



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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Impacted IRM: 5.9.18

MEMORANDUM FOR DIRECTOR, SPECIALTY COLLECTION INSOLVENCY

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

SUBJECT: Reissuance of Procedures for Processing the Individual Shared
Responsibility Payment (SRP) in Bankruptcy Cases

This memorandum provides guidance on Insolvency caseworker responsibilities for handling the Individual Shared Responsibility Payment (SRP) assessed under MFT 35.

This guidance was previously issued under Interim Guidance number SBSE-05-1214-0083, *Procedures for Processing the Individual shared Responsibility Payment (SRP) in Bankruptcy Cases*, which was incorporated into all the impacted IRMs except 5.9.18. The attached procedures affect only IRM 5.9.18 and will be incorporated into the next IRM revision.

The following topic is covered in this Interim Guidance:

- Automated Discharge System (ADS) Processing of SRP Liabilities

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). The guidance will be incorporated into the IRM indicated above by September 30, 2017. Please ensure that this information is distributed to all affected employees within your organization.

Employees should elevate any questions through their appropriate management chain.
Attachments: (1)

Automated Discharge System (ADS) and Insolvency Interface Program (IIP) Processing of Individual SRP Liabilities

Impacts: IRM 5.9.18

ADS will flag individual MFT 35 modules in the following situations:

1. **Post-petition Claims.** ADS will flag a Chapter 13 post-petition module in status 72. The Field Insolvency caseworker must address the post-petition liability and update the AIS history with an explanation of how the liability will be handled upon discharge. If Field Insolvency prepares a § 1305 claim, the caseworker must document in the history that payment of the post-petition module has been provided for in a modified plan.

If a § 1305 claim has been partially paid at the time of discharge, the caseworker should research IDRS and the AIS payment screen for misapplied payments. If misapplied payments are found that fully pay the § 1305 claim, the payments in question should be transferred to the post-petition period and a follow-up input for the payment transfer(s) to post. Once the payments have posted to the 1305 period, the period will be discharged, *unless exceptions to discharge apply*. See IRM 5.9.17 *Discharge and Exceptions to Discharge*.

2. **Possible Fraud.** ADS flags modules for possible fraud when the due date of the return to the petition date is greater than three years, a TC 350 (negligence penalty) appears on the TXMOD, and a TC 914 or 910 (case held or assigned to Criminal Investigation) is present. If a MFT 30 module is flagged and there is a related MFT 35 module, it will also be flagged. If it is determined that fraud exists, the MFT 35 will not be discharged. See IRM 5.9.18.5.3, *Fraud Conditions*, for additional information.

A determination must be made if fraud exists which excepts a period from discharge. See IRM 5.9.17.7, *Discharge and Exceptions to Discharge*; IRM 5.9.17.7.2, *The Fraud and Willful Evasion Exemption*; and IRM 5.9.4.11, *Bankruptcy Fraud*. If fraud exists and the case is Chapter 7 or Chapter 13 hardship, or a Chapter 13 case filed on or after October 17, 2005, see IRM 5.9.18-6, *Fraud Referral and DDR Hold Process*.

3. **Willful Failure to Pay.** ADS flags modules for possible willful failure to pay where the due date of the return to the petition date is greater than three years; prior tax year's adjusted gross income (AGI) is greater than the ADS parameter set by management; and aggregate balance is greater than the ADS parameter based on Counsel referral criteria. If a MFT 30 module is flagged and there is a related MFT 35 module, it will also be flagged. If it is determined that willful failure to pay exists, the MFT 35 will not be discharged. See IRM 5.9.18.5.6, *Willful Failure to Pay*, for additional information.

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Automated Discharge System (ADS) and Insolvency Interface Program (IIP) Processing of Individual SRP Liabilities, Continued

4. **Non-Debtor Spouse.** ADS will generate a flag when it identifies a bankruptcy filed in a community property state and a non-debtor spouse has filed joint returns with a debtor spouse. A determination must be made if the account should be mirrored or discharged for both spouses. If the account should be mirrored, input case classification "ACA MFT=35" and reassign the case to the CIO Operation Support Unit for monitoring (until 2016 when mirroring for MFT 35 will be implemented). See IRM 5.9.18.5.8, Community Property, and IRM 5.9.3.6.1.1, *Community Property*, for additional information.
5. **Joint Account and Non-Debtor Spouse and not Community Property State.**

Usually, when there is a joint assessment and only one spouse files bankruptcy, the module is mirrored and two separate accounts are established. However, mirroring of MFT 35 modules will not be implemented until January 2016. In the meantime, the following interim procedures will be utilized.

 - a) **Dismissed Cases.** For a MFT 35, filing status 2, individual bankruptcy, and there is a TC 520 on the module with CSED indicator P or S, IIP will generate a Process J Error and input case classification (ACA CD 36). The caseworker will route the Process J Error to the CIO Operation Support Unit who will monitor the case until January 2016. Once mirroring is implemented in 2016, the MFT 35 module will be manually mirrored.
 - b) **Discharged Cases.** For a MFT 35, filing status 2, individual bankruptcy, and there is a TC 520 on the module with CSED indicator P or S, ADS will generate a Discharge Determination Report (DDR) and input case classification (ACA CD 36). The caseworker will route the case to the CIO Operation Support Unit who will monitor the case until January 2016. Once mirroring is implemented in 2016, the MFT 35 module will be manually mirrored and any dischargeable amounts adjusted for the debtor spouse.