



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.17.11

JULY 9, 2019

EFFECTIVE DATE

(07-09-2019)

PURPOSE

- (1) This transmits revised IRM 5.17.11, *Legal Reference Guide for Revenue Officers, Chapter 13 Bankruptcy (Individuals with Regular Income) and Chapter 12 Bankruptcy (Family Farmers or Fishermen with Regular Income)*.

MATERIAL CHANGES

- (1) IRM 5.17.11, *Chapter 13 Bankruptcy (Individuals with Regular Income) and Chapter 12 Bankruptcy (Family Farmers or Fishermen with Regular Income)*, has been revised to provide clarity and expansion of existing material. The following table shows substantive changes within this IRM revision.

IRM	Change
5.17.11.1	Revised title and added content to comply with the new IRM internal control requirements.
5.17.11.3(2)(a)	Updated the Chapter 13 debt limits that adjusted on April 1, 2019.
5.17.11.4(1)	Added (b)(1) to Bankruptcy Rule 1007 to show specific guidance section.
5.17.11.7(2)	Updated the time frame for non-governmental creditors to file a Proof of Claim.
5.17.11.10(3)	Updated the Bankruptcy Law Advisory Rules Engine (BLARE) web link.
5.17.11.10.1	Revised the subsection name and content to include the interim guidance SBSE 05-1217-0089, Processing the MFT 43, Employer Shared Responsibility Payment (ESRP) in Bankruptcy Case .
5.17.11.10.1(1)	Updated the BLARE web link.
5.17.11.14(8)	Added guidance on ESRP MFT 43 for collection of post-petition taxes.
5.17.11.18(1)	Added IRM 5.9.17.8.10, Discharge and Individual Shared Responsibilities (SRP) Liabilities reference.
5.17.11.18(1)	Added IRM 5.9.17.8.11, Discharge and Employer Shared Responsibility Payment (ESRP) Liabilities reference.

IRM	Change
5.17.11.20(2)	Updated the Chapter 12 Family Farmer and Family Fisherman debt limits that adjusted on April 1, 2019.
Throughout	IRM sections have been renumbered due to the movement of content to internal controls.

- (2) Editorial changes were made throughout this section to add clarity and to update, correct, or add citations.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 5.17.11 dated November 8, 2016. This revision incorporates interim guidance SBSE 05-1217-0089, *Processing the MFT 43, Employer Shared Responsibility Payment (ESRP) in Bankruptcy Cases*, dated December 5, 2017.

AUDIENCE

Small Business / Self-Employed Revenue Officers and Specialty Collection - Insolvency

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Collection Policy

5.17.11

Chapter 13 Bankruptcy (Individuals with Regular Income) and Chapter 12 Bankruptcy (Family Farmers or Fishermen with Regular Income)

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5.17.11.1
(07-09-2019)
Program Scope and Objectives

- (1) **Purpose.** This Internal Revenue Manual (IRM) section contains guidance for Revenue Officers related to processing bankruptcy cases filed under Chapter 13 of the United States Bankruptcy Code, known as Title 11 of the United States Code (USC). It explains the provisions and concepts of bankruptcy law that are unique to Chapter 13. It also briefly discusses Chapter 12 bankruptcies.
- (2) **Audience.** This IRM section is designed for use by Small Business / Self-Employed (SB/SE) Revenue Officers (ROs) and management. Specialty Collection - Insolvency (SCI) caseworkers and management in the Centralized Insolvency Operation (CIO) and Field Insolvency (FI) may also refer to this section. Caseworkers in functions other than SB/SE may refer to this section when dealing with a taxpayer that has filed bankruptcy.
- (3) **Policy Owner.** The Director of Collection Policy is responsible for issuing policy for the Insolvency program.
- (4) **Program Owner.** The program owner is SB/SE Collection, Specialty Collection - Insolvency.
- (5) **Primary Stakeholders.** The primary stakeholders are Field Collection, Civil Enforcement Advice and Support Operations (CEASO), and Chief Counsel.
- (6) **Program Goals.** The goal is to provide fundamental knowledge and procedural guidance for working Chapters 13 and 12 bankruptcy cases. Following the guidance in this IRM will ensure cases are worked in accordance with bankruptcy laws and regulations.

5.17.11.1.1
(07-09-2019)
Background

- (1) **Chapter 13 - Reorganization of Debts for Individuals.** A Chapter 13 bankruptcy represents a voluntary reorganization of debts for individuals. The debtors, who usually retain all of their assets, commit a portion of their future income to repay creditors. Cases normally remain open for 36 to 60 months, with 60 months being the maximum and most common time frame. Under the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), for bankruptcies commencing on or after October 17, 2005, the plan length is determined by the relationship of the debtor's income to the median income in the state where the debtor filed the bankruptcy petition (11 USC § 1322(d)). This chapter is not available to corporations, Limited Liability Companies (LLCs), or partnerships. Chapter 13 is available only to individuals (wage earners and sole proprietors) with regular income. See IRM 5.9.10, *Processing Chapter 13 Bankruptcy Cases*, for more detailed information.
- (2) **Chapter 12 - Reorganization of Debts for Family Farmers / Fisherman.** A Chapter 12 bankruptcy allows family farmers / fishermen with regular income to reorganize and pay their debts through a payment plan. A Chapter 12 case closely resembles a Chapter 13 case, however, Chapter 12 incorporates some aspects of a Chapter 11 case. See IRM 5.9.9, *Processing Chapter 12 Bankruptcy Cases*, for more detailed information.

5.17.11.1.2
(07-09-2019)

Authority

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

5.17.11.1.3
(07-09-2019)

Responsibilities

- (1) IRM 5.17.1.8, *Revenue Officer's Role*, provides the duties and responsibilities of a Revenue Officer. Revenue Officers will use this IRM to gain an understanding when administering cases in which the taxpayer is in a Chapter 13 or Chapter 12 bankruptcy.
- (2) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), *Execution of Duties in Accord with Taxpayer Rights*. For additional information about the TBOR, see <https://irssource.web.irs.gov/Lists/General%20News/DispItemForm.aspx?ID=126>

5.17.11.1.4
(07-09-2019)

Program Management and Review

- (1) **Program Reports.** IRM 1.4.50.8.2.1, *Management Information Systems (MIS) Reports*, contains guidance on Field Collection reports.
- (2) **Program Effectiveness.**
- a. National quality reviews and consistency reviews are conducted on a consistent basis. See IRM 1.4.50.12.1, *EQRS*, and IRM 1.4.50.12.2, *NQRS*, for more information.
 - b. Operational and Program reviews are conducted on a yearly basis. See IRM 1.4.50.13.2, *Operational Reviews*, and IRM 1.4.50.13.5, *Program Reviews*, for more information.

5.17.11.1.5
(07-09-2019)

Program Controls

- (1) Managers are required to follow program management procedures and controls addressed in IRM 1.4.50.11, *Group Controls*, and IRM 1.4.50.12, *Quality*.
- (2) Caseworkers and managers use the Integrated Collection System (ICS) for case management, assignment, and documentation.

5.17.11.1.6
(07-09-2019)

Terms/Definitions/ Acronyms

- (1) A glossary of terms used in this section can be found in Exhibit 5.17.8-1, *Glossary of Common Bankruptcy Terms*.
- (2) Acceptable acronyms and abbreviations can be found in the ReferenceNet Acronym Database, which may be viewed at: <http://rnet.web.irs.gov/Resources/Acronymbdb.asp>.
- (3) The following table lists acronyms and definitions used specifically in this IRM section.

Acronym	Definition
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
BLARE	Bankruptcy Law Advisory Rules Engine
CIO	Centralized Insolvency Operation
ERISA	Employee Retirement Income Security Act
ESRP	Employer Shared Responsibility Payment

Acronym	Definition
FI	Field Insolvency
J&C	Judgment and Commitment
NFTL	Notice of Federal Tax Lien
SCI	Specialty Collection - Insolvency
SRP	Shared Responsibility Payment
USBC	United States Bankruptcy Code
USC	United States Code

5.17.11.1.7
(07-09-2019)

Related Resources

- (1) Procedural guidance on Insolvencies can be found throughout IRM 5.9, *Bankruptcy and Other Insolvencies*.
- (2) The United States Bankruptcy Code and Rules, including Local Bankruptcy Court Rules.

5.17.11.2
(07-09-2019)

Purpose of Chapter 13 Cases

- (1) Chapter 13 provides a procedure for an eligible individual to pay all or a portion of their debts through plan payments over an extended period. The individual must be a wage earner with regular income or self-employed with regular income. Only those portions of regular income that are not necessary to pay living expenses are used to pay claims.
- (2) Before the effective date of BAPCPA, a debtor received what IRS commonly referred to as a “super discharge” upon completion of all payments required under the plan. Any tax debts provided for under the plan would be discharged. BAPCPA modified this discharge so that certain tax debts excepted from discharge under 11 USC § 523, **Exceptions to discharge**, are no longer discharged. For example, trust fund recovery penalties are no longer discharged and must be paid in full.
- (3) After filing the Chapter 13 petition, the debtor files a Chapter 13 plan. The plan proposes to pay creditors, including the IRS, over a period of 36 to 60 months. Sixty months is the maximum and most common payment period. Payments are typically in monthly installments.

5.17.11.3
(07-09-2019)

Who May Be a Chapter 13 Debtor

- (1) Chapter 13 is for individual debtors. (11 USC § 109(e))
 - a. It is not available to corporations, partnerships, or other business entities.
 - b. An individual owning a business operating as a sole proprietorship may file as an individual. The schedules may include business debts of the individual.
 - c. Chapter 13 cases are commonly known as wage-earner cases. However, the USBC does not require that the individual be a wage earner. The individual is only required to have regular income with which to fund the plan.

- d. An “individual with regular income” is defined in 11 USC § 101(30). The USBC defines that individual as one whose income is sufficiently stable and regular to enable them to make payments under a Chapter 13 plan. A stockbroker or commodity broker is excluded from filing bankruptcy under this chapter.
- (2) To be a Chapter 13 debtor, the individual must have a regular source of income. The total outstanding liabilities at the time of the petition cannot exceed certain dollar limits.
 - a. For cases commenced on or after April 1, 2019, the dollar limits were increased to \$419,275 for unsecured debts and \$1,257,850 for secured debts. (11 USC § 109(e))
 - b. These dollar limits are increased every three years based upon the Consumer Price Index.
 - c. The debts must be non-contingent and liquidated.
 - (3) Liabilities set forth in a statutory notice of deficiency are non-contingent, liquidated debts even if contested in Tax Court at the time the bankruptcy petition is filed. United States v. Verdunn, 89 F.3d 799 (11th Cir. 1996); In re Brooks, 216 B.R. 838 (Bankr. N.D. Okla. 1998). A debt is non-contingent when all of the events giving rise to liability for the debt occurred prior to the debtor’s filing for bankruptcy. See, e.g., In re Knight, 55 F.3d 231, 236 (7th Cir. 1995); In re Nicholes, 184 B.R. 82, 88 (9th Cir. BAP 1995).

Note: As long as the liabilities can be calculated through mathematical computations, a debt may be liquidated without issuance of a notice of deficiency. See Hounsom v. United States, 325 B.R. 319 (M.D. Fla. 2005).

5.17.11.4
(07-09-2019)
**Initiating a Chapter 13
Case**

- (1) A Chapter 13 case must be voluntary. Procedures for filing a Chapter 13 are otherwise essentially the same as in Chapter 7 cases. Bankruptcy Rule 1007(b)(1) requires a Chapter 13 debtor to file:
 - Schedules of assets and liabilities,
 - A schedule of current income and expenditures,
 - A schedule of executory contracts, and
 - A statement of financial affairs.
- (2) A first meeting of creditors (11 USC § 341) is held as in a Chapter 7 case. The business of the meeting includes the examination of the debtor concerning the debtor’s statement of financial affairs and the feasibility of the debtor’s plan. Under BAPCPA, the debtor is required to file tax returns for the four-year period ending before the petition date before the first meeting of creditors. At least seven days before the meeting, the debtor is required to give the trustee a copy of the return for the tax year ending immediately before the petition date. However, the debtor may elect to give the trustee a transcript of the return instead of a return copy. See 11 USC §§ 521(e)(2) and 1308(a). See In re Perry, 389 B.R. 62 (Bankr. N.D. Ohio 2008).
 - a. Unlike Chapters 7 and 11, Chapter 13 makes no provision for creditors’ committees.
 - b. Appointment of a trustee in a Chapter 13 does not displace a business debtor from management, unlike Chapter 11.

5.17.11.5
(07-09-2019)
The Trustee

- (1) There is a trustee in every Chapter 13 case. The trustee is almost always a standing trustee who is appointed by the United States Trustee. (11 USC § 1302)
 - a. The Chapter 13 trustee's duties include many of those of the Chapter 7 trustee. The trustee is accountable for all property received in the bankruptcy case. The trustee investigates the financial affairs of the debtor. If opposing discharge is advisable, the trustee opposes the discharge. At the end of the case, the trustee makes a final report and accounting.
 - b. Under BAPCPA, the trustee ensures payment of the debtor's domestic support obligations.
 - c. The trustee appears and is heard at numerous hearings. Those hearings concern the valuation of property subject to a lien, confirmation of a plan, or modification of the plan after confirmation.
 - d. The trustee also ensures that the debtor commences making timely plan payments.
- (2) If the debtor is engaged in business, the trustee has some of the duties of a Chapter 11 trustee under 11 USC § 1106(a)(3) and (4). This includes investigating the financial condition of the debtor and the desirability of continuing the business. Then, the trustee files a statement regarding such investigation.

5.17.11.6
(07-09-2019)
Rights and Duties of the Debtor

- (1) The debtor has the exclusive right to seek court approval for the use, sale, or lease of property outside the ordinary course of business. These rights are essentially the same as those given to a Chapter 7 trustee. (11 USC § 1303)
- (2) Unless the court orders otherwise, a debtor engaged in business is authorized to operate the business. (11 USC § 1304)
 - a. In this capacity, the debtor is subject to the same rights, powers, and limitations of a debtor in possession (DIP) or trustee in a Chapter 11 case. In both bankruptcy chapters, rights are similar with respect to the use, sale or lease of property, and the obtaining of credit.
 - b. A debtor engaged in business must also perform the duties of a Chapter 7 trustee under 11 USC § 704(a)(8). This includes filing with the court and the United States Trustee periodic reports and summaries concerning the operation of the business. (11 USC § 1304(c))
- (3) Unlike individual Chapter 7 and Chapter 11 estates, a Chapter 13 estate is not a separate taxable entity. (IRC § 1399, **No separate taxable entities for partnerships, corporations, etc.**) The debtor is therefore responsible for filing tax returns for all post-petition income.

Note: Under 11 USC § 521(j), added by BAPCPA, the IRS may request that the court convert or dismiss the case if the debtor fails to file post-petition returns. The IRS need not be a party in interest to make this request.

5.17.11.7
(07-09-2019)
Proofs of Claim

- (1) To receive payment, a proof of claim must be timely filed. The procedures for filing a claim are set forth in Bankruptcy Rules 3001 and 3002.

- (2) The time for filing a proof of claim for non-governmental creditors in a Chapter 13 case is 70 days after the bankruptcy petition date. However, under 11 USC § 502(b)(9), as amended by BAPCPA, a governmental unit has 180 days after the date of the bankruptcy petition to file a claim. Additionally, a governmental unit has 60 days after a required return is filed to file a claim for a tax to which the return relates. A claim filed within any of these periods is timely. A governmental unit may seek to have these time frames extended by filing a motion for extension prior to the expiration of the initial time period. (Bankr. Rule 3002(c)(1))

5.17.11.8
(07-09-2019)
Automatic Stay

- (1) A Chapter 13 debtor is protected by the automatic stay provisions found in 11 USC § 362.
- (2) The stay operates until the Chapter 13 case is dismissed or closed, or a discharge is granted or denied. (11 USC § 362(c)(2)) Because the discharge is not granted until all payments have been made under the plan, the stay remains in effect throughout the entire period of the plan. However, a Chapter 13 debtor may receive a hardship discharge under 11 USC § 1328(b). In the hardship case, the discharge is granted before all plan payments have been made. See IRM 5.17.11.18, *Discharge*, for additional information.

Note: The IRS may request relief from the automatic stay in certain circumstances (e.g., lack of adequate protection). See 11 USC § 362(d). Consult Area Counsel to determine whether seeking relief from the stay is appropriate.

- (3) BAPCPA contains provisions designed to discourage debtors from filing sequential bankruptcies. The IRS refers to these debtors who file multiple bankruptcy petitions as “serial filers.” USC § 362(c) limits or eliminates the imposition of the automatic stay in the current bankruptcy case of an individual with prior dismissals within a year of the current bankruptcy case. However, the dismissals must not have been for failure to pass the means test in a prior Chapter 7 bankruptcy case. If the debtor had one or more bankruptcies dismissed within a year before the current bankruptcy, the stay may terminate early or may never go into effect. The stay may terminate 30 days after the petition date where one prior bankruptcy was filed. The stay may never go into effect where there were two or more prior bankruptcies dismissed within the year before the current bankruptcy. The debtor may file a motion and secure an order extending the stay. However, the order must be entered within 30 days of the current petition date to extend or impose the stay. The order must specifically state “all creditors” or specifically list the IRS for the stay to be extended (or imposed) as it relates to the IRS. The debtor may be able to proceed to confirmation even if the automatic stay is deemed not to be in effect. Consult Field Insolvency (FI) when contemplating any collection action on these “serial filers” to ensure that the property being pursued is not under the protection of the bankruptcy court. If necessary, FI will contact Area Counsel for advice on how to determine the duration of the automatic stay in these situations. For additional information on serial filers, see the following subsections in IRM 5.9.5, *Opening a Bankruptcy Case*:

- IRM 5.9.5.7, *Serial Filers*
- IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*
- Exhibit 5.9.5-4, *Common Processing Steps in Serial Filer Cases*
- Exhibit 5.9.5-5, *Processing the Serial Filer Case When the Stay Terminates After 30 Days*

- Exhibit 5.9.5-6, *Processing the Serial Filer Case When No Stay Goes into Effect*

- (4) The duration of the automatic stay affects the running of the collection statute of limitations and how long it is suspended under IRC § 6503(h), **Cases under Title 11 of the United States Code**. Serial bankruptcy cases make it difficult to calculate the statute of limitations. Consult with FI for these calculations. If necessary, FI will consult with Area Counsel to determine the Collection Statute Expiration Date (CSED).
- (5) Additionally, creditors are stayed from collecting from co-debtors on consumer debts (11 USC § 1301). Consumer debt is defined in 11 USC § 101(8) as debt incurred primarily for a personal family or household purpose. Tax liabilities are not included in the definition.

5.17.11.9
(10-01-2010)
**Adequate Protection and
Turnover**

- (1) Lack of adequate protection can be a basis for the IRS to resist turning over property of the estate to the trustee. See *In re Hooper*, 152 B.R. 309 (Bankr. D. Colo. 1993). Adequate protection typically means periodic cash payments. In a Chapter 13, the debtor is required to initiate payments within 30 days of the filing of the plan. (11 USC § 1326(a)) Confirmation is achieved fairly quickly in most Chapter 13 cases. Confirmation binds the Government to the terms of the confirmed plan. Thus, adequate protection has been determined by some courts to be provided by the periodic payments required by the confirmed plan. (*United States v. Reynolds*, 764 F.2d 1004 (4th Cir. 1985); *United States v. Norton*, 717 F.2d 767 (3d Cir. 1983))

5.17.11.10
(07-09-2019)
Setoff

- (1) Under BAPCPA, the automatic stay does not prohibit the IRS from setting off pre-petition income tax refunds against pre-petition income tax liabilities. (11 USC § 362(b)(26)) Where the automatic stay prohibits other types of setoffs, the IRS can temporarily retain a refund to preserve its setoff rights. In those cases, the IRS should seek relief from the stay before permanently offsetting refunds. See *Citizens Bank v. Strumpf*, 516 U.S. 16 (1995). After confirmation of the Chapter 13 plan, and where the plan fully provides for the IRS claims, retaining the refund indefinitely may be considered a violation of the automatic stay.
- (2) In general, the IRS may setoff a post-petition refund against a post-petition debt. However, if the IRS files a claim under 11 USC § 1305, it may be bound by language in a confirmed plan prohibiting setoff. If the confirmed plan has language expressly prohibiting setoff of post-petition refunds to liabilities on an 11 USC § 1305 claim, contact Counsel prior to effecting such setoff. Absent language in the confirmed plan prohibiting setoff, the IRS can setoff a post-petition refund to a post-petition liability. This is true even if the post-petition liability was included on an 11 USC § 1305 claim. Subject to the referral tolerances in IRM 5.9.4.15.4, *Referral Tolerances*, the IRS should consider a referral to Counsel to object to confirmation of the plan when the plan prohibits the setoff.
- (3) Local bankruptcy court rules and orders may provide specific procedures regarding the setoff of refunds. Many local rules are found on the Bankruptcy

Law Advisory Rules Engine (BLARE). BLARE can be accessed at: <http://serp.enterprise.irs.gov/databases/local-sites-other.dr/blare/blare.html>
Consult Area Counsel for questions regarding local rules.

5.17.11.10.1
(07-09-2019)

Setoff and the Individual Shared Responsibility Payment (SRP) Master File Transaction 35 (MFT 35), SRP MFT 65 Mirror Assessment, and/or Employer Shared Responsibility Payment (ESRP) MFT 43 Liabilities in Chapter 13 Cases

- (1) The Service has the right to setoff a refund or a voluntary overpayment (that is not derived from a levy or lien action) to the individual SRP MFT 35, SRP MFT 65, and/or ESRP MFT 43 balance due before sending anything to the trustee, if applicable. Remember to check the local rules via BLARE prior to offsetting. The BLARE search engine can be found at: <http://serp.enterprise.irs.gov/databases/local-sites-other.dr/blare/blare.html>.
- (2) Although the USBC allows setoff of pre-petition income tax refunds to pre-petition income tax, this does not apply to individual SRP MFT 35 liabilities, SRP MFT 65 mirror assessment liabilities, and/or ESRP MFT 43 liabilities. SRP MFT 35, SRP MFT 65 mirror assessment, and ESRP MFT 43 liabilities are not included in the exception to the automatic stay under 11 USC § 362(b)(26), which refers only to income tax liabilities. Therefore, setoffs are **not** permitted between pre-petition SRP MFT 35, SRP MFT 65 mirror assessment, and/or ESRP MFT 43 modules, nor are they permitted between pre-petition income tax MFT 30 modules and SRP MFT 35, SRP MFT 65 mirror assessment, and/or ESRP MFT 43 modules, without a lifting of the stay.
- (3) Setoffs between post-petition income tax MFT 30 modules or SRP MFT 35, SRP MFT 65 mirror assessment, and/or ESRP MFT 43 modules are permitted, as they are not prohibited by the USBC. No lifting of the stay is required. This applies to instances where post-petition refunds are setoff to post-petition MFT 35, MFT 65, and/or MFT 43 liabilities included on an 11 USC § 1305 claim.
- (4) Lien or levy payments cannot be setoff to individual SRP MFT 35 and/or SRP MFT 65 mirror assessments. Lien or levy payments can be offset to ESRP MFT 43 liabilities. When applying a setoff or credit to any SRP MFT 35, SRP MFT 65 mirror assessment, and/or ESRP MFT 43, check the Designated Payment Code (DPC) of the credit. The following are some common enforcement-related DPCs:
 - 05: Most common levy
 - 06: Seizure and sale
 - 18: Primary TIN Federal Payment Levy Program (FPLP)
 - 19: Secondary TIN Federal Payment Levy Program (FPLP)

Note: For additional lien and levy designated payment codes, see Section 11 of Document 6209, *IRS Processing Codes and Information*, which may be viewed online at: <http://serp.enterprise.irs.gov/databases/irm.dr/current/6209.dr/6209ch11.10.htm>.

5.17.11.11
(07-09-2019)

The Chapter 13 Plan

- (1) The debtor has the exclusive responsibility for filing a plan. (11 USC § 1321) Most plans are filed at the same time the petition is filed. However, the debtor has up to 14 days from the filing of the petition to file the plan unless the court, for cause, allows otherwise. (Bankr. Rule 3015(b)) The plan specifies what each creditor will be paid and under what terms.
- (2) Unlike Chapter 11 creditors, Chapter 13 creditors do not vote on the plan. A creditor should object to confirmation if the plan does not properly treat its claim.

- (3) Section 1322(a) requires a plan to provide for:
- a. Submission of all or such portion of future earnings or income to the trustee as is necessary to fund the plan;
 - b. The full payment in deferred cash payments of priority claims (including priority taxes under 11 USC § 507), unless the holder of the claim agrees to different treatment;
- Note:** BAPCPA added a new provision to 11 USC § 1322(a)(4). If the plan provides for less than full payment of a domestic support claim entitled to priority status, all of the debtor's disposable income for a five-year period must be applied to plan payments.
- c. The same treatment for each claim within a class; and
 - d. The payment of interest on claims for non-dischargeable unsecured debts, assuming that the debtor has disposable income remaining after paying all allowed claims in full.
- (4) Prior to BAPCPA, the plan could not be longer than three years unless the court approved a longer payment period for cause. That period could not exceed five years. Under BAPCPA, the allowable plan length is tied to the debtor's income. However, the plan cannot exceed five years under any circumstances. (11 USC § 1322(d))
- (5) 11 USC § 1325(a)(5) requires the court to confirm a plan:
- a. If the holder of each allowed secured claim has accepted the plan;
 - b. If the plan provides that the claim holder retains its lien and receives the full amount allowed on such claim; or,
 - c. If the debtor surrenders the property securing such claim to the claim holder.

Under BAPCPA:

- a. If a secured creditor is to receive periodic payments, the payments must be in equal monthly amounts. The amount of the payments must provide an amount sufficient to constitute adequate protection if the claim is secured by personal property.
 - b. A secured creditor may retain its lien until the debtor pays the underlying debt or the court grants a discharge, whichever is earlier. If the case is dismissed or converted prior to completion of the plan, a secured creditor retains its lien to the extent allowed by non-bankruptcy law.
- Note:** The value of a secured claim does not include the value of property excluded from the bankruptcy estate. A lien on excluded property passes through bankruptcy unaffected. The lien remains enforceable against this property after the discharge is granted. Excluded property is a property interest that never becomes property of the bankruptcy estate. Employee Retirement Income Security Act (ERISA)-qualified pension plans and other plans listed under 11 USC § 541 are examples.
- (6) The IRS should object to confirmation if its secured claim is not properly treated under the plan. A confirmed plan is binding on a secured creditor who

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does not timely object to the plan. Depending on the circuit, it may not matter if the plan complies with 11 USC § 1325(a)(5). See the following:

- In re Szostek, 886 F.2d 1405 (3d Cir. 1989)
- IRS v. DiPasquale, 2006 WL 1207990, 97 AFTR2d 2006-2233, 2006-1 USTC ¶ 50,318 (D.N.J. 2006)
- Shaw v. Autogroup Financial Credit Union, 552 F.3d 447 (6th Cir. 2009)
- In re Jones, 530 F.3d 1284 (10th Cir. 2008)

- (7) The debtor may deal with a secured claim outside the plan. If the secured claim is held by the IRS and the debtor does not pay its liability, the IRS should ask the court to lift the stay.
- (8) A plan should not be confirmed unless priority claims are provided for in full. The IRS should object to a plan that does not provide for full payment of priority taxes. The IRS may move to have a plan dismissed or modified prior to discharge when a plan is confirmed which does not properly provide for priority taxes and the IRS did not object prior to confirmation. This has been successful in some but not all courts. See In re Escobedo, 28 F.3d 34 (7th Cir. 1994); In re Puckett, 193 B.R. 842 (Bankr. N.D. Ill. 1996); and In re Pardee, 193 F.3d 1083 (9th Cir. 1999), for additional information. However, absent extenuating circumstances, the IRS should object to confirmation of an unacceptable plan by the last day to file an objection to confirmation established by the court. After discharge, the IRS's options are more limited.
- (9) Under the "best interests of creditors" test, unsecured general claims must receive under the plan at least the amount they would be entitled to in a Chapter 7 case. (11 USC § 1325(a)(4)) To decide whether the plan meets this requirement, the court must determine the value of non-exempt assets. Then, the court must make a hypothetical Chapter 7 distribution. If a claim would be fully paid in a Chapter 7 case, the creditor is entitled to receive interest on its claim until it is fully paid in the Chapter 13 case.
- (10) If a plan provides for less than full payment of unsecured general claims, the court may not approve the plan over the trustee's or a creditor's objection unless the debtor commits all of the debtor's projected disposable income to plan payments. (11 USC § 1325(b)(1)(B))

Note: The court shall confirm a plan if the plan has been proposed in good faith and not by any means forbidden by law. (11 USC 1325(a)(3)) In general, the good faith test requires consideration of the totality of the circumstances. See, e.g., In re Alt, 305 F.3d 413 (6th Cir. 2002) which provides a list of possible circumstances courts should consider. For example, a plan may not meet the good faith test if the debtor fails to pay all disposable income into the plan. A plan may not meet the good faith test if the plan provides a minimal payout in relation to large unsecured debts. Consult Area Counsel to determine whether a plan has not been proposed in good faith.

- (11) If the debtor fails to file the tax returns required by 11 USC § 1308, the court will dismiss or convert a case after notice and a hearing. Under 11 USC § 1308, the taxpayer must file tax returns for the four-year period ending on the petition date. However, a party in interest or the U.S. Trustee must request the dismissal or conversion. (11 USC § 1307(e)) The court will decide whether to dismiss or convert the case based upon the best interests of the creditors and the estate. Or, the court may extend the filing deadline for a limited time.

However, the debtor must demonstrate by a preponderance of the evidence that the failure to file a return as required is attributable to circumstances beyond the debtor's control. (11 USC § 1308(b)(2)) See IRM 5.17.11.17, *Conversion or Dismissal*, for more information regarding conversion or dismissal of Chapter 13 cases.

5.17.11.11.1
(07-09-2019)

**Chapter 13 Plans and
Bankruptcy Cases with
Restitution Assessments**

- (1) 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. In 2010, Congress amended IRC § 6201, **Assessment authority**, to provide that the IRS shall assess and collect tax-related restitution in the same manner as if such amount were tax. This change in IRC § 6201 applies to restitution in all J&C Orders entered after August 16, 2010.
- (2) Restitution assessments against individuals will be made on Master File Transaction (MFT) 31. They are easily identified by Transaction Code (TC) 971 with Action Code (AC) 102. Restitution ordered in a case of an individual will be assessed with one of the following:
 - TC 290 with Reason Code (RC) 141 to 150
 - TC 300 with RC 141 to 150
 - TC 298 with RC 141 to 150

Restitution assessments against a Business Master File (BMF) account will be made on MFT 02, 06, 05, etc. It is expected that restitution assessments on a BMF account will be rare. However, an individual filing Chapter 13 may be liable for a BMF account. For example, the debtor may have a sole proprietorship. The individual may be the single member owner of a Limited Liability Company (LLC). Most restitution assessments are made against individual taxpayers, even if the restitution assessment relates to a BMF source.

- (3) For purposes of a bankruptcy case, a restitution assessment is classified in the same manner as the tax module to which it relates. Interest on the restitution assessment will have the same classification as the tax assessment. If the failure to pay penalty accrued on the restitution assessment, it will either be secured or general unsecured.
- (4) The J&C Order will usually contain a payment schedule specifying the manner in which the restitution amount must be paid. The order will normally specify that restitution payments are to be made to the office of the clerk of the district court in the district 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). KCSPC applies the payments to the restitution assessment. Insolvency caseworkers can inquire about the restitution payment schedule contained in the J&C Order from the appropriate Advisor in the Dallas Advisory Group.

Note: Any reconciliation of the payments must come from the Kansas City Teller Unit which processes such payments.

Initial collection actions on restitution based assessments were centralized to the Dallas Advisory Group in 2015. They can be reached via e-mail at *SBSE EEF Dallas Restitution or by researching the SB/SE Probation/Restitution page at <http://mysbse.web.irs.gov/collection/aiqorg/contacts/19176.aspx>.

- (5) Restitution payments are monitored by the office of the clerk of the court. For this reason, the bankruptcy plan may provide for restitution payments to be made to the office of the clerk of court outside the terms of the plan. If the taxpayer provides for the restitution payments outside the plan, caseworkers should not object to the plan solely for this reason. After confirmation, FI will notify the Advisor that the taxpayer will continue to make payments to the clerk of the court. The Advisor will monitor compliance with the J&C Order.
- (6) If the plan states payment of the restitution assessment will be through the plan according to the J&C Order, the IRS should:
 - a. Verify that the plan complies with the payment amount scheduled in the J&C Order,
 - b. Verify that the plan provides for payments to be made according to the schedule in the J&C Order, and
 - c. Accept plan terms when the plan mirrors the provisions of the J&C Order.

Note: The IRS may still object to the plan for some other reason.

If the plan provides for the restitution assessment to be paid through the bankruptcy plan, FI will notify the Advisor that the payments are being made to the IRS pursuant to a bankruptcy plan. Insolvency will monitor that the payments are being made.

- (7) The case should be referred to Counsel for an objection to confirmation when the terms of the plan do not agree with the J&C Order. For example, the IRS should object to the plan when it provides for payments in amounts less than the payments ordered in the J&C Order. The IRS should object to the plan if payments are made on a less frequent schedule than required in the J&C Order.
- (8) 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 of the plan.

5.17.11.12
(10-01-2010)
Payments

- (1) The debtor is required to start making payments proposed by a plan within 30 days after the plan is filed or the order for relief is entered, whichever is earlier. (11 USC § 1326(a)(1))
- (2) The payments are to be retained by the trustee until confirmation or denial of confirmation.
 - a. If a plan is confirmed, the trustee shall distribute such payments in accordance with the plan.
 - b. If the plan is not confirmed, the trustee shall return the payments to the debtor after deducting allowed administrative claims under 11 USC § 503(b). The IRS can levy on the trustee to obtain these funds. (Beam v. IRS, 192 F.3d 941 (9th Cir. 1999))

5.17.11.13
(07-09-2019)
Effect of Confirmation

- (1) Once confirmed, a plan is binding. It does not matter whether or not the plan provided for a creditor's claim. It does not matter if the creditor objected to confirmation, accepted, or rejected the plan. (11 USC § 1327(a))
- (2) Upon confirmation, property of the estate reverts in the debtor *except as otherwise provided in the plan or the order confirming the plan.* (11 USC § 1327(b)) Except as otherwise provided in the plan, the property reverting in the debtor is free and clear of any claim or interest of any creditor provided for in the plan. (11 USC § 1327(c)) Post-petition earnings and income used to fund the plan are property of the estate after confirmation until the plan is completed or the case is dismissed. (11 USC § 1306(a)(2))
- (3) The automatic stay is not lifted upon confirmation in a Chapter 13 case. The automatic stay continues until the case is dismissed, closed, or the debtor is discharged. Therefore, additional contact with the debtor to make a demand for payment and collection of pre-petition liabilities outside the bankruptcy are generally prohibited. Contacting the debtor to investigate and determine the amount and existence of a liability does not violate the stay. For additional information on the automatic stay, see IRM 5.17.8.10, *Automatic Stay - 11 USC § 362*. Also, see the following IRM subsections within IRM 5.9, *Bankruptcy and Other Insolvencies*:
 - IRM 5.9.2.10, *The Effect of Bankruptcy on Collection*
 - IRM 5.9.3.5, *Automatic Stay*
 - IRM 5.9.5.7, *Serial Filers*
 - IRM 5.9.5.8, *Levies and Bankruptcy*
 - IRM 5.9.5.9, *Liens and Insolvency*
 - IRM 5.9.10.7.2, *Impact of the Automatic Stay*

5.17.11.14
(07-09-2019)
**Collection of
Post-petition Taxes**

- (1) Property of the estate and the collection of post-petition liabilities are discussed in detail in IRM 5.9.10, *Processing Chapter 13 Bankruptcy Cases*. For additional information, refer to:
 - IRM 5.9.10.8.1, *Property of the Estate after Confirmation*
 - IRM 5.9.10.9, *Post-Petition Tax Liabilities*
 - IRM 5.9.10.9.1, *Collection from Specific Assets*
 - IRM 5.9.10.9.2, *11 USC Section 1305 Claims*
 - IRM 5.9.10.10, *Court Intervention*
 - IRM 5.9.10.10.1, *Conversion*
- (2) There are two potential alternatives for collecting post-petition taxes in a Chapter 13 case:
 - a. Administrative collection (e.g., levy); or
 - b. Filing a claim under 11 USC § 1305.
- (3) In the case of serious post-petition non-compliance, IRS may seek court intervention to deal with the post-petition non-compliance. IRS may ask the courts to dismiss the case or convert it to Chapter 7 for cause. See 11 USC § 1307(c). The IRS may ask the courts to lift the stay to collect on specific assets if those assets remained property of the estate after confirmation of the Chapter 13 plan. However, coordination with Area Counsel and adherence to

5.17 Legal Reference Guide for Revenue Officers

IRM 5.9.4.15, *Referrals — Representing IRS in Bankruptcy Court*, is required. Litigation should become an option only after all alternatives have been explored.

- (4) The IRS may collect post-petition liabilities from the property of the debtor. The IRS may not collect post-petition liabilities from property of the estate. Collection of post-petition taxes during the pendency of a Chapter 13 case is complicated. There are differing views among the courts as to what is property of the estate after confirmation. Filing a Notice of Federal Tax Lien (NFTL) for post-petition taxes generally does not violate the automatic stay so long as it is not being asserted against property of the estate. However, there is no way to systemically generate an NFTL that includes a special statement exempting property of the estate from the NFTL.
- (5) Most courts hold that a Chapter 13 bankruptcy estate exists after confirmation. However, most take the position that the estate is limited to the portion of the earnings or other property of the debtor necessary for the funding of the plan. Accordingly, any other assets are available for administrative collection of post-petition taxes. See, e.g.:
- Telfair v. First Union Mortgage Corp., 216 F.3d 1333 (11th Cir. 2000);
 - In re Heath, 115 F.3d 521 (7th Cir. 1997);
 - In re Markowicz, 150 B.R. 461 (Bankr. D. Nev. 1993);
 - In re Thompson, 142 B.R. 961 (Bankr. D. Colo. 1992); and,
 - In re McKnight, 136 B.R. 891 (Bankr. S.D. Ga. 1992).

See Security Bank of Marshalltown, Iowa v. Neiman, 1 F.3d 687 (8th Cir. 1993). Examining the debtor's plan is important because the plan may specify that all or some of the property is to remain property of the estate. In some instances, the confirmation order contains language about the impact of confirmation on the debtor's property or property of the estate. Examining the confirmation order is necessary.

- (6) As an alternative to pursuing post-petition claims outside bankruptcy, the IRS may file a claim for its post-petition taxes under 11 USC § 1305(a)(1).
- a. Such a claim is allowed or disallowed as though it were a pre-petition claim. (11 USC § 1305(b))
 - b. Full payment of 11 USC § 1305(a) claims and payment of interest and penalties thereon are permissive in Chapter 13 plans. However, they are not required elements of a Chapter 13 plan. (11 USC § 1322(b)(6)) Accordingly, the IRS does not file section 1305 claims in many jurisdictions.
 - c. There is no bar date for filing a claim under 11 USC § 1305. The debtor cannot file this type of claim on behalf of the IRS; only the IRS can file it.
- (7) The Individual Shared Responsibility Payment (SRP) liability is assessed on IDRS under MFT 35. Joint SRP MFT 35 liabilities may be mirrored into separate SRP mirror assessment modules for each spouse on IDRS under MFT 65. The IRS may file an 11 USC § 1305 claim for post-petition SRP MFT 35 and/or SRP MFT 65 mirror assessment liabilities of the debtor that become payable while the Chapter 13 case is pending. If the Form 1040, *U.S. Individual Income Tax Return*, assessed on IDRS under MFT 30 is a post-petition module, the SRP MFT 35 and/or SRP MFT 65 module is also post-petition.
- (8) The Employer Shared Responsibility Payment (ESRP) MFT 43 liability is post-petition when the Service issues Letter 226-J, *ESRP Preliminary Contact*, to an employer notifying them that one of their employees was allowed the premium

credit (PTC) on or after the petition date. The IRS may file an 11 USC § 1305 claim for post-petition ESRP MFT 43 liability. When the post-petition ESRP MFT 43 liability is not included on an 11 USC § 1305 claim, an Insolvency caseworker will input a TC 520 closing code (cc) 84 to the liability to alert IRS caseworkers to contact Insolvency before taking collection action on post-petition liabilities as certain assets may remain property of the bankruptcy estate throughout the life of the Chapter 13 plan.

5.17.11.15
(10-01-2010)

Modification of the Plan

- (1) Any time prior to the completion of payments under a confirmed plan, the plan may be modified after notice and a hearing. The debtor, the trustee, or an unsecured creditor may request the modification. (11 USC § 1329) The plan may be modified to:
 - a. Increase or reduce the amount of payments on claims in a particular class;
 - b. Extend or reduce the time for such payments;
 - c. Alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take into account any payment of that claim other than under the plan; or
 - d. Under BAPCPA, reduce amounts to be paid under the plan by the amount expended by the debtor to purchase health insurance for himself or his dependents.
- (2) The requirements of 11 USC §§ 1322 and 1325(a) apply to the modified plan.

5.17.11.16
(10-01-2010)

Revocation of Confirmation

- (1) A party in interest may request revocation within 180 days of confirmation if the confirmation order was procured by fraud. (11 USC § 1330)
- (2) If the court revokes an order of confirmation, it shall convert or dismiss the case, whichever is in the best interest of the creditors, unless within the time fixed by the court the debtor proposes and the court confirms a modification of the plan under 11 USC § 1329.

5.17.11.17
(06-16-2015)

Conversion or Dismissal

- (1) The Chapter 13 debtor may convert the case to Chapter 7 at any time. (11 USC § 1307(a))
- (2) On request of the debtor, the case may be dismissed at any time unless the case was previously converted from another chapter. (11 USC § 1307(b))
- (3) After notice and a hearing, the court may convert a case to Chapter 7 or dismiss it, whichever is in the best interest of creditors. The dismissal or conversion must be requested by an interested party or the United States Trustee. The dismissal or conversion must be for cause, which includes but is not limited to:
 - Unreasonable delay that is prejudicial to creditors,
 - Material default with respect to the terms of a confirmed plan,
 - Failure to commence making timely plan payments, and

5.17 Legal Reference Guide for Revenue Officers

- Under BAPCPA, failure to fulfill required post-petition domestic support obligations, 11 USC § 1307(c)(11).

See 11 USC § 1307(c)(1)-(11) for a non-exhaustive list of causes.

- (4) Although lack of good faith is not enumerated as a specific basis for dismissal, courts have recognized it as sufficient cause under 11 USC § 1307(c). See the following cases:

- Marrama v. Citizens Bank of Mass., 549 U.S. 365, 373 (2007);
- In re Alt, 305 F.3d 413 (6th Cir. 2002);
- In re Love, 957 F.2d 1350, 1354 (7th Cir. 1992); and,
- In re Maclean, 200 B.R. 417 (Bankr. M.D. Fla. 1996).

- (5) Under BAPCPA, upon the request of a party in interest and after a notice and hearing, the court shall dismiss or convert the case for failure to file tax returns for the four-year period ending on the petition date. The IRS can also request dismissal or conversion of the case when the debtor does not file post-petition tax returns or obtain an extension for filing the returns. The court shall dismiss or convert the case, whichever is in the best interests of creditors and the estate. (11 USC §§ 521(j)(1)-(2) and 1307(e); In re Cushing, 401 B.R. 528 (1st Cir. BAP 2009); In re Perry, 389 B.R. 62 (Bankr. N.D. Ohio 2008)). Dismissal or conversion under this provision is not automatic. Consult with Area Counsel to determine whether a motion to dismiss or convert is appropriate.

5.17.11.18
(07-09-2019)
Discharge

- (1) The USBC provides a Chapter 13 debtor may be discharged in one of two ways. The debtor may receive a discharge upon completion of all payments provided for in the plan under 11 USC § 1328(a). When exigent circumstances prevent the debtor from completing plan payments, the debtor may receive a hardship discharge under 11 USC § 1328(b). For general information regarding bankruptcy discharges, see IRM 5.17.8.22, *Exceptions to Discharge*. For more detailed information on discharges, see the following sections in IRM 5.9.17, *Closing a Bankruptcy Case*:

- IRM 5.9.17.8, *Discharge and Exceptions to Discharge*
- IRM 5.9.17.8.1, *Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared*
- IRM 5.9.17.8.2, *The Fraud or Willful Evasion Exception to Discharge*
- IRM 5.9.17.8.3, *Discharge Denied*
- IRM 5.9.17.8.6, *Chapter 12 and 13 Revocations of Discharge*
- IRM 5.9.17.8.7, *Following Revocation*
- IRM 5.9.17.8.8, *Discharge and Restitution Assessments*
- IRM 5.9.17.8.9, *Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case*
- IRM 5.9.17.8.10, *Discharge and Individual Shared Responsibility Payment (SRP) Liabilities*
- IRM 5.9.17.8.11, *Discharge and Employer Shared Responsibility Payment (ESRP) Liabilities*
- IRM 5.9.17.15, *Chapter 13 Discharge Pre-BAPCPA*
- IRM 5.9.17.15.1, *Chapter 13 Discharge Changes under BAPCPA*
- IRM 5.9.17.15.2, *Chapter 13 Hardship Discharge*

- (2) Under 11 USC § 1328(a), the debtor is generally discharged of all debts provided for by the plan upon completion of plan payments. The debtor may also be discharged of liabilities disallowed under 11 USC § 502 when a claim was filed late and after the bar date. However, 11 USC § 523(a)(3) provides

that an individual debtor is not discharged of a debt if the creditor does not receive notice in time to file a timely proof of claim because the debtor failed to include the creditor on the schedules and statements. BAPCPA amended 11 USC § 1328(a)(2) to make this exception to discharge applicable in Chapter 13 cases. Other exceptions to discharge applicable in Chapter 13 cases are:

- a. Trust fund taxes;
- b. Taxes for which returns were not filed;
- c. Taxes due on returns that were filed late (at any time after the date that is two years before the petition date); and,
- d. Taxes for which the debtor made a fraudulent return or made a willful attempt to evade or defeat the tax.

Note: These exceptions to discharge also apply to post-petition liabilities claimed on an 11 USC § 1305 claim.

(3) BAPCPA adds new prerequisites to discharge in Chapter 13 cases. For example:

- a. Under 11 USC § 1328(a), the debtor must certify that he has satisfied any domestic support obligations.
- b. Under 11 USC § 1328(f), the debtor cannot receive a discharge if the debtor received a discharge in a Chapter 7, 11, or 12 case during the four-year period before the petition date. The debtor cannot receive a discharge in the current case if they received a discharge in a Chapter 13 case during the two-year period before the petition date.
- c. Under 11 USC § 1328(g), the court cannot grant the debtor a discharge unless the debtor has completed a course in personal financial management since filing the bankruptcy petition.
- d. Under 11 USC § 1328(h), the court cannot grant a discharge unless the court, after notice and a hearing, finds no reasonable cause for believing that the debtor has abused the bankruptcy system.

(4) Tax claims, including priority claims, will be discharged if they are provided for in the plan. Courts have held that “provided for” simply means “dealt with”, “referred to”, or “mentioned”. For additional information see:

- In re Gregory, 705 F.2d 1118 (9th Cir. 1983);
- IRS v. DiPasquale, 2006 WL 1207990, 97 AFTR2d 2006-2233, 2006-1 USTC ¶ 50,318 (D.N.J. 2006); and,
- In re Bryant, 323 B.R. 635 (Bankr. E.D. Pa. 2005).

(5) The IRS’s claim may be discharged even if the claim is provided for in an amount less than that claimed. However, the plan must provide for the full payment of priority claims. Failure to so provide may render the plan void. The IRS, like other creditors, is bound by the terms of a confirmed plan. If the plan provides less than the amount of the IRS’s claim, the IRS should object to confirmation.

Note: The court can vacate an order of discharge where the IRS was not paid as required in the plan and the court’s discharge order was based on the

mistaken assumption that the IRS was paid. *Cisneros v. United States*, 994 F.2d 1462 (9th Cir. 1993); see also *In re Midkiff*, 342 F.3d 1194 (10th Cir. 2003).

- (6) If the debtor does not complete plan payments, a hardship discharge may be granted under 11 USC § 1328(b). A hardship discharge is equivalent to the discharge granted under Chapter 7. All priority taxes and other non-dischargeable taxes under 11 USC § 523 will not be discharged. The court may grant a hardship discharge, after notice and a hearing, only if:
- a. The failure to complete plan payments is due to circumstances beyond the debtor's control (e.g., loss of job);
 - b. The value of the property actually distributed is at least what would have been distributed in a Chapter 7; and
 - c. Modification of the plan is not feasible.
- (7) Pre-petition and post-petition interest on non-dischargeable taxes are non-dischargeable, as are any post-petition penalties on these taxes. This includes interest that accrues on non-dischargeable taxes during the bankruptcy plan. However, certain post-petition penalties do not accrue while a bankruptcy case is pending under IRC § 6658, **Coordination with title 11**.

Hardship Discharge. If there is a hardship discharge under 11 USC § 1328(b), then the exception to discharge for penalties under 11 USC § 523(a)(7) applies.

5.17.11.18.1
(06-16-2015)

**Discharge and Chapter
13 Cases with
Restitution Assessments**

- (1) Pursuant to 11 USC §§ 523(a)(13) and 1328(a)(3), restitution amounts ordered in a J&C Order are not subject to discharge in an individual debtor's case. Further, the tax loss ordered to be paid as restitution would probably qualify as a tax for which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat the tax. (See 11 USC § 523(a)(1)(C); 11 USC § 1328(a)(2); and IRM 5.9.17.8.8, *Discharge and Restitution Assessments*, for additional information.)

Note: Consult Area Counsel should questions arise regarding the willful evasion or fraud exception to discharge in these cases.

- (2) For purposes of the discharge, interest will be treated in the same manner as the tax to which it relates. Accordingly, interest will not be discharged if the restitution assessment is not discharged.
- (3) The only penalty that may accrue on a restitution assessment is the failure to pay penalty. The failure to pay penalty on a restitution assessment should be treated like other penalties in Chapter 13 that relate to non-dischargeable taxes. Because the exception to discharge set forth in 11 USC § 523(a)(7) does not apply in non-hardship Chapter 13 cases, a failure to pay penalty related to a restitution assessment would be dischargeable under 11 USC § 1328(a).

5.17.11.18.2
(07-09-2019)

**Discharge and the
Individual Shared
Responsibility Payment
(SRP) Master File
Transaction 35 (MFT 35),
SRP MFT 65 Mirror
Assessment, and/or
Employer Shared
Responsibility Payment
(ESRP) MFT 43
Liabilities in Chapter 13
Cases**

- (1) The Individual Shared Responsibility Payment (SRP) and Employer Shared Responsibility Payment (ESRP) are treated as an excise tax in bankruptcy under 11 USC § 507(a)(8)(E). The liability for the SRP is reported on the appropriate line of the debtor's Form 1040, *U.S. Individual Income Tax Return*. The liability is assessed on IDRS under Master File Transaction 35 (MFT 35). The joint SRP MFT 35 liability may be mirrored on IDRS as separate SRP MFT 65 mirror assessment modules for each spouse. The liability for the ESRP is not based on a filed return and there is no form number associated with the ESRP. The assessment amount is calculated by the IRS, not the employer. When an assessment is made, IDRS will show a TC 298 with an amount due.
- (2) An individual or joint debtor may not be eligible to receive a discharge in the current Chapter 13 case if they received a discharge in a prior bankruptcy case. Eligibility is determined by the type of prior bankruptcy filed and the petition date of the prior bankruptcy. See Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*, for additional information.
- (3) Since liability on the SRP MFT 35 and/or SRP MFT 65 module is derived from the debtor's Form 1040, certain information regarding that return is used in determining dischargeability of the SRP MFT 35 and/or SRP MFT 65 module. As there is no return associated with ESRP MFT 43 liabilities, there is no exception to discharge for non-filing or late filing of tax returns. Determining dischargeability is based on whether the debtor received a discharge upon completion of the bankruptcy plan or a hardship discharge. Discharge may also depend on whether the IRS was properly notified in the bankruptcy case. See IRM 5.9.17.8.9, *Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case*, for additional information.
- (4) When a debtor receives a discharge upon completion of the Chapter 13 bankruptcy plan under 11 USC § 1328(a), the remaining balance of the debts "provided for" by the bankruptcy plan are generally discharged unless they are an exception to discharge. The dischargeable liability may be a pre-petition debt or a post-petition debt included on an 11 USC § 1305 claim that was "provided for" by the debtor's plan. The following are exceptions to discharge when the Chapter 13 debtor receives a discharge upon completion of the bankruptcy plan:
 - The SRP MFT 35 and/or SRP MFT 65 module may be non-dischargeable if the tax on the income tax return is non-dischargeable due to willful evasion or fraud. Consult with Area Counsel for guidance when the SRP MFT 35 and/or SRP MFT 65 module may be non-dischargeable due to willful evasion or fraud.
 - The SRP MFT 35 and/or SRP MFT 65 module is non-dischargeable if the tax on the income tax return is non-dischargeable because the taxpayer did not file the required return. The SRP MFT 35 and/or SRP MFT 65 module may also be non-dischargeable because the taxpayer filed a return after the SRP MFT 35 and/or SRP MFT 65 module was assessed. See IRM 5.9.17.8.1, *Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared*, for additional information.

- The SRP MFT 35 and/or SRP MFT 65 module is non-dischargeable if the income tax return was filed late and after the date that is two-years before the date of the bankruptcy petition. This includes post-petition liabilities for the SRP MFT 35 and/or SRP MFT 65 module included on an 11 USC § 1305 claim and the related income tax return was not timely filed.

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), *Unsecured Priority, BAPCPA Tolling*, for additional information.

- The pre-petition ESRP MFT 43 liabilities are generally dischargeable when the debtor received a discharge upon completion of the Chapter 13 plan.
 - The post-petition ESRP MFT 43 liabilities are generally dischargeable when the debtor received a discharge upon completion of the Chapter 13 plan, the post-petition ESRP MFT 43 liability was included on an 11 USC § 1305 claim, and the plan “provided for” the post-petition ESRP MFT 43 liability.
 - The post-petition ESRP MFT 43 liabilities are generally non-dischargeable when the Chapter 13 plan was not amended to “provide for” post-petition ESRP MFT 43 liabilities whether or not the liabilities were included on an 11 USC § 1305 claim.
- (5) The exceptions to discharge listed above for a plan completion discharge are also applicable to a hardship discharge. Additionally, if the debtor receives a hardship discharge, the SRP MFT 35 and/or SRP MFT 65 liability is non-dischargeable if the income tax return was due, with extension, within the three-years prior to the bankruptcy petition date.

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

- (6) A separate analysis should be employed to determine dischargeability of the SRP MFT 35 and/or SRP MFR 65 liability versus the dischargeability of the related income tax. For example, to determine dischargeability of the SRP MFT 35 and/or SRP MFT 65 liability, the rules under 11 USC § 507(a)(8)(A)(i) apply but not the “240 day rule” and the “unassessed but assessable rule” set forth in 11 USC §§ 507(a)(8)(A)(ii) and (iii). The late-filed return and unfiled return rules under 11 USC § 523(a)(1)(B), however, do apply. A separate analysis should be used to determine the dischargeability of the SRP MFT 35 and/or SRP MFT 65 liability under 11 USC § 523(a)(1)(C) regarding the debtor filing a fraudulent return or willfully attempting to evade tax. As there is no return filed for ESRP MFT 43 liabilities, there is generally no exception to discharge for fraud. However, if the debtor willfully evaded the assessment or collection of ESRP MFT 43 liabilities, with the agreement on Area Counsel, the ESRP MFT 43 liabilities may be excepted from discharge due to willful evasion. Finally, the rules under 11 USC § 507(a)(8)(E) apply to determine the dischargeability of the SRP MFT 35, SRP MFT 65, and/or ESRP MFT 43 because the SRP and ESRP are treated as an excise tax for bankruptcy purposes. The interest is always non-dischargeable when the SRP MFT 35 and/or SRP MFT 65 liability is non-dischargeable. No penalty is assessed or accrued on the SRP MFT 35 and/or SRP MFT 65 module.

- (7) In community property locations, the non-debtor spouse is treated in the same manner as the debtor spouse when determining dischargeability. For additional information, see:
- IRM 5.9.3.5.1.1, *Community Property*
 - IRM 5.9.18.6.8, *Community Property*
 - IRM 25.18, *Special Topics, Community Property*

5.17.11.19
(07-09-2019)
**Collection Outside of the
Bankruptcy Estate**

- (1) The IRS can collect non-dischargeable liabilities from the exempt, abandoned, non-administered, and after-acquired property of an individual debtor.
- (2) Regarding dischargeable liabilities, if a Notice of Federal Tax Lien (NFTL) has been filed pre-petition, the IRS may collect on its lien from exempt or excluded property. IRS may collect on its lien from property that has been abandoned or otherwise not administered by the trustee.
- (3) Even if an NFTL has not been filed, the IRS may still collect on dischargeable liabilities by enforcing its assessment lien against excluded or abandoned property after the automatic stay is lifted. Property excluded from the estate includes ERISA-qualified pension plans and other plans described in 11 USC § 541(b).
- (4) For additional information on collection outside of the bankruptcy estate, see the following subsections in IRM 5.9.17, *Closing a Bankruptcy Case*:
- IRM 5.9.17.5, *Exempt, Abandoned, or Excluded Property (EAEP)*
 - IRM 5.9.17.5.1, *Pre-discharge Review for Exempt, Abandoned, or Excluded Property (EAEP) in Chapter 7 No Asset Cases*
 - IRM 5.9.17.5.2, *Collection from Exempt, Abandoned, or Excluded Property (EAEP)*
 - IRM 5.9.17.5.3, *Addressing Lien Issues*
 - IRM 5.9.17.5.4, *Insolvency Levy Procedures for Excluded Retirement Plans*
 - IRM 5.9.17.5.4.1, *Thrift Savings Plan (TSP)*

5.17.11.20
(07-09-2019)
Chapter 12

- (1) Chapter 12 bankruptcies are discussed in detail in IRM 5.9.9, *Processing Chapter 12 Bankruptcy Cases*. Readers may refer to IRM 5.9.9 for additional information on Chapter 12 cases not addressed within IRM 5.17.11.20.
- (2) Chapter 12 is similar in many ways to a Chapter 13. However, Chapter 12 incorporates some aspects of the Chapter 11 case. Only a “family farmer or fisherman” can be a debtor under Chapter 12. A “family farmer” can be an individual, partnership, Limited Liability Company (LLC), or corporation. The debtor must have regular income and specified percentages of the income, assets and debts of the debtor must be farmed or family fishing related. See 11 USC § 101(18), (19), and (20). Additionally, see IRM 5.9.9.2, *Chapter 12 Eligibility*, for additional information about eligibility for filing Chapter 12. On April 1, 2019, the debt limit for a family farmer increased to \$4,411,400. The debt limit for a family fisherman increased to \$2,044,225.
- (3) The Chapter 12 plan must provide for full payment of the IRS’s priority claims. Under BAPCPA, there is an exception to this rule when a claim is owed to a

governmental unit and the debtor receives a discharge. The exception applies when the claim owed to the government unit arises as a result of the sale, transfer, exchange, or other disposition of farm assets used in the debtor's operations. If the exception applies, the claim is treated as a general unsecured claim. (11 USC § 1232) See 5.9.9.10.3(1), **11 USC § 1232**.

- (4) BAPCPA allows the plan to provide for post-petition interest on non-dischargeable unsecured claims to the extent that the debtor has disposable income remaining after paying all allowed claims in full. The 11 USC § 1222(b)(11) provides that the plan *may* provide for the payment of interest.
- (5) Post-petition income tax liabilities of an individual Chapter 12 debtor cannot be paid or discharged through a Chapter 12 plan unless the debt arose as a result of the sale transfer, exchange, or other disposition of any property used in the debtor's farming operation per 11 USC § 1232.
- (6) Individual debtors remain liable for debts that are non-dischargeable under 11 USC § 523.