

IRM PROCEDURAL UPDATE

DATE: 06/14/2021

NUMBER: sbse-05-0621-0837

SUBJECT: Addressing Unfiled Returns; Calculating Interest on Manually Prepared Claims

AFFECTED IRM(s)/SUBSECTION(s): 5.9.13

IRM 5.9.13.18.2(4) Updated to state the caseworker will set a 15 day follow up date on all cases when the Letter 1714 is issued.

- 4. Letter 1714 Follow-up.** A 15- day follow-up date will be set on all cases where Letter 1714 is issued, including individual debtors and streamlined cases. (See Exhibit 5.9.4-1, *Inputting Follow-up Dates*, for steps in setting a follow-up date.) Upon follow-up, the caseworker must review the case to verify if the requested returns have been filed or if the debtor has provided pertinent information regarding the filing or non-filing of the delinquent returns.

IRM 5.9.13.18.2(5) Added actions needed when the caseworker verifies the debtor is not required to file a tax return.

- 5. Reply to Letter 1714.** Responses to the 1714 letter may be written or telephonic. Written replies may contain copies of returns or original returns. The following table explains actions required for potential replies to Letter 1714.

IF...	THEN...
the debtor indicates the date and place the return was filed and the provided facts cannot be confirmed,	an unassessed claim may be considered, and the AIS history must be documented.
the debtor explains why filing is not required and the facts provided conflict with other case resource materials,	an unassessed claim may be considered, and the AIS history must be documented.
the debtor explains why filing is not required and the facts provided are	the caseworker will request the input of the appropriate TC 590/591 for all modules the debtor is not liable to file.

verified with other case resource materials,	The caseworker will request to close the filing requirements for non-individual debtors. The history should be documented to explain why filing is not required and the research conducted or information provided to make that determination.
the debtor estimates the tax due, gives reasons the return has not been filed, and provides an estimated filing date,	the caseworker should compare the estimate of tax due provided by the debtor against the case resource materials, and prepare an unassessed claim as necessary, documenting actions in the AIS history.
the debtor replies to Letter 1714 and provides original returns,	the caseworker must: <ul style="list-style-type: none"> • ensure the return has been date stamped legibly on the first page; • prepare Form 3210 to transmit return; • forward return to Submission Processing in the appropriate Campus; and • document AIS history with return MFT/period, tax liability and any estimated penalty for future claim consideration or preparation.
the debtor replies to Letter 1714 and provides copies of returns,	the caseworker must document the AIS history with return MFT/period, tax liability and any estimated penalty for future claim consideration or preparation.

IRM 5.9.13.18.2(6) Updated to state the caseworker must contact the debtor or debtors attorney by phone to secure returns or return information if they do not receive a response from Letter 1714.

6. **No Reply to Letter 1714.** In some cases, the debtor will not respond to Letter 1714. In those cases, the caseworker must contact the debtor or debtor’s attorney by phone to secure returns or return information. If contact with the debtor or the debtor’s attorney by phone does not bring the debtor into compliance, the caseworker should consider the appropriate next action which may include:
- a. Attendance at 341 hearing to secure the return(s);
 - b. Creating an OI for a revenue officer to collect the return(s);
 - c. Preparation of an IRC 6020(b) return;

NOTE: Delegation Order 5-2 (Rev. 1) gives specified bankruptcy advisors and specialists the authority to prepare and execute IRC

6020(b) returns. IRM 5.1.11.6.7, *IRC 6020(b) Authority*, IRM 5.1.11.6.7.1, *Taxpayer Contact*, and IRM 5.1.11.6.7.2, *Preparation and Approval of 6020(b) Returns*, provide guidance and instructions on IRC 6020(b) procedures.

- d. Referral to Counsel to dismiss; or

NOTE: No referral to Counsel should be made in a Chapter 13 case if the only unfiled returns contained in the referral relate to tax years that ended more than four years before the filing of the bankruptcy petition. See 11 USC §§ 1307(e), 1308, 1325(a)(9).

- e. Preparation of an estimated claim or allowing an existing estimated claim to stand.

All actions taken to secure delinquent returns, must be documented in the AIS history.

IRM 5.9.13.18.2(9) Added requirement to input the appropriate transaction code to satisfy the module if the caseworker determines the debtor is not liable to file.

- 9. ***No Longer Required to File Return.*** If the caseworker determines the debtor is no longer required to file or is no longer in business, the caseworker should request to close the filing requirements and request the appropriate TC 590/591 to satisfy the module. See IRM 5.1.11.8.3, *No Return Secured Taxpayer Not Required to File for This Period*, and IRM 5.1.11.8.4, *No Return Secured Taxpayer No Longer Required to File (Final)*. The history should be documented to explain why filing is not required and the research conducted or information provided, to verify the business is closed.

IRM 5.9.13.20(4) Updated to state it is necessary to separately calculate the amount of interest attributed to the tax and the amount of interest attributed to the penalty in all case classifications, when manually computing a claim.

- 4. ***Manual Calculations.*** If there is more than one tax assessment on a single tax module, in order to appropriately claim the amounts owed, the caseworker must calculate each assessment separately. Claims not fully secured by a debtor's equity require additional steps. Also, employment tax returns which are not treated as priority under the three-year lookback rule will require additional steps in order to correctly calculate the trust fund and non-trust fund taxes separately. The trust fund portion of the tax and any accrued interest will be classified as priority, while the remainder of the employment taxes will be classified as unsecured general. (See IRM 5.9.13.19.3,

Unsecured Priority, and IRM 5.9.13.20(5), Alternative Manual Calculations.)

The tax, penalty and interest is calculated the same for all claim classifications. The interest on the penalty will always be classified as a penalty. Therefore, it is necessary to separately calculate the amount of interest attributable to the tax and the amount of interest attributable to the penalty. The following table demonstrates how to calculate a basic claim.

STEP	ACTION	RESULTS
1	Using TXMOD, locate the appropriate tax assessment (ex: TC 150, 290, or 240 RC 618) and subtract pre-petition adjustments to tax.	Total assessed tax to be used in calculating claim. CAUTION: Unagreed deficiency assessments on pre-petition periods which are assessed post-petition are violations of IRC § 6213(f) if the period to petition the Tax Court did not expire before the bankruptcy petition was filed. In these cases, the assessment must be reversed. The amount should be included on the proof of claim as an unassessed priority or unsecured general claim.
2	Total all unreversed pre-petition payments.	Amount of payment credits to be applied toward the tax liability.
3	Subtract the total payments from step 2 from the total tax from step 1. NOTE: If pre-petition payments satisfy tax liability and credits still exist, subtract the remaining step 2 payments from penalties until they are zeroed out, then subtract any remaining payments from interest.	Tax due is computed. This is the amount that will be listed as tax on the claim.
4	Using INTSTB, add TAX & ASSESSED OTHER PENALTY amounts to TOTAL FTP.	Tax and all penalties are computed.
5	Subtract tax (step 3) from tax and all penalty (step 4).	Penalty only computed.

<p>6</p>	<p>Input CC COMPA from due date of return to petition date on amount of tax (from step 3). Refer to IRM 2.3.29, Command Codes INTST, ICOMP, and COMPA.</p> <p>NOTE: For TXMODs where payments have posted after the return due date, a <i>new</i> COMPA is required each time the balance of tax changes. The determination of interest on tax may require multiple COMPA calculations, starting from the return due date and ending on the petition date, with interim payment dates in the "from" and "to" fields.</p>	<p>Interest on tax is computed. This amount will be listed as the interest amount on the claim.</p>
<p>7</p>	<p>Subtract step 6 from TOTAL INT on INTST.</p>	<p>Interest on penalties is computed. This type of interest is always classified as an unsecured general claim.</p>
<p>8</p>	<p>Add interest on penalties (from Step 7) to the penalty amount (from Step 5).</p>	<p>This is the amount of penalties and interest on penalties. It will be listed as penalty on the claim.</p>

NOTE: Verification of calculations can be obtained by adding Steps 3, 5, 6, and 7, which should equal the balance due on INTSTB.