

IRM PROCEDURAL UPDATE

DATE: 09/20/2023

NUMBER: sbse-05-0923-0962

**SUBJECT: Removed Reference on Using the IAT Tool to Calculate the TFRP;
Updated the Dollar Amount Considered Seriously Delinquent**

AFFECTED IRM(s)/SUBSECTION(s): 5.9.3

IRM 5.9.3.1.6(4) Added command code and closing code to Acronym Chart.

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

Acronyms	Definitions
AIS	Automated Insolvency System
ASED	Assessment Statute Expiration Date
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
CDP	Collection Due Process
cc	Closing Code
CC	Command Code
CIO	Centralized Insolvency Operation
DIP	Debtor-In-Possession
FI	Field Insolvency
NFTL	Notice of Federal Tax Lien
OI	Other Investigation
RO	Revenue Officer
SCI	Specialty Collection Insolvency
TAS	Taxpayer Advocate Service
TFRP	Trust Fund Recovery Penalty

IRM 5.9.3.3(3) Added clarification to state the ASED could also be extended if a case is dismissed.

(3) **Actions to Assist SCI.** The following table explains actions IRS employees should take when a bankruptcy issue exists. These actions will help Insolvency process the bankruptcy case if a new filing has occurred or perform necessary research if issues stem from a current or prior bankruptcy. CIO phone numbers and fax numbers for internal IRS communications are found at SERP- Insolvency (Bankruptcy) Tools.

IF...	THEN...
The taxpayer is in notice status,	<ul style="list-style-type: none"> a. Gather basic bankruptcy information and provide by facsimile or telephone to CIO. Form 4442, Inquiry Referral, should be used to fax the information to CIO; b. Do not request the filing of a NFTL unless Insolvency so directs; c. Input an IDRS history item on ENMOD: "4442 TO INSOLVENCY" and d. Input IDRS CC STAUP to the next notice status for 6 cycles to allow Insolvency time to respond.
The taxpayer is in Status 72,	Complete Form 4442, Inquiry Referral, and fax it to CIO. Advise the taxpayer that Insolvency will be in contact, if necessary, to resolve a problem. Provide the taxpayer with the toll free Insolvency phone number for CIO provided at SERP - Insolvency (Bankruptcy) Tools. If the debtor is residing overseas and cannot contact CIO at the toll free telephone number, secure a contact phone number for the taxpayer. Prepare and fax Form 4442 to CIO. Advise the taxpayer that Insolvency will contact them.
The taxpayer cannot provide sufficient bankruptcy information and the account is not in status 72,	Schedule a follow-up call with the taxpayer and note it in the case history. Allow the taxpayer time to secure the information, if necessary. Enter response/results in the case history.
The taxpayer has been discharged from bankruptcy,	<p>Ask the taxpayer for the date the discharge was issued, the court location, chapter number, and entity information. Check for a TC 521 and closing code on TXMOD indicating release of the bankruptcy freeze code.</p> <p>Note: Ask if the bankruptcy case was closed through discharge or dismissal. If a case was dismissed, aside from the CSED extension (and possible ASSED extension), it is as if the bankruptcy had not occurred.</p>

IRM 5.9.3.10.1 Removed reference on using the IAT tool to calculate the TFRP due to inaccuracies. Added caution when calculating the TFRP.

(1) **Overview.** The term "penalty" in the Trust Fund Recovery Penalty (TFRP) can be misleading in that the TFRP is actually a withholding tax for bankruptcy purposes. As such, the TFRP is never an unsecured general liability. For additional information and guidance on the administration of the TFRP, see IRM 1.2.1. 6.3, Policy Statement P 5-14 (Formerly P-5-60), Trust Fund Recovery Penalty Assessments, IRM 5.7, Trust Fund Compliance, IRM 5.17.7, Legal Reference Guide for Revenue Officers - Liability of Third Parties for Unpaid Employment Taxes, and IRM 5.19.14.3.2, Trust Fund Calculation.

(2) **Calculating the Trust Fund.** Calculate the TFRP amount prior to issuing an OI to Field Collection for investigation. See IRM 5.19.14.3.2, Trust Fund Calculation, for instructions on how to calculate the trust fund and non-trust fund portion on employment tax returns.

Caution: Further research is required if the tax period includes a nonrefundable credit, an unreversed social security deferred credit, and/or a combination of a TC 826/846 followed by a TC 290.

Note: The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, reduced the amount of FICA taxes required to be withheld on behalf of the employee. As a result, the calculation of the trust fund portion on employment taxes for all quarters of calendar years 2011 and 2012 were impacted.

IRM 5.9.3.13(2) Updated debt amount considered as seriously delinquent as of 2023.

(2) **Seriously Delinquent Tax Debt.** For the purposes of the FAST Act, a taxpayers has "serious delinquent tax debt" if they have unresolved tax debt of over \$50,000, which is adjusted to \$59,000 (as of January 1, 2023) due to inflation *that has been assessed and* for which:

- a NFTL has been filed and all administrative remedies *under IRC 6320* have lapsed or have been exhausted, or
- a levy has been issued