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INTERNAL REVENUE SERVICE
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SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, SPECIALTY COLLECTION INSOLVENCY

FROM: Dretha Barham /s/ *Dretha Barham*
Director, Collection Policy

SUBJECT: 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.

The following topics are covered in this Interim Guidance:

- General Information on the Affordable Care Act (ACA) relating to Bankruptcy
- Offsets and the SRP
- Post-Petition Pre-Discharge SRP MFT 35 Liabilities of the Chapter 11 Debtor
- Automated Discharge System (ADS) Processing of SRP Liabilities
- Filing and Calculating a Proof of Claim
- Determining Dischargeability of the SRP Liability
- Installment Agreement Reinstatements and the SRP MFT 35 Module

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 IRMs indicated above by January 1, 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)

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General Information on the Individual Shared Responsibility Payment Relating to Bankruptcy

Impacts: IRM 5.9.4.18

1. **Background.** Starting in 2014, the individual shared responsibility provision of the Affordable Care Act (ACA) calls for each individual to:
 - Have minimum essential health coverage, known as minimum essential coverage (MEC), for each month,
 - Qualify for a coverage exemption, or
 - Make a Shared Responsibility Payment (SRP) when filing their Federal income tax return.

2. **Payment Amount.** The amount of any payment owed takes into account the number of months in a given year that an individual does not have MEC, or a coverage exemption.

3. **MFT 35.** MFT 35, Tax Class 2, File Source 1, is the Individual Master File (IMF) MFT code for the Individual SRP.

4. **Standalone Module.** A standalone SRP occurs when a balance due is created on a module with MFT 35 File Source 1 (SRP 5000A) and there is no other:
 - Balance due module with a different MFT in Status 22, 24, or 26, or
 - TDI module in status 03.

If an additional SRP balance due occurs in a subsequent year, and there are still no other modules with a different MFT, it is still considered a standalone SRP.

5. **Enforcement.** The individual SRP amount owed is not subject to penalties or the filing of a Notice of Federal Tax Lien, and the Service will not levy on any property of the taxpayer for failure to pay the SRP. However, interest will continue to accrue until the total SRP is paid. The Service may offset federal tax refunds (that are not derived from a levy or lien action) to the SRP amount until it is paid in full.
6. **Treatment in Bankruptcy.** The individual SRP liability will be treated as an excise tax under USC § 507 (a)(8)(E). See IRM 5.9.13.19.3, Classifying Claims-Unsecured Priority, for additional information.

Offsets and the Individual Shared Responsibility Payment (SRP)

Impacts: IRM 5.9.4.4.5

1. **Offsetting Refunds to SRP Assessments.** The Service has the right to offset a refund or a voluntary overpayment (that is not derived from a levy or lien action) to the individual SRP balance due before sending anything to the trustee, if applicable. Remember to check local rules via the Bankruptcy Laws Advisory Rules Engine (BLARE) prior to offsetting. The BLARE search engine can be found at: <http://blare.enterprise.irs.gov/blare/?x=169&y=21>.
2. **Pre-Petition Offsets.** Although BAPCPA allows offset of pre-petition income tax refunds to pre-petition income tax because the debts are mutual, this rationale does not apply to individual SRP liabilities. Offsets are not permitted between pre-petition MFT 35 modules, nor are they permitted between pre-petition MFT 30 and MFT 35 modules, without a lifting of the stay.
3. **Post-Petition Offsets.** Offsets between *post*-petition MFT 30 or MFT 35 modules are permitted, as they are not prohibited by BAPCPA. No lifting of the stay is required.
4. **Lien or Levy Payments.** Lien or levy payments cannot be offset to individual SRP assessments. When applying an offset or credit to any SRP assessment, 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)

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>.

Post-Petition Pre-Discharge SRP MFT 35 Liabilities of the Chapter 11 Debtor

Impacts: IRM 5.9.8.11.1, 5.9.8.16.4.2 and 5.17.10.11

1. ***Post-Petition Income Tax and the SRP in a Chapter 11 Case.*** When an individual files Chapter 11 bankruptcy, the individual reports “personal service income” on Form 1041, *U.S. Income Tax Return for Estates and Trusts*. That income is property of the bankruptcy estate. The remaining income of the individual debtor is reported on Form 1040, *U.S. Individual Income Tax Return*.
2. ***The Automatic Stay and an Individual’s Post-Petition Income Tax Liability Reported on Form 1041.*** Post-petition income tax liabilities on Form 1041 are protected by the automatic stay until the bankruptcy stay is lifted at dismissal, discharge, or denial of discharge. Generally, the discharge is entered when the debtor completes all bankruptcy plan payments. The Collection Statute Expiration Date (CSED) is extended by the bankruptcy on these liabilities. A TC 520 cc 6X is input for the outstanding liability to prevent all collection activity and to suspend the CSED.
3. ***Post-Petition Claims for Income Tax Liability Reported on Form 1041.*** Form 1041 liabilities are administrative expenses that must be paid through the bankruptcy. The post-petition Form 1041 liabilities are claimable in the Chapter 11 bankruptcy on Form 6338-A, *Request for Payment of Internal Revenue Taxes*. Any unpaid Form 1041 liability not paid through the bankruptcy is generally discharged.
4. ***No Automatic Stay on an Individual’s Post-Petition Income Tax Liability Reported on Form 1040.*** The automatic stay is not in place for the unpaid income tax liability of an individual reported on Form 1040. However, there may be limited assets available for collection under 11 USC § 1115. To prevent any inadvertent collection activity against property of the estate, a TC 520 CC 84 should be placed on the 1040 post-petition/pre-discharge account on IDRS. Collection personnel must contact Insolvency before taking collection action to ensure no action is taken against property of the estate. The automatic stay does not protect non-estate property from the collection of post-petition debts. The CSED is not extended.
5. ***No Post-Petition Claims for Income Tax Liability Reported on Form 1040.*** The individual’s post-petition income tax liability reported on Form 1040 is not a debt of the bankruptcy estate. It is not claimable as an administrative expense on Form 6338-A, *Request for Payment of Internal Revenue Taxes*. Unlike the Chapter 13 case which provides for the filing of an 11 USC § 1305 claim for the individual’s post-petition taxes, Chapter 11 has no provision for claiming these post-petition liabilities in the individual bankruptcy. The post-petition Form 1040 liability is non-dischargeable in the debtor’s Chapter 11 case.

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Post-Petition Pre-Discharge SRP MFT 35 Liabilities of the Chapter 11 Debtor, Continued

6. ***SRP MFT 35 Post-Petition Liabilities Treated in the Same Manner as the Post-Petition Form 1040 Liability.*** The individual SRP liability of the debtor is taken from Line 61 of the individual's Form 1040, when the debtor's gross income reportable on Form 1040 meets the threshold requiring the debtor to file Form 1040. As such, post-petition MFT 35 liabilities are treated in the same manner as post-petition Form 1040 liabilities in Chapter 11 cases:

- While the post-petition SRP is not protected by the automatic stay, a TC 520 CC 84 must be placed on the post-petition MFT 35 module to prevent any inadvertent collection activity against any property of the bankruptcy estate.
- Like income tax reported on the debtor's Form 1040, the post-petition SRP MFT 35 module is not claimable as an administrative expense on Form 6338-A, *Request for Payment of Internal Revenue Taxes*.
- The post-petition SRP MFT 35 module is non-dischargeable in the individual debtor's Chapter 11 case.

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

Impacts: IRMs 5.9.12, 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 the content on Determining Dischargeability in this interim guidance.

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 “MFT 35 –NDS” 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 (Code 36 –MFT 35 –NDS). 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 (Code 36 – MFT 35- NDS). 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.

Filing and Calculating a Proof of Claim

Impacts: IRM 5.9.13.18, 5.9.13.20, 5.17.8.15(6) and 5.17.8.17

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. For bankruptcy purposes, it will be treated as an excise tax under 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 1040 information from which it arose. Since there is no 'tax return' on the MFT 35, the caseworker must use the form 1040 from the same year as the MFT 35 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 taxpayer incurs 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.

- C. **Post-Petition SRP Assessments in Chapter 13.** A 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 is a post-petition module (see IRM 5.9.10.9(1), *Post-Petition Tax Liabilities*), the SRP is also post-petition.

2. Manually Calculating the Individual SRP (MFT 35) Assessment.

- A. **Calculations.** Since this assessment is made as a penalty on IDRS, but treated as an excise tax for the purposes of bankruptcy claim filings, standard claim calculation methods cannot be used for this MFT.

Pull TXMOD & INTSTB on each applicable assessment and take the following actions:

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)

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Filing and Calculating a Proof of Claim, Continued

Caution: If the calculated Tax amount from step 1 is ≤ 0 , then set Tax on the claim = zero, and set the Interest on the claim = Bal Due (from INTSTB).

Determining Dischargeability of the Individual Shared Responsibility Provision (SRP) Liability

Impacts: IRMs 5.9.17.7, 5.17.8.22, 5.17.9.13, 5.17.10.11, 5.17.11.18

1. **General Background Information.** A bankruptcy discharge may be granted to individual or joint debtors who file Chapter 7, 11, 12, or 13 bankruptcy cases. The discharge may be granted when the debtor completes all payments due and provided for in confirmed Chapter 11, 12, or 13 bankruptcy plans. A discharge may also be granted when the court enters a discharge order in a Chapter 7 case or when a hardship discharge is granted to Chapter 11, 12, or 13 debtors who cannot complete their confirmed bankruptcy plans.
2. **Ineligibility for Discharge.** An individual or joint debtor may not be eligible to receive a discharge in the current case if they received a discharge in a prior bankruptcy case. Eligibility is determined by the type of bankruptcies filed by the debtor and the petition date of the prior bankruptcies. See IRM Exhibit 5.9.5-3, *Allowable Elapsed Time Between Bankruptcy Filings and Discharges*, for additional information.
3. **SRP Treated as an Excise Tax in Bankruptcy Proceedings.** The SRP liability is assessed on the Individual Master File (IMF) under Master File Tax (MFT) Account Code 35. The SRP liability is treated as an excise tax under 11 USC § 507(a)(8)(E). However, since the liability on the SRP MFT 35 module is derived from Line 61 of the debtor's Form 1040, *U.S. Individual Income Tax Return*, certain information from the debtor's Form 1040 is used in determining dischargeability of the SRP.

Determining dischargeability is based on:

- The type of bankruptcy filed by the debtor, and
- Whether the debtor received a discharge *upon completion of the bankruptcy plan*, or a *hardship* discharge.

Discharge may also depend on whether IRS was properly noticed of the bankruptcy case. See IRM 5.9.17.7.9, *Procedures for Processing Bankruptcy Discharge when the IRS Received No Notice or Late Notice in the Asset Case*, and IRM 5.9.17.9(4), *Chapter 7 Discharge Actions, Lack of Notice in Chapter 7 No Asset Case*, for determining if taxes may be excepted from discharge due to improper notice.

4. **Chapter 13 Plan Completion Discharge.** When a debtor receives a discharge upon completion of a Chapter 13 bankruptcy plan under 11 USC § 1328(a), the remaining balance of 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.

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Determining Dischargeability of the Individual Shared Responsibility Provision (SRP) Liability, Continued

The following are exceptions to discharge for the SRP MFT35 module when the Chapter 13 debtor receives a discharge upon completion of the bankruptcy plan:

- The SRP is non-dischargeable if the tax on the Form 1040 is non-dischargeable due to willful evasion or fraud.
- The SRP is non-dischargeable if the tax on the Form 1040 is non-dischargeable because the Form 1040 was unfiled and the Service assessed a return under IRC § 6020(b). See IRM 5.9.17.7.1, *Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared, for additional information on SFRs.*
- The SRP is non-dischargeable if the Form 1040 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 module included on an 11 USC § 1305 claim and the related Form 1040 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), *BAPCPA Tolling, for additional information.*

5. Exceptions to Discharge in All Other Individual or Joint Bankruptcy Cases except the Chapter 13 Case with a Plan Completion Discharge. The following are exceptions to discharge for the SRP MFT 35 module when the individual or joint debtor receives a discharge in the bankruptcy case and the discharge was not a plan completion discharge under 11 USC § 1328(a):

- The SRP is non-dischargeable if the Form 1040 was due, with extensions, within the three-years prior to the bankruptcy petition date.
- The SRP is non-dischargeable if the tax on the Form 1040 is non-dischargeable due to willful evasion or fraud.
- The SRP is non-dischargeable if the tax on the Form 1040 is non-dischargeable because the Form 1040 was unfiled and the Service assessed a return under IRC § 6020(b). See IRM 5.9.17.7.1, *Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared, for additional information on SFRs.*
- The SRP is non-dischargeable if the Form 1040 was filed late and after the date that is two-years before the date of the bankruptcy petition.

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), *BAPCPA Tolling, for additional information.*

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Determining Dischargeability of the Individual Shared Responsibility Provision (SRP) Liability, Continued

6. *Determining Dischargeability.* All rules for determining the dischargeability of income tax are used when determining dischargeability of the SRP of the ACA except the “240-day rule” in 11 USC § 507(a)(8)(a)(ii). Other than the “240-day rule,” when the tax on the Form 1040 is dischargeable, the tax on the SRP MFT 35 module is generally dischargeable. If the tax on the Form 1040 is non-dischargeable, the tax on the SRP MFT 35 module is generally non-dischargeable. The interest is always non-dischargeable when the tax is non-dischargeable. No penalty is assessed or accrued on the SRP.

Example 1

John Doe timely files his 201412 income tax return on 04/15/2015. There is no tax due on the Form 1040. John Doe listed \$350 as the SRP amount on Line 61 of his Form 1040. IRS assesses a MFT 35 module for the SRP for 201412 in the amount of \$350. On 02/15/2018, IRS assesses an Examination deficiency (TC 300) for \$1500 on the 30-201412 income tax module. John Doe files Chapter 7 on 05/15/2018.

- *The tax and interest due on the Form 1040 is non-dischargeable.* The TC 300 was assessed 89-days prior to the bankruptcy petition date. The TC 300 is a priority debt under 11 USC § 507(a)(8)(a)(ii). It is excepted from discharge under 11 USC § 523(a)(1)(A).
- *The tax and interest on the SRP MFT 35 module is dischargeable.* The 30-201412 module was due on 04/15/2015. The return due date was more than three-years prior to the bankruptcy petition date. The SRP MFT 35 module is an excise tax. There is nothing in 11 USC § 507(a)(8)(E) that makes assessments within the 240-days prior to the petition date a priority debt for excise tax. The tax and interest on the excise tax on the MFT 35 module is not excepted from discharge under 11 USC § 523(a).

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Determining Dischargeability of the Individual Shared Responsibility Provision (SRP) Liability, Continued

Example 2

John Doe files his 1040 for 201412 late and on 05/01/2016. He had no approved extension (TC 460) for filing the 201412 income tax return. He has no tax due on the Form 1040. John Doe listed \$350 as the SRP amount on Line 61 of his Form 1040. IRS assesses a MFT 35 module for the SRP for 201412 in the amount of \$350. On 02/15/2018, IRS assesses an Examination deficiency (TC 300) for \$1500 on the 30-201412 income tax module. John Doe files Chapter 7 on 05/15/2018.

- *The tax and interest due on the Form 1040 is non-dischargeable* because the TC 300 was assessed 89-days prior to the bankruptcy petition date. It does not matter that the return due date was more than three-years prior to the petition date. It does not matter that the return was filed late and more than two-years prior to the petition date. The determining factor is that the TC 300 is a priority tax under 11 USC § 507(a)(8)(a)(ii). It is excepted from discharge under 11 USC § 523(a)(1)(A).
- *The tax and interest on the SRP MFT 35 module is dischargeable.* The 30-201412 module was due more than three-years prior to the bankruptcy petition date. The 30-201412 return was filed more than two-years prior to the bankruptcy petition date. There is nothing in 11 USC § 507(a)(8)(E) that makes assessments within the 240-days prior to the petition date a priority debt for excise tax. The tax and interest on the excise tax on the MFT 35 module is not excepted from discharge under 11 USC § 523(a).

Installment Agreement (IA) Reinstatements and the Individual SRP MFT 35 Module

Impacts: IRM 5.9.17.23, IRM 5.9.17.23.1

- 1. Background Information.** When a taxpayer has an installment agreement (IA) and files bankruptcy, the Service treats the IA as suspended during the bankruptcy, not terminated. When the bankruptcy case is dismissed or discharged, and there are outstanding liabilities that survive the bankruptcy, the caseworker must address the prior IA during case closure. The Insolvency caseworker must either reinstate the IA, or notify the taxpayer of proposed termination when the IA cannot be reinstated. See IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing a Case*, for additional information.
- 2. Installment Agreement Cannot Be Reinstated.** Normally, when the taxpayer has incurred an additional liability that was not included in the original IA, the IA cannot be reinstated. For the purpose of IA reinstatements, the SRP MFT 35 module is *not* considered an additional liability. Form 1040 liabilities or other taxes are additional liabilities when not included in the original installment agreement.

Example 1: John Doe had an installment agreement for 30-201112 and 30-201212 when the bankruptcy was filed on 03/14/2013. John's IA was suspended by the bankruptcy. During the bankruptcy, he accrued a liability for 30-201312. The bankruptcy case was dismissed on 05/01/2014. Since the 30-201312 was not included in the original IA, the IA cannot be reinstated.

Example 2: John Doe had an installment agreement for 30-201213 taxes when the bankruptcy was filed on 05/15/2014. John's IA was suspended by the bankruptcy. During the bankruptcy, he accrues a liability for 30-201412 and a SRP liability for 35-201412. Therefore, when his bankruptcy case is dismissed on 06/01/2015, John's IA cannot be reinstated. The additional income tax liability on 30-201412, *not the SRP MFT 35 module*, is the reason the IA cannot be reinstated.

When the IA is not reinstated, the Service is terminating the IA. The taxpayer must be notified of the proposed termination and given appeal rights. Send Letter 2975 - C, *Intent to Terminate IA*, to the taxpayer to give notice of proposed termination and appeal rights. Include any additional income tax liabilities not included in the original IA in Paragraph C of the Letter 2975-C. If the debtor has also incurred a liability for a SRP MFT 35 module, check Paragraph A on the Letter 2975-C. Paragraph A states:

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Installment Agreement (IA) Reinstatements and the Individual SRP MFT 35 Module, Continued

“The shared responsibility payment (SRP) amount that you owe is the assessed payment for not having minimum essential health coverage for you and, if applicable, your dependents per Internal Revenue Code Section 5000A - Individual Shared Responsibility Payment. The SRP amount that you owe is not subject to penalties or to lien or levy enforcement actions. However, interest will continue to accrue until you pay the total SRP balance due. We may apply your federal tax refunds to the SRP amount that you owe until it is paid in full.”

See IRM 5.9.17.23.1(3), *Installment Agreement Letters Used During Case Closure, Letter 2975-C*, and Exhibit 5.9.17-5, *Installment Agreement Cannot be Reinstated*, for additional information.

- 3. *Installment Agreement Can be Reinstated.*** When a bankruptcy case is closed and the debtor has not incurred any additional liability, *or the only additional liability is the SRP MFT 35 module*, the debtor’s installment agreement must be reinstated.

The following example illustrates a case with a prior installment agreement and the only additional liability is the SRP MFT 35 module:

Example: John Doe had an installment agreement for 30-201312 taxes when the bankruptcy was filed on 05/15/2014. John’s IA was suspended by the bankruptcy. During the bankruptcy, he accrues an SRP liability for 2014, but no additional income tax liability. Therefore, when his bankruptcy is dismissed on 06/01/2015, the IA must be reinstated. There is no additional liability for IA reinstatement purposes.

Note: To reinstate an IA when there is no additional liability, follow the guidance in:

- IRM 5.9.17.23, *Addressing Prior Installment Agreements When Closing a Case*
- IRM 5.9.17.23.23.1, *Installment Agreement Letters Used During Case Closure*
- IRM Exhibit 5.9.17-2, *Regular Installment Agreement Reinstatements*
- IRM Exhibit 5.9.17-3, *Reinstating Direct Debit or Payroll Deduction Installment Agreements as a Regular Installment Agreement*
- IRM Exhibit 5.9.17-4, *Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)*

- 4. *Reinstating the Suspended IA When the Only Additional Liability is SRP MFT 35.*** In most instances, IAs suspended by bankruptcy no longer have the original terms of the IA available on IDRS. Therefore, “reinstatements” are input to IDRS as new IAs, waiving the User Fee. IDRS requires all balances due which are not in St 72 to be included when an IA is input.

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Installment Agreement (IA) Reinstatements and the Individual SRP MFT 35 Module, Continued

5. **Modules to be Included.** If a MFT 35 SRP liability was included in the original IA, the module will be included in the IA reinstatement. If a MFT 35 SRP module was *not* included in the original IA, it cannot be included in the reinstatement.
6. **Centralized Insolvency Operation (CIO) Procedures.** CIO is responsible for reinstating all IAs during case closure when reinstatement criteria are met.

When the only additional liability is the SRP MFT 35 module, CIO will take the following steps to reinstate the IA at case closure:

- 1) If not already present, add an "IA Issues" case classification to the case on AIS.
- 2) Input a TC 520 CC 64 to any MFT 35 module(s) not included in the original IA using the bankruptcy petition date. This will put the MFT 35 module into ST 72.
- 3) Input a TC 971 AC 063 to all modules included in the IA reinstatement.
Caution: Do *not* input a TC 971 AC 063 to the MFT 35 modules unless they were included in the original IA.
- 4) Reverse the TC 520 CC 6X on the pre-petition modules using the dismissal or discharge date. Do *not* reverse the TC 520 CC 64 on the MFT 35 module(s) unless included in the original IA being reinstated.
- 5) Input the IA to IDRS for only the modules included in the original IA. *Do not include the MFT 35 module(s) unless they were included in the original IA.* Follow guidance in Exhibits 5.9.17-2 through 5.9.17-4, as applicable.
- 6) Once the pre-petition modules are in St 60 on IDRS, reverse the TC 520 cc 64 on the MFT 35 module(s) using a TC 522. The TC 522 will take the MFT 35 module out of ST 72.
- 7) Input a TC 530 CC 35 to the MFT 35 module(s) with a 2-cycle posting delay if the MFT 35 module(s) do not systemically return to ST 53.
- 8) Add all TC 520/TC521/TC522 and 971 transactions to the Freeze Screen on AIS.
- 9) Document all actions taken on the case in the AIS history.
- 10) Close the case on AIS.

Note: Beginning in 2016, these procedures will also apply to joint SRP MFT 35 modules that are mirrored as individual SRP MFT 65 modules.