". If a payment posts with DPC 03, the payment is "Bankruptcy, Non-Designated". DPC 11 identifies the payment as "Bankruptcy, Designated to Trust Fund".

Reminder: A TFRP assessment is classified as priority (unless secured by a NFTL) on the IRS's proof of claim. A TFRP is never to be paid as a general unsecured claim. Despite being called a *penalty*, the TFRP is treated as a tax.

5.9.8.12
(02-08-2019)
Closing Chapter 11 No Liability Cases

(1) **Significant Bankruptcy Cases.** Cases meeting the Significant Bankruptcy Case Processing Procedures criteria in IRM 5.9.4.15.3, Significant Bankruptcy Case Referrals, must be referred to Area Counsel upon initial case review regardless of a "no liability" determination.

Note: Significant cases or cases referred to TEGE are not to be closed on AIS without express consent from Area Counsel or TEGE.

(2) **No Liability Closures - Caution.** If a "no liability" determination is made in a Chapter 11 case, caution must be exercised in early closure of the case. Closure, in all instances, must conform to the provisions of the USBC to protect the debtor's rights.

(3) **Required Research Prior to Closure.** At a minimum, current research must be done which shows ***all*** of the following conditions have been met:

- No balance due periods
- No pending assessments
- No unfiled returns
- No pending examinations
- No potential liability to the IRS indicated by the plan review
- Debtor is current for at least one complete post-petition quarter (Business Master File (BMF) taxes). If a debtor files bankruptcy in the middle of the quarter, the caseworker must monitor for BMF taxes for the remainder of that quarter and the next complete quarter.
- No other issues requiring Insolvency's attention

Caution: Chapter 11 no liability cases are not required to be held open until the plan is filed and reviewed for tax consequences. However, cases that meet the significant or sensitive case criteria must remain open until the debtor's proposed plan has been reviewed and no other potential issues remain.

Reminder: A complete initial analysis per IRM 5.9.8.4, Initial Case Review for Chapter 11, is required on all Chapter 11 "no liability" cases.

(4) **Amended Plan or Disclosure Statement Received After Case Closure.** If the IRS receives an amended disclosure statement or plan after closing a no liability Chapter 11 case, FI should conduct another liability review taking any necessary actions, which may include reopening the case on AIS.

5.9.8.13
(02-01-2023)
Post-petition/Pre-confirmation BMF Monitoring

(1) **After Initial Case Review.** Once the initial case review has been completed, FI caseworkers must monitor the debtor's compliance with filing, making FTDs, and adherence to adequate protection orders prior to plan confirmation. Compliance monitoring must be conducted for all in-business debtors, including those cases where no proof of claim will be filed or no money is owed. FI caseworkers may schedule follow-ups to monitor compliance using the "Follow-ups" tab on AIS.

(2) **Deposit Requirements.** Caseworkers should review pre-confirmation compliance for making federal tax deposits based on the business' FTD requirements. A business required to make deposits monthly or more frequently should be reviewed on a monthly basis. Businesses required to make quarterly deposits should be reviewed quarterly. If the debtor has been non-

compliant pre-petition or becomes non-compliant post-petition/pre-confirmation, it may be advisable to review the case after each required deposit.

Note: Form 944 filers (annual filing) must make FTDs under the applicable deposit rules.

(3) **Contact with Debtor.** At any time the debtor is found to be delinquent in making FTDs, the caseworker must attempt to contact the debtor by phone. During the phone call, the caseworker must advise the debtor that the business has 10 calendar days to deposit all delinquent FTDs. The caseworker must enumerate the possible consequences of non-compliance, which may include the IRS:

- Filing Form 6338-A(C), Request for Payment of Internal Revenue Taxes, with the court (see paragraph (8) below)
- Requesting the appointment of a trustee
- Filing a motion to have the Chapter 11 case converted to a Chapter 7 bankruptcy
- Filing a motion to have the case dismissed
- Filing a motion for relief from the automatic stay

If the debtor cannot be reached by phone, the caseworker must send a letter to the debtor establishing the 10 day deadline to respond. Alternatively, the caseworker may contact the debtor's attorney of record in the bankruptcy proceeding regarding the delinquent FTDs. However, the caseworker must first confirm the attorney's status as the debtor's bankruptcy attorney before making contact.

Note: The caseworker should consider whether an existing adequate protection order requires timely deposits. If so, and the debtor is not making deposits, the case may be referred to Counsel if the tolerance criterion in IRM #

(4) **Contact Ineffective.** If contact with the debtor or debtor's attorney by phone or letter does not bring the debtor into FTD compliance, the caseworker should file an administrative claim, Form 6338-A(C), and send a copy to the US Trustee. Further actions to be considered are:

a. Negotiating an agreed order for compliance with FTD requirements containing a "conversion" or "drop dead" clause (referral to Counsel required to finalize an agreement in court), or
b. Referring the case to Counsel to consider conversion or dismissal, if the post-petition unpaid tax meets the tolerance criteria in IRM 5.9.4.15.4. (See paragraph (9) below.)

(5) **LAMS.** The Litigation Account Management System (LAMS) is a sub-system within AIS used to monitor compliance for all debtors in Chapters 11, 12, and 13. LAMS generates a report to match closed cases on AIS with unreversed TC 520s on IDRS. This report should be worked timely to identify violations of the automatic stay. Through LAMS, timely reviews can be conducted when working on large dollar and chronic repeater cases.

Note: IRM 5.9.16.4, Litigation Account Management System (LAMS), provides instructions for working LAMS reports.

(6) **TC 136 BMF Monitoring.** The use of TC 136 assists FI when monitoring for BMF compliance. For compliance monitoring, the Insolvency Interface Program (IIP) inputs a systemic TC 136 reflecting the Last Return Amount Code of "1".

a. The input of TC 136 suppresses both litigation transcripts for TC 650 and FTD alerts. See IRM 5.7.1.5 (2)(e), Pre-Contact Research and Analysis.
b. A FTD-FIDUC transcript is generated when a systemic check discloses substantial under-depositing.
c. When systemic monitoring is no longer necessary, a TC 137 should be input.

(7) **Large Dollar/Chronic Delinquency Cases.** In lieu of systemic monitoring, FI should consider periodic manual monitoring of large dollar or chronic repeater cases on IDRS (as established by local management guidelines).

(8) **Request for Payment.** If the post-petition liabilities remain unpaid, the case-worker must consider listing the liabilities on Form 6338-A(C), Request for Payment of Internal Revenue Taxes. The request for payment should be filed with the court. Under 11 USC 503(b)(1)(D), the IRS is not required to file a request for the payment of administrative expense taxes and related penalties. However, it is the IRS's position that IRS will file the request for payment of these post-petition liabilities. (IRM 5.9.13.11, Administrative Claims) Filing the Form 6338-A(C) puts the debtor and creditors on notice as to the amounts due. Failure to include these liabilities on Form 6338-A(C) may result in the liabilities being discharged in the bankruptcy case. Depending upon local court practices, the IRS may find it beneficial to continue to file administrative claims to establish a basis for a motion for conversion or dismissal. FI should consult Counsel for guidance, if necessary.

a. The caseworker should send a copy of the Form 6338-A(C) to the debtor and debtor's attorney. Include a letter advising them that IRS will request a motion to convert or dismiss the case if the non-compliance is not cured by the specified target date.
b. Include an estimate of the current tax period liability and an estimate of the amount due on any unfiled returns on the Form 6338-A(C).

(9) **Referral.** If the delinquency is not resolved, the case should be referred to Counsel for court intervention. Failure to pay or file post-petition taxes as they become due are grounds for conversion, dismissal, or appointment of a trustee. (See 11 USC 1112(b)(4)(I) for additional information.) Additionally, if the debtor fails to file a tax return that becomes due post-petition or fails to properly obtain an extension, the IRS may request that the case be converted or dismissed. The court is required to grant the request if the debtor does not file the return or obtain an extension within 90 days of the request. (11 USC 521(j)(2)) The referral to Counsel must include the debtor's full TINs.

Note: Consult Counsel for guidance on how to address the debtor's noncompliance with post-petition filing and paying requirements when the amounts involved do not meet IRM 5.9.4.15.4 criteria.

(10) **Conversion Limitations.** Generally, a Chapter 11 case can be converted or dismissed voluntarily by the debtor or involuntarily by the request of a party in interest. However, for three types of debtors, the court is prevented from converting a case from Chapter 11 to Chapter 7 unless the conversion is requested by the debtor. In instances involving these special debtors, the court

may only dismiss the case (assuming grounds exist to do so). The three types of debtors listed under 11 USC 1112(c) are:

a. A farmer;
b. A corporation which is not moneyed, business or commercial; or
c. Any entity not eligible to file Chapter 7.

5.9.8.14
(01-02-2020)
Internal Revenue Code 1398 Issues

(1) **Special Tax Provisions.** IRC 1398 contains special tax provisions for an individual filing Chapter 11. For an individual who files bankruptcy under Chapter 11 provisions, two taxpayers exist post-petition:

1. The trustee or DIP files a return (Form 1041) for all income, which belongs to the estate; and
2. The individual debtor files a return (Form 1040) for all income of the debtor, which is not part of the estate.

Note: These same provisions are applicable to individual Chapter 7 cases. (See IRM 5.9.6.14, Bankruptcy Estate Income Taxes — Separate Taxable Entity.)

(2) **Post-petition Property.** 11 USC 1115 makes property acquired by an individual debtor post-petition property of the estate, as in Chapter 13 cases. However, unlike in Chapter 13 cases, the bankruptcy estate of an individual in Chapter 11 is a separate taxable entity. Gross earnings from a Chapter 11 debtor's performance of services and gross income from property they acquired once the petition was filed must be included in the bankruptcy estate's gross income, not in the debtor's gross income. If the debtor is self-employed, the debtor remains responsible for paying the self-employment tax on post-petition income on their individual Form 1040 Schedule SE, even though that income must be reported on the estate's return for income tax purposes. Notice 2006-83, IRB 2006-40, provides detailed guidance on property of the bankruptcy estate for individuals .

(3) **Individuals Can Terminate Tax Year.** Although the practice is not common, individuals may elect to terminate their tax year when the bankruptcy petition is filed. (IRC 1398(d))

a. If this election is made, the tax year is terminated as of the day before the bankruptcy filing, which will result in the debtor's filing two "short-year" returns. This election is made by filing the first short year return on or before the due date, which is the 15th day of the fourth month following the close of the first short year.
b. The debtor must write at the top of the *first* short year return: *SECTION 1398 ELECTION*. At the top of the *second* short year return, the debtor must write: *SECOND SHORT YEAR RETURN AFTER SECTION 1398 ELECTION*.

Note: The election can also be made by filing an extension to file on or before the due date of this return.

c. The spouse can join in this election. If the spouse does join, a joint return must be filed for the first short year. If the spouse does not join, a joint return cannot be filed for that year.
d. If an individual files Chapter 11 and makes the IRC 1398 election, the spouse may join in this election. If the spouse subsequently files Chapter

11, the second filing creates a second IRC 1398 election opportunity. If the election should be made again, three short year returns are required.

e. Once this election is made, it may not be changed unless the case is dismissed. (See paragraph (4) below.)

(4) **The Bankruptcy Estate in the Individual Chapter 11 Case.** The bankruptcy estate in an individual Chapter 11 case is a separate taxable entity. A separate Employer's Identification Number (EIN) must be obtained for the estate.

a. An income tax return must be filed on Form 1041, if the estate has sufficient income to meet the filing requirements. The Form 1041 filing requirements are the total of the amount of one exemption plus the standard deduction for a married person filing separately.

b. The estate may initially choose its own taxable period (i.e., when its first tax year ends) as long as the initial period does not exceed one year.

c. The DIP or the trustee must determine what portion of income, deductions, and/or credits belongs to the individual debtor and what portion belongs to the estate. For cases of individuals, property and earnings acquired post-petition are property of the estate, as in Chapter 13 cases. See IRM 5.9.8.14.1, Post-petition Debts - Chapter 11 Individuals, and 11 USC 1115 for further information. Income derived from assets of the estate should be reported on the estate's Form 1041.

Example: A loss derived from rental property that is property of the estate would not be available to reduce the debtor's Form 1040 income as the rental property is part of the estate, and the loss should be reported on the estate's Form 1041.

d. The bankruptcy estate will succeed to and take into account any pre-petition net operating loss (NOL) available to the individual. The NOL will become part of the estate when the petition is filed and will not be available to the individual so long as the estate exists. When the estate terminates, any remaining NOL will revert to the individual, but first it must be reduced by the amount of any discharged debt. (IRC 108)

e. A joint bankruptcy petition actually creates two bankruptcy estates – unless the court has substantively consolidated the estates. If the estates have not been consolidated, two 1041 obligations exist.

f. Caseworkers should send Letter 4914, Notice to Individual Chapter 11 Debtor Regarding Income Tax Filing Responsibilities, to individual Chapter 11 debtors and trustees advising them of these opportunities and their subsequent tax responsibilities.

g. If the Chapter 11 case is dismissed, the effect is as if a bankruptcy petition was never filed. Therefore, the debtor must file amended returns to replace any short year returns filed or Form 1041s filed.

(5) **Determining if Income is Property of the Estate or Property of the Debtor.** Income earned by the debtor for services performed is "personal service income". Personal service income is reported and taxed on Form 1041, U.S. Income Tax Return for Estates and Trusts. There are other forms of income reported and taxed on the Form 1041. Examples of income reported on Form 1041 are:

- Wages and other compensation earned as an employee,
- Independent contractor income,
- Self-employment income, such as, income earned as a painter, CPA, consultant, attorney, plumber, etc., and

- Rental income from real property purchased with income of the estate after the filing of the bankruptcy petition.

The debtor may also be required to file Form 1040, U.S. Individual Income Tax Return. The Form 1040 is used to report income and tax that is not taxed as property of the estate. Some examples of income and tax reported by the debtor on Form 1040 are:

- Rental income from real property purchased using excluded, exempt, or abandoned assets.
- Rental income from real property using funds obtained from gifts, inheritance, or insurance proceeds received more than 180 days after the bankruptcy petition date.
- Income from excluded property, such as, an ERISA retirement plan.
- Self-employment tax on self-employment income earned by the bankruptcy estate and reported on the Form 1041 filed by the estate. The self-employment tax is included on the debtor's Form 1040.

Note: See Notice 2006-83, IRB 2006-40, when determining if income is property of the estate or property of the debtor.

5.9.8.14.1
(02-01-2023)
Post-petition Debts - Chapter 11 Individuals

(1) **Post-Petition Liabilities - Individuals.** In the Chapter 11 case of an individual, the debtor and the bankruptcy estate represent two separate taxable entities. (See IRM 5.9.8.14, Internal Revenue Code 1398 Issues, and IRB 2006-40, Notice 2006-83, for further information.) Any post-petition liability incurred by the individual debtor may not be claimed in the bankruptcy case. However, 11 USC 1115 provides that personal service income earned by the individual debtor is property of the bankruptcy estate. The personal service income is reported on Form 1041, U.S. Income Tax Return for Estates and Trusts. The remaining income of the individual debtor is reported on Form 1040, U.S. Individual Income Tax Return.

(2) **Individual's Post-Petition Liabilities.** No stay of collection is placed on the individual's post-petition debts. Such debts can be collected from non-estate assets, such as exempt assets. Collection of these accounts is not to be suspended.

(3) **Collection.** In the Chapter 11 case of an individual, the automatic stay prohibits collection of Form 1041 liabilities outside the bankruptcy. Form 1041 liabilities are administrative expenses that must be paid through the bankruptcy. The Collection Statute Expiration Date (CSED) is extended by the bankruptcy on these liabilities. If the liabilities are not paid through the bankruptcy, they will generally be discharged. The caseworker must:

a. Contact the debtor or debtor's attorney and establish a 10 day deadline for the debtor to pay the outstanding post-petition tax liability. If the liability remains unpaid,
b. File Form 6338-A(C), Request for Payment of Internal Revenue Taxes, to request payment of the outstanding liability from the bankruptcy estate, and
c. Ensure that a TC 520 bankruptcy freeze is input for the outstanding liability that prevents all collection activity and suspends the CSED. Generally, the TC 520 cc 64 or TC 520 cc 65 is input, subject to local procedures.

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to dismiss or convert, or an objection to discharge.

(4) **Automatic Stay.** The automatic stay is not in place for the unpaid income tax liability of an individual reported on a post-petition Form 1040. However, limited assets are available for collection under 11 USC 1115. Only excluded, exempted or abandoned assets, and assets obtained by gift, inheritance, divorce settlement, or as life insurance proceeds acquired more than 180 days after commencement of the bankruptcy case are available for collection. To prevent any inadvertent collection activity against property of the estate, a TC 520 cc 84 should be placed on the post-petition/pre-discharge Form 1040 account on IDRS. Collection personnel must contact Insolvency before taking collection action to ensure no action is taken against property of the estate.

Note: While these post-petition liabilities can be collected from non-estate property, the case should be referred to Counsel for dismissal, conversion, or an objection to discharge when post-petition Form 1040 liabilities meet the referral tolerances in IRM 5.9.4.15.4.

(5) **Income From Business.** When an individual debtor operates a business as a sole proprietorship, or the debtor solely owns the business, the personal service income is property of the bankruptcy estate. The income and tax on the income are reported on Form 1041. Any self-employment tax on the personal service income is reported and collected on the debtor's Form 1040. It may not be clear whether income from the business is property of the estate or the debtor's separate post-petition income. In such cases, FI should consult Counsel.

(6) **Filing Compliance.** The individual debtor is required to report all post-petition personal service income on Form 1041. Caseworkers must monitor the individual bankruptcy case yearly to ensure that the Form 1041 is filed for each year in which the automatic stay is in place. Generally, this is from the petition date through discharge upon completion of the plan. Failure to file the Form 1041 should be referred to Counsel when local tolerances and additional concerns listed in IRM 5.9.4.15, Referrals-Representing IRS in Bankruptcy Court, permit the referral. If the debtor did not provide the EIN as directed in the Letter 4914, the caseworker must contact the debtor and document actions taken to secure the EIN.

Note: Chapter 11 no liability cases are not required to be held open to monitor only for Form 1041 compliance.

(7) **Installment Agreement (IA) Requests on Post-Petition Liabilities.** Taxpayers who are in Chapter 11 may submit a request for an installment agreement for post-petition liabilities. When a taxpayer is in bankruptcy, a request for an IA on post-petition liabilities is non-processable. Administrative appeal rights are not provided for a non-processable IA. A TC 971 AC 043 should not be input on these accounts. For additional information, see IRM 5.9.4.20.1, IA Requests for Post-Petition Liabilities Submitted During Bankruptcy.

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

5.9.8.15
(01-02-2020)
Individual Shared Responsibility Payment

(1) **General Information.** Effective 2014, the Affordable Care Act, 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. For more information see IRM 5.9.4.19.1, Individual Shared Responsibility Payment (SRP).

(2) **Assessments and Treatment in Bankruptcy.** The SRP liability is treated as an excise tax under 11 USC 507(a)(8)(E). It is reported on the appropriate line of the debtor's federal income tax return. The amount shown on the respective line of the income tax return is then assessed on IDRS as a MFT 35 module for the respective tax year. Since the liability for the SRP module is derived from an individual's federal income tax return, certain information from that return is used in determining dischargeability of the SRP liability.

(3) **Post-Petition SRP Liabilities are Treated in the Same Manner as the Post-Petition Form 1040 Liability.** The individual SRP liability of the debtor is taken from the appropriate line on the debtor's income tax return, when the debtor's gross income reportable on Form 1040 meets the threshold requiring the debtor to file Form 1040. For the tax year ending December 31, 2014 (201412), the SRP liability is reported on:

- Form 1040, U.S. Individual Income Tax Return, Line 61
- Form 1040A, U.S. Individual Income Tax Return, Line 38
- Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, Line 11

Like post-petition Form 1040 tax liabilities, post-petition SRP liabilities are not dischargeable and not claimable as administrative expenses in Chapter 11 cases:

- While collection of the post-petition SRP liability is not prohibited by the automatic stay, a TC 520 cc 84 must be placed on post-petition SRP liabilities to prevent any inadvertent collection activity against any property of the bankruptcy estate.
- Like income tax reported on the debtor's Form 1040, the post-petition SRP liability is not claimable as an administrative expense on Form 6338-A(C), Request for Payment of Internal Revenue Taxes.
- The post-petition SRP liability is non-dischargeable in the individual or joint debtor's Chapter 11 bankruptcy case.

(4) **SRP Mirrored Modules.** Beginning in January of 2016, certain joint SRP liabilities assessed under Master File Transaction (MFT) 35 on IDRS are mirrored as individual SRP modules under MFT 65 on IDRS. For example, a joint SRP liability may be mirrored when one spouse filed bankruptcy and the bankruptcy case was dismissed or discharged. The SRP liability of the debtor is treated in the same manner in a bankruptcy case. It does not matter if the SRP is assessed under MFT 35 or MFT 65.

(5) **Discharge Eligibility.** A debtor must be eligible to receive a discharge in the current Chapter 11 bankruptcy case for any of the debtor's liabilities to be discharged. Liabilities owed by the individual or joint debtor may not be discharged if the IRS was not properly notified of the bankruptcy case. See IRM 5.9.17.8.9, Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case, for additional information. This also includes SRP liabilities.

(6) **Discharge Upon Completion of the Chapter 11 Plan.** When an individual or joint debtor receives a discharge upon completion of the Chapter 11 plan under 11 USC 1141(d)(5)(A), the pre-petition SRP liability:

a. Is non-dischargeable if the Form 1040 was due, with extensions, within the three-years prior to the bankruptcy petition date. (11 USC 523(a)(1)(A) and 11 USC 507(a)(8)(E)(i))
b. May be non-dischargeable if the tax on the Form 1040 is non-dischargeable due to willful evasion or fraud. However, IRS must be able to show that the debtor willfully evaded the SRP or committed fraud as to the SRP. When the SRP may be non-dischargeable for these reasons, concurrence that the liability is non-dischargeable is required from Area Counsel. (IRM 5.9.17.8.2(1), Exception to Discharge, and 11 USC 523(a)(1)(C))
c. May be non-dischargeable if the tax on the Form 1040 was assessed before the debtor filed a return. Discharge can depend upon the jurisdiction where the bankruptcy case was filed. Discharge can also depend upon when/if the debtor filed their return for the respective year. See IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared, and 11 USC 523(a)(1)(B)(i).
d. Is non-dischargeable if the Form 1040 was filed late and after the date that is two-years before the date of the bankruptcy petition. (11 USC 523(a)(1)(B)(ii))

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

(7) **Hardship Discharge.** The exceptions to discharge above apply to a hardship discharge as well.

(8) **Interest.** If the SRP liability is non-dischargeable, the interest is non-dischargeable. No penalty is assessed or accrued on the SRP liability.

5.9.8.16 (02-01-2023) Employer Shared Responsibility Payment

(1) **General Information.** Effective January 1, 2015, 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. For more information see IRM 5.9.4.19.2, Employer Shared Responsibility Payment (ESRP).

(2) **Assessment and Treatment in Bankruptcy.** ESRP liabilities are claimable as an excise tax on the IRS's proof of claim. For additional information on claiming these liabilities, see IRM 5.9.13.18.6(3), IRC 4980H-Employer Shared Responsibility Provisions.

(3) **Post-petition ESRP MFT 43 Liabilities and Chapter 11 Cases.** The enrollment date and the Letter 226-J issuance date need to be considered when determining to file a pre-petition claim, post-petition claim or both. See IRM 5.9.4.19.2(10) , Determining if the ESRP Liability is Pre-Petition/Post-Petition. The enrollment date is usually November 1st of the year before the ESRP year. The date the Letter 226-J was issued is identified by a TC 971 AC 782 in the MFT 43 module.

a. Individual Chapter 11 Cases. Post-petition/pre-confirmation ESRP MFT 43 liabilities owed by an individual debtor who is an ALE sole-proprietor qualify as an administrative expense of the Chapter 11 estate if the estate was the employer for the purposes of the ESRP. If the estate filed employment tax returns, contact Counsel to determine if it was the employer for purposes of the ESRP. If the post- petition/pre-confirmation ESRP MFT 43 liability was incurred by the estate and is claimable as an administrative expense, use Form 6338-A(C), Request for Payment of Internal Revenue Taxes. Include proof of claim statement "Z9", caption ESRP on the Form 6338-A(C) stating, "ESRP is post-petition since Letter 226-J was issued post-petition".
b. Non-Individual Chapter 11 Cases. In Chapter 11 non-individual cases, the bankruptcy estate is not a separate taxable entity. Post-petition/pre-confirmation ESRP MFT 43 liabilities owed by the non-individual debtor in a Chapter 11 case are claimable as administrative expenses on Form 6338-A(C). The Form 6338-A (C) should include proof of claim statement "Z9", caption ESRP stating, "ESRP is post-petition since Letter 226-J was issued post-petition".

Note: If the enrollment date is pre-petition and the L 226-J issuance date is post-petition or has not been issued yet, then file a pre-petition and a post-petition claim. When both claims will be filed, Proof of Claim statements "Y5" and "Y6"' needs to be added to the pre-petition claim. It states, "While one or more ESRP assessments are post-petition, the pre-petition claim is being filed as a protective measure." See IRM 5.9.13.18.6(3), IRC 4980H – Employer Shared Responsibility Provision.

Any tax liability that is incurred during the Chapter 11 case, including the ESRP, should be paid when due under the tax laws, or the case is subject to conversion or dismissal under 11 USC 1112(b)(4)(I). However, if the IRS doesn't bring a motion to convert or dismiss, the plan should provide for payment on the effective date of the plan. Post-confirmation ESRP MFT 43 liabilities owed by a Chapter 11 debtor are not claimable on Form 6338-A(C) and they are not paid under the bankruptcy plan.

(4) **Discharge and ESRP Liabilities.** The ESRP is treated as an excise tax under 11 USC 507(a)(8)(E). When the L226-J issuance date, F1094-C due date, or employees' return due date are within three years before the petition date,. the ESRP MFT 43 liability is a priority excise tax debt.

a. Individual Chapter 11 Cases. Pre- petition ESRP priority taxes in individual Chapter 11 cases are excepted from discharge pursuant to 11 USC 523(a)(1)(A) *unless the confirmed plan provides otherwise*. Any portion of the post-petition ESRP (whether incurred by the estate or the debtor) that should have been paid under the plan will be non-dischargeable.
b. Non-Individual Chapter 11 Cases. In reorganizing Chapter 11 cases of non-individual debtors, debtors generally receive a "super discharge" of pre-confirmation tax debts when the Chapter 11 plan is confirmed except to the extent that the plan or confirmation order provides otherwise (11 USC 1141(d)(1)(A)).

Note: For more information on dischargeability, see IRM 5.9.17.8.11(5),Chapter 11 Bankruptcies.

5.9.8.17
(02-01-2023)
Disclosure Statements and Plans of Reorganization

(1) **Requirement.** Chapter 11 is the only chapter of the Bankruptcy Code requiring a disclosure statement to accompany a proposed plan of reorganization.

(2) **Describes Plan.** The disclosure statement may be brief or lengthy. It should explain what the proposed plan means to particular creditors and to other interested persons. The contents of the disclosure statement are not binding on the IRS. The approval process for the disclosure statement provides the IRS with an opportunity to explore relevant facts regarding the debtor. The process also affords the IRS a chance to clarify any plan issues.

(3) **Tax Consequences.** The disclosure statement is required to include a discussion of the potential federal tax consequences to the debtor, any successor to the debtor, and a typical "hypothetical investor." Among other issues, plans providing for liquidation or the sale of property should be reviewed for the tax impact.

Caution: Any discussion of tax consequences in the disclosure statement should be reviewed to ensure that no language is included purporting to bind the IRS. There may be tax consequences whenever a debtor is released from liability for debt. For example, a debtor may "restructure" a mortgage on real property for the current reduced value rather than the mortgage amount when purchased. The plan may also provide for liquidation of real property at values less than the existing mortgage. These situations may affect the debtor's tax attributes, such as, the basis in the property or the NOL carryover available to the debtor. The disclosure statement should not state that there are no tax consequences to the debtor, in these situations. These examples are not all inclusive. Consult with Counsel if questions arise regarding tax consequences.

(4) **Notice of Hearing.** Once the debtor submits a disclosure statement and plan of reorganization, the court schedules a hearing on the disclosure statement. Notice of the hearing is sent to all creditors. The FI caseworker should immediately request a copy of the disclosure statement and plan from the debtor's attorney upon receipt of the notice of hearing. These documents can also be reviewed on PACER. If mailed, these documents should be sent directly to the FI office instead of the national Insolvency post office box address.

(5) **Insolvency Review.** The FI caseworker should review the claim and IDRS to ensure all tax liabilities, assessed and estimated, are included on a proof of claim. The pre-petition claim should be amended, if appropriate. This review will also identify if administrative tax liabilities have been incurred. 11 USC1112(b)(4)(I) provides that failure to timely pay taxes owed after the petition date or failure to file post-petition tax returns is cause for dismissal or conversion. The IRS is not required to file an administrative claim before requesting dismissal or conversion of the case. However, the IRS takes the position that IRS will file Form 6338-A(C), Request for Payment of Internal Revenue Taxes, when actual or potential post-petition liabilities are present. The filing of the administrative claim puts the debtor and creditors on notice of the post-petition amounts due. (See IRM 5.9.8.13, Post-petition/Pre-confirmation BMF Monitoring, IRM 5.9.8.14.1, Post-petition Debts - Chapter 11 Individuals, and IRM 5.9.8.17.1(4), Plan Provisions.)

(6) **Lien and Equity Issues.** If the IRS has filed a NFTL allowing for a secured claim, schedules must be reviewed to determine if the equity to which the lien attaches is at least equal to the claim. If the equity is less than the secured

claim, the portions of the claim to be reclassified as unsecured priority or unsecured general must be calculated. The claim must be amended accordingly. (See IRM 5.9.13.19.2, Secured Claim.)

(7) **Objections.** The disclosure statement must provide sufficient information for the reviewer to make a judgment about the plan. Comparison of debtors' schedules and statements of financial affairs should be made against other financial information. Examples of financial information that can be reviewed include:

- Accurint
- Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals
- Form 433-B, Collection Information Statement for Businesses

IRS will usually object to the disclosure statement only if it is grossly deficient and if major plan objections are identified. FI and Counsel should establish guidelines regarding objections to disclosure statements.

5.9.8.17.1
(02-01-2023)
The Plan of Reorganization

(1) **Time Frame for Filing a Chapter 11 Plan**. FI caseworkers must determine if the debtor's case is a small business (fast track) Chapter 11 case, a SBRA case, or a "regular" Chapter 11 case. The time frame for which a small business debtor must file their proposed plan is discussed in IRM 5.9.8.5, Small Business Debtor and IRM 5.9.8.5.1 Small Business Reorganization Act. If the case is not a small business case, the debtor has 120 days from entry of the order for relief to file their proposed plan in order to retain the exclusive right to do so. However, the 120 day period may be extended for a period *up to 18 months* with court approval. See 11 USC 1121.FI caseworkers must schedule a follow-up on AIS to monitor for timely filing of the Chapter 11 plan. The follow-up should be scheduled based on whether the case is a small business or regular Chapter 11 case.

- In a small business case, the debtor must file their plan within 300 days of the order for relief, schedule a follow-up for a time shortly after the 300 day period.
- In the SBRA case, the debtor must file a plan no later than 90 days after filing the case, schedule a follow-up for a time shortly after the 90 day period.

  Note: The court may grant an extension if the need for the extension is due to circumstances for which the debtor should not be found accountable.

- In the "regular" case, schedule a follow-up for a time shortly after the 120 day period has expired. If a plan has not been filed, see if the court has granted the debtor an extension on the period to file the proposed plan.

Caseworkers may utilize the "Unfiled Plans" report to identify cases where plans have not been filed within a specified time period. However, the report will not be accurate when the "Plan Filed" field on the AIS Taxpayer Screen has not been updated with the date the proposed plan is filed. Ensure that the "Plan Filed" field is updated when the debtor's plan is filed.

Note: If the debtor's plan has been filed but not confirmed within 180 days, check to see if another party has proposed another plan on behalf of the debtor.

(2) **Negotiations.** The Bankruptcy Code prescribes minimal requirements for the structure and confirmation of a Chapter 11 plan. However, the final format of the plan results from negotiations among the debtor and its creditors. The IRS must monitor the development and feasibility of proposed Chapter 11 plans prior to confirmation of the plan. *Failure to monitor the plan may put IRS at risk for losing its rights under the law. Terms in the confirmed plan are binding on the debtor and the creditors.*

(3) **Quality Plan Reviews/Timely Objections.** Chapter 11 plans may fail to provide properly for the claims of the IRS. The IRS must review proposed plans carefully. The court generally establishes a deadline for creditors to object to confirmation of the proposed plan. The IRS must review the proposed plan in sufficient time to refer the case to Counsel to request an objection to confirmation by the deadline established by the court. The caseworker should refer the case to Counsel to object to deficient plans subject to tolerances in IRM 5.9.4.15.4. IRM 5.9.5.4(4), Chapters 11 and 12 Plan Documentation, provides the format to be followed in documenting a Chapter 11 plan summary on AIS.

(4) **Plan Provisions.** The caseworker must review the proposed plan to ensure that it complies with 11 USC 1129 regarding treatment of any liabilities (assessed and estimated) owed to the IRS. The proposed plan must provide:

a. Administrative Expenses. Any unpaid administrative expense claims must be paid in full on the effective date of the plan unless the claim holder agrees to different treatment. (11 USC 1129(a)(9)(A)) The effective date of the plan should be the confirmation date, or shortly following it. The IRS rarely agrees to different treatment. (See paragraph (9) below.)The IRS should claim all administrative expense taxes on Form 6338-A(C), Request for Payment of Internal Revenue Taxes, filed prior to confirmation. Filing Form 6338-A(C) prior to confirmation may avoid the debtor contending that any unclaimed taxes are discharged by confirmation. Further, caseworkers should review plans to ensure they provide a mechanism for the payment of assessed and estimated post-petition, pre-confirmation tax liabilities. An estimated administrative claim may be required to include potential liabilities on unfiled returns for income tax years ending before, or other taxes arising before, confirmation of the plan. An estimated administrative claim may also be required to include any potential withholding tax liabilities for FTDs that were not made, or that were insufficient. The tax on Form 941 is incurred when the wages are paid, not when the return is due. Therefore, an estimated claim may be required for tax on a return that is not due prior to the confirmation date.

Note: Plans typically set a bar date for administrative expense requests. FI should negotiate for plan language allowing taxes for pre-confirmation liabilities for which a return has not been filed to pass through bankruptcy unaffected by such bar date. FI caseworkers should consult with Counsel if problems arise. If the debtor will not agree, the IRS must object to the plan.

Caution: *Failure to file a timely request for payment presents substantial risk the court will hold such administrative taxes to have been discharged notwithstanding 11 USC 1129(a)(9)(A) and 503.*

b. Administrative Expenses - Proofs of Claim. Governmental units are not required to file requests for payment of administrative expenses. (11 USC 503(b)(1)(D)) The taxpayer is generally required to pay taxes on or before the due date of the tax under applicable non-bankruptcy law per 28 USC 960. The small business debtor must timely file tax returns (11 USC 1116(6)(A)). 11 USC 1112 (b)(4)(I) makes the failure to file or pay post-petition taxes an express reason for dismissal or conversion in any Chapter 11 case. Thus, debtors should be paying their post-petition tax obligations in the ordinary course of business pursuant to the tax laws. This includes the filing and paying of any income tax liabilities of the bankruptcy estate on Form 1041 in the individual or joint bankruptcy case. While the administrative expense claim is not required, it is the IRS's position that IRS will file Form 6338-A(C) in case the court imposes any bar date for administrative expense claims. The Form 6338-A(C) puts the debtor and creditors on notice of assessed and estimated delinquent taxes and returns. Additionally, filing the "admin" claim serves to make the delinquent taxes or returns a matter of tax administration. The claim will alert other interested persons of the debtor's non-compliance. Any pursuit of a motion to convert or dismiss for failure to file the post-petition returns or pay the post-petition taxes requires a referral to Counsel subject to tolerances set forth in IRM 5.9.4.15.4.

Caution: Caseworkers must review discharge language in the proposed plan closely. The claim should be filed in order for the claim to be paid in the plan. Additionally, the plan may contain language discharging liabilities not included on Form 6338-A(C). If the plan is confirmed with the discharge language, and the liability is not included on Form 6338-A(C), the liability may be discharged.

c. Secured Claims and Protection of the Government's Interests. BAPCPA requires the treatment of secured claims in the same manner as a priority claim when the claim would be a priority claim absent its secured status. (See 11 USC 507(a)(8) to determine if the claim would be a priority claim.) The claim must be paid over a period ending not later than 5 years after the date of the order for relief. Interest must be paid at the IRC rate. (See 11 USC 1129(a)(9)(C) and (D), 11 USC 511, and list item (j) below.)

d. Rate of Interest for Tax Claims. The interest rate is the IRC 6621 rate for calendar month the plan is confirmed. (See 11 USC 511.) The interest rate for large corporate underpayments under IRC 6621(c) is the "normal" interest rate plus *two* percentage points. In either instance, interest is *compounded daily*. The proposed plan may include language stating "of a value, as of the effective date of the plan" to address the payment of interest required for confirmation of the plan per 11 USC 1129(a)(9)(C)(i).The caseworker must be alert for plans that do not provide for interest at the IRC rate or do not contain "present value" language. Plans may state "no interest." They may provide for an interest rate other than the IRC rate. They may provide for "simple" instead of "compound" interest. The caseworker should attempt to negotiate an amended plan to provide for interest at the IRC 6621 rate. A referral to Counsel may be required to request an objection to confirmation if the debtor refuses to amend the plan. The confirmed plan is binding on the IRS. Therefore, if the plan is confirmed at 2% simple interest, the IRS is only entitled to collect 2% simple interest through the life of the plan.

e. Full Payment Provision. The IRS should insist the plan *provide for full payment of secured claims before the CSED is due to expire, absent the*

IRC 6503(h) suspension. If the debtor does not include this provision in their proposed plan, the IRS may ask for modification of the plan. The modified plan should include language clarifying the CSED will be suspended pursuant to IRC 6503(h)(2). (See IRM 5.9.8.10, Collection Statute of Limitations and Chapter 11 Plans.)

f. Collection Suspension and the Individual in Chapter 11. 11 USC 1141(d)(5) generally provides that confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge after the debtor has completed all payments required under the plan. Therefore, the collection statute is extended on periods covered under the plan. However, caseworkers must be alert for language in plans that provides for a discharge prior to plan completion. The caseworker should attempt to negotiate a modified plan that provides for a discharge after completion of plan payments. If the debtor does not modify the plan, the case should be referred to Counsel for an objection to confirmation-.Some plans contain language allowing the court to close the case at "substantial consummation" of the plan. Pursuant to 11 USC 362(c)(2), the automatic stay lifts at the earliest of case closure, dismissal, or the time discharge is granted or denied. The stay may be lifted long before completion of payments provided for in the plan. In these cases, the caseworker must protect the Assessment Statute Expiration Date (ASED) when there is an unagreed Examination or AUR deficiency.

Reminder: The IRS can proceed with the standard IRC 6213 deficiency procedures once the stay has lifted. There would no longer be any prohibition to the debtor from filing a petition with the Tax Court to challenge the proposed deficiency and there would be no further suspension of the ASED under IRC 6503(a) unless something in the plan specifies differently. Exam should continue to contact Insolvency to verify the status of the automatic stay prior to taking any actions.

g. Lien Retention Provision. If the IRS has a secured claim, the plan must contain a provision providing for retention of the IRS's lien until plan completion. Unless the plan provides otherwise, 11 USC 1141(c) provides that the property dealt with by the plan is free and clear of all claims of creditors and equity security holders once the plan is confirmed. Without lien retention language, the IRS's lien could be released at confirmation.

h. Over-secured Claim. The IRS is over-secured when the value of the collateral exceeds the amount of the IRS's secured claim. The plan should provide for interest on the claim from the petition date (11 USC 506(b)).

i. Unsecured Priority Claims. Unsecured priority claims must be paid in regular installment payments in cash, over a period no later than five years after the petition date. Unless the plan provides otherwise, the IRS is entitled to receive compound interest at the IRC rate the month of confirmation (11 USC 511). If the plan states that the IRS is paid interest, but is silent regarding the interest rate, interest is calculated per 11 USC 511. If the plan does not specify interest terms, but contains language regarding "present value," interest accrues at the compound interest rate for the month of confirmation. If the plan provides for simple interest, a specified interest rate or states "no interest," the IRS is bound by the terms of the confirmed plan. If the debtor liquidates through Chapter 11, the liquidating plan must provide for accrued interest. Interest requirements for the liquidating plan mirror those for a plan of reorganization.

The payment schedule may not be less favorable than the most favored unsecured general claim provided for by the plan except for 11 USC 1122(b) creditors.

Note: 11 USC 1122(b) creditors file small unsecured claims that may be paid separately in a lump sum for convenience sake.

j. Unsecured General Claims. Unsecured general claims are not required to be paid in full. There is no requirement for the payment of post-petition interest. General creditors must be paid an amount at least equal to that which the creditors would have received under Chapter 7, in accordance with 11 USC 1129(a)(7). An unsecured claim should be filed by the IRS if unsecured amounts are due the IRS and the IRM 5.9.13.17, Below Tolerance - Non-Filing of a Proof of Claim, dollar criterion is met. The general unsecured claims of the IRS must be treated in the same manner as all other general unsecured claims. The IRS should request the payment of interest if the plan provides for payment of interest to other unsecured general creditors.

Note: Plans may divide general claims into categories by amount and provide for more prompt disposition of smaller claims. In such cases, the reviewer may consider, with managerial concurrence, reducing the general claim for more prompt "up front" payments and disposition, depending on the terms and amounts. (See paragraph (8) below.)

k. Default Provisions. The caseworker should attempt to negotiate *default provisions* in the proposed plan. The caseworker should also attempt to negotiate language clarifying that the plan does not discharge federal tax liabilities provided for in the plan until paid. In the case of entities other than individuals, the plan should permit administrative collection actions, upon default. The discharge in the individual or joint bankruptcy case does not occur until completion of plan payments. For the individual or joint bankruptcy case, the plan default language should include provisions for conversion or dismissal upon plan default.

Reminder: In light of the high default rate of Chapter 11 plans, negotiating default provisions is a significant aspect of the plan review. The absence of clear default provisions in the plan leaves the IRS with an uncertain legal position, which can lead to litigation.

l. Default Language. The following model language can be modified to fit local practice or the circumstances of a particular case:
"If the reorganized debtor substantially defaults on the plan payments due to the IRS, the outstanding balance is immediately due and payable. Payment shall be for the entire amount owed to the IRS under the plan. The IRS may collect these unpaid tax liabilities through the administrative collection provisions of the Internal Revenue Code."

Note: This language should be modified for cases of individuals , since the discharge in such cases does not usually occur until after completion of payments under the plan. See IRM 5.9.8.19.3(3), Administrative Collection.

(5) **Full Plan Review Critical.** The entire plan must be reviewed to ensure it adequately provides for the IRS's claims. The review must ensure that there are no provisions detrimental to the government. Plans providing for liquidation or

the sale of property should be reviewed for the tax impact. (See IRM 5.9.4.6.1, Sale of Property Considerations.) The plan must not contain language that discharges debts that is not compliant with 11 USC 1141. Finally, the plan must not provide for closure of the individual or joint case prior to discharge upon completion of plan payments.

Caution: Terms of the confirmed plan are binding on the IRS, even when not compliant with the USBC.

(6) **Plan Review Red Flags.** No list can be all-inclusive. FI must exercise caution when plan provisions are reviewed and any of the following factors are noted:

Red Flags
Balloon payments. While irregular or fluctuating payments may be acceptable for a seasonal business, IRS should object to plans providing for a large final payment.
Designation of payments. Especially, plans designating payments first to trust fund taxes.
Discharge-like releases and/or injunctions in favor of non-debtor third parties, such as officers of the debtor corporation.
Distribution of property to the government in lieu of cash.
Excessive time periods between confirmation and the effective date.
Excessive time to cure any default in the plan.
Giving any third party, such as the creditor's committee, the right to delay payment to any creditor.
Language which purports to change or conclusively determine tax consequences under the IRC.
Payment of interest for only a portion of the claim.
Payment of interest at a rate other than the IRC rate at confirmation.
Payment of priority or secured claims otherwise entitled to priority longer than five years from the petition date.
Providing for payment over several years, but not providing for equal monthly payments
Providing for large immediate cash payments to general creditors but payments over time to priority creditors
Provisions giving general unsecured creditors more favorable treatment than priority creditors.
Provisions dealing with any post-confirmation taxes or bringing post-confirmation matters under court jurisdiction.
Creation of a post-confirmation trust, funded by assets of the bankruptcy estate.
Unrealistically short administrative claim bar dates.
Any provision requiring the filing of an administrative expense claim for taxes
Language discharging the individual or joint debtor prior to completion of plan payments in a reorganizing plan.
Any other provision which jeopardizes the government's interests.

(7) **Deficient Plans - General.** If the plan proposes to pay less than the amount required by the USBC, the plan is a "deficient plan." The FI caseworker should

attempt to negotiate "deficient" plans with the debtor's attorney when the plan does not meet minimum requirements for payment under the USBC. Any other serious concerns with the proposed plan should be negotiated with the debtor's attorney. The changes will then be included in an amended plan or in the order confirming the plan. In any event, the agreed-upon changes must be *in writing*.

(8) **Deficient Plans - Exceptions.** If the debtor can demonstrate that acceptance of the proposed deficient plan is in the best interests of the government, refer the case to Counsel. Recommend acceptance of the plan in lieu of objection. Any unpaid pre-confirmation debt in a non-individual Chapter 11 will be discharged unless it meets one of the exceptions in 11 USC 1141(d)(6).

Note: This recommendation may be made only if no other creditor benefits to the detriment of the IRS. *Management and Counsel must concur with this recommendation.*

(9) **Prompt Objections.** Consider a referral to Counsel to object to confirmation of the plan when:

- Opposing counsel is unresponsive to requests for plan modifications
- Opposing counsel is unable to demonstrate acceptance of a deficient plan is in the best interest of the government
- The government's interests are at risk

The referral to Counsel should be made as soon as possible and before the last day for a creditor to object to confirmation of the plan.

(10) **Objection Contents.** The referral must state actions taken to negotiate with opposing counsel. Any factors considered in rejecting any settlement proposals should be included. Examples of factors include:

- The debtor did not demonstrate acceptance of a deficient plan is in the best interest of the government
- Insufficient information was provided by the debtor to make a determination
- The debtor's payment proposals are not feasible
- The tax claims are non-dischargeable and full collection is likely outside of bankruptcy

(11) **Written Notice to Debtor.** When a debtor's Chapter 11 plan is confirmed, the caseworker should send Letter 6240, Amortization Letter for Individuals, or Letter 6237, Amortization Letter for Non-Individuals, to clearly specify the terms of the confirmed plan. The letter should include the:

- Payment amount,
- Payment due date,
- Frequency of payments,
- Address where the payments should be mailed,
- Name and telephone number of the caseworker assigned the debtor's bankruptcy case and
- Default provisions.

(12) **Individual Debtor and Non-dischargeable Taxes.** If the bankruptcy is an individual case, advise the debtor and the debtor's attorney *in writing* of any *non-dischargeable* liabilities. These liabilities will survive the bankruptcy case. They will be collectible after lifting of the stay. Also, advise the debtor and debtor's

attorney that any post-petition, pre-confirmation interest on these non-dischargeable liabilities will survive the bankruptcy, even if the taxes were paid in full under the plan. This interest is not claimable in the bankruptcy case. When sending Letter 6240, Amortization Letter for Individuals, the caseworker should select the appropriate "Non-dischargeable Period" paragraph to address these liabilities. (See IRM 5.9.8.15(8) regarding collection outside the plan.)

(13) **TFRP and Responsible Officers.** Responsible officers of a corporation are personally responsible for interest on the TFRP from the date of the TFRP assessment or the date of the bankruptcy petition (whichever is later) to the Chapter 11 Plan's effective date. The caseworker should notify the responsible officer of their liability by issuing Letter 6241, TFRP Gap Interest for Responsible Officers.

5.9.8.17.2
(01-02-2020)
Chapter 11 Plans and Restitution Assessments

(1) **General Information.** Following the conviction of a defendant for a criminal tax violation or tax-related offense, the court may order the defendant to pay restitution. The requirement that the defendant pay restitution will be contained in a document signed by the judge called a Judgment and Commitment (J&C) Order. The Dallas Centralized Restitution and Probation Advisory Unit can provide information regarding the terms for payment of the restitution and is responsible for monitoring whether the taxpayer is in compliance with the J&C Order. Contact information for the Dallas Advisory Unit is located at: *http://mysbse.web.irs.gov/collection/aiqorg/contacts/19176.aspx*. For general information regarding restitution assessments and dischargeability, see IRM 5.9.17.8.8, Discharge and Restitution Assessments. For information regarding proofs of claim and restitution assessments, see IRM 5.9.13.18.5, Restitution Assessments.

(2) **Classifying the Case as Restitution.** When a RO or an Advisor learns that a taxpayer against whom a restitution assessment has been made has filed bankruptcy, the RO or Advisor will contact CIO to inform them that the bankruptcy involves a restitution assessment. It does not matter if the IRS has otherwise received notice of the bankruptcy case and if the case has been opened on AIS. CIO caseworker will input a "CRIMREST - Module(s) w/ Criminal Restitution Assessment" case classification on the AIS case classification screen and document the information provided by the RO or Advisor in the case history.

Note: If the FI caseworker becomes aware of the restitution assessment, and the case classification is not present on AIS, the FI caseworker will add the "CRIMREST" classification to AIS.

(3) **Payment Schedule and J&C Orders.** The J&C Order usually contains a payment schedule specifying the manner in which the restitution order must be paid. The order normally specifies that restitution payments are made to the office of the clerk of the district court in which the J&C Order was entered. The clerk of the court office disburses the payments to the appropriate victims of the criminal action. In the case of the IRS as a victim, the payments are mailed to the Kansas City Submission Processing Center (KCSPC), which applies the payments to the restitution assessment. If the person ordered to make the restitution payments fails to make the required payments, the court may revoke or modify a term of supervised release, or may resentence the individual. In the case of the IRS, the assigned Advisor monitors the payments and reports if the

taxpayer fails to make the required payments. FI caseworkers can obtain the restitution payment schedule contained in the J&C Order from the appropriate Advisor.

(4) **Discharge Language in the Plan and Restitution Assessments**. In all cases, plans should be reviewed for language providing for a discharge of the restitution assessment. If the plan contains such language, the case should be referred to Counsel for an objection to confirmation. See IRM 5.9.17.8.8, Discharge and Restitution Assessments, for a discussion of dischargeability and restitution assessments.

5.9.8.17.2.1
(09-29-2015)
Restitution Assessment Paid Outside the Chapter 11 Plan

(1) **Plan Review and Payment of the Restitution Assessment Outside the Plan.** Because restitution payments are monitored by the office of the clerk of the court, the taxpayer may provide in the plan for the restitution payments to be made to the office of the clerk outside the terms of the plan. If the taxpayer provides for restitution payments to be made outside the plan, FI caseworkers should not object to the plan solely for this reason. After confirmation, the FI caseworker should notify the Advisor that the taxpayer will continue to make payments to the office of the clerk of the court. The Advisor will monitor that payments pursuant to a restitution order are being made.

(2) **Payments of the Restitution Assessment Outside the Plan and the Confirmed Plan Monitoring (CPM) Screen.** If payments are to be made outside the plan, the FI caseworker will need to remove the assessment amount from the Claim Screen. The restitution assessment must not be included on the CPM screen on AIS. This will ensure that the trustee or DIP does not duplicate the payment made directly to the office of the clerk of the court. It will also ensure that none of the payments made pursuant to the plan are applied to the restitution assessment.

5.9.8.17.2.2
(02-01-2023)
Restitution Assessment Paid in the Chapter 11 Plan

(1) **Plan Provisions Mirror the J&C Order.** If the taxpayer provides in the plan for the restitution payment to be paid according to the payment scheduled in the J&C Order, FI caseworkers should verify that the plan complies with the terms of the J&C Order in terms of the amount of the payments and the schedule on which the payments are to be made. If the plan mirrors the provisions of the J&C Order, no objection should be raised to the plan unless some other reason for objection exists. If the plan provides for the restitution assessment to be paid according to the J&C Order, upon confirmation the FI caseworker should:

- notify the Advisor that the restitution payments are being made to the IRS pursuant to a Chapter 11 plan.
- monitor that the payments are being made.
- detail in the AIS history the amounts paid under the plan for restitution that are being applied to the restitution assessment.

(2) **Plan Provisions Do Not Mirror the J&C Order.** If the plan provides for the restitution assessment to be paid through the plan, but in amounts less than the payments ordered in the J&C Order, or on a less frequent schedule than the J&C Order requires, the case should be referred to Counsel to object to confirmation of the plan. The basis of the objection to confirmation is that the plan contradicts a court order. In the event that the bankruptcy court confirms a plan in which the restitution payments do not mirror the J&C Order but are in accordance with the USBC, the caseworker should apply the payments in ac-

cordance with the provision of the plan and the order confirming the plan. The AIS history should contain the details regarding the appropriate payment application. The FI caseworker should notify the Advisor of the details of the confirmed plan and that the plan does not comply with the provisions of the J&C Order.

(3) **Application of Payments.** Payments made pursuant to a plan for restitution must be applied to the restitution assessment. In the event it is necessary to determine how any payment(s) received in bankruptcy and designated for restitution should be applied, the FI caseworker should contact the Advisor for guidance.

(4) **Actions Upon Default of a Chapter 11 Plan with Restitution Assessments.** The Insolvency caseworker should immediately contact the Advisor in the event that the debtor defaults on a confirmed plan and:

- The restitution is being paid through the plan and
- The restitution assessment(s) have not been fully paid.

The FI caseworker should also contact Counsel for guidance on whether a motion should be filed to dismiss the case. The caseworker should inform Counsel that there is an unpaid restitution assessment and provide the contact information for the assigned Advisor.

(5) **Dismissal or Discharge of the Case with a Restitution Assessment.** The FI caseworker should notify the appropriate Advisor when a bankruptcy case is dismissed or discharged and there is a restitution assessment. Procedures for the dismissed case with a restitution assessment are the same as those for any dismissed case. See IRM 5.9.17.6, Dismissal, for information. For information on a discharged case with a restitution assessment, see IRM 5.9.17.8.8, Discharge and Restitution Assessments.

5.9.8.18
(02-01-2023)
The Chapter 11 Discharge and the Effects of Confirmation

(1) **Bankruptcy Estate upon Confirmation.** All property of the non-individual debtor generally vests back to the debtor upon confirmation. However, the plan or the confirmation order may provide otherwise in accordance with 11 USC 1141(b). The automatic stay in cases other than individuals usually terminates at confirmation per 11 USC 362(c) because the debtor is granted or denied a discharge. Treatment of the individual debtor case is different. As in Chapter 13 cases, there is a provision that post-petition property is included in the estate; and, as in Chapter 13 cases, there is confusion as to what property revests in the debtor at confirmation. The automatic stay in the case of an individual remains in effect until the earlier of dismissal, discharge, or closure of the case by the court. In any event, there is always a stay against collection from property of the estate. The discharge does not occur in the individual case until completion of all payments provided for in the plan. Caseworkers must be alert to plans that provide for premature closure of the case by the court, prior to the discharge. In such cases, the automatic stay will terminate prior to the discharge. Early termination of the stay may pose difficulties in calculation of the tolling of the Assessment Statute Expiration Date (ASED).

(2) **Effective Date of Plan.** The effective date of the plan is usually defined in the plan. If not defined in the plan, the effective date is the date the confirmation order becomes final.

(3) **Plan Confirmation Binding.** A Chapter 11 plan is confirmed when the court enters an order confirming the plan. Confirmation binds the debtor and creditors to the terms of the plan.

Caution: *Insolvency should scrutinize confirmation orders in all cases. The confirmation order is as binding as the plan and may contain problematic provisions. A referral to Counsel may be needed for a timely motion for relief from judgment or to appeal any problematic provisions in the confirmation order.*

(4) **Discharge.** The individual debtor does not receive a discharge upon confirmation unless the court orders otherwise for cause. Rather, the individual receives a discharge after completion of payments, as in Chapter 13 cases. Additionally, similar to the Chapter 13 case, the court may grant the individual a hardship discharge in appropriate circumstances per 11 USC 1141(d)(5).

(5) **Automatic Stay Terminated.** The automatic stay is usually terminated at confirmation for all non-individual debtors. There is no need to input a TC 520 cc 81 at confirmation. (See IRM 5.9.8.19, Post-Confirmation Actions.) For Chapter 11 cases of individuals, the stay usually remains in effect after confirmation and during the plan.

Note: The automatic stay against acts to collect from property of the estate only ends when the property is no longer property of the estate, per 11 USC 362(c).

(6) **Non-Discharge.** For a debt to be discharged, the debtor must first be eligible to receive a discharge. Per 11 USC 1141(d)(3), a debtor is not eligible to receive a discharge if:

a. The plan provides for liquidation of all or substantially all property of the estate;
b. The debtor does not engage in business after the confirmation of the plan; *and*
c. The debtor would be denied a discharge in Chapter 7.

An *individual* or *non-individual* debtor may be denied a discharge when they have:

- Committed fraud.
- Not been open and truthful during the bankruptcy. For example, the debtor failed to explain satisfactorily the loss of assets when questioned at the meeting of creditors. Another example is the debtor knowingly changing the books and records of the non-individual to conceal income earned by the non-individual to creditors. These examples are not all-inclusive.
- Been granted a discharge in prior Chapter 11 case with a petition date *within eight years* of the current petition date.
- Been granted a discharge in prior Chapter 12 case with a petition date *within six years* of the current petition date. Payments in the Chapter 12 plan in the prior case must have either totaled 100% of allowed unsecured claims, or the debtor must show that the Chapter 12 plan was proposed in good faith, was the debtor's best effort, and the debtor paid 70% of such claims.

An *individual* debtor may also be denied a discharge when they were granted a discharge in a prior Chapter 13 case with a petition date *within six years* of the current petition date. Payments in the Chapter 13 plan in the prior case must have either totaled 100% of allowed unsecured claims, or the debtor must show that the Chapter 13 plan was proposed in good faith, was the debtor's best effort, and the debtor paid 70% of such claims.

Reminder: If a creditor does not object to the discharge by the last date to object to the discharge set by the USBC, the USBC issues a discharge order.

Note: See 11 USC 727 for information on the denial of discharge in the Chapter 11 case.

(7) **Individuals/Certain Taxes Not Discharged.** Confirmation in a Chapter 11 case does not discharge an *individual* debtor from certain taxes. 11 USC 523(a)(1) lists the exceptions to discharge and includes:

- Priority taxes under 11 USC 507(a)(8)
- Taxes on unfiled returns
- Taxes on returns that were filed late and within the two years prior to the bankruptcy petition date
- Taxes on fraudulent returns
- Any tax that the debtor willfully attempted to evade or defeat

If the non-dischargeable taxes are paid in the proceeding, the unpaid post-petition/pre-confirmation interest will survive the bankruptcy. It will be collectible after the discharge. Unpaid penalties relating to non-dischargeable taxes will also survive the bankruptcy, if the penalties arose from acts of the debtor after the date that is three years before the bankruptcy petition date.

(8) **Non-Collection Outside of Plan.** Confirmation does not discharge an individual debtor from taxes excepted from discharge under 11 USC 523(a). However, it is the IRS's practice not to attempt to collect non-dischargeable pre-petition taxes outside of the plan unless:

a. A substantial default has occurred;
b. Circumstances allowing collection through setoff arise, or
c. The plan does not provide for full payment of the non-dischargeable taxes.

5.9.8.19 (02-01-2023) **Post-Confirmation Actions**

(1) **Actions.** Take the following post-confirmation actions on all non-individual debtors cases :

1. Input TC 520 cc 64 on all pre-confirmation modules.

   Note: Unusual language in the confirmed plan or confirmation order regarding offset provisions or post-confirmation collection actions may require the use of a TC 520 closing code other than TC 520 cc 64. If provisions are unclear, contact Counsel for assistance in interpreting the plan.

2. Verify that the TC 520 cc 64 has posted.
3. Reverse any TC 520 bankruptcy closing code that is present on the account except the TC 520 cc 64.
4. Input TC 137 on all accounts having a TC 136.

5. Request assessment of any unagreed deficiencies, as appropriate, with the exception stated in paragraph (2) below.
6. Document the terms of the confirmed plan in the AIS history. (See IRM 5.9.5.4(4), Chapters 11 and 12 Plan Documentation.)
7. Send the debtor Letter 6237, Amortization Letter for Non-Individuals, advising of the terms of the plan . Include the name, telephone number, and mailing address of the caseworker in the letter. (See IRM 5.9.8.17.1(11), Written Notice to Debtor.)
8. If there are assessed TFRP liabilities owned by non-individual debtor. send the responsible officer Letter 6241, TFRP Gap Interest for Responsible Officers.
9. Add the plan to the Confirmed Plan Monitoring (CPM) screen on AIS. (Exhibit 5.9.8-1, Adding the Confirmed Plan to AIS.)
10. Schedule a follow-up for receipt of the first plan payment.

(2) **Individual Debtors.** For individual debtors the automatic stay generally remains in place until the discharge upon completion of plan payments. The TC 520 code should not be changed without a specific need to do so. Unagreed deficiencies on pre-petition periods cannot be assessed until the stay is lifted. The stay is lifted at the earliest of closure of the case by the court, dismissal, discharge, or denial of discharge. The caseworker must:

a. Document the terms of the confirmed plan in the AIS history. (See IRM 5.9.5.4(4), Chapters 11 and 12 Plan Documentation.)
b. Send the debtor Letter 6240, Amortization Letter for Individuals, advising of the terms of the plan. Include the name, telephone number, and mailing address of the caseworker in the letter. (See IRM 5.9.8.17.1(11), Written Notice to Debtor.)
c. Add the plan to the Confirmed Plan Monitoring (CPM) screen on AIS. (See Exhibit 5.9.8-1, Adding the Confirmed Plan to AIS.)
d. Schedule a follow-up for receipt of the first plan payment.

Note: When the confirmed plan does not specify the plan payment amount, the caseworker must determine the plan payment amount by computing an amortization schedule.

The DIP or trustee in the Chapter 11 case of an individual debtor is required to report income of the bankruptcy estate on Form 1041. This filing requirement remains until discharge upon completion of the plan. Any outstanding Form 1041 liability is a debt of the bankruptcy estate and claimable on Form 6338-A(C). For additional information, see IRM 5.9.8.14.1, Post-petition Debts - Chapter 11 Individuals, and IRM 5.9.8.14, Internal Revenue Code 1398 Issues.

Caution: Any unclaimed pre-confirmation liability on the Form 1041 may be dischargeable. The caseworker must monitor post-confirmation filing and paying compliance of the individual debtor closely. Any unclaimed post-confirmation Form 1041 liability may be uncollectible outside the bankruptcy.

5.9.8.19.1
(01-01-2006)
Disposition of Acquired Property

(1) **Disposing of Acquired Property.** If property is received in accordance with the plan, the plan should be reviewed for restrictions or considerations that inhibit disposing of the property. If none are identified, the property should be treated similarly to property acquired by redemption. This includes recording any deeds, certificates of title or similar documents, and then selling the acquired property. (See IRM 5.10.5, Sale Procedures.)

5.9.8.19.2
(02-01-2023)
Monitoring the Plan and Reviewing for Refiling of the Notice of Federal Tax Lien (NFTL)

(1) **AIS Follow-up.** FI caseworkers must monitor plans after confirmation. This will ensure debtors are making required payments to the IRS. It will also ensure that NFTLs are refiled, when appropriate.

(2) **Monitoring Time Frame.** Schedule an AIS follow-up to monitor compliance with terms of the confirmed plan. In most cases, this should be done *at least quarterly*.

Caution: *To ensure protection of the government's interests in large dollar cases, and in cases of unusual complexities and/or sensitivity, monitoring should be conducted monthly.*

(3) **Plan Payments Review.** To monitor the debtor's payments under the plan effectively, FI must review and identify the terms governing payments to the IRS in the confirmed plan, including:

- Payment amounts.
- Payment dates.
- Default provisions.
- Claim classifications
- Frequency and regularity of payments.
- Amount of any arrearage.
- Accrued interest rate for payments under the confirmed plan.
- Accrued interest rate on large corporate balances due (generally the "normal" underpayment interest rate plus two percent).
- Payments to general unsecured creditors.
- Length of time to pay the claim.
- Projected date of discharge for individuals
- Special conditions.

(4) **Application of Payments.** Payments should be applied to the claim for which the payment was received. For example, payments designated for the secured claim must be applied to the secured claim. Payments designated for the priority claim must be applied to the priority claim. Finally, payments designated for general claims must be applied to the unsecured general claim. In addition, *the payment must be applied in accordance with the plan, if specified.* Otherwise, the payments will be applied in the best interests of the government. (See IRM 5.9.15, Payments in Bankruptcy.)

(5) **Payment Follow-up.** After the receipt of each plan payment, the caseworker must:

- Annotate the AIS history with the dollar amount of the next expected payment.
- Document how the next payment should be applied.
- Schedule a follow-up date on the AIS to monitor for the next required payment.

This allows anyone to post the payment properly, in the event the assigned caseworker is absent.

(6) **NFTL Refile Review.** When the IRS's claim includes an unpaid secured claim, the caseworker must make a determination whether refiling of the NFTL is appropriate to protect the lien from releasing. IRC 6323(g) defines the refiling period for NFTLs. *Column e* on the NFTL contains the ending date of the refile period. There are two types of refile periods but the length of both types is a year. The first type of refile period begins 9 years and 30 days after the original assessment date and ends 10 years and 30 days after the original assessment date. The second type of refile period covers any subsequent refile. That window begins 9 years after the end of the previous refile period and ends 10 years after the end of the previous refile period. See IRM 5.12.8, Notice of Lien Refiling, for additional information. A follow-up should be scheduled on AIS to refile the NFTL during the refile period. The results of the NFTL refile determination must be entered in the AIS history. (See IRM 5.9.5.9.2, Refiling Notices of Federal Tax Lien (NFTLs).)

5.9.8.19.3
(02-01-2023)
Plan Default

(1) **Default Notice.** If required plan payments have not been received, the caseworker must promptly address the default. Prompt action will reduce the amount of accrued interest owed by the taxpayer on the delinquent payment(s). The likelihood of the debtor becoming current is greater when there are fewer delinquent payments. When the taxpayer is non-compliant with terms of the confirmed plan, the caseworker must review the plan for default provisions. When the plan contains default provisions, the caseworker must comply with those provisions. When the plan does not contain default provisions, the following steps should be taken, as appropriate:

a. The assigned caseworker must attempt phone contact with the DIP or trustee (if one was appointed) to negotiate a cure for the default. When an agreement cannot be reached during phone contact, additional action is required. Advise the DIP/trustee that they have five business days to become current on plan payments. Advise them that a default letter will be issued if the plan is not brought current by the deadline. When the caseworker cannot make phone contact within a reasonable period, a default letter should be issued to the DIP/trustee. Generally, five business days constitutes a reasonable period.

Note: Managerial approval is not required when sending a default notice without prior phone contact.

b. If the arrearage is not cured by the sixth business day, or if a cure cannot be agreed upon during phone contact, send a pending default notice. The pending default notice or "last-chance" letter should be sent in accordance with the plan's default provisions. It should also be sent when the plan does not contain default provisions. Generally, the notice is sent to the DIP/trustee.

c. A date must be *specified* in the letter for the DIP/trustee to come into compliance with the plan provisions. For example, request payment within 30 days from the date of the "pending default" letter. The letter should request full remittance of delinquent plan payments, to date. Advise the DIP/trustee that they must stay current on plan obligations.

d. The letter must explain possible consequences of failing to cure the plan default.

e. When the DIP/trustee *does not* come into full compliance by the deadline established in the "last chance" letter, issue a *default notification letter*. The letter must be sent to the DIP/trustee and attorney for the DIP or trustee.

(2) **Available Options.** If the default is not cured by the time required in the plan or the default letter, available options include:

a. Administrative collection,
b. A motion to convert or dismiss, or
c. Referral to Counsel for legal advice on action needed to address the default in the specific case.

Caution: The automatic stay in the individual case generally remains in place until discharge upon completion of plan payments. Administrative collection actions may violate the stay. Consider a motion to convert or dismiss.

(3) **Administrative Collection.** Pursuant to IRM 5.9.8.17.1(4)(l), Default Provisions, the IRS should seek language in the plan specifying remedies upon default. Suggested remedies differ for the non-individual and individual case.

- In the non-individual case, the IRS should be allowed to exercise administrative collection remedies to collect liabilities provided for in the plan when the debtor defaults in plan payments. A referral to Counsel is not required in these instances.
- In the individual case, the DIP/trustee may request, or the plan may provide for, closure of the case by the court prior to discharge upon completion of the plan. In these instances, if the plan provides for administrative collection remedies, and does not contain language indicating that the stay remains in place, there is no need to refer the case to Counsel for dismissal or conversion. The stay lifted at court closure. If the case remains open upon default, and the plan contains language for immediate dismissal or conversion upon default in payments provided for in the plan, a referral to Counsel is required. Established local procedures should be followed .

a. Plan Language. If the plan provides specific default language, the IRS and the DIP/Trustee are bound by that provision.
b. Consult Counsel. If the plan has no provision specifying the IRS's remedies upon default, the IRS's options are less clear. FI should consult Counsel for guidance with local practice and case law.

(4) **Substantial Default.** Generally, in the case of a non-individual debtor, the IRS can administratively collect the full amount of the liabilities provided for in a Chapter 11 plan upon substantial default. In the non-individual case, regardless of petition date, administrative collection can be taken upon substantial default. The individual case must be dismissed before administrative collection action can be taken. The plan is in substantial default when all of the following conditions have occurred:

1. The DIP/trustee has defaulted on a series of plan payments and has ceased making regular payments under the plan,
2. The IRS has sent a notice of default, and
3. The DIP/trustee clearly will not cure the default in a reasonable time nor remain current on plan obligations

Note: *In such cases, the DIP/trustee is no longer operating under the terms of the plan. The DIP/trustee has opted out of participation in the bankruptcy process.*

(5) **Payments Current/Arrearage Exists.** When the DIP/trustee is behind on plan payments but continues to make regular payments under the plan, administrative collection of only past due payments may be appropriate. Collection of the entire amount due under the plan may be inappropriate.

Example: If the DIP/trustee missed three $1,000 payments but continued to make regular payments, $3,000 (which is the amount of the arrearage), can be collected administratively.

(6) **Administrative Collection.** If administrative collection is appropriate and identifiable levy sources are found, consideration may be given to FI sending a *modified* notice of intention to levy. Otherwise, Form 2209 should be sent to Field Collection to request administrative collection of the defaulted amount, or the entire amount, as appropriate. FI should consult with Counsel, should this situation arise.

(7) **Discharged Taxes.** No attempts can be made to collect discharged taxes from the debtor. However, discharged liabilities may still be collected from exempt, abandoned or excluded property (EAEP). See IRM 5.9.17.5, Exempt, Abandoned or Excluded Property (EAEP), and subsections, for additional information.

- Non-Individual. Unless the plan provides otherwise in the non-individual Chapter 11 case, any *pre-confirmation* tax liabilities are discharged unless the debt comes within one of the exceptions listed in 11 USC 1141(d)(6).
- Individual . Chapter 11 individual debtors are not granted a discharge until completion of all payments provided for in the plan. A discharge may be granted earlier if the court finds hardship.

  Note: See IRM 5.9.8.18, for more information on the discharge in the Chapter 11 case.

(8) **Motions to Convert or Dismiss.** When deciding to refer a case for a motion to convert or dismiss, FI must consider each case separately. In some cases, administrative collection may not be feasible because of a lack of assets. In other cases, the court may retain jurisdiction over the assets. In these instances, conversion to a Chapter 7 proceeding may be appropriate. (See IRM 5.9.17.6, Dismissal.)

5.9.8.19.4 (02-01-2023) **Accrual of Post-Confirmation Tax Liabilities**

(1) **Post-Confirmation Tax Liabilities.** The treatment of post-confirmation debts of the individual Chapter 11 debtor differs from the treatment of post-confirmation debts of the non-individual debtor. In an individual debtor case, the estate is responsible for any tax liabilities arising from personal service income if that income is property of the estate, and income generated by property of the bankruptcy estate.

5.9.8.19.4.1
(02-01-2023)
Post-Confirmation Tax Liabilities of the Non-individual Debtor

(1) **Tax Debts Arising After Confirmation**. No administrative claims are filed for post-confirmation debts. Post-confirmation liabilities of the non-individual debtor are not discharged or paid under the bankruptcy plan. They cannot be claimed in the proceeding. *Insolvency should not input any codes to IDRS which suspend collection of these liabilities*. If you are in contact with the debtor, advise the taxpayer that the IRS may file a NFTL for post-confirmation liabilities, that the liabilities are non-dischargeable, and that the IRS may pursue collection of these post-confirmation liabilities outside the bankruptcy.

Note: If the non-individual debtor is liquidating through Chapter 11, and incurs a post-confirmation liability, consult with Counsel for guidance on how to proceed.

(2) **Withholding Tax Reported by Partnerships on Form 8804.** When a partnership files bankruptcy, any discharge of indebtedness income is income to the partners. If the partnership has foreign partners, the partnership has a withholding requirement for the foreign partners' share of effectively connected income, including income from the discharge of indebtedness. The withholding tax is reported by the partnership on Form 8804, Annual Return for Partnership Withholding Tax (Section 1446). Unless the plan provides otherwise, unpaid tax on the Form 8804 attributable to income from discharge of indebtedness created when a plan is confirmed is a post-confirmation debt. It should be treated as any other post-confirmation debt of a non-individual debtor. The debt may be collected from the partnership or the partners, as appropriate.

(3) **Insolvency Assistance**. Accounts Management, the Automated Collection System (ACS), or Field Collection personnel should proceed with appropriate collection activities on these accounts. However, if issues and questions arise at the field level, the employee must contact the FI caseworker for assistance. The employee must also contact the FI caseworker if uncertainty exists on how to proceed with collections. If the matter is complex, FI should suspend these accounts from collection until clarification of the issue. The FI caseworker should request advice from Counsel.

5.9.8.19.4.2
(02-01-2023)
Post-Confirmation Tax Liabilities of the Individual Debtor

(1) **Automatic Stay**. Unless the plan specifies otherwise, the automatic stay in the individual case ends at the earliest of:

- Closure of the case by the court;
- Dismissal; or,
- Discharge or denial of discharge.

Caution: The automatic stay remains in place against property of the estate until the property no longer belongs to the estate.

(2) **Income Tax Reporting**. The DIP or trustee in the Chapter 11 case of an individual is required to file Form 1041, U.S. Income Tax Return for Estates and Trusts, to report personal service income earned prior to lifting of the automatic stay. The Form 1041 is also used to report the income generated by property of the bankruptcy estate. The individual reports any remaining income on Form 1040, U.S. Individual Income Tax Return.

(3) **Collection Considerations**. The automatic stay always remains to prohibit collection from property of the estate. It may be difficult to determine whether

an asset is property of the estate or property of the debtor. To prevent inadvertent violations of the stay, a bankruptcy indicator should be placed on the post-confirmation/pre-discharge modules.

a. Form 1041 Liabilities. The CSED is extended during the period the assets are under the control of the court. A TC 520 cc 64 or 65 (per local procedures) should be input to post-confirmation modules until the stay is lifted. Any liability is a debt of the bankruptcy estate and claimable on Form 6338-A(C), Request for Payment of Internal Revenue Taxes. The case should be referred to Counsel to request dismissal when the liability is not paid within a reasonable period. Any unpaid post-confirmation liability is not discharged.
b. Form 1040 Liabilities. Post-confirmation income tax liabilities of the individual debtor for income that is not property of the estate is reported on Form 1040, U.S. Individual Income Tax Return. Additionally, income generated from property that is not property of the estate is reported on Form 1040. Self-employment tax on income reported on Form 1041 is also reported on the Form 1040. To prevent inadvertent collection activity against any property of the bankruptcy estate, a TC 520 cc 84 should be placed on the post-confirmation/pre-discharge modules. The TC 520 cc 84 will alert IRS employees to contact Insolvency prior to taking any collection action. The automatic stay does not protect non-estate property from the collection of post-petition debts. The CSED is not extended. The liability is not claimable on Form 6338-A(C). The debt is non-dischargeable. A TC 522 cc 84 should be input to the module upon discharge. Consider a referral to Counsel to request dismissal when post-confirmation debts are incurred.

   Note: The FI caseworker must consult Counsel when clarification is needed regarding property of the estate. A referral may also be required when it is not clear if the automatic stay is in place.

c. Notice of Federal Tax Lien (NFTL). Due to the complex nature of the individual case, it is not common practice to file a NFTL for post-confirmation debts prior to discharge. Consult with Counsel should a situation arise that may justify filing a NFTL.

(4) **Installment Agreement (IA) Requests on Post-Confirmation Liabilities.** Taxpayers who are in Chapter 11 may submit a request for an installment agreement (IA) for post-petition liabilities. When a taxpayer is in bankruptcy, a request for an IA on post-petition liabilities is non-processable. It does not matter if the post-petition liabilities are pre-confirmation or post-confirmation. Administrative appeal rights are not provided for a non-processable IA. A TC 971 ac 043 should not be input on these accounts. For additional information, see IRM 5.9.4.20.1, IA Requests for Post-Petition Liabilities Submitted During Bankruptcy.

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

5.9.8.20
(01-02-2020)
Closing Chapter 11 Bankruptcies

(1) **Reasons for Closure.** Events that may close a Chapter 11 case are:

- Dismissal (including voluntary)
- Conversion to a Chapter 7 liquidation proceeding
- Default of the payment plan
- Plan completion
- Discharge

(2) **Closing Actions.** IRM 5.9.17, Closing a Bankruptcy Case, provides information on closing bankruptcy cases, including Chapter 11 cases. Dismissal is discussed in IRM 5.9.17.6, Dismissal, and subsections. Discharge is discussed in IRM 5.9.17.8, Discharge and Exceptions to Discharge, and subsections. In addition to these subsections, caseworkers should refer to:

- IRM 5.9.17.11, Closing Chapter 7 and Liquidating Chapter 11 Partnerships
- IRM 5.9.17.12, Closing Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)
- IRM 5.9.17.13, Closing Liquidating Chapter 11 Corporations and Liquidating Chapter 11 LLCs
- IRM 5.9.17.13.1, Closing Chapter 11 Non-Individual Entities that Reorganize in Chapter 11
- IRM 5.9.17.13.2, Consolidated Chapter 11 Filings
- IRM 5.9.17.13.3, Closing Chapter 11 Cases Filed by Individuals
- IRM 5.9.17.16, Trust Fund Recovery Penalty Adjustments

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Exhibit 5.9.8-1 (01-02-2020)
Adding the Confirmed Plan to AIS

Step	Action
1.	Select the **Case Files** button on the AIS home page and the taxpayer screen will appear.
2.	Type the numeric case number in the "AIS Case Number" field in XX-XXXXX format and select **Submit Search**. Select the correct index number to pull up the case.
3.	Add the confirmation date to the confirmation date in the "Confirmed" field under "Other Key Dates" and select **Save**.
4.	Select the **CPM** tab at the top of the taxpayer screen. The CPM screen will appear.
5.	Select the **Insert** tab to add information from the confirmed plan to AIS.
6.	Select the "Plan Type" of Administrative, Confirmed or Adq. Protect, from the drop down menu.
7.	The confirmed plan will specify the frequency of plan payments. Select the "Payment Frequency" and click on the "▼" to bring up the drop down list. Select the frequency of payments as Monthly, Quarterly, Semi-Annual, Annually, or Misc., based on the frequency of payments specified in the confirmed plan.
8.	When the CPM is inserted, AIS defaults the "Effective Date" of the plan to the confirmation date entered on the taxpayer screen. If the effective date is a date other than the confirmation date, overlay the confirmation date with the effective date specified in the confirmed plan.
9.	Input the "Payment Due" date. Type in the due date using MM/DD/YYYY format or use the calendar button. This is the due date of the first payment under the plan.
10.	Move the cursor to the "Amount" block and type the plan payment amount in using XXX.XX format.
11.	Move to the drop down menu in the "Interest Type" field on the CPM screen to select the interest type provided for in the plan. Generally, "Daily Compounded" is the interest type unless "Simple" is specified as the interest type in the confirmed plan.
12.	Select the "Optional" block to add the interest rate provided for in the plan. If no specific rate is noted in the plan, the interest rate is generally the IRC rate on the confirmation date (unless the plan specifies no interest will be paid). There is no need to add a decimal point (.) or % symbol in the "Optional" field for AIS to calculate the accrued interest on the plan. Only use the decimal point (.) when the plan provides for an interest rate that is not a whole number. For example, add 3.4% as 3.4. If the plan is confirmed at 3%, enter 3.
13.	The confirmed plan information must be saved to AIS. Select **Save** to save the confirmed plan.
14.	Go to **Import Period** button on the bottom CPM screen. This will import all of the periods from the proof of claim.

Exhibit 5.9.8-1 (Cont. 1) (01-02-2020)
Adding the Confirmed Plan to AIS

Step	Action
15.	If a BMF tax period has trust fund tax, the tax should be divided into trust fund and non-trust fund. Select the plan index. Select **Show Periods**. Select the index number of the module you need to update. Select the "Trust Fund Tax" field under the **Liability** section. Input the trust fund tax amount. The non trust fund tax amount will update automatically. Select **Save**. Repeat this step until all tax periods are updated appropriately.
16.	Ensure all periods have the "Plan Verified" box checked.