



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.27.1

JULY 6, 2020

## EFFECTIVE DATE

(07-06-2020)

## PURPOSE

- (1) This transmits revised IRM 4.27.1, Bankruptcy, Examiner Responsibilities and Procedures.

## MATERIAL CHANGES

- (1) The title of IRM 4.27.1 has changed from Bankruptcy Petitions to Examiner Responsibilities and Procedures.
- (2) Content from IRM 4.27.2 has been incorporated into IRM 4.27.1 and IRM 4.27.2 has been made obsolete.
- (3) Content from IRM 4.27.3 has been incorporated into IRM 4.27.1 and IRM 4.27.3 has been made obsolete.
- (4) The following material changes have been made to IRM 4.27.1 since the prior revision:

Former IRM Reference	New IRM Reference	Description of Change
4.27.2.1 4.27.3.1	4.27.1.1	Content relating to bankruptcy program scope and objectives previously contained in IRM 4.27.2.1 and IRM 4.27.3.1 has been incorporated into IRM 4.27.1.1. IRM 4.27.2.1 has been made obsolete.
4.27.1.1.7 4.27.1.8	Unchanged	References and links to the MySB/SE Bankruptcy webpage have been replaced with the Knowledge Management Bankruptcy webpage.
4.27.1.4	4.27.1.2	IRM section formerly numbered 4.27.1.4 relating to bankruptcy estate filing requirements has been moved and renumbered to 4.27.1.2 to improve overall readability.
4.27.3.5	4.27.1.3	Content relating to the Bankruptcy Reform Act and the Bankruptcy Abuse Prevention and Consumer Protection Act previously contained in IRM 4.27.3.5 has been moved to IRM 4.27.1.3. IRM 4.27.3.5 has been made obsolete.
4.27.3.6	4.27.1.4	Content relating to bankrupt TEFRA investors previously contained in IRM 4.27.3.6 has been moved to IRM 4.27.1.4. IRM 4.27.3.6 has been made obsolete.
4.27.1.3	4.27.1.5	IRM section formerly numbered 4.27.1.3 relating to involvement of area Counsel has been moved and renumbered to 4.27.1.5 to improve overall readability.
4.27.2.3	4.27.1.6	Content relating to notification of bankruptcy proceedings previously contained in IRM 4.27.2.3 has been moved to IRM 4.27.1.6. IRM 4.27.2.3 has been made obsolete.

Former IRM Reference	New IRM Reference	Description of Change
4.27.3.3	4.27.1.7	Content relating to exam coordination with insolvency previously contained in IRM 4.27.3.3 has been moved to IRM 4.27.1.7. IRM 4.27.3.3 has been made obsolete. Paragraph 4 modified to clarify tax filing requirements under the Bankruptcy Abuse Prevention and Consumer Protection Act.
4.27.2.4 4.27.2.6 4.27.2.7 4.27.2.8 4.27.3.4	4.27.1.8	Content relating to the closure of agreed, unagreed, survey, and no change cases at the group level previously contained in IRMs 4.27.2.4, 4.27.2.6, 4.27.2.7, 4.27.2.8 and 4.27.3.4 has been moved to 4.27.1.8. IRMs 4.27.2.4, 4.27.2.6, 4.27.2.7, 4.27.2.8 and 4.27.3.4 have been made obsolete.
4.27.2.5	4.27.1.9	Content relating to miscellaneous bankruptcy provisions previously contained in IRM 4.27.2.5 has been moved to IRM 4.27.1.9. IRM 4.27.2.5 has been made obsolete.
4.27.1	Unchanged	Minor editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary.

**EFFECT ON OTHER DOCUMENTS**

This material supersedes IRM 4.27.1, dated February 02, 2018.

**AUDIENCE**

SB/SE Examination

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 Small Business/Self-Employed

4.27.1

Examiner Responsibilities and Procedures

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4.27.1.1  
(02-02-2018)  
**Program Scope and Objectives**

- (1) *Purpose.* This IRM section is an introduction and outline of examiner’s responsibilities regarding bankruptcy petitions.
- (2) *Audience.* These procedures apply to all SB/SE Field and Specialty examiners, excluding Estate and Gift Tax.
- (3) *Policy Owner.* The Director, Examination Field and Campus Policy, which is under the Director, Headquarters Examination.
- (4) *IRM Owner.* Field Examination Special Processes, which is under the Director, Examination Field and Campus Policy.
- (5) *Primary Stakeholders.* SB/SE is the primary stakeholder of the examination Bankruptcy Program.
- (6) *Contact Information.* To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.

4.27.1.1.1  
(02-02-2018)  
**Background**

- (1) Principle of Bankruptcy - The general underlying principle of bankruptcy is to provide a debtor an avenue to pay what the debtor can afford while receiving forgiveness for debt that cannot be satisfied. Bankruptcy law has three primary objectives:
  - a. To relieve debtors from pre-bankruptcy financial burdens (where there are insufficient assets to satisfy debts owed to creditors);
  - b. To rehabilitate debtors and give them a “fresh start” by allowing them to retain assets necessary for subsistence which are exempt from creditors’ reach; and
  - c. To protect creditors by establishing an orderly and equitable system of satisfying their claims out of existing assets and/or future income and earnings.
- (2) Automatic Stay - Prior to October 17, 2005, when a debtor filed a petition in bankruptcy court, a stay of collection actions went into effect in every case and immediately stopped ongoing and future (during the pendency of the bankruptcy) attempts by creditors to collect pre-petition debts owed by the debtor or otherwise exercise control over property of the estate or the debtor (11 USC § 362). This essential feature of bankruptcy law created what is known as the automatic stay. For most debtors, the automatic stay remains in effect during the pendency of the bankruptcy. But, for debtors who file bankruptcy on or after October 17, 2005 and have had one or more bankruptcy cases dismissed within the preceding twelve-month period, the automatic stay may either terminate within 30 days with respect to the debtor and the debtor’s property that is not property of the bankruptcy estate, or not go into effect at all. See IRM 5.9.5.7, Serial Filers, for more information.
- (3) Debtor - Most bankruptcy cases begin when the debtor files a petition in bankruptcy court seeking financial relief from creditors. Individuals, corporations, partnerships, LLCs, railroads, municipalities, and other forms of government have the right to file bankruptcy. There are six types of bankruptcies which can be filed, Chapters 7, 9, 11, 12, 13 and 15. Refer to IRM 5.9.2.4, Chapters in Bankruptcy, for definitions of each bankruptcy chapter.
- (4) Advantages to Debtors - When negotiations with creditors to pay debts fail, debtors may be faced with immediate garnishment of salaries and reposses-

sion of their assets. Business debtors may have their businesses closed through repossession or foreclosure. Bankruptcy is attractive to debtors because it can offer:

- a. Immediate temporary relief from creditor pressure by staying all creditor actions against the debtor;
  - b. Long-term relief by allowing a debtor to extend the time for payment of a debt; and
  - c. Permanent relief by discharging debts. The relief provisions of the Bankruptcy Code can give the debtor a “fresh start.”
- (5) **Creditor** - Creditors include persons and entities who have claims against the debtor, usually for debts incurred before the bankruptcy was filed (pre-petition debts). Because bankruptcy estates may continue to incur debts after the bankruptcy petition date, entities can also hold post-petition administrative expense claims against the bankruptcy estate. In certain circumstances, creditors can force debtors into bankruptcy by involuntary means.
- (6) **Advantages to Creditors** - Bankruptcy offers advantages to creditors, such as the following:
- a. A greater recovery on creditors' claims. Traditional debtor/creditor remedies may lead to piecemeal dismantling of the debtor's business through repossession and sale of the debtor's assets. Such actions by creditors may cause a business to fail.
  - b. The potential to preserve the going-concern value of a business which can exceed its liquidation value.
  - c. Allowing the sale of a business as an operating enterprise and restraining creditors from precipitous actions.
  - d. Distributing an equitable share of the available funds to each creditor.

4.27.1.1.2  
(02-02-2018)  
**Authority**

- (1) **Authority** - The U.S. Constitution grants Congress authority to enact federal bankruptcy laws. The Bankruptcy Act of 1898 formed the basis of federal bankruptcy law until 1979, when enactment of the Bankruptcy Code (11 USC) repealed the old law and codified procedures making the bankruptcy process less burdensome for the debtor. The Bankruptcy Reform Act of 1994 (BRA 94) brought about a major amendment to the Bankruptcy Code affecting the government's treatment of debtors, notably granting permission to assess taxes while the debtor is under the protection of the automatic stay. For additional information about federal bankruptcy laws, refer to IRM 5.9.1.2, Federal Bankruptcy Law.
- (2) **Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)** - On April 20, 2005, the BAPCPA was signed into law. Most of the provisions of this act became effective October 17, 2005, although some provisions, such as those dealing with Chapter 12 bankruptcies, were effective upon the date of enactment.
- (3) **Bankruptcy Code** - The Bankruptcy Code provides an orderly method for the debtor's financial rehabilitation (Chapters 11, 12, and 13) or the liquidation and distribution of a debtor's assets (Chapter 7). This federal law is intended to be applied uniformly among all states and possessions.
- (4) **Jurisdiction** - Bankruptcy courts generally have jurisdiction over all matters concerning payment of a debtor's financial obligations under the Bankruptcy Code and administration of the bankruptcy estate. Bankruptcy court jurisdiction

includes the authority to determine the amount of tax due by the debtor or estate and what taxes will be discharged, meaning the debtor no longer will be personally liable. The bankruptcy court also has jurisdiction over any matters concerning collection of tax debts at issue in the bankruptcy case or collection from any property of the estate.

- (5) Bankruptcy Judges - Bankruptcy judges are appointed by the appellate circuit courts for a term of 14 years, as provided under Article I of the U.S. Constitution.

4.27.1.1.3  
(02-02-2018)  
**Responsibilities**

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for Field employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.3.5, Headquarters Examination, for additional information.
- (2) The Director, Examination Field and Campus Policy, reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the Field Examination process. See IRM 1.1.16.3.5.1, Field and Campus Policy, for additional information.
- (3) Field Examination Special Processes (FESP), which is under the Director, Examination - Field and Campus Policy, is the group responsible for providing oversight and policy and procedural guidance on specialized examination processes to SB/SE Field examiners and group managers. See IRM 1.1.16.3.5.1.2, Field Exam Special Processes.

4.27.1.1.4  
(02-02-2018)  
**Program Reports**

- (1) Periodic program reviews are conducted by FESP to:
  - Assess the effectiveness of specific programs within Examination or across the organization,
  - Determine if procedures are followed,
  - Validate policies and procedures, and
  - Identify and share best/proven practices.

4.27.1.1.5  
(07-06-2020)  
**Acronyms and Codes**

- (1) The following table lists commonly used acronyms and command codes with their definitions as used throughout this IRM:

Acronym/Code	Definition
AIMS	Audit Information Management System
AIS	Automated Insolvency System
ASED	Assessment Statute Expiration Date
AMDIS	Audit Management Display Information System
BRA94	The Bankruptcy Reform Act of 1994
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
CCP	Centralized Case Processing

<b>Acronym/Code</b>	<b>Definition</b>
CIC	Coordinated Industry Case
CIO	Centralized Insolvency Operation
DIP	Debtor-in-Possession
DOJ	Department of Justice
FESP	Field Exam Special Processes
IDRS	Integrated Data Retrieval System
IRB	Internal Revenue Bulletin
IRP	Information Returns Processing
IRPTR	Information Returns Processing Transcript Requests
LLC	Limited Liability Company
OIC	Offer in Compromise
PSP	Planning and Special Programs
SNOD	Statutory Notice of Deficiency
TC	Transaction Code
USC	United States Code

4.27.1.1.6  
(07-06-2020)

- (1) The following table lists commonly used terms and associated definitions as referenced throughout this IRM:

**Terms**

Term	Definition
Administrative Expense	A liability incurred by the bankruptcy estate for actual, necessary expenses of preserving the estate. This generally includes tax liabilities for periods ending post-petition and before discharge or dismissal for which the estate is liable. The IRS is entitled to payment of these taxes from the estate as a priority tax (generally paid at time of confirmation). 11 USC § 503 defines allowable administrative expenses and IRC § 1398(h) explains the proper handling of these expenses on the bankruptcy estate's tax return.
Automatic Stay	Prior to October 17, 2005, when a debtor filed a petition in bankruptcy court, a stay of collection actions went into effect in every case and immediately stopped ongoing and future (during the pendency of the bankruptcy) attempts by creditors to collect pre-petition debts owed by the debtor or otherwise exercise control over property of the estate or the debtor (11 USC § 362). This essential feature of bankruptcy law created what is known as the automatic stay. For most debtors, the automatic stay remains in effect during the pendency of the bankruptcy. But, for debtors who file bankruptcy on or after October 17, 2005 and have had one or more bankruptcy cases dismissed within the preceding twelve-month period, the automatic stay may either terminate within 30 days with respect to the debtor and the debtor's property that is not property of the bankruptcy estate, or not go into effect at all. See IRM 5.9.5.7, Serial Filers, for more information.
Bankruptcy	Refers to a judicial process to resolve a debtor's problems in paying debts incurred by the debtor. The term <i>bankruptcy</i> is used in connection with the federal bankruptcy laws enacted by Congress. <i>Bankruptcy case</i> refers to a case filed in a federal bankruptcy court under one of the chapters of the Bankruptcy Code (Title 11). The terms <i>insolvency proceeding</i> and <i>receivership</i> refer to proceedings brought under state laws and supervised by the state courts. A bankruptcy can either be voluntary or involuntary. 11 USC § 303 provides the requirements to file an involuntary petition.
Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)	An act that amended the Bankruptcy Code. Most of the provisions of BAPCPA are effective for cases filed on or after October 17, 2005. However, some BAPCPA provisions, such as certain provisions relating to Chapter 12 debtors, took effect on April 20, 2005, the date of enactment. Many provisions of BAPCPA are intended to keep debtors from abusing the bankruptcy system. Such provisions may limit the imposition of the automatic stay in cases of serial filings, require tax compliance from individual debtors, and establish a means test for Chapter 7 debtors. BAPCPA also added a new Chapter 15 to deal with cross-border bankruptcies.
Bankruptcy Code	The laws of bankruptcy codified under Title 11, USC §§ 101 through 1532.
Bankruptcy Court	U.S. District Courts have standing orders referring all cases arising under Title 11 to bankruptcy judges, which are referred to as bankruptcy courts. See 28 USC § 157.
Bankruptcy Estate	See Estate.

Term	Definition
Bankruptcy Petition	The form filed by the debtor (or against the debtor by creditors in an involuntary bankruptcy) with the bankruptcy court requesting relief from debts. It is filed to commence a case under a specific chapter of the Bankruptcy Code.
Bankruptcy Plan	A proposed method of payment filed in Bankruptcy Court by debtors in Chapters 11, 12, and 13 cases, and/or by other interested parties in Chapter 11 cases, and sent to creditors for review and approval. In the case of Chapter 11 reorganization plan, creditors have the right to accept or reject, and/or object to the plan. Creditors may object to bankruptcy plans filed in cases under Chapters 12 and 13.
Bankruptcy Reform Act of 1994 (BRA 94)	An act that amended the Bankruptcy Code, signed into law and effective for all bankruptcy cases filed on or after October 22, 1994. It made changes to the bankruptcy law such as permitting assessments and issuing notice and demand during the automatic stay and the filing of late proofs of claim in Chapter 7 cases.
Bankruptcy Rules	Rules of procedure that govern the practice and procedure in bankruptcy cases.
Bar Date	The date fixed by the court or by statute as the date by which a creditor must file a proof of claim. In general, a claim of a governmental unit, including the Service, is considered timely if it is filed before 180 days after the order of relief (11 USC § 502(b)(9)).
Chapter 7	A case filed under Chapter 7 of the Bankruptcy Code by an individual, business, or other entity, where creditors are paid by liquidation and distribution of the debtor's available assets.
Chapter 9	A bankruptcy case for a governmental unit. In order to qualify as a debtor under Chapter 9, an entity must, among other things: be a municipality, be authorized to be a debtor by state law, be insolvent or unable to meet its debts as they mature, and desire to effect a plan to adjust such debts.
Chapter 11	A reorganization case filed under Chapter 11 of the Bankruptcy Code by an individual, business, or other entity. The case is intended to result in a reorganization plan, although Chapter 11 plans can provide for the liquidation of the debtor's assets, as well. A plan can last several years; however, a large percentage eventually liquidate. Unless the court orders otherwise for cause, an individual debtor may receive a discharge upon completion of all payments under the Chapter 11 plan. If an individual debtor is unable to complete all the plan payments, the court may grant the debtor a hardship discharge in certain instances. In general, a non individual debtor receives a discharge upon plan confirmation.

Term	Definition
Chapter 12	This chapter applies to family farmers and fishermen. It closely resembles a Chapter 13 but without a <i>super discharge</i> that was available to Chapter 13 debtors in bankruptcies filed prior to October 17, 2005. Creditors are paid pursuant to a plan. Plan payments are paid through a trustee who handles all disbursements. Plan payments may be paid seasonally. The debtor may receive a discharge upon completion of all payments under the Chapter 12 plan. If a debtor is unable to complete all the plan payments, the court may grant the debtor a “hardship discharge” in certain instances.
Chapter 13	This chapter applies to individuals with regular income, including wage earners, sole proprietors, and other self-employed individuals. Chapter 13 is a case where creditors are paid pursuant to a plan. The debtor may receive a discharge upon completion of all payments under the Chapter 13 plan. If a debtor is unable to complete all the plan payments, the court may grant the debtor a “hardship discharge” in certain instances.
Chapter 15	This chapter applies when (1) a foreign court or a foreign representative seeks assistance in the United States in connection with a foreign insolvency proceeding; (2) assistance is requested in a foreign country in connection with a case under 11 USC; (3) a foreign insolvency proceeding and a domestic bankruptcy for the same debtor are pending concurrently; or (4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under Title 11 USC.
Claim	A right to payment, even if un-liquidated, contingent, or disputed. Proofs of claim may include tax liabilities which have not been assessed. Also, see <i>Proof of Claim</i> .
Confirmation	The time when the court grants final approval to the debtor’s plan. Applicable only in Chapters 11, 12, and 13 bankruptcies.
Consumer Debt	A debt incurred by an individual primarily for personal, family, or household purposes (does not include taxes).
Creditor	Person or entity with a claim against the debtor and/or property of the debtor at the time the bankruptcy petition is filed.
Debtor	The individual or entity (corporation, partnership, municipality) that: (1) files a voluntary petition, or (2) has an order of relief entered against it when an involuntary petition is filed with the bankruptcy court.
Debtor-in-Possession (DIP)	The debtor in a Chapter 11 reorganization is known as a debtor-in-possession (DIP) of the assets of the estate unless a trustee is appointed. The DIP has the rights and powers of a bankruptcy trustee.

Term	Definition
Discharge	<p>A court order that prohibits the collection of many pre-petition debts as a personal liability of the debtor. It is the event that triggers forgiveness of debt in a bankruptcy case. Generally, a discharge is granted:</p> <ol style="list-style-type: none"> <li>In an individual debtor's Chapter 7 case, after the time for challenging discharge has expired and/or after all timely challenges to discharge have been resolved;</li> <li>In a Chapter 11 case of a corporation when the plan is confirmed;</li> <li>In a Chapter 11 case of an individual when the plan is completed or when the court grants a hardship discharge; and</li> <li>In Chapter 12 and 13 cases, when the plan is completed (3-5 years) or when the court grants a hardship discharge to the debtor.</li> </ol>
Discharge Date	The date the court records the discharge.
Discharge, Denial of	The situation in which a debtor goes through a bankruptcy case but is not granted a discharge.
Disclosure Statement	<p>In a Chapter 11 case, an approved disclosure statement must generally accompany the proposed plan of reorganization before the plan is confirmed. The disclosure statement must contain adequate information concerning the affairs of the debtor to allow the creditors to make an informed judgment about the plan. However, for post-BAPCPA cases, electing small businesses may be subject to less stringent disclosure statement requirements (11 USC § 1125(f)).</p>
Dismiss	<p>With the exception of certain confirmed Chapter 11 cases, a dismissal order typically returns the debtor to their pre-petition status. This includes the accrual of applicable penalties and interest. Upon dismissal, property of the estate is revested in the debtor.</p>
Estate	<p>A bankruptcy estate is created upon the commencement of the bankruptcy case which is generally when the petition is filed. It generally consists of all of the debtor's interests in any property at the time the case is filed, plus property acquired by the estate after the petition is filed.</p> <p><b>Note:</b> The estate may also include a non-debtor spouse's community property interests.</p> <p>In an <i>individual</i> Chapter 7 or 11 case, the bankruptcy estate is a separate taxable entity (IRC § 1398). In Chapter 13 cases and in individual Chapter 11 cases filed on or after October 17, 2005, certain assets acquired by the debtor post-petition may also be included in the estate along with post-petition earnings from services performed by the debtor (11 USC §§ 1306 and 1115).</p>
Examiner	<p>An examiner may be appointed in a Chapter 11 case to investigate the financial affairs of the debtor. An examiner does not replace the debtor-in-possession as a Chapter 11 trustee does.</p>
Excluded Asset	<p>A property interest of the debtor that does not become property of the bankruptcy estate upon the filing of the petition. A pre-petition Notice of Federal Tax Lien (NFTL) is not required to collect discharged taxes from excluded property, although a statutory lien is required. Non-dischargeable taxes may also be collected from excluded assets.</p>

Term	Definition
Fresh Start	Refers to the goal of bankruptcy to give the debtor a new financial life free from many past debts.
Individual Debtor	A person who files bankruptcy as an individual rather than as a partnership, limited liability company (LLC) or corporation. The individual debtor may file singularly or jointly with a spouse.
Insider	If the debtor is an individual, an insider includes a relative or partner of the debtor, a partnership in which the debtor is a general partner, a general partner of the debtor, or a corporation of which the debtor is a director, officer, or person in control. If the debtor is a corporation, an insider includes a director of the debtor, officer of the debtor or a person in control of the debtor (11 USC § 101(31)). An insider may be subject to different treatment under the Bankruptcy Code. For example, the time period for recovering preferential transfers to an insider is one year as opposed to 90 days for transfers made to non-insiders.
Insolvency	Generally, understood to mean an inability to pay debts as they become due. However, the Bankruptcy Code refers to an insolvent entity as one whose debts are greater than the fair market value of its assets (11 USC § 101(32)). A debtor need not be insolvent to file bankruptcy. See <i>Bankruptcy</i> .
Liquidation	The act of reducing tangible and intangible assets to cash. This applies to Chapter 7 cases in which the business ceases to exist and its assets are sold. For individuals, the liquidation is limited to non-exempt assets. Some debtors liquidate through a Chapter 11 bankruptcy case.
Objection to Claim	A motion filed with the bankruptcy court by a debtor, creditor, or trustee to object to all or parts of a claim. A hearing will be held to resolve the dispute. Most bankruptcy court litigation, including objections to claim, are brought by motion pursuant to the less formal contested matter procedures.
Petition Date	The date the bankruptcy petition was filed in the bankruptcy court.
Post-confirmation	The period that occurs after the plan of reorganization is confirmed.
Post-petition	The period after the bankruptcy petition is filed.
Pre-packaged Bankruptcies	A Chapter 11 plan of reorganization that the debtor and primary creditors negotiate and accept <i>prior</i> to the filing of the bankruptcy petition.
Pre-petition	The period of time before the bankruptcy petition was filed.
Pre-petition Taxes	Taxes incurred, whether or not assessed, prior to the filing of the bankruptcy petition. Income taxes are incurred on the last day of the income tax year.
Proof of Claim	A document a creditor files with the bankruptcy court to assert a right of payment from the bankruptcy estate for pre-petition debts. A claim can also be filed for post-petition debts in some instances (11 USC § 1305 claims in Chapter 13).
Reorganization	The process through which a Chapter 11 debtor promises to resolve or pay creditors' claims.

Term	Definition
Schedules and Statements	After a bankruptcy is filed, all debtors must timely file: (1) schedules of assets and liabilities, (2) a schedule of current income and current expenditures, and (3) a statement of financial affairs.
Trustee	<p>In a case under Chapters 7, 12, or 13, the trustee is the officer appointed by the United States Trustee to administer the bankruptcy estate. The trustee is the representative of the bankruptcy estate and has a fiduciary duty to unsecured creditors. In a case under Chapter 11, the debtor-in-possession (DIP) generally has the rights and powers of a trustee unless the court orders a trustee be appointed.</p> <p>Listed are several definitions of a trustee and the corresponding Chapter(s) of bankruptcy:</p> <ul style="list-style-type: none"> <li>•<b>Chapter 7 trustee:</b> A disinterested person appointed by the United States Trustee or elected by creditors to administer the Chapter 7 case. Referred to as a panel trustee or case trustee. The Chapter 7 trustee is responsible for a particular Chapter 7 case.</li> <li>•<b>Chapter 11 trustee:</b> The court can order the appointment of a Chapter 11 trustee to replace the debtor-in-possession. The DIP, or the Chapter 11 trustee, is a fiduciary responsible for administering the Chapter 11 case. The United States Trustee or a party in interest may request the court appoint a Chapter 11 trustee for cause.</li> <li>•<b>Chapter 12 trustee:</b> A trustee is appointed in every Chapter 12 case. Referred to as a standing trustee, the trustee typically reviews the debtor's proposed plan and recommends modifications, as needed. After confirmation, the trustee typically serves as disbursing agent of the debtor's payments under the plan.</li> <li>•<b>Chapter 13 trustee:</b> A trustee is appointed in every Chapter 13 case. Referred to as a standing trustee, the trustee typically reviews the debtor's proposed plan and recommends modifications, as needed. After confirmation, the trustee typically serves as disbursing agent of the debtor's payments under the plan.</li> </ul>

4.27.1.1.7  
(07-06-2020)

**Related Resources**

(1) Procedural guidance on bankruptcies can be found throughout IRM 5.9, Bankruptcy and Other Insolvencies.

(2) For basic information on bankruptcy, see Pub 908, Bankruptcy Tax Guide.

**Caution:** Although publications are good sources of general information, they should not be cited to sustain a position. See IRM 4.10.7.2.8, IRS Publications.

(3) Document 13219, Automated Insolvency System - User Guide.

(4) *Knowledge Management Bankruptcy Webpage.*

**Note:** Examination Bankruptcy Coordinators in Technical Services are listed on the Knowledge Management Bankruptcy webpage.

(5) *Insolvency National Field/Centralized Site Directory.*

- (6) Examiners must consider collectibility during the pre-planning phase and throughout the examination. Refer to IRM 4.20, Examination Collectibility. If you decide to survey the return, please advise Insolvency.
- (7) In order to better comprehend bankruptcy law and effectively examine bankruptcy cases, familiarity with bankruptcy terminology is essential. See IRM Exhibit 5.9.1-1, Glossary of Common Insolvency Terms, for common bankruptcy definitions and concepts. For commonly used acronyms, refer to IRM Exhibit 5.9.1-2, Acronyms and Abbreviations.
- (8) The following table contains related IRMs which cover additional procedures that examiners may use in cases involving bankruptcy and are referenced throughout this IRM:

IRM	Title
IRM 4.1.1.6.18	Prompt Determination Requests
IRM 4.20	Examination Collectibility
IRM 4.31.2	TEFRA Examinations - Field Office Procedures
IRM 4.31.7	TEFRA Bankruptcy
IRM 4.8.2.11.4	Bankruptcy Suspense
IRM 5.9.1	Overview of Bankruptcy
IRM Exhibit 5.9.1-1	Glossary of Common Insolvency Terms
IRM 5.9.2	The Bankruptcy Code and Collection
IRM 5.9.3	Debtors' Delinquent Accounts
IRM 5.9.4	Common Bankruptcy Issues
IRM 5.9.5.6.1	Closing Codes
IRM 5.9.9.5.1	Determinations of Tax Implications of Chapter 12 Plans
IRM 5.9.13	Manual Proofs of Claim and Common Claim Issues
IRM 5.17.8.20	Return Filing Requirements
IRM 25.1.2.6	Bankruptcy Fraud

4.27.1.2  
(07-06-2020)  
**Bankruptcy Estate and Filing Requirements**

- (1) The filing of a bankruptcy petition under any chapter creates a bankruptcy estate. However, for purposes of federal tax liability, only an individual Chapter 7 or 11 bankruptcy estate creates a separate taxable entity. The trustee or DIP of an individual bankruptcy estate is required to file tax returns and to pay any tax which may be due if the estate has gross income that meets or exceeds the amount required for filing. See IRC 1398(c), Computation and payment of tax; basic standard deduction, for more information. This amount is the total of the personal exemption amount and the basic standard deduction for a married individual filing separately. The trustee or DIP must obtain a taxpayer identification number for the estate. The filing of a tax return for the bankruptcy estate does not relieve the individual debtor of his or her tax filing requirement.

- (2) No separate taxable entity shall result from the commencement of a bankruptcy case involving a partnership or corporation. See IRC 1398, Rules relating to individuals' Title 11 cases; IRC 1399, No separate taxable entities for partnerships, corporations, etc.; and IRC 6012(b)(3), Receivers, trustees and assignees for corporations.
- (3) Certain tax attributes of the estate must be reduced by any excluded income from cancellation of debt occurring in a bankruptcy proceeding. The amount of debt cancellation (debt discharged) and the amount to be offset against the estate's tax attributes are shown by filing Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (And Section 1082 Basis Adjustment), in the year of discharge. This form should be attached to the tax return of the bankruptcy estate. Tax attributes remaining under IRC 1398(i), Debtor succeeds to tax attributes of estate, at the time the case is closed by the Bankruptcy Court revert to the debtor in that year. It may be several years after the discharge date depending on the complexity of the case. The tax attributes are not available for the taxpayer's use during this period prior to the close of the case. For additional information concerning passive activity losses, credits, and at risk amounts, see Treas. Reg. section 1.1398-1 and Treas. Reg. section 1.1398-2.
- (4) There are special rules for the deductibility of administrative expenses of the bankruptcy estate, allowance of net operating losses, and carryback of tax attributes arising in post-petition taxable years. See IRC 1398 and Notice 2006-83 in IRB 2006-40.

#### 4.27.1.3 (07-06-2020)

##### Effect of Automatic Stay

- (1) The automatic stay provision of the U.S. Bankruptcy Code does not prohibit assessment of agreed deficiencies against the taxpayer. For this reason, the suspending of the statute of limitations period under IRC 6503(h), Cases under title 11 of the United States Code, does not apply in agreed cases.

**Example:** A taxpayer files their 2015 individual tax return on April 15, 2016. On December 1, 2016, they file a petition for bankruptcy, and is not granted a discharge until May 2, 2019. On March 31, 2017, they sign a Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, agreeing to an additional deficiency on their 2015 return. Although still in bankruptcy, the additional tax must be assessed before the statute of limitations expires on April 15, 2019, under IRC 6501, Limitations on assessment and collection.

- (2) The automatic stay does not prohibit the issuance of a statutory notice of deficiency for unagreed cases. However, the stay still prohibits the commencement or continuation of certain proceeding before the U.S. Tax Court. The stay of Tax Court proceedings only applies in certain cases of individuals and corporations (11 USC § 362(a)(8)). For bankruptcy cases of individuals, the stay prohibits the commencement or continuation of Tax Court cases concerning tax liabilities for tax years ending before the bankruptcy petition date. For bankruptcy cases of corporations, the stay generally prohibits the commencement or continuation of Tax Court cases concerning tax liabilities for tax years that ended before the confirmation date of the Chapter 11 plan. For this reason, the SNOD must be issued prior to the expiration of the IRC 6501 assessment statute.
- (3) Once Technical Services issues a SNOD, IRC 6213(a), Time for filing petition and restriction on assessment, suspends the statute of limitations during the

90-day petition period and IRC 6503, Suspension of running of period of limitation, suspends the limitation period for an additional 60 days.

- (4) IRC 6213(f), Coordination with Title 11, provides the 90-day petition period is suspended while the taxpayer is prohibited from petitioning the Tax Court due to the bankruptcy proceedings, and for an additional 60 days. Thus, while the taxpayer is prohibited from petitioning the Tax Court due to the automatic stay, the statute of limitations is suspended.
- (5) The IRS may obtain a valid consent to extend the statute of limitations on assessment from entities in bankruptcy.

4.27.1.4  
(07-06-2020)  
**Bankrupt TEFRA Investors**

- (1) The Tax Equity and Fiscal Responsibility Act (TEFRA) generally applies to partnership examinations for partnership taxable years beginning prior to January 1, 2018.
- (2) When a TEFRA investor files for bankruptcy protection, the ASED on the affected pre-petition years becomes shortened. The most common ASED date will be the one year date which is imposed by former IRC 6229(f)(1), Items becoming non-partnership items.
- (3) Examiners are encouraged to contact their area Technical Services Pass-through Coordinator when determining the ASED of a TEFRA investor because this is a specialized area.
- (4) See IRM 4.31.2, TEFRA Examinations - Field Office Procedures, and IRM 4.31.7, TEFRA Bankruptcy, for additional information. More specific guidance related to this topic may be found in:
  - a. IRM 4.31.2.5.6, Suspension of Statute with Issuance of FPAA.
  - b. IRM 4.31.2.5.7, Items Becoming Nonpartnership Items.
  - c. IRM 4.31.7.6.2, Individual Returns.

4.27.1.5  
(08-25-2009)  
**Involvement of Area Counsel**

- (1) Examiners should contact their Associate Area Counsel for case specific legal advice and guidance. For more information about the role of Counsel, refer to IRM 5.9.1.3.1, Associate Area Counsel.
- (2) Examination will promptly inform Associate Area Counsel and Insolvency when:
  - a. A case meets referral criteria for significant bankruptcy case processing procedures;
  - b. Litigation is brought against the IRS in the bankruptcy proceedings, such as when an objection to proof of claim is filed;
  - c. Contemplating assertion of taxpayer's tax liabilities against a transferee of the taxpayer's assets;
  - d. Receiving an administrative offer in compromise (OIC) based on doubt as to liability. As a rule, the IRS will not consider an OIC from a taxpayer in bankruptcy; however, we may work with the taxpayer outside of the context of an administrative offer in compromise when it is in the best interest of the IRS and the taxpayer to do so. See IRM 5.9.4.11, Offers in Compromise and Bankruptcy; or
  - e. Assets transferred outside of the ordinary course of business within 90 days before filing of the bankruptcy petition or within 1 year to an insider.
- (3) It is the responsibility of Examination to promptly respond to all requests from both Area Counsel and Insolvency with any supporting data, documents, or

other examination information from the administrative file. Examination should be aware of and comply with the deadlines and requirements imposed by the Bankruptcy Court that affect the examination process.

- (4) Examiners who suspect bankruptcy fraud should contact their Fraud Technical Advisor for assistance and guidance. Refer to IRM 25.1.2.6, Bankruptcy Fraud.

4.27.1.5.1  
(02-02-2018)

**Significant Bankruptcy  
Case Issues**

- (1) All cases which meet the referral criteria listed in IRM 5.9.4.15.3, Significant Bankruptcy Case Referrals, should be immediately referred to Associate Area Counsel. This is for the purpose of permitting identification of those cases that may require coordination on a more expedited or more extensive basis. The referral criteria should be applied to all taxable years of the taxpayer that have ended prior to the petition date and any known tax transactions that have occurred in the current year but prior to the petition date. It is not mandatory that every tax year be opened and included in the examination. Normal examination criteria should be used to determine which tax year will be included in the audit.
- (2) The following types of cases should be referred to Area Counsel immediately:
- a. All cases for which a criminal tax prosecution is being considered or is pending.
  - b. All cases involving taxpayers with assets of \$50 million or more. The referral must state if indications suggest, through audit or otherwise, more than nominal tax may be due. IDRS command BRTVU gives specific BMF return information. Line codes are edited from Forms 941, 943, 940, and 1120.
  - c. All cases in which the outstanding assessed liability exceeds \$10 million.
  - d. All cases for which the potential deficiency to the tax liability exceeds \$1 million (income, excise and other) and taking into account all open tax years.
  - e. Cases raising difficult or significant post-confirmation tax issues in the disclosure statement, the Chapter 11 plan, or in related documents, such as the Liquidating Trust Agreement.
  - f. All cases with potential tax liabilities for which significant publicity may be generated. The economic impact of the bankruptcy to the geographical area or the taxpayer's industry should be considered.
  - g. All cases in which technical advice or ruling requests are pending, including requests for change of method of accounting, if the outcome of the request has a significant tax impact on the taxpayer or on the taxpayer's industry.
  - h. All CIC under examination.
  - i. All taxpayers for which an Industry Specialization Program issue is present.
  - j. Presently or previously consolidated subsidiaries that file for bankruptcy for which the parent and/or sibling entities fall within the above criteria.
  - k. Parent corporations filing for bankruptcy in which consolidated subsidiaries fall within the above criteria.
  - l. Pre-packaged bankruptcies; a bankruptcy which includes a plan of reorganization the creditors negotiated and accepted prior to the filing of the bankruptcy petition.
  - m. Cases which do not fall within the above criteria but for which referral may be deemed to be in the best interests of the government.

- (3) Special care must be taken when only part of a consolidated corporate taxpayer files for protection under the reorganization provisions of the Bankruptcy Code. Members of the group are severally liable; therefore, referral should be based on an analysis of the consolidated corporate taxpayer and not just the debtor company.
- (4) The identification of particular taxpayers using the referral criteria is not intended to make these cases subject to mandatory examinations. However, Examination should give due consideration to the views of Counsel about whether to survey or audit the taxpayer and should consider the finality of a decision not to survey or audit a taxpayer's recent tax years before the claim's bar date.
- (5) The employee responsible for the case at the time the bankruptcy proceeding is identified will prepare the referral, and forward it to Associate Area Counsel through the Examination Bankruptcy Coordinator in Technical Services, as soon as one or more of the above criteria are found to be present. The referral should be in writing, such as a memorandum, and labeled "Significant Corporate Bankruptcy Referral."
- (6) The Examination Bankruptcy Coordinator in Technical Services will ensure that the referral is forwarded to the Associate Area Counsel, with a copy sent to Insolvency, in order for a timely proof of claim to be filed with the Bankruptcy Court.
- (7) Within 3 days, Counsel will provide Examination with a written response as to whether the facts and circumstances warrant expedited examination procedures.
  - a. Upon receipt of a referral, a determination will be made as to which Counsel office and which attorney(s) will be selected as coordinators for the issues of the debtor taxpayer.
  - b. Counsel will also provide oral and written advice as to whether issuance of a SNOD will be authorized.
  - c. Counsel will establish a liaison with DOJ attorneys who have responsibility for the case.
- (8) If Counsel confirms that a case warrants expedited examination procedures, a meeting will be held with all Service personnel involved in the case to review Counsel's written response, discuss the case, and establish an action plan.
  - a. The meeting will be coordinated by the Examination Bankruptcy Coordinator in Technical Services and should include representatives from Insolvency (for further information regarding claim bar dates, filing proofs of claims, and other bankruptcy procedures) and from Tax Exempt and Government Entities (if pension plan problems are known to exist or may be indicated by the debtor's schedules and statements). Consideration should also be given to inviting DOJ attorneys who have responsibility for the bankruptcy case. The plan should set forth the actions to be taken by Counsel and each affected function of the Area office, with copies given to each party. Monthly updates should be made.
  - b. At the meeting, it should be established which area will control particular aspects of the case. With CIC cases, the area where the CIC examination is controlled will probably also control claim assertion and claim

defense strategies. Each case will be handled by the “team approach” and all tax years included in the examination are to be viewed as a single unit.

- c. All settlements of tax years or specific issues should be reviewed by the Counsel attorneys handling the case to assess the impact of the settlement on all open tax years.
  - d. The debtor should be informed of the coordinated effort and the urgency needed to expedite years under examination. The notification should be in writing and an acknowledged copy should become part of the audit file.
  - e. All contact with the taxpayer should be documented. This is especially important when assessing taxpayer’s timely response and good faith cooperation with respect to information document requests.
- (9) If in the course of the examination, issues are addressed which have a tax effect on subsequent year returns, copies of Form 906, Closing Agreement on Final Determination Covering Specific Matters, or other agreements and relevant workpapers should be sent by the examiner or Appeals Officer to the Area PSP Manager before the case is closed. This information should be processed using Form 5346, Examination Information Report. Any future audit issues identified by Counsel should be similarly processed through the Area PSP Manager, and followed-up by an appropriate survey and/or audit of the former debtor’s future tax year returns when filed.

4.27.1.5.2  
(08-25-2009)  
**Inquiries from  
Department of Justice**

- (1) The Examination Bankruptcy Coordinator in Technical Services will review DOJ Bankruptcy referrals.
- (2) If the Examination Bankruptcy Coordinator determines an examination is not warranted, they will advise DOJ of their decision.
- (3) If the Examination Bankruptcy Coordinator determines an examination may be warranted, they will make a referral to PSP. The referral will be made using Form 5346, Examination Information Report, and notate the bar date or any other response date needed at the top of the form.
- (4) Technical Services will advise DOJ of PSP decision.

4.27.1.6  
(07-06-2020)  
**Notification of  
Bankruptcy Proceedings**

- (1) Insolvency uses various means to notify Examination that a bankruptcy petition has been filed by taxpayers under examination. It primarily uses the Automated Insolvency System (AIS), in addition to inputting various IDRS command codes that reflect a bankruptcy filing. As a rule, examiners should pull current IDRS transcripts and AIMS prints during the pre-planning stage of each case to determine whether a taxpayer has filed bankruptcy. The following IDRS codes indicate a taxpayer may be in bankruptcy:
  - TC 520 with closing code 60, 61, 62, 63, 64, 65, 66, 67, 81, 83, 84, 85, 86, 87, 88 or 89 on the taxpayer’s IDRS transcript. See IRM 5.9.5.6.1, Closing Codes.  
**Note:** TC 521 may indicate a taxpayer is no longer in bankruptcy.
  - AIMS Freeze Code U or X on AMDISA.  
**Note:** You may also see the word “BANKRUPTCY” reflected on AMDISA.
  - Master File Freeze Code -V or -W.

- (2) Immediately advise your Examination Bankruptcy Coordinator in Technical Services if you become aware of bankruptcy proceedings but do not see the indicators in paragraph (1) on IDRS.

**Note:** To find your Examination Bankruptcy Coordinator in Technical Services, look to the *Knowledge Management Bankruptcy Webpage*.

- (3) The Examination Bankruptcy Coordinator in Technical Services may receive notification from Insolvency regarding an open examination on a taxpayer that has filed bankruptcy. If notified, the Coordinator will notify the examiner assigned to the return and the group manager. See IRM 4.27.1.8, Group Procedures.
- (4) No less than 30 calendar days before the bar date, the assigned Examination/ Appeals function will ensure that Insolvency is notified of any potential assessment or refund which is not yet reflected on IDRS so that a proof of claim may be timely filed with Bankruptcy Court. If a final determination of tax, pre-petition interest, and pre-petition penalties is not made by this date, an estimate of these amounts, based upon all the facts, should be given. Upon completion of the examination action, Insolvency should be notified of the complete final determination and may then file an amended claim.
- (5) If the case will require significant processing procedures, please refer to IRM 4.27.1.5.1, Significant Bankruptcy Case Issues.
- (6) Examination employees who become aware of bankruptcy proceedings through any other means should follow the procedures in paragraphs (4) and (5) above, so the collection of any pending tax is protected by a proof of claim timely filed in the Bankruptcy Court. Contact your Examination Bankruptcy Coordinator in Technical Services or Insolvency to find out the status of the bankruptcy and the bar date.

4.27.1.7  
(07-06-2020)  
**Examination  
Coordination with  
Insolvency**

- (1) Bankruptcy proceedings impose deadlines for action for both the debtor (taxpayer) and the creditor (IRS).
- (2) The deadline for filing proofs of claim is called the “bar date”. The court sets the bar date in a Chapter 11 case. In Chapters 7, 12, and 13 a claim of a governmental unit, including the Service, is generally considered timely if it is filed before 180 days after the order of relief (11 USC § 502(b)(9)).
- (3) It is imperative that examiners contact Insolvency as soon as they are aware that a taxpayer under examination has filed for bankruptcy. Your Examination Bankruptcy Coordinator in Technical Services will provide the name of the Insolvency Bankruptcy Specialist. Insolvency needs to advise Bankruptcy Court by the bar date of all IRS tax debt of a taxpayer. You will need to provide Insolvency any potential deficiencies, penalties and interest. Estimate any amounts if you have not completed the examination. Refer to IRM 5.9.13, Manual Proofs of Claim and Common Claim Issues. If you later change the amounts, provide a revised report to Insolvency. Advise Insolvency when you close the case and how it is being closed (no-change, agreed, forwarded to Appeals or to Technical Services for issuance of SNOD).
- (4) A debtor is generally required to comply with their tax-filing responsibilities. The Bankruptcy Code provides that if the debtor does not file a tax return that becomes due after the commencement of the bankruptcy case, the taxing

authority may request that the court either dismiss the case or convert the case to a case under another chapter of the Bankruptcy Code. Chapter 13 debtors are required to file all tax returns for tax periods ending within 4 years of the debtor’s bankruptcy filing. The IRS may file a claim for such returns by the later of 180 days after the petition date or 60 days after the date of the filing of the tax return. The IRS will not receive payment for unfiled returns or open exam cases unless they are listed as estimates on a proof of claim.

- (5) The IRS’ failure to meet the bar date (or bar date extension) may result in the IRS’ claim being disallowed. This means the IRS may not recover from the debtor personally upon discharge. Thus, the IRS must ensure that it files accurate claims with the court in a timely manner.
- (6) The court can extend a creditor’s bar date for cause.

4.27.1.7.1  
(07-06-2020)  
**Questionable Returns  
Filed with Insolvency  
During Bankruptcy  
Proceedings**

- (1) Some returns submitted to Insolvency by debtors are questionable. For instance, they may not reflect the income showing on the debtor’s schedules, the information presented in his/her statement of financial affairs, or data on master file sources such as IRPTR.
- (2) Insolvency needs to have these questionable returns reviewed by Examination so an accurate proof of claim can be filed with the court in a timely manner.

**Note:** Insolvency is responsible for following normal processing procedures to have tax returns processed and assessed.

4.27.1.7.1.1  
(07-06-2020)  
**Returns Eligible For  
Review**

- (1) Insolvency will request an exam review of questionable returns using Form 3449, Referral Report.

#  
#  
#  
#  
#  
#  
#

- (3) The referral must be made at least 45 days before the bar date. The bar date should be notated at the top of the referrals.
- (4) Form 3449, along with copies of the questionable returns, will be forwarded to PSP.
- (5) Upon receipt of the referral, PSP will review the referral to ensure:
  - a. The referral was made at least 45 days before the bar date, and
  - b. The questionable returns meet the criteria in paragraph 2.
- (6) If less than 45 days before the bar date remains and/or the questionable returns do not meet the criteria described in paragraph 2, the referral will be returned to Insolvency, unless special arrangements have been made.

4.27.1.7.2  
(07-06-2020)  
**PSP Classification of  
Questionable Returns**

- (1) PSP will establish the return(s) on AIMS.
- (2) PSP will provide Insolvency with an estimated deficiency within 15 days of the bar date.
  - a. The estimate provided must be based on facts that can be presented in court should the debtor object to the IRS' estimated claim.
  - b. Refer to IRC 7491, Burden of proof, for additional information.
- (3) If the referral is a result of internally available source documentation, such as IRP reports, PSP will forward the case to Technical Services.
- (4) PSP will assign the case to an examination group if the referral involves issues that require further development.
- (5) PSP may determine at any time during the review process that the return should be surveyed before assignment.

4.27.1.7.3  
(07-06-2020)  
**Technical Services  
Review of Questionable  
Returns**

- (1) A Technical Services reviewer will determine if there is adequate documentation to issue a SNOD.
- (2) If there is not adequate documentation to support issuance of a SNOD, the reviewer will return the case to PSP advising that the case needs further development.
 

**Caution:** The reviewer needs to provide an estimated deficiency to Insolvency prior to returning the case to PSP.
- (3) The reviewer will issue a SNOD and provide a copy to Insolvency if there is adequate documentation.
- (4) A 30-day letter does not need to be issued prior to the issuance of a SNOD with regard to the tax return situations addressed above. *Luhring v. Glotzbach*, 304 F.2d 560, 565 (4th Cir. 1962) and *Rosenberg v. Commissioner*, 450 F.2d 529, 533 (10th Cir. 1971).

4.27.1.7.4  
(07-06-2020)  
**Returns Under  
Examination When the  
Bankruptcy Petition is  
Filed**

- (1) It is imperative that Insolvency be provided deficiency or estimated deficiency amounts for returns under examination at least 30 days prior to the bar date. All communication should stipulate the bar date because of its importance.
- (2) When a return is warehoused at a campus waiting for classification or assignment, Area PSP will instruct the campus holding the return to forward the return immediately to the Area PSP.
- (3) If a return is in a status below 10, Area PSP, Campus Exam, or Centralized Files & Scheduling (whomever is assigned the return) will take one of the following actions:
  - a. Advise Insolvency that the return will be closed survey before assignment;
  - b. Advise Insolvency the return has been assigned to an examination group;  
or
  - c. Advise Insolvency of the estimated deficiency amount.

- (4) If a return is assigned to an exam group, the group must notify Insolvency of the disposition of the case. Your Examination Bankruptcy Coordinator in Technical Services will provide the name of the Insolvency Bankruptcy Specialist.
  - a. If the return is in the group's unassigned inventory, the manager will ensure Insolvency is provided the deficiency or estimated deficiency amount.
  - b. If the return is in assigned inventory, the examiner will ensure Insolvency is provided the deficiency or estimated deficiency amount.
  - c. Prior to closing the case from the group, the examiner will provide Insolvency with a copy of the report of adjustments.
- (5) If a SNOD is issued to a bankrupt taxpayer, Technical Services will provide Insolvency with a copy of the SNOD.

4.27.1.8  
(07-06-2020)  
**Group Procedures**

- (1) During all phases of an examination (classification and pre-planning to closure), collectibility should be considered. Refer to IRM 4.20, Examination Collectibility. The filing of a bankruptcy petition does not preclude the IRS from examining a taxpayer; however, this fact should be given some weight when deciding whether to conduct an examination. You may find it helpful to discuss the case with your Examination Bankruptcy Coordinator in Technical Services. The Insolvency Bankruptcy Specialist may be able to give helpful information.
- (2) Before initiating an in-depth income tax examination of a corporation which has filed an "asset" Chapter 7 bankruptcy case where all the debtor corporation's assets will be liquidated, examiners should consider (with Insolvency's assistance) the collectibility of the income tax deficiencies as a result of the examination. This is because a corporate debtor would, for all practical purposes, cease to exist at the conclusion of a Chapter 7 bankruptcy and secured claims are generally paid before unsecured priority tax claims. Sources other than the corporate debtor or its scheduled assets may exist for the Service to later collect taxes determined to be due, as in the cases of trust fund taxes, consolidated group income taxes, controlled group pension excise taxes, undisclosed potential tax refunds or overpayments, amounts due the debtor from other federal government agencies for which "offsets" may be allowed, and potential transferee assessments.
- (3) Bankruptcy project codes should be updated on AIMS, as soon as possible, after notification of the bankruptcy case is received. Project codes and tracking codes should be added according to your local guidelines. Contact your local PSP for guidance or refer to the Local Tracking Code list.

<b>Bankruptcy Chapter</b>	<b>Project Code</b>
7	0663
11	0664
12	0665
13	0666

- (4) At the time of notification of the bankruptcy case, the responsible examination function will verify via IDRS commands TSUMY and AMDISA that the bankrupt taxpayer is not an investor in a TEFRA proceeding. If the taxpayer is an investor in a TEFRA proceeding, the filing of a bankruptcy petition begins the running of the one year statute of limitations provided in IRC 6229(f), Special rules, for partnership tax years that begin before December 31, 2017. If it is determined IRC 6229(f) one year statute applies, steps must be taken to assure a SNOD is issued for tax deficiencies resulting from the key case related issues. Contact your Technical Services Passthrough Coordinator with questions.
- (5) The normal three-year statute of limitations provided by IRC 6501, Limitations on assessment and collection, should be protected at the examination group level. The responsible examination personnel should solicit a consent to extend the statutory period of limitations before the expiration of the IRC 6501 date. In the case of a joint return where only one spouse has petitioned for bankruptcy, separate consents should be solicited for each spouse. If a trustee has been appointed in the bankruptcy case, Counsel should be consulted for an opinion as to whether the bankrupt taxpayer and/or the trustee should sign the consent. IRC 6501(c)(4), Extension by agreement, provides the Service must give notice to taxpayers of their right to refuse to extend the period of limitations, or to limit the extension to particular issues.
- (6) If an examiner uncovers evidence of bankruptcy fraud, whether or not it would result in any tax consequences, their Fraud Technical Advisor should be consulted for assistance in preparing a referral to the appropriate function or agency. For more information, refer to IRM 25.1.2.6, Bankruptcy Fraud.

4.27.1.8.1  
(07-06-2020)  
**Closure of Cases at the  
Group Level**

- (1) Most unagreed cases should be forwarded to Technical Services for closure to Appeals or issuance of a SNOD, depending on the response to the preliminary letter issued in accordance with IRM 4.27.1.8.1.2, Unagreed Closures with Automatic Stay. The following types of cases may be forwarded for assessment and/or closure without review after Insolvency has been notified of the final audit results:
  - a. Survey;
  - b. No change;
  - c. Overassessments/refunds;
  - d. Agreed cases; or
  - e. All cases where a notice of deficiency is not required (some employment and some excise tax cases).
- (2) Taxpayers, who disagree with the deficiency determination, including penalties and interest, may file a written protest and request an appeals conference.
  - a. Upon receipt of the request, the case will be referred to Appeals.
  - b. Upon conclusion of Appeals consideration of a bankruptcy case, Appeals will confirm the automatic stay is in effect.
  - c. For cases where the stay is in effect, Appeals will forward those cases to the appropriate Area Technical Service Examination Bankruptcy Coordinator after issuing the notice of deficiency.
  - d. When appropriate, the case will be suspended if assessment is prohibited by the bankruptcy stay.
  - e. All other Appeals closures will be processed by normal Appeals processing procedures.

4.27.1.8.1.1  
(07-06-2020)

**Agreed Closures**

- (1) Agreed cases are closed directly to Centralized Case Processing (CCP).
- (2) If a trustee is appointed in the bankruptcy case, Associate Counsel should be consulted for an opinion as to whether the trustee, in addition to the taxpayer should sign the final examination report.
- (3) If the automatic stay is still in place, the Service is prohibited by the Bankruptcy Code (11 USC § 362, Automatic stay) from taking most collection actions including any attempt to collect pre-petition tax liabilities and/or to collect from property of the bankruptcy estate. For this reason, the following procedures should be followed to ensure the Service does not violate the automatic stay:
  - a. Advance payments and installment agreements may not be solicited.
 

**Caution:** Examiners must use caution when mailing form letters to taxpayers when the automatic stay is in place. Some report transmittal form letters (such as Letter 4121, Agreed Examination Report Transmittal) instruct the taxpayer to send in payment if they agree with the proposed changes in the examination report. This language is considered a solicitation of payment and violates the taxpayer's automatic stay protection.
  - b. For unagreed income tax cases, see the procedures detailed in IRM 4.27.1.8.1.2, Unagreed Closures with Automatic Stay.
  - c. Partially agreed deficiencies should be forwarded to CCP for assessment. Follow unagreed closing procedures once the agreed portion has been assessed.
- (4) Additional information on specific activities prohibited (and specific activities not prohibited) by the automatic stay can be found in IRM 5.17.8.10, Automatic Stay - 11 USC § 362.

4.27.1.8.1.2  
(07-06-2020)

**Unagreed Closures with Automatic Stay**

- (1) Taxpayers under the automatic stay protection will be furnished a copy of the examination report and advised of their appeal rights. Letter 950-B, 30-Day Bankruptcy, explains rights unique to a taxpayer in bankruptcy proceedings and should be used by Field Examiners and Office Examiners for this purpose. When fewer than 240 days remain on the statute of limitations, use Letter 5153-D, Examination Report Transmittal - Statute <240 Days (Bankruptcy).

**Caution:** These letters contain specific language that will not violate the automatic stay when a taxpayer is in bankruptcy. The use of other preliminary (30-day) letters could violate the taxpayer's automatic stay protection.

**Note:** See IRM 4.19.13.20, Bankruptcy, for Correspondence Exam procedures.

- (2) The bankruptcy preliminary letters will be expeditiously prepared and issued at the group level for all unagreed examination cases with a bankruptcy filing. The case will then be included in the group's 30-day suspense file. Office examiners will update the ERCS action code to 07. Managers will ensure adequate group controls are in place for cases in 30-day status. Bankruptcy preliminary letters will be sent by regular mail, except when it is necessary to use certified mail. If certified mail is used, return receipts will be requested.
- (3) If both spouses on a joint return have filed a bankruptcy petition with separate residences, a duplicate original of the preliminary bankruptcy letter will be

mailed to each spouse. The duplicate letters will be accompanied by those items listed in (6) below. The administrative file should include the documentation of the separate residences as well as being noted on Form 3198, Special Handling Notice for Examination Case Processing.

- (4) If only one spouse on a joint return has petitioned Bankruptcy Court, a regular 30-day letter should be issued to the non-petitioning spouse. The spouse who is in a bankruptcy case will be issued a bankruptcy preliminary letter. Regular 30-day letters include but are not limited to the following:
    - a. Letter 915, Examination Report Transmittal, (Office Examination);
    - b. Letter 950, 30 Day Letter - Straight Deficiency, (Field Examination); and
    - c. Letter 525, General 30 Day Letter.
  - (5) A copy of the bankruptcy preliminary letter with enclosures should be mailed to the taxpayer's representative if indicated in the administrative file.
  - (6) Bankruptcy preliminary letters will be accompanied by the following:
    - a. A copy of the examination report. Taxpayer's copy should not include transmittal letters or other reports of confidential nature.
    - b. An appropriate waiver form.
    - c. Pub 3498, The Examination Process.
  - (7) When prepayment credits shown on the return are changed, the examination report accompanying a bankruptcy preliminary letter will disclose separately the increase or decrease in income tax liability and the adjustment to prepayment credits. The accompanying waiver will show the full deficiency amount before any adjustments due to change in prepayment credits. A statement attached to the waiver will show the adjustment to the prepayment credits with the net amount due.
  - (8) If the taxpayer agrees during the period provided by the 30-day letter, follow the procedures under IRM 4.27.1.8.1.1, Agreed Closures.
  - (9) If the taxpayer files an appeal, forward the case to Appeals through Technical Services. Be sure to note the bankruptcy status on the Form 3198.
  - (10) If you receive no response, forward the case to Technical Services for issuance of a SNOD or an Unagreed Notice of Worker Classification (for Employment Tax cases with an IRC 7436, Proceedings for determination of employment status, issue). Note the bankruptcy status on the Form 3198.
  - (11) In the event the non-bankrupt spouse agrees to the deficiency but the bankrupt spouse does not, follow quick/prompt assessment procedures to have the non-bankrupt spouse assessed. Note on the Form 3198 that the non-bankrupt spouse has been assessed under MFT 31 before forwarding the case to Technical Services for issuance of a SNOD to the bankrupt spouse. Refer to IRM 4.10.8.12.3, Separate Assessments on Joint Taxpayers.
- (1) When closing a surveyed return or no-change case, follow normal procedures. Bankruptcy has no effect on these types of closures.

4.27.1.8.1.3  
(07-06-2020)

**Surveys and No-Change  
Closures**

4.27.1.9  
(07-06-2020)  
**Miscellaneous  
Provisions**

- (1) This section addresses the following situations requiring special handling for bankruptcy cases:
- Prompt Determination of Tax Liability (IRM 4.27.1.9.1),
  - Prompt Determination of Tax Refund (IRM 4.27.1.9.2),
  - Chapter 12 Bankruptcy Plan - 11 USC Section 1231(b) Requests (IRM 4.27.1.9.3), and
  - Individual Chapter 11 Debtors Required Filings (IRM 4.27.1.9.4).

4.27.1.9.1  
(07-06-2020)  
**Prompt Determination of  
Tax Liability**

- (1) Rev. Proc. 2006-24, 2006-22 I.R.B. 943 (as modified by Announcement 2011-77) provides the procedures a trustee or debtor-in-possession representing a bankruptcy estate must follow to request a prompt determination by the Service of any unpaid tax liability of the estate.
- (2) The Service has 60 days from the date of receipt of a request for a prompt determination of any unpaid tax liability to advise the trustee of the decision to examine a tax return or accept it as filed. IRM 4.1.1.6.18, Prompt Determination Requests, provides the steps PSP must follow when receiving these types of requests. PSP is responsible for mailing Letter 5531, Prompt Determination of Tax Liability, to the trustee or debtor-in-possession.
- (3) When a return requesting a prompt determination of any unpaid tax liability is selected for examination, PSP establishes the return on AIMS using Source Code 73 and Project Code 0668. The return is sent to a Field group in a red folder instructing the examiner to complete the examination within 180 days of the request.
- (4) When an examiner is assigned a return to examine with a prompt determination request, the examiner should become familiar with IRC 1398, Rules relating to individuals' Title 11 cases, and IRC 108, Income from discharge of indebtedness, before beginning the examination of the bankrupt entity. There are numerous issues and consequences associated with the returns of these and related entities, including the Form 1040 of the individual debtor. Refer to Notice 2006-83 in IRB 2006-40, Individual Chapter 11 Debtors, for details on Chapter 11 individual cases.
- (5) A return cannot be surveyed after PSP issues Letter 5531, Prompt Determination of Tax Liability. If a determination is made not to examine the return, the examiner must follow the procedures in IRM 4.10.8.3, No Change and No Liability Cases, to no change the return.
- (6) The trustee or debtor-in-possession must be notified of any tax due within 180 days of receipt of the request for prompt determination. As soon as the examination report is prepared, the examiner should forward a copy of the report to the appropriate *Field Insolvency Office* so an Administrative Claim can be filed and an immediate assessment of any resulting tax deficiency may be considered pursuant to IRC 6871(b), Immediate assessment with respect to certain title 11 cases.
- (7) When a bankruptcy estate return is selected for examination and the 180-day deadline cannot be met for reasons beyond the control of the Service, a Bankruptcy Court order extending the time limit must be requested through Counsel. The examiner should initiate this process in a written memorandum routed through their manager to Counsel at least 45 days prior to the end of the 180-day period. The request should state the need for Counsel's review,

approval, and forwarding to the DOJ. A copy of the extension request should be sent to PSP for monitoring. The extension memorandum should address the following:

- The reason for requesting the extension. The extension is more likely to be granted if the reason for the request is due to circumstances beyond the control of the Service, for example, the taxpayer has not provided the records requested despite several document requests (copies of which should be attached to the memo). Reasons generally not acceptable for requesting an extension may include heavy workloads, vacations, training, details, etc. In such instances, the case should be reassigned to another examiner as soon as possible.
- The extension period sought. The extension request should allow for sufficient time and contingencies to complete all work on the case and issue the final Examination report.

- (8) If Counsel and the DOJ concur with the examiner's extension request, then DOJ will file a motion with the Bankruptcy Court requesting the extension. The Court will set a date for a hearing on the motion and notify the various affected parties. It is at the discretion of the Bankruptcy Court whether to grant a motion to extend the 180-day period. The judge will make a decision on or after the date of the hearing and all parties will be notified.

**Note:** The examiner should be prepared to immediately close the case in the event that no additional time is granted. In addition, the procedures in paragraph (6) above for filing the Administrative Claim should be followed.

- (9) If the 180-day period (or period of extension, if applicable) is not met, all amounts owed the Service in excess of the tax shown on the return that is paid by the debtor may be discharged against the estate, trustee, debtor, or its successor, except under specified circumstances such as misrepresentation or fraud. The Service will be prohibited from collecting any discharged amounts owed from the debtor or its successor.

4.27.1.9.2  
(07-06-2020)

**Prompt Determination of  
Tax Refund**

- (1) Rev. Proc. 2010-27, 2010-31 I.R.B. 183, provides the procedures to be followed by the bankruptcy estate trustee in filing a request for credit or refund of any overpayment of tax. This procedure is applicable to all chapters of bankruptcy except Chapter 9, Municipal Debt Adjustment, and Chapter 15, Ancillary and Cross-Border.
- (2) If the trustee or debtor-in-possession requests a refund, the applicable refund procedures will apply except under 11 USC § 505(a)(2)(B) the Bankruptcy Court has the jurisdiction to determine the refund amount 120 days after the trustee's request.
- (3) A request for refund will be deemed to have been made if:
- a. The trustee files a claim for refund in response to the Service's proof of claim; or
  - b. The trustee files a tax return or amended return in which there is a claimed overpayment.

- (4) IRM 4.1.1.6.18, Prompt Determinations Requests, provides the steps PSP must follow when receiving these types of requests. PSP is responsible for mailing Letter 5531-A, Prompt Determination of Tax Refund, to the trustee or debtor-in-possession.
- (5) If the request for credit or refund is selected for examination, the Field Examiner should notify the trustee or debtor-in-possession within 120 days of receipt of the request as to whether the refund is allowed in whole or in part. If an extension of time is necessary, the Service should discuss an extended time table with the trustee or debtor-in-possession after coordinating with Counsel, but no motion to extend the 120-day time period is appropriate or necessary. The Service does not lose the authority to deny a tax refund if no determination is made within 120 days. After 120 days, the trustee may seek a merits determination of the estate's right to the refund in Bankruptcy Court.

4.27.1.9.3  
(07-06-2020)

**Chapter 12 Bankruptcy  
Plan - 11 USC Section  
1231(b) Requests**

- (1) Chapter 12 of the Bankruptcy Code provides for the adjustment of debts of a family farmer or fisherman with regular annual income and contemplates the filing of a plan to do so. The BAPCPA amended 11 USC § 1231(b) to allow proponents of Chapter 12 bankruptcy plans to request determinations of the tax effects of proposed plans. Rev. Proc. 2006-52, 2006-48 I.R.B. 995, provides the procedures to be followed when requesting determinations and provides they must be filed in writing with the CIO. See IRM 5.9.9.5.1, Determinations of Tax Implications of Chapter 12 Plans, for CIO processing guidelines.
- (2) Tax Effects of Proposed Plans: BAPCPA amended 11 USC § 1231(b) allowing Bankruptcy Courts to authorize proponents of Chapter 12 plans to request determinations of the federal income tax effects of proposed plans of reorganization, limited to questions of law. Should a controversy arise between the Service and the debtor, the court may declare the tax effects of a proposed plan after the earlier of the date on which the governmental unit responds to the request or 270 days after the request.
- (3) Required Information: The exact information required when requesting a determination is provided in section 7.01 of the first revenue procedure issued each year (e.g. Rev. Proc. 2019-1, 2019-1 I.R.B. 1). This revenue procedure is updated annually but may be modified or amplified during the year.
- (4) Copy of Proposed Chapter 12 Plan: In addition to the information above, the requesting party must include a copy of the proposed Chapter 12 Plan along with a copy of the Bankruptcy Court order allowing the proponent to make the request.
- (5) Acknowledgement: PSP will mail a letter to the requestor advising a processable application has been received and the date received per section 3.02 of Rev. Proc. 2006-52.
- (6) Time Frame: The plan proponent must be notified of the determination within 270 days from receipt of a processable application. The 270-day time frame will not begin until a processable application is received.
- (7) Application Reviewed: The Application will be assigned to a Field Examiner who will work with Counsel to analyze the tax ramifications of the proposed plan. An examination may be warranted at the advice of Counsel due to the impact of the proposed plan.

- (8) Letter Prepared: The Field Examiner will prepare the Determination of Tax Effects of Chapter 12 Plan letter. The examiner should contact the Examination Bankruptcy Coordinator in Technical Services and Counsel if they need assistance in drafting the letter. Counsel must approve the letter before it is mailed to the plan proponent.
- (9) Letter Issued: The letter must be reviewed and signed by the examiner's manager to indicate their approval. The examiner will mail the letter to the plan proponent within the 270-day time frame.
- (10) Closing the Case: If an examination was opened, the Proposed Chapter 12 Plan and Plan Determination letter will remain with the examination case file. If an examination was not opened, the Chapter 12 plan package should be filed with the latest tax return filed using Form 9856, Attachment Alert.
- (11) Unless the Bankruptcy Court declares otherwise pursuant to 11 USC § 1231(b), a Field Office examining the debtor's return must follow the determination if:
  - a. A copy of the determination is attached to the tax return to which it relates;
  - b. The determination is properly reflected in the return;
  - c. The representations upon which the determination was made reflected an accurate statement of the controlling facts;
  - d. The transactions proposed in the plan were carried out substantially as proposed; and
  - e. No change has occurred in the law that applies to the period during which the transactions were consummated.

4.27.1.9.4  
(07-06-2020)  
**Individual Chapter 11 Debtors Required Filings**

- (1) Notice 2006-83 in IRB 2006-40, Individual Chapter 11 Debtors, provides guidance regarding certain income tax returns and information returns that must be filed for individuals who file bankruptcy cases under Chapter 11 of the Bankruptcy Code on or after October 17, 2005.
- (2) This notice also provides guidance for:
  - a. Employers of these individuals,
  - b. Persons filing Forms W-2, 1099-INT, 1099-DIV, 1099-MISC, and other information returns (including Schedule K-1) that report payments to these individuals,
  - c. Chapter 11 trustees in bankruptcy cases filed by these individuals,
  - d. Tax treatment of post-petition income as the result of the enactment of section 1115 of the Bankruptcy Code, by BAPCPA, and
  - e. Correct reporting of self-employment tax on Form 1040 and Form 1041.

