



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

October 6, 2015

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5.9.17, 5.9.18, 5.17.8-5.17.11

MEMORANDUM FOR Director, Specialty Collection Insolvency

FROM: Kristen E. Bailey /s/ *Kristen E. Bailey*  
Director, Collection Policy

SUBJECT: Interim Guidance on Processing the MFT 65, Individual Shared  
Responsibility Payment (SRP) Mirror Assessment, in Bankruptcy  
Cases

This memorandum issues guidance on MFT 65, the Individual Shared Responsibility Payment (SRP) Mirror Assessment, until the IRM sections referenced above are revised. Please ensure that this information is distributed to all affected employees within your organization.

In January of 2016, the Service will begin mirroring joint SRP (MFT 35) liabilities as separate SRP (MFT 65) liabilities. Mirroring of the joint SRP (MFT 35) liability into separate SRP (MFT 65) liabilities may take place when:

A bankruptcy case is dismissed or discharged and only one spouse filed bankruptcy. Exam, AUR, or other functions within the Service request CIO to mirror joint SRP (MFT 35) liabilities into separate SRP (MFT 65) liabilities "upfront" so the liability of the non-debtor spouse (NDS) can be pursued by the Service, the NDS can exercise appeal rights, Exam/AUR can assess agreed deficiencies against the NDS when the debtor spouse does not agree with the deficiency, etc.

Joint SRP (MFT 35) liabilities may also be mirrored as separate SRP (MFT 65) liabilities prior to the filing of a bankruptcy petition when mirroring is appropriate. For example, a joint SRP (MFT 35) liability may be mirrored by the Offer in Compromise (OIC) Unit when a taxpayer has a joint liability and only one spouse submitted an OIC on a joint SRP (MFT 35 liability).

For purposes of proof of claim calculation, bankruptcy plans, and determining dischargeability, the MFT 65 liability of the debtor spouse is treated in the same manner as the MFT 35 liability of the debtor spouse would be treated. Similarly, the MFT 65 liability of the NDS is treated in the same manner as the MFT 35 liability of the NDS would be treated.

**Reminder:** In community property locations, the NDS is treated in the same manner as the debtor spouse. For additional information, see IRM 5.9.3.6.1.1, *Community Property*; IRM 5.9.18.5.8, *Community Property*; and IRM 25.18, *Community Property*.

The mirroring process will be the same as it is for MFT 30/31. When a case is dismissed or discharged and only one spouse filed bankruptcy, IIP or ADS will input the needed transactions to mirror the MFT 35 into two MFT 65 accounts.

If a case requires manual mirroring (Exam, AUR upfront mirroring), or in the event IIP/ADS cannot mirror an MFT 35, caseworkers in the CIO Operation Support Team (OST) will be responsible for manually processing the MFT 65 mirrors. The manual process is the same as for MFT 31, described in [IRM 5.9.17.21.4](#), *Mirroring Process*. The OST caseworkers will also be responsible for resolving any Process J errors and DDRs that generate due to IIP/ADS not being able to mirror a module.

The following attachment provides guidance on MFT 65 and proofs of claim, specific to IRM 5.9.13, *Manual Proofs of Claim and Common Claim Issues*.

This guidance is effective January 1, 2016 and will be incorporated into the IRMs indicated above by January 1, 2018. The guidance issued in this memorandum is based on Affordable Care Act Provision 1501: *Requirement to Maintain Minimum Essential Coverage* (Individual Shared Responsibility) (IRC §5000A).

Employees should elevate any questions through their appropriate management chain.

Attachments: (1)

Distribution: Director, Collection  
Director, Headquarters Collection  
[IRS.gov \(http://www.IRS.gov\)](http://www.IRS.gov)

## **Duplicate and Mirror Assessments and NMF Periods**

### **Impacts: IRM 5.9.13.18.4**

**(1) Mirror Modules (MFT 31 and MFT 65) and NMF Modules.** All of a debtor's tax liabilities accrued as of the petition date should be included on the proof of claim. This includes MFT 31 and MFT 65 mirror modules and modules on the non-master file (NMF).

The claim procedures for an MFT 31 or MFT 65 mirror or NMF module are the same as for an MFT 30 module. The caseworker must determine:

- If the tax liability is pre-petition or post-petition,
- The correct classification of the mirror module, and
- The accurate claim amount.

**Note:** Claim calculations for NMF modules must be computed manually.

**(2) Duplicate Spousal MFT 31, MFT 65, and Trust Fund Recovery Penalty (TFRP) Assessments.** A proof of claim may list two MFT 31, two MFT 65, or two TFRP modules for the same period when a married couple files a joint bankruptcy. The amounts of the assessments for the same period may be identical, or one may be larger than the other. When AIS computes the total amount of a claim on the proof of claim form, the sum includes the amounts of each module. The total amount computed by AIS cannot be systemically overridden, so when both spouses have duplicate MFT 31, MFT 65, and/or TFRP assessments, the amount of the claim on the proof of claim form is overstated. Caseworkers should determine whether the assessments are for the same liabilities. If so, the claim should be filed according to local procedures in one of two ways.

**Note:** The Proof of Claim Statements on AIS contain several options for each procedure. The statement chosen by the caseworker may vary depending on local practice.

- a) The caseworker may omit one spouse's MFT 31, MFT 65, and/or TFRP assessment(s) from the claim and provide a clarifying statement on the proof of claim that both debtors are liable, but that only one assessment is being shown on the proof of claim to prevent overpayment. If the assessments are in differing amounts, the caseworker should determine which assessment should be included on the proof of claim. In most cases, this will be the higher assessment, but in some situations, the lower assessment should be used. For example, when payments have been made on one account, but have not yet been cross-referenced to the other account, the lower assessment should be included on the proof of claim to prevent overpayment.

**Example:** Proof of Claim Statement 20 is one option for providing this information. It states: "Separate assmts, one assmt is being claimed to avoid overpayment." There are other options available in the Proof of Claim statements on AIS.

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**Duplicate and Mirror Assessments and NMF Periods**, Continued

b) The caseworker may include both spouses' MFT 31, MFT 65 and/or TFRP assessments and provide a suitable clarifying statement on the proof of claim that both assessments are included, but the amount is to be paid only once.

**Example:** Proof of Claim Statement 30 is one option for providing this information. It states: "Separate Assmts. Both are shown, but the amt. is to be collected once." There are other options available in the Proof of Claim statements on AIS.

**Caution:** Because the Confirmed Plan Monitoring (CPM) screen populates systemically from the proof of claim, with this option the duplicate assessments will both populate to the CPM screen. Caseworkers must remember to delete the duplicate assessment from the CPM so the assessment is not being paid twice through the plan. If the assessments are in different amounts, the caseworker will need to determine which assessment should be included on the proof of claim, as discussed above.

**Affordable Care Act Provisions**  
**Impacts: IRM 5.9.13.18.6**

**(1) IRC 5000A - Individual Shared Responsibility Provision.**

a) **Assessment and Treatment under Bankruptcy.** When applicable, the Individual Shared Responsibility Payment (SRP) liability will be assessed under MFT 35 or for mirrored accounts, MFT 65. Even though the SRP may be thought of as a penalty, it is not treated as one when filing a proof of claim. Rather, for bankruptcy purposes, the SRP will be treated as an excise tax under 11 USC § 507 (a)(8)(E). See [IRM 5.9.13.19.3](#), *Classifying Claims - Unsecured Priority*, for additional information.

**Note:** The SRP follows the tax year Form 1040, 1040A or 1040EZ information from which it arose. Since there is no 'tax return' on the SRP module, the caseworker must use the Form 1040, 1040A or 1040EZ from the same year as the SRP assessment for all information needed in order to correctly classify the liability.

b) **Including the SRP on a Proof of Claim.** APOC will calculate and classify assessed balances due for the shared responsibility payment; however, it will NOT compute unassessed claims or issue a flag. Caseworkers will not file estimated claims for an unassessed SRP.

**Caution:** If the taxpayer incurs a pre-petition SRP liability prior to the bar date it should be included on the Proof of Claim. If the IRS discovers a pre-petition SRP after the bar date, please see [IRM 5.9.13.7.1](#), *Late Filed Claims*, or [IRM 5.9.13.8](#), *Amended Claims*, for guidance.

**Note:** If needed, [IRM 5.9.13.20](#), *Claim Calculations*, explains how to manually calculate an assessed SRP liability.

c) **Multiple Persons Assessed the SRP.** Problems may arise with proofs of claim involving SRPs that have been assessed against both spouses under MFT 65 mirrored accounts.

d) **Duplicate Spousal SRP Assessments.** A proof of claim may list two identical SRPs when a married couple files a joint bankruptcy and each has been assessed a SRP for the same module(s). The assessments may either be in the same or differing amounts. When AIS computes the total amount of a claim on a proof of claim form, the sum equals the amounts of each module. That total amount computed by AIS cannot be systemically overridden, so when both spouses have duplicate SRP assessments, the amount of the claim on the proof of claim form is overstated. Caseworkers should follow the procedures outlined in IRM 5.9.13.18.4, *Duplicate and Mirror Assessments and NMF Periods*, choosing the appropriate option based on local procedures.

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**Affordable Care Act Provisions**, Continued

**Caution:** Caseworkers should not assume that assessments made against both a husband and wife for the same period are duplicates simply because they are for the same tax period. Before assessments are treated as duplicates, caseworkers should verify that the shared responsibility payment assessments are for the same underlying liability (jointly filed Form 1040), and are not for separately filed Forms 1040.

e) **Collection of Proper Amount.** The IRS must not over-collect. The Service's policy is to collect the unpaid SRP only once.

f) **Post-Petition SRP assessments in Chapter 13.** An 11 USC § 1305 claim may be filed for taxes that become payable while the case is pending. This includes any amounts due for the SRP. If the Form 1040, 1040A or 1040EZ is a post-petition module, the SRP is also post-petition. (See [IRM 5.9.10.9\(1\)](#), *Post-Petition Tax Liabilities*.)

## **Claim Calculations**

**Impacts: IRM 5.9.13.20**

**(6) Manually Calculating the TFRP and Individual Shared Responsibility Payment (SRP) Assessments.** Since these assessments are made as penalties on IDRS, but treated as Tax amounts for the purposes of bankruptcy claim filings, standard claim calculation methods cannot be used. Pull TXMOD & INTSTB on each applicable assessment and follow the instructions below:

b) *SRP assessments.*

1. Set Tax on the claim = Assessed Other Penalty + Tax (from INTSTB)
2. Set Penalty on the claim = 0
3. Set Interest on the claim = Total INT (from INTSTB)

**Caution:** If the calculated Tax amount from step 1 above is  $\leq 0$  then set Tax on the claim = zero and set the Interest on the claim = Bal Due (from INTSTB).

**Reminder:** Interest is applicable on any tax period where the Petition Date > the Return Due Date. If interest is applicable, and the interest on INTSTB is zero, use command code COMPA to compute an interest amount.

## **Case Flag Conditions and Resolutions**

**Impacts: IRM 5.9.14.2.8**

### **(5) Case Flag Conditions and Resolutions.**

**n. Multiple ACA for Different TINs with Same Period.** This flag is issued to alert the caseworker that the AIS freeze table contains the Shared Responsibility Payment (SRP) assessed under MFT 65 on the same period for both debtors of a joint bankruptcy. Review the SRP liabilities to determine if they are from the same jointly filed Form 1040. APOC will list the liability under both debtors but will allow the caseworker to remove one of the APOC records, if appropriate. If the SRP assessments are for separately filed Forms 1040, then update the flag. If the SRP assessments are for the jointly filed Form 1040, then either:

- Remove one of the MFT 65 periods, insert the proper clarifying proof of claim statement and update the flag, or
- Leave both periods on the claim, insert the proper clarifying proof of claim statement and update the flag.

See IRM 5.9.13.18.4, *Duplicate and Mirror Assessments and NMF Periods*, for guidance.