



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.9.3

MAY 26, 2022

EFFECTIVE DATE

(05-26-2022)

PURPOSE

- (1) This transmits a revised IRM 5.9.3, Bankruptcy and Other Insolvencies, Debtors' Delinquent Accounts.

MATERIAL CHANGES

- (1) IRM 5.9.3 has been updated to provide clarification and expansion of existing material. The following table details changes in this IRM revision:

IRM Section	Description of Change
IRM 5.9.3.1.6(4)	Added table with list of frequent acronyms used in this section.
IRM 5.9.3.1.7	Consolidated bankruptcy rules and added Pub 5170 and Taxpayer Bill of Rights website.
IRM 5.9.3.1.7(4)	Updated the site page to the Insolvency Knowledge Base Home Page.
IRM 5.9.3.2(1)	Updated to reflect AIS updates. Added Assignment for the Benefits of the Creditors to types of cases on AIS.
IRM 5.9.3.2(2)	Added Business Objects Environment is used to generate AIS reports.
IRM 5.9.3.2(4)	Updated with procedures to gain access to AIS.
IRM 5.9.3.2(3)(h)	Added ASER when returns are secured to list of items that should be updated.
IRM 5.9.3.5	Clarified section to remove separation of pre and post BAPCPA.
IRM 5.9.3.5(2)	Updated to state when the automatic stay may terminate in serial filer cases.
IRM 5.9.3.5(7)	Added Form 668-R and updated form numbers.
IRM 5.9.3.5(8)	Added clarification on impact on the ASER on unagreed audit deficiencies. Added reminder to state the bankruptcy does not extend or suspend the TFRP ASER. Added Rev Ruling 2003-80 as another reference.
IRM 5.9.3.5(10)(i)	Added the issuance of Form 6639 is not a violation of the automatic stay.
IRM 5.9.3.5.1(1)	Added additional examples of actions that are in violation of the automatic stay.
IRM 5.9.3.5.1.1(1)	Added additional states that follow community property laws.
IRM 5.9.3.7(1)	Added IRM 5.1.9.3 reference on Collection Due Processing.
IRM 5.9.3.10(3)	Removed obsolete Form 942. Added Form 1042.

IRM Section	Description of Change
IRM 5.9.3.10(8)	Added reminder to update ASER on AIS when a return is secured.
IRM 5.9.3.10(11)	Added IRM 5.7.4.2.1(4) reference when considering if an OI may be necessary.
IRM 5.9.3.10(21)	Added new paragraph on updating the ASER indicator on AIS.
IRM 5.9.3.12.1 IPU 20U0639 issued 05-26-2020	Updated to reflect new Third Party Contact requirements.
IRM 5.9.3.13	Added IRM 5.19.25 Passport Program reference and updated what qualifies as a seriously delinquent tax debt.
Throughout	Editorial changes were made to update or correct citations.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.9.3 dated May 26, 2020. This revision incorporates content from IRM Procedural Update (IPU) 20U0639 issued May 26, 2020.

AUDIENCE

All Operating Divisions.

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5.9.3

Debtors' Delinquent Accounts

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5.9.3.1
(08-03-2017)
Program Scope and Objectives

- (1) **Purpose.** Internal Revenue Manual (IRM) 5.9.3, Debtors' Delinquent Accounts, is the section within IRM 5.9, Bankruptcy and Other Insolvencies, that discusses general processes and procedures utilized when a debtor has delinquent account(s) and files bankruptcy or another type of insolvency proceeding.
- (2) **Audience.** Insolvency caseworkers and management in Specialty Collection Insolvency (SCI), which consists of Field Insolvency (FI) and the Centralized Insolvency Operations (CIO), are the primary users of this IRM section. Advisors, Revenue Officers, and other SB/SE employees may also refer to this section. Employees in functions other than SB/SE may refer to this section when working with a taxpayer that has filed an insolvency proceeding.
- (3) **Policy Owner.** The Director of Collection Policy is responsible for issuing policy for the Insolvency program.
- (4) **Program Owner.** The program owner is Collection Policy, Insolvency an organization within Small Business Self Employed (SB/SE) division.
- (5) **Primary Stakeholders.** The primary stakeholders of this section are SCI, SB/SE Collection, Taxpayer Advocate and Appeals employees.
- (6) **Program Goals.** The goal of this IRM is to provide fundamental knowledge and procedural guidance for working insolvency cases. Following the guidance in this IRM will ensure cases are worked in accordance with bankruptcy laws and regulations.

5.9.3.1.1
(08-03-2017)
Background

- (1) IRM 5.9, Bankruptcy and Other Insolvencies, contains the IRS's position, procedures, information, instructions, guidance, and references concerning bankruptcy cases, stockbroker insolvencies, receiverships, assignments for the benefit of creditors, corporate dissolutions, and bulk sales.

5.9.3.1.2
(05-26-2022)
Authority

- (1) The Insolvency program operates within the guidelines of the US Bankruptcy Code (11 USC) and the Federal Rules of Bankruptcy Procedure.
- (2) Insolvency personnel have delegated authority to:
 - Prepare and file proofs of claim (IRM 1.2.2.14.3, Delegation Order 25-3(Rev. 1), Proofs of Claim)
 - Refer bankruptcy case actions to the Department of Justice through local Area Counsel or directly to the US Attorney's Office (IRM 1.2.2.14.9, Delegation Order 25-9 (Rev. 1) (formerly DO-25-9 and DO-249), Authority to Refer Matters to and Authorize Commencement of Actions by the Department of Justice in Certain Bankruptcy Matters.)
 - Resolve bankruptcy issues administratively (IRM 1.2.2.14.10, Delegation Order 25-10 (Rev. 1), Payment of Claims for Damages and Attorneys' Fees Resulting from Violations of the Automatic Stay and Discharge Injunctions of the Bankruptcy Code.)
 - Sign Notices of Federal Tax Lien (NFTL) (IRM 1.2.2.6.4, Delegation Order 5-4 (Rev. 3), Federal Tax Lien Certificates.)
 - Sign Letter 1153, Proposed Trust Fund Recovery Penalty Notification, , IRM 1.2.2.2.20, Delegation Order 1-23 (formerly DO-193, Rev. 6), Authorization to Perform Functions of the Commissioner.

5.9.3.1.3
(05-26-2022)
Responsibilities

- (1) **Roles and Responsibilities.** SCI implements bankruptcy procedural guidelines, controls and monitors bankruptcy cases for the IRS, and takes appropriate case actions on all of the bankruptcy cases assigned to Insolvency. FI also work receiverships, Securities Investor Protection Act (SIPA) proceedings, and assignments for the benefit of creditors. (See IRM 5.9.20, Non-Bankruptcy Insolvencies.) IRM 5.9.1, Overview of Bankruptcy, provides a list of titles and responsibilities with an explanation of their roles and authority.
- (2) **Contacts.** Insolvency employees deal directly with Associate Area Counsel (SB/SE), Department of Justice, Assistant US Attorneys, Bankruptcy Court employees, trustees, debtors and their attorneys, and IRS employees in other functions throughout the IRS.
- (3) **Advice and Guidance.** Insolvency employees are trained in specific areas of bankruptcy law that deal with tax administration and debtor protection. When confronted with bankruptcy issues beyond the scope of their knowledge and expertise, they are to seek guidance from Counsel.
- (4) **Directions from Insolvency.** Insolvency employees provide directions on bankruptcies to other IRS functions. When IRS personnel contact Insolvency regarding a bankruptcy-related issue, they should comply with the advice and guidance given by Insolvency. If additional assistance is required, Insolvency employees will contact Counsel on behalf of other IRS employees. See IRM 5.9.1.4, The Role of Insolvency, for a detailed explanation of the roles and responsibilities of Insolvency.

5.9.3.1.4
(05-26-2022)
Program Management and Review

- (1) IRM 1.4.51.8.3, Case Management Tools, IRM 5.9.12, Insolvency Automated Processes, and IRM 5.9.16, Insolvency Case Monitoring, contain a list of required reports for caseworkers and managers to utilize for inventory management and review of case inventories. These sections also include the frequency and purpose of each report.
- (2) National quality reviews and consistency reviews are conducted on a regular basis. See IRM 1.4.51.16.1, NQRS, and IRM 1.4.51.16.2, EQ Consistency Reviews, for more information.
- (3) Operational and program reviews are conducted on a yearly basis. See IRM 1.4.51.17.2, Operational Reviews, and IRM 1.4.51.17.5, Program Reviews, for more information.

5.9.3.1.5
(05-26-2022)
Program Controls

- (1) Managers are required to follow program management procedures and controls addressed in IRM 1.4.51.5.2, Reviews (Overview), IRM 1.4.51.15, Controls, and IRM 1.4.51.16, Quality.
- (2) Caseworkers and managers utilize the Automated Insolvency System (AIS) for case management, assignment and documentation of all insolvency and non-bankruptcy insolvency cases. See IRM 5.9.3.2, Automated Insolvency Systems (AIS).

5.9.3.1.6
(05-26-2022)
Terms and Acronyms

- (1) A glossary of terms used by Insolvency can be found in Exhibit 5.9.1-1, Glossary of Common Insolvency Terms.
- (2) Common acronyms acceptable for use in the Automated Insolvency System (AIS) history are listed in Exhibit 5.9.1-2, Acronyms and Abbreviations.

- (3) Additional acceptable acronyms and abbreviations are found in the ReferenceNet Acronym Database, which may be viewed at: <http://rnet.web.irs.gov/Resources/AcronymsDatabase.aspx>
- (4) Acronyms used specifically in this IRM section are listed below:

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

5.9.3.1.7
(05-26-2022)
Related Resources

- (1) Procedural guidance on insolvencies can be found throughout IRM 5.9, Bankruptcy and Other Insolvencies.
- (2) The US Bankruptcy Code and Rules
- (3) AIS User Guide, Document Number 13219
- (4) Insolvency Knowledge Base Home Page <https://portal.ds.irsnet.gov/sites/vl114/pages/default.aspx>
- (5) For specific guidance pertaining to the type of insolvency proceeding, see the following sections:
- IRM 5.9.6, Processing Chapter 7 Bankruptcy Cases
 - IRM 5.9.7, Processing Chapter 9 and Chapter 15 Bankruptcy Cases
 - IRM 5.9.8, Processing Chapter 11 Bankruptcy Cases
 - IRM 5.9.9, Processing Chapter 12 Bankruptcy Cases
 - IRM 5.9.10, Processing Chapter 13 Bankruptcy Cases
 - IRM 5.9.20, Non-Bankruptcy Insolvencies
- (6) Taxpayer Bill of Rights, Pub 5170, and Taxpayer Bill of Rights page <https://www.irs.gov/taxpayer-bill-of-rights>

5.9.3.2
(05-26-2022)
**Automated Insolvency
System (AIS)**

- (1) **Insolvency's Database System.** The Automated Insolvency System (AIS) database is a standardized control and processing web application used for processing bankruptcy, decedent, assignment for the benefit of creditors (ABC) and receivership cases. It provides case inventory, status control, proofs of claim, and exchange of information with the United States Bankruptcy Courts system.
- (2) **Functions and Capabilities.** AIS maintains a record of cases, displays data, and generates various documents. The software employed in the AIS application has the capability to retrieve, add, or modify data needed to manage a bankruptcy inventory.

Note: Reports for AIS are generated in Business Objects Environment by accessing <https://boeprod.web.irs.gov/BOE/BI>.

- (3) **Requirements for Automated Case Processing.** All bankruptcy cases involving the IRS are loaded on AIS. At minimum, the following actions need to be taken for automated bankruptcy case processing:
 - a. Load "Taxpayer Screen" information.
 - b. Record all case actions in the AIS case history, even if the action occurred *prior* to the case being loaded on AIS.
 - c. Document all oral and written contact with the debtor, attorney for the debtor, trustee, and other functions within the IRS in the AIS history.
 - d. Complete all proof of claim (POC) processing activity.
 - e. Document information relating to liens, including refiling of NFTLs, and NFTLs filed in violation of the automatic stay.
 - f. Accurately and promptly load the "Confirmed Plan Monitoring (CPM)" screen on AIS for cases with confirmed plans.
 - g. Apply payments through the AIS system.
 - h. Update applicable screens when new information comes to Insolvency, including bar date, confirmation date, plan provisions, ASERs (when returns are secured), and modifications of plans.
 - i. Input specific data to the AIS case history, including information relating to unfiled returns, non-compliance issues, disputes, negotiations, litigation, monitoring results, and data on case closures.

Note: The AIS case history must be updated to reflect all actions taken because AIS is an official record of case activity for legal purposes.

- (4) **Access to AIS.** Employees requiring access to AIS must submit a Business Entitlement Access Request System (BEARS) request. There are several AIS profile "Roles" available to request. The employee's manager will instruct the employee as to the appropriate role(s) that they should request. Once approved by their manager, an AIS User Administrator will create an employee profile in the AIS database. The AIS User Administrator will also complete/close the BEARS request. AIS will automatically terminate a user session after 30 minutes of idle time. AIS users will also require an active Employee User Portal (EUP) account. See EUP SharePoint Site for instructions to obtain access <https://portal.ds.irsnet.gov/sites/vl037/Lists/Book110/DispItemForm.aspx?ID=5>.
- (5) **Additional AIS Information.** Various AIS processes are referenced in this IRM chapter. System enhancements periodically refine and improve AIS capabilities.

ties. Insolvency employees must stay up-to-date on any changes by reading the "AIS Message of the Day" posted on the AIS Home Page.

5.9.3.3
(08-03-2017)
**Taxpayer/Debtor
Contacts**

- (1) **Obtaining Pertinent Information.** When the IRS is advised through oral or written contact that a taxpayer has filed for bankruptcy, or issues remain from a prior bankruptcy, pertinent information should be collected to help Insolvency research the issue. Suggested information to gather from the taxpayer include the following:

- a. Current status of the taxpayer's bankruptcy (opened or closed),
- b. Date the petition was filed,
- c. Court location where the bankruptcy was filed,
- d. Chapter under which the bankruptcy was filed,
- e. Case (docket) number,
- f. Taxpayer identification numbers (TINs),
- g. Method of closure (dismissal or discharge) and the closure date (or general time frame), if the case is closed, and
- h. Any other pertinent information.

Note: If a taxpayer responds to a notice of deficiency by sending the IRS a copy of a bankruptcy petition, the receiving office must fax a copy of the petition to CIO. CIO tax examiners will open the case on the AIS database and ensure the bankruptcy freeze is input on the Integrated Data Retrieval System (IDRS).

- (2) **Prompt Referral to Insolvency.** IRS employees (e.g., revenue officers, examination employees, personnel from campuses, etc.), who have contact with taxpayers in bankruptcy and are aware of debtor concerns or complaints, should *promptly* contact CIO (same day notification, when possible). Referral information should be faxed to Insolvency using Form 4442, Inquiry Referral. Telephonic notification may also be used. All actions must be promptly documented by IRS employees.

Note: CIO phone numbers and fax numbers for internal IRS communications are found on the Servicewide Electronic Research Program (SERP) in *National Insolvency Field/Centralized Site Directory*.

- (3) **Actions to Assist Insolvency.** The following table explains actions IRS employees should take when a bankruptcy issue exists. These actions will help Insolvency process the bankruptcy case if a new filing has occurred or perform necessary research if issues stem from a current or prior bankruptcy.

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

5.9.3.4
(05-26-2022)

Duties of the Debtor

- (1) **BAPCPA Requirements.** The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) added mandatory actions for debtors who file bankruptcies on or after October 17, 2005. If debtors fail to meet these obligations, their cases may be dismissed or converted.

- Debtors are required to file all tax returns becoming due after the date of the petition. If the debtor fails to file such a return, or properly obtain an extension, the IRS may request the bankruptcy case be converted or dismissed (11 USC 521(j)). If the debtor does not file the return or obtain an extension within 90 days of the request, the court must convert or dismiss the case. The responsibility to request conversion or dismissal is on the IRS.
- Chapter 11 debtors must file and pay post-petition taxes timely or face conversion or dismissal of their cases or, alternatively, appointment of a Chapter 11 trustee (11 USC 1112(b)). The timely filing and payment of post-petition taxes is an express duty of the trustee or debtor in possession in small business cases (11 USC 1116).

Note: Post-petition taxes should be paid in the ordinary course of business without the necessity of the IRS filing a request for payment. (See IRM 5.9.8.13(8), Request for Payment, and 11 USC

503(b)(1)(D).) However, it is the IRS's practice to file Form 6338-A, Request for Payment of Internal Revenue Taxes, in a Chapter 11 case if the court sets a bar date for administrative expense claims. See IRM 5.9.17.13.3(8), Debt of the Bankruptcy Estate in the Individual Chapter 11 Case, for additional information.

- c. Chapter 13 debtors are required to file returns with the IRS (if required under tax law) no later than the day before the scheduled 341 meeting of creditors for the taxable periods ending during the four-year period ending on the petition date, if they have not yet done so (11 USC 1308(a)). Filing returns is a requirement for Chapter 13 plan confirmation; a debtor whose plan cannot be confirmed faces conversion or dismissal (11 USC 1325 and 1307(c) and (e)).

Example: A debtor filed a Chapter 13 bankruptcy petition on May 23, 2020. The debtor is required to have the 2016, 2017, 2018, and 2019 tax returns filed no later than the day before the 341 meeting of creditors.

- d. Not later than seven days before the 341 meeting of creditors, debtors must provide the trustee with a copy of their federal income tax returns (or transcripts, if locally allowed) for the most recent year ending immediately before the petition date (11 USC 521(e)(2)). The debtor must also provide a copy of that return or transcript to any creditor who timely requests it. If the debtor fails to provide the return to the trustee or a requesting creditor, the court must dismiss the case unless the debtor demonstrates the failure to so comply is due to circumstances beyond the debtor's control.
- e. Upon request of the court, trustee, or party in interest, Chapter 7, 11, and 13 individual debtors must file with the court copies of returns (or transcripts, if locally allowed) for years ending during the bankruptcy at the same time they file the returns with the IRS (11 USC 521(f)). This provision also applies to any past due returns that were subsequently filed during the bankruptcy case for the three years before the bankruptcy, and to any amendments to returns that had to be filed with the court under this provision. Section 521(f) is enforced through a BAPCPA provision not in the Bankruptcy Code, but applicable, nonetheless. BAPCPA 1228 provides a Chapter 7 discharge will not be granted unless requested tax documents have been provided to the court. It also provides the court shall not confirm a Chapter 11 or 13 plan unless requested tax documents have been filed with the court.

5.9.3.5
(05-26-2022)
Automatic Stay

- (1) **Automatic Stay.** The filing of a bankruptcy petition under any chapter acts as an injunction or legal prohibition of further action against the estate, debtor, or property of the debtor. The injunction is called the automatic stay.
- (2) **Individual Serial Filers.** To discourage serial filings by individuals, the imposition or duration of the automatic stay for certain debtors who file bankruptcy and had a prior bankruptcy dismissed within the previous 12 months is affected. The automatic stay may terminate 30 days after the petition date or may not go into effect. (See IRM 5.9.5.7, Serial Filers, for additional information.)
- (3) **Duration of the Stay.** The stay against property of the estate continues until the property is no longer property of the estate. With the exception of serial individual filings discussed in IRM 5.9.5.7, the stay of any other act continues

until the *earliest* of the date the case is dismissed or closed by the court or until a discharge is granted or denied (11 USC 362). The automatic stay never goes into effect at all (including the stay with respect to estate property) in certain multiple serial filer cases.

Note: The automatic stay also may not go into effect in a case involving serial filings by a small business debtor (11 USC 362(n)).

- (4) **Factors Affecting IRS Actions.** The complexity of bankruptcy laws and differing court interpretations obscure what actions are or are not permitted while the stay is in effect. Variables that can impact IRS procedures include, but are not limited to, the following:

- Bankruptcy chapter and court location
- Name(s) under which the bankruptcy was filed
- Entities
- Type of tax(es)
- Tax periods
- Local bankruptcy rules
- Standing orders
- Prior bankruptcies
- Court decisions

IRM 5.9.2.10, The Effect of Bankruptcy on Collection, and other parts of this IRM provide more information about actions that can or cannot be taken by the IRS during a bankruptcy proceeding.

- (5) **Protection of Taxpayer Rights.** Taxpayer rights protected by the Bankruptcy Code must be honored. IRS procedures dictate that all IRS employees exercise due diligence to ensure the automatic stay is not violated by taking prohibited actions after a taxpayer has filed bankruptcy (11 USC 362). The IRS must also prevent violations of the discharge injunction under 11 USC 524.
- a. The IRS, at large, is charged with preventing violations from occurring and initiating corrective actions within *two workdays* of becoming aware that a stay violation has occurred. When a IRS employee is unclear if a particular IRS action has resulted in a stay violation, whether the case is under FI or CIO control, the employee should immediately call CIO at the phone number provided on SERP.
 - b. CIO must resolve stay violations on cases assigned to CIO units. FI is responsible for correcting stay violations for cases in FI inventory. When CIO is notified of cases under the control of FI, CIO will alert the appropriate FI group by email, fax, or phone.
 - c. FI will notify CIO by fax or phone call when FI identifies stay violations in cases assigned to CIO. FI will perform necessary actions to correct stay violations on cases assigned to FI inventory. If FI is notified of an outstanding levy, FI will immediately release the levy, input a bankruptcy freeze on IDRS, if needed, advise CIO to open a case on AIS and explain the actions taken so they can be documented on AIS, even if the case will ultimately be assigned to CIO. (See IRM 5.9.3.12.1, Third Party Contacts, and IRM 5.9.5.8 ,Levies and Bankruptcy.)
 - d. Most automatic stay violations can be resolved via timely notification to CIO, depending on the status of the account at the time of the bankruptcy filing.

- (6) **Damages and Attorney Fees.** The IRS may be required to pay damages and attorney fees (but not punitive damages) when prohibited actions take place after the IRS has been notified of a bankruptcy filing. The IRS can only be held liable for damages and attorney's fees if it commits a "willful violation" of the stay or discharge injunction. (See IRM 1.4.51.3.7.1, Payment of Damages.)
- (7) **Automatic Stay Prohibitions.** Most collection activity taken after a bankruptcy filing violates the automatic stay. The automatic stay prohibits many actions and may include the following:

- a. Starting or continuing judicial or administrative collection proceedings for pre-petition debts, such as making seizures (Form 668-B) or serving levies (Form 668-A, Form 668-R, or Form 668-W).

Note: Although Collection Due Process (CDP) hearings may not violate the stay, the IRS has decided to suspend such actions while the stay is in effect so the bankruptcy case may resolve the issues raised in the CDP proceeding. (See IRM 8.7.63, Collection Due Process Cases.)

Note: 11 USC 362(a)(8) allows Tax Court proceedings for individuals for post-petition tax liabilities.

- b. Verbally requesting payment for tax periods ending before the bankruptcy petition date;
- c. Sending notices requesting payment or sending notices of intent to levy regarding pre-petition periods;

Note: A notice and demand for payment in connection with a new assessment, assuming the assessment itself is allowable under the Bankruptcy Code, is not prohibited by the stay. Further collection notices demanding payment violate the automatic stay.

- d. Starting a lawsuit or serving or enforcing a summons to collect liabilities;
- e. Making a setoff of any debt (tax or otherwise) owed by the debtor that arose before the commencement of the case against any claim made against the debtor that arose before the commencement of the case;

Note: Pre-petition income tax refunds can be offset to pre-petition income tax liabilities and debtor refunds can be offset to pay domestic support obligations (11 USC 362(b)(26) and 362(b)(2)(F)).

- f. Attempting to recover a claim from the debtor that arose before the commencement of the case, including trying to enforce a judgment;
- g. Attempting to recover a claim for pre-petition debts from community property, even if the claim is against a non-debtor spouse;
- h. Creating, perfecting, or enforcing aNFTL on pre-petition periods (NFTL refiles are allowed); or
- i. Retaining pre-petition refunds indefinitely without requesting the automatic stay be lifted – other than temporary retention of refunds prior to Chapter 11 or Chapter 13 confirmation, or longer with written Counsel recommendation. But, see "Note" in item (e) above regarding setoff exceptions.
- j. Considering an offer in compromise (OIC) submitted before or during the bankruptcy. See IRM 5.8.10.2, Bankruptcy.

- (8) **Impact of the Stay on ASEDs.** In most cases, the stay of assessment and suspension of the assessment statute expiration date (ASED) do not apply for *agreed* cases. On *unagreed* audit deficiencies, the statutory period of assess-

ment is suspended while the automatic stay is in effect plus 60 days after. Exam maintains a suspense file of cases for which a statutory notice has been issued, and assessment is stayed because a Tax Court petition cannot be filed. The ASED is determined from the date a statutory notice is issued until the TC 521 date. Examination employees are responsible for the input of the transaction codes effective for suspension. (See IRM 5.9.4.3, ASED/CSED; IRM 5.9.4.3.1, BRA 94 and BAPCPA's Effect on Assessments, IRM 5.9.4.4, Examination and Insolvency and Rev. Rul. 2003-80 .)

Note: Insolvency will input TC 521s to reverse the freeze code, when appropriate to do so.

Reminder: Bankruptcy does not extend or suspend the running of the TFRP ASED. See IRM 5.9.3.10 Trust Fund Recovery Penalty.

- (9) **Pre-petition Levy Proceeds.** If proceeds of a pre-petition levy are received by the IRS *after* a bankruptcy petition is filed, they are property of the bankruptcy estate. In a Chapter 13 case, 11 USC 1306(b) provides that the debtor remains in possession of all property of the bankruptcy estate unless otherwise provided in the confirmed plan or confirmation order. In most instances, post-petition levy payments are returned to the Chapter 13 debtor. Insolvency must be contacted for advice on handling levy proceeds. Insolvency may initiate an action to turn the funds over to the trustee or make a referral to Counsel to take legal action for adequate protection when the IRS has such a right. (See IRM 5.9.3.6 , Referrals to Insolvency on Bankruptcy Related Issues, and IRM 5.9.5.8, Levies and Bankruptcy.)
- (10) **Certain Activities Allowed.** The automatic stay does not prohibit the following activities:

- a. An audit to determine tax liability;
- b. Issuance of a notice of tax deficiency;
- c. Issuance of a final notice of determination granting or denying relief from joint and several liability (innocent spouse relief discussed further in IRM 5.9.4.18, Innocent Spouse Claims and Bankruptcy);

Note: A notice of determination in a CDP proceeding may not violate the stay. Insolvency must consult Counsel if a notice of determination is issued in a CDP proceeding while the stay is in effect.

- d. Making an assessment for most taxes and issuance of one informational notice;

Caution: Debtors receive one notice of assessment of a pre-petition tax return balance due. Subsequent notices may not be issued. If they are, Insolvency must be contacted immediately.

- e. Securing a tax return;
- f. Accepting payments made with tax returns (TC 610);
- g. Refiling a valid pre-petition NFTL;
- h. Beginning or continuing an action or proceeding by a governmental unit to enforce police or regulatory power;
- i. Conducting, continuing, completing a TFRP investigation and making a TFRP assessment;

Note: Form 6639, Financial Record Summons, for TFRP investigations is allowed.

- j. Opening or continuing a criminal action or proceeding against the debtor;
- k. Filing a Tax Court petition by an individual concerning a post-petition tax liability and subsequent Tax Court proceedings for those post-petition tax periods;
- l. Setoff of pre-petition income tax refunds to pre-petition income tax liabilities; or
- m. Offsets for domestic support obligations.

5.9.3.5.1
(05-26-2022)
**Violations of the
Automatic Stay**

- (1) **Expeditious Corrective Actions.** Actions in violation of the automatic stay must be corrected within a specific time frame established by the IRS and outlined in paragraph (2) below. Corrective actions may include the release of pre-petition continuous wage levies, expedited issuance of refunds after the IRS has illegally offset overpayments to dischargeable tax periods, releasing any open collection summons, or withdrawing a NFTL filed but not yet recorded after the petition date.
- (2) **IRS-Wide Time Frame.** The IRS must initiate corrective actions *within two workdays* of the IRS's knowledge of an actual or potential violation of the Bankruptcy Code. When notified of a possible stay violation, IRS personnel should immediately telephone CIO or fax Form 4442, Inquiry Referral, with necessary information to CIO. CIO phone and fax numbers are found on SERP.
- (3) **Documentation.** All information entered in the AIS case history must be as accurate and concise as possible. Case histories may become evidence in court if litigation develops. IRM 5.9.5.4, AIS Documentation, provides guidance on required AIS history documentation.

5.9.3.5.1.1
(05-26-2022)
Community Property

- (1) **Background.** Community property is a form of marital property rights recognized in nine states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin, as well as Puerto Rico. In California, Nevada, New Mexico and Washington, community property laws also apply to registered domestic partners. Spouses in Alaska and South Dakota may elect to have community property rules apply to some or all of their property. All property acquired during marriage is presumed to be community property. Generally, property acquired as a gift, as an inheritance, or before marriage is considered separate property. However, the specific rules concerning what constitutes community or separate property are governed by state law and vary among jurisdictions. (See IRM 5.9.18.6.8, Community Property, and IRM 25.18, Community Property, for additional information.)
- (2) **Community Property and the Bankruptcy Estate.** All community property, as of the commencement of the case, under the sole, equal, or joint management of the debtor spouse, becomes a part of the bankruptcy estate, *including the interest of the non-debtor spouse* (11 USC 541(a)(2)(A)). Community property also becomes property of the estate to the extent it is liable for an allowed claim against the debtor (11 USC 541(a)(2)(B)).
- (3) **The Automatic Stay and Community Property.** Because the non-debtor spouse's interest in community property also becomes a part of the estate, the automatic stay bars attempts to collect the non-debtor spouse's separate tax liabilities from community property.

Example: Wages earned by the non-debtor spouse are presumed to be community property and will most likely be included in the bankruptcy estate.

5.9.3.6

(08-03-2017)

Referrals to Insolvency on Bankruptcy Related Issues

- (4) **Counsel Advice.** Case specific questions about community property being considered part of the estate should be directed to Counsel through Insolvency.
- (1) **Enforcement Action - Potential or Actual.** Insolvency receives contacts regarding distraint actions taken against the debtor that remain outstanding and unresolved. Debtors may be aware they are facing imminent enforcement action or such action may be pending, and they want to advise the IRS of their bankruptcy filing. When an IRS employee outside of Insolvency learns of an enforcement action (e.g., outstanding levy or an open seizure action) and confirms the taxpayer has filed a bankruptcy, the employee must immediately notify CIO by faxing Form 4442, Inquiry Referral, or by calling CIO. Telephone and fax numbers are found on SERP.
- (2) **Information Required.** IRS employees are expected to advise Insolvency of pertinent information concerning distraint action(s), including the following:
- Details about the enforcement action.
 - The name, address, telephone and facsimile numbers of any levy source(s).
 - Receipt of any levy payment(s) after the petition date.
 - Knowledge of a possible illegal refund offset learned from the debtor or research from IDRS.
 - Status of a seizure: Is it still open? Are expenses being incurred? And, if so, how much?
 - Additional bankruptcy information as instructed in IRM 5.9.3.3, Taxpayer/ Debtor Contacts.

Caution: *If a seizure action is to be kept open (with Counsel's written concurrence), Insolvency should be aware of escalating expenses of a seized asset and the amount the IRS can expect to receive if the asset goes to sale. For example, the sale of a vehicle will not be justified if high storage costs will result in minimal or no net equity.*

- (3) **Insolvency Actions.** Insolvency may direct reversal of a collection action. However, in some cases, seeking relief from the stay, moving for dismissal, or requesting an adequate protection order from the court may be appropriate. Counsel's involvement, through Insolvency, is required on these matters.
- (4) **Discharged Periods.** Balances discharged by the bankruptcy proceeding may be erroneously sent back into the collection system. When the IRS receives notification of a problem concerning discharged liabilities, the IRS must begin actions *within two business days* of notification to correct the situation. If appropriate, after research has been completed, Insolvency will initiate an expedited request for adjustment actions to be taken on the discharged liabilities.

5.9.3.7

(05-26-2022)

Collection Due Process (CDP) Cases

- (1) **Internal Revenue Code Requirements and Collection Due Process (CDP).** IRC 6320 requires the IRS to notify a taxpayer when a NFTL has been filed and give the taxpayer the right to a post-filing CDP hearing. IRC 6330 requires the IRS to give a taxpayer pre-levy notice of the right to a CDP hearing. See IRM 5.1.9.3, Collection Due Processing, for more information.

- (2) **CDP Hearings.** The responsibility for CDP hearings lies with the Office of Appeals. Collection Due Process issues are not often encountered after a bankruptcy is filed; however, questions and issues may still arise while a case is assigned to Insolvency. The debtor must be provided assistance and given information if an issue surfaces concerning CDP procedures.

Caution: Actions taken toward collection from exempt, abandoned or excluded property (EAEP) must adhere to all CDP requirements.

- (3) **The Automatic Stay and the CDP Process.** When a taxpayer files a bankruptcy petition, the automatic stay prohibits a range of collection activities (11 USC 362(a)). While the automatic stay is in effect, a Notice of Federal Tax Lien (NFTL) for pre-petition taxes should not be filed. Similarly, no levies should be proposed or made for pre-petition taxes. If a NFTL is filed in violation of the automatic stay, Insolvency must withdraw the NFTL and the CDP lien notice may be rescinded. (See IRM 5.12.9.6.6, Rescission of CDP Rights for Withdrawals, IRM 5.9.5.9.1, NFTL Filing after Bankruptcy Filing, and IRM 5.9.5.9.1.(1), Rescinding NFTL CDP Rights.) If a CDP levy notice is sent while the automatic stay is in effect, it is void and does not grant the right to a hearing and any levies made in violation of the stay must be released. Insolvency should consult Counsel, as needed.

- (4) **Bankruptcy's Effect on CDP Hearings.** Generally, the IRS will postpone or suspend CDP lien and levy hearings while the automatic stay is in effect.

Exception: After confirmation of a Chapter 11 or 13 plan, where the debtor has resolved all issues raised in his or her CDP hearing request through the confirmed Chapter 11 or 13 plan and has not withdrawn the request for a CDP hearing, Appeals may issue a notice of determination before the completion of the plan. Appeals will contact Insolvency for plan information prior to issuing such a determination. Insolvency should consult Counsel, as needed. (See IRM 8.7.6, Appeals Bankruptcy Cases , for additional information.)

- (5) **Joint CDP and Non-Debtor Spouse.** There may be instances when both spouses request a CDP hearing and only one spouse filed a Chapter 11 or Chapter 13 bankruptcy petition. In order to resolve the non-debtor's part of the joint CDP, Appeals may contact CIO to request mirroring of the joint tax period when the bankruptcy plan is confirmed. CIO will input the mirroring transaction codes, monitor for the MFT 31 modules to be created on IDRS, and input the TC 522 with the appropriate bankruptcy closing code to the non-debtor's MFT 31 module to reverse the bankruptcy freeze and to reflect that the bankruptcy freeze was not applicable for this spouse. (See IRM 5.9.4.4.2, MFT 31 Mirroring Requested by Appeals and Other Organizations, for additional information.)

- (6) **Court Review of CDP Determinations and Bankruptcy.** The commencement or continuation of a Tax Court proceeding is prohibited while the automatic stay is in effect (11 USC 362(a)(8)). However, for bankruptcy petitions filed by individual debtors, the automatic stay against commencement or continuation of Tax Court proceedings does not extend to post-petition taxes. Insolvency should be contacted when case-specific questions arise.

- (7) **CDP Resources.** Additional information, guidance, and assistance on the Collection Due Process can be obtained from the following resources:

- IRM 5.1.9, Collection Appeal Rights
- IRC 6320 and 6330

5.9.3.7.1
(05-26-2022)

**Collection Due Process
(CDP) and Equivalent
Hearing**

- (1) **Insolvency Processing of CDP and Equivalent Hearing Requests.** Insolvency caseworkers may receive a CDP and Equivalent Hearing Request from a debtor in response to actions taken to collect from exempt, abandoned or excluded property (EAEP). Insolvency caseworkers may also receive a CDP request in response to a NFTL filed by FI. (See IRM 5.9.17.6.7, NFTL Filing after Dismissal, for additional information.) Follow the procedures in the table below upon receipt of a CDP and Equivalent Hearing Request.

STEP	ACTION
1	<p>Request input of the appropriate TC 971 action code (AC) to the respective modules in the CDP request:</p> <ul style="list-style-type: none"> • TC 971 AC 275 when the hearing type is CDP-Levy, CDP-Lien or CDP-Both • TC 971 AC 630 in addition to TC 971 AC 275 when the hearing type is CDP-Levy or CDP-Both • TC 971 AC 278 when the hearing type is EH-Levy, EH-Lien or EH-Both <p>Note: The TC 971 may be input manually to IDRS or requested by submitting Form 4844, Request for Terminal Action, via secure email to *SBSE CCPINSLV.</p> <p>Review the hearing request and determine if contact with the taxpayer is appropriate. Refer to IRM 5.1.9.3.3, Processing CDP and EH Requests.</p>
2	Complete Form 14461, Transmittal of CDP/Equivalent Request Hearing.
3	Complete Form 3210, Document Transmittal, to transfer the CDP request to Appeals.
4	Secure managerial approval on Form 3210.
5	<p>Send the Form 3210, Form 14461, and any supporting documentation to the appropriate Appeals office. The appropriate Appeals office can be located on the Case Routing Into Appeals web page located at https://organization.ds.irsnet.gov/sites/AppealsCOS/APS/ SitePages/CaseRouting.aspx</p> <p>Note: Utilize the "Spreadsheet Tool". Select "CDP Field Source" in the Type of Case drop down box, then select the taxpayer's state in the Taxpayer Location drop down box.</p> <p>Supporting documentation includes the following:</p> <ul style="list-style-type: none"> • Form 12153, Request for Collection Due Process or Equivalent Hearing, or other written request received from the taxpayer. • The post-marked envelope containing the written request, if available. • When the request is due to the filing of a NFTL, include a copy of Letter 3172, Notice of Federal Tax Lien Filing and your Rights to a Hearing Under IRC 6320. A copy of the Letter 3172 can be secured on ALS when not provided by the taxpayer. • If available, when the CDP request is due to a Notice of Intent to Levy, include a copy of the: <ul style="list-style-type: none"> a) Letter 1058, Notice of Intent to Levy and Notice of Your Right to a Hearing, b) Letter 4066, Notice of Intent to Levy CDP Rights, or c) Letter 4554, Excluded Property - Final Notice with CDP Rights. • Any other supporting documentation relative to the request. <p>Refer to IRM 5.1.9.3.3.2, Sending Hearing Requests to Appeals.</p>
6	Document all actions taken in the AIS case history.

STEP	ACTION
7	Schedule a 45-day follow-up on the AIS Follow-up Screen for return of the acknowledged Form 3210 from Appeals.
8	If the acknowledgement copy of the Form 3210 is not received from Appeals within 30-calendar days, contact Appeals at the telephone number found on the link in Step 5, above.
9	Once the CDP hearing is held, a decision is made and the time allowed for the taxpayer to petition the Tax Court expires (if Tax Court rights are applicable), Appeals will return the file to Insolvency with a copy of the Appeals determination letter, etc. Refer to IRM 5.1.9.3.11, After the Appeals Determination is Final.

5.9.3.7.2
(05-26-2022)
**Requests for
Adjustments from
Appeals on Tax Court
Cases**

- (1) **Introduction.** Appeals may contact SCI in Tax Court CDP cases in which the resolution of the case involves an abatement or other adjustment to the debtor's account based on a bankruptcy issue. For example, an adjustment may be needed on the account due to dischargeability, rather than a recomputation of the debtor's tax liability.
- (2) **Mixed Adjustments.** In the event a case involves both a tax recomputation and an adjustment based on a bankruptcy issue, Appeals should complete the adjustment(s) based on the tax recomputation before contacting SCI to request any adjustments based on the bankruptcy issue.
- (3) **Bankruptcy Adjustments.** If an adjustment is based solely on a bankruptcy issue, the Appeals employee should contact CIO at the number provided on SERP. CIO employee will research AIS and refer the Appeals employee to the FI office which would have been responsible for the bankruptcy case. CIO will refer the case to the FI office responsible for the court where the bankruptcy was filed.

Note: The FI office may not be in the same geographic area where the debtor is now living.

- (4) **Documentation.** The Appeals employee will need to provide the FI caseworker with the documentation from the Tax Court case on which the adjustments are based. The documentation must include any closing instructions from Counsel and the name of the Counsel attorney who handled the Tax Court case in the event the FI caseworker has any questions regarding the action(s) to be taken.
- (5) **Insolvency Notification to Appeals.** Once the FI caseworker has completed the adjustment(s) based on the bankruptcy issue(s), the FI caseworker will contact the referring Appeals employee to inform them the adjustment action has been completed.

5.9.3.8
(05-26-2022)
**Taxpayer Advocate
Service (TAS)**

- (1) **Taxpayer Rights.** Per the Taxpayer Bill of Rights (TBOR), taxpayers have the right to expect a fair and just tax system which provides taxpayers with the opportunity to have their facts and circumstances considered when it might affect their underlying liabilities, ability to pay, or ability to provide information timely.

- (2) **Taxpayer Advocate Service.** Taxpayers have the right to receive assistance from the Taxpayer Advocate Service (TAS) if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through normal channels. For additional information on the Taxpayer Bill of Rights, visit <https://irssource.web.irs.gov/TAS/SitePages/TaxpayerRights.aspx>.
- (3) **Taxpayer Advocate Case Criteria.** TAS generally does not handle cases when a taxpayer is in litigation, which may include bankruptcy litigation. See IRM 13.1.7, Taxpayer Advocate Services Case Criteria, for more information on TAS case criteria and IRM 13.1.10.10.2, Request for Assistance in Which Counsel or the Department of Justice has Jurisdiction, for information about TAS litigation procedures. Referrals from SCI to TAS are rare. However, any referral to TAS must be made on a Form 911 ,Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order).
- (4) **TAS Referrals to Insolvency.** If the taxpayer contacts TAS when there is an open bankruptcy case, TAS follows case transfer guidelines found in IRM 13.1.17.3, Determining if the TAS Case Transfer Guidelines Apply. Once transferred, TAS's jurisdiction is very limited because the case is under the jurisdiction of the Bankruptcy Court. TAS can only refer account related issues to SCI or the attorney representing the government; i.e., the Assistant United States Attorney (AUSA) or the Department of Justice (DOJ) Attorney, representing the IRS in the bankruptcy litigation for their consideration.
- (5) **Service Level Agreements.** The National Taxpayer Advocate has reached agreements with the Commissioners of the Wage & Investment (W&I) Division, Small Business & Self Employed (SB/SE) Division, Tax Exempt & Government Entities (TE/GE), Criminal Investigations (CI), Appeals, and Large Business and International (LB&I) that outline the procedures and responsibilities for the processing of TAS casework when either the statutory or delegated authority to complete case transactions rests outside of TAS. These agreements are known as Service Level Agreements (SLAs). The SLAs are located at <https://irssource.web.irs.gov/TAS/SitePages/SLA.aspx>. When adjustment actions exceed the TA's delegated authority, the Advocate's office can refer a case to SCI for assistance by using an Operations Assistance Request (OAR).
 - a. **Centralized Insolvency Operation (CIO).** CIO will work issues referred by TAS for cases in its inventory *when the issues involved are not complex*. Cases containing complex issues will be transferred to the appropriate FI office.
 - b. **Field Insolvency (FI).** FI caseworkers will work TAS issues for cases assigned to their inventories or issues identified as complex. (See IRM 5.9.1.4(5), Complex Issues.) Issues referred to FI by TAS for cases assigned to CIO and are not deemed complex should be referred to CIO.
- (6) **Disputed Resolutions.** If an SCI caseworker and TAS cannot agree on relief after attempting to reach a satisfactory resolution, the matter must be elevated to the SCI caseworker's manager. If an agreement is not reached at the managerial level, the case file must be forwarded (along with a description of SCI's position) to the local TAS office.
- (1) **Insolvency Contacts.** Revenue officers (ROs) must immediately contact CIO or the local Field Insolvency office by phone or fax upon learning of a bankruptcy when no TC 520s are posted on IDRS to freeze the taxpayer's accounts. SCI may not be aware a taxpayer has filed bankruptcy because:

5.9.3.9
(05-26-2022)
**Revenue Officers and
Insolvency**

- a. The debtor did not list the IRS as a creditor;
- b. The court notifications did not reach the IRS; or
- c. Clerical error.

(2) **Revenue Officer Responsibilities.** Upon learning an assigned taxpayer has filed bankruptcy, ROs should take the following steps:

1. *Stop all enforced collection activity.*
2. Record pertinent bankruptcy filing information (e.g., entity in bankruptcy, case number, chapter filed, court location, and filing date).
3. Contact CIO or local FI as soon as possible by fax or phone (same day notification is preferred, but no later than one day after learning of the bankruptcy). SCI contact information can be found in the Insolvency National Field/Centralized Site Directory on SERP.

Note: CIO will input appropriate freeze codes.

4. Secure all delinquent returns and process them normally.
5. Advise SCI immediately when returns have been secured and send copies to the appropriate FI office for proof of claim computations.
6. Advise SCI and continue any pending TFRP investigation or recommendations.
7. Provide any other pertinent case information to SCI.
8. Retain open assignments until TC 520s have posted to IDRS and the Integrated Collection System (ICS) notifies the accounts are closed at the Field Collection level.

(3) **Additional Information for ROs.**

1. **Mailing Matrix.** All case information at the Bankruptcy Court should list the IRS address for noticing the IRS as:
Internal Revenue Service
Post Office Box 7346
Philadelphia, PA 19101-7346
2. **Payments.** Any pre-petition check payments must be sent by overnight courier to CIO with Form 3210, Document Transmittal, for proper processing. ROs may also call CIO the same day a check is received for instructions on check processing or, if warranted, the return of a check to the source.

Note: The street address for overnight courier service to CIO is:
Internal Revenue Service
2970 Market St., Mail Stop - 5-Q30.133
Philadelphia, PA 19104 - 5016
Attention: Payment Team

3. **Contact Points.** ROs may use a local contact listing established between FI and RO groups for Chapter 9, 11, and 12 cases. For cases under Chapter 7 or Chapter 13 protection, ROs should call CIO to provide information on bankruptcy filings or other bankruptcy-related casework. CIO phone and fax numbers can be found on SERP.

Reminder: To avoid violations of the automatic stay, ROs and SCI caseworkers must make immediate contact with each others' offices whenever it is learned a taxpayer, who is assigned to an RO group, has filed for bankruptcy protection.

4. **Discharge/Dismissal Issues.** ROs should contact CIO or local FI office to resolve issues with discharge or dismissal situations. A taxpayer may be confused or uncertain about the disposition of the bankruptcy case (whether a dismissal or a discharge took place, and if tax accounts were discharged). CIO will assist the RO with routine Chapter 7 and 13 issues and discuss appropriate actions. For questions centering on complex Chapter 7 and 13 issues or other bankruptcy chapters, the RO will be referred to the proper FI office.

Note: When a case is dismissed, a discharge is not granted, and normal collection actions can proceed as if the bankruptcy never occurred.

5. **IRMs.** ROs must adhere to IRMs, including IRM 5.9, Bankruptcy and Other Insolvencies, for guidance on bankruptcy issues. IRMs are available on the IRS intranet. Insolvency interim guidance can be found on the interim guidance search page at <http://imdtrack.web.irs.gov/Search.aspx> or Service Electronic Research Program (SERP).
6. **Documentation.** AIS case history documentation is the official record of activity on an account. The accurate and complete reporting of events is important throughout the pendency of a bankruptcy case. Should litigation follow, the case history becomes the primary record of the bankruptcy case.

- (4) **Specialty Collection Insolvency Requests for RO Files.** When a taxpayer in a RO's inventory files bankruptcy, the FI caseworker may request that the paper file be sent to them for review. The FI caseworker may be verifying schedules of expenses, looking for evidence of fraud, or checking for assets. The FI caseworker must return the paper file to the Field Collection group *within 21 calendar days of receipt* so it can be placed in the RO closed case files. Any documents needed by SCI beyond the 21 day time frame should be photocopied by SCI .

5.9.3.10
(05-26-2022)
**Trust Fund Recovery
Penalty**

- (1) **Withheld and Collected Taxes.** Trust fund taxes are taxes required to be withheld or collected by a third party (e.g., an employer) and paid over to the government (IRC 7501(a)). The Trust Fund Recovery Penalty (TFRP) allows the IRS to assess against responsible parties when trust fund taxes are not paid over to the government (IRC 6672). IRM 5.9.8.4.2(18), Aspects of the Initial Case Review in the Chapter 11 Case, TFRP Issues, contains a list of parties that may be assessed a TFRP.
 - a. The party assessed the TFRP had the duty, authority, and status to direct collection (*responsibility*), and made a decision not to pay over and account for the tax (*willfulness*).
 - b. The penalty facilitates the collection of trust fund taxes and enhances voluntary compliance.
 - c. Most TFRP assessments relate to employment taxes due from businesses.
- (2) **Urgency.** Timely identification of trust fund taxes in bankruptcy is critical. In bankruptcies, the IRS is often working against short deadlines for confirmations and bar dates. If SCI fails to file a timely proof of claim for trust fund taxes, the IRS may not be paid.
- (3) **Forms Reporting Trust Fund Taxes.** Forms 941, 943, 944, 945 (Withholding from Wages and Federal Insurance Contributions Act), Form 1042 (Annual

Withholding Tax Return for U.S. Source Income of Foreign Persons), and CT-1 (per the Railroad Retirement Tax Act) report trust fund taxes. Subtitle D of the IRC identifies miscellaneous excise taxes considered trust fund taxes and reported on Form 720. (See Chapter 25 of Subtitle C, Sec. 3505(b), Liability of Third Parties Paying Wages.)

Note: Although Form 941 is the return most often investigated for TFRP liability, Forms 943, 944, 945, 1042, CT-1, and 720 may warrant a TFRP investigation.

- (4) **Treated as a Tax.** The TFRP is assessed and collected in the same manner as a tax (IRC 6671(a)).
- (5) **One Time Collection.** Withheld income and employment taxes or collected excise taxes are collected only once, whether from the business and/or from one or more of its responsible parties.
- (6) **Pre-petition Trust Fund Quarters.** Any TFRP accruing on tax periods ending before the bankruptcy petition is filed constitutes a *pre-petition* tax liability, even if the TFRP assessment was not made before the bankruptcy was filed.
- (7) **Preparation of Claim.** The government's proof of claim should include the full amount of any trust fund tax pending (e.g., include all applicable Form 941 tax quarters). If an accurate amount is not known at the time the proof of claim is prepared, SCI can file an unassessed (estimated) claim and an amendment can be prepared, when possible. IRM 5.9.3.10.1, Calculating Trust Fund, and IRM 5.19.14.3.2, Trust Fund Calculation, explain the calculations needed to estimate a TFRP for employment taxes should the debtor be an individual who is responsible for ensuring business trust fund taxes were paid and who willfully failed to do so. TFRP liabilities are not dischargeable in all individual bankruptcy cases even if the IRS does not file a claim for those liabilities.
- (8) **ASED Protection.** The assessment statute expiration date (ASED) must be protected. *Returns should be secured as soon as possible and the TFRP investigation begun immediately upon learning a bankruptcy has been filed.* IDRS research should be conducted and files should be reviewed (such as the debtor's petition, schedules and statement of financial affairs) to determine the names, titles, addresses, and social security numbers of potentially responsible parties.

Note: *Returns filed fraudulently or prepared by the IRS under IRC 6020(b) have no ASED.*

Reminder: When a return is secured, AIS needs to be updated with the correct ASED.

Note: The assessment period is initially based on the return reporting the trust fund taxes being collected. For example, if the period for assessment of an employer is open because of fraud on a Form 941, the period for assessing the responsible party is open, as well. However, a consent to extend the period filed by the employer (i.e., a Form SS-10, Consent to Extend the Time to Assess Employment Taxes), will not extend the period for a responsible person as each party has a separate tax liability. The consent of the responsible person must be obtained on Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty.

- (9) **Information at 341 Meeting of Creditors.** All available administrative means should be used to complete the TFRP investigation. For example, a FI caseworker or a RO may attend the 341 meeting of creditors to interview a potentially responsible person, such as an officer of a company.
- (10) **General Rules for TFRP Investigation.** If corporate trust fund taxes are due, and the case is assigned to a RO, the RO's manager will generally issue an ICS OI for the TFRP investigation. However, if the case is not assigned to a RO, SCI may issue Form 2209, Courtesy Investigation, or an ICS OI for the TFRP investigation to the RO group responsible for the corporate address identified on the bankruptcy petition. In either case, the deadline on any OI requesting a TFRP investigation should be 90 days to allow sufficient time for the RO to complete the investigation and issue Letter 1153. (See IRM 5.9.3.10.2, ICS Other Investigations (OIs) to Request a TFRP Investigation, for additional information.)

- (11) **TFRP Investigation Criteria.** Generally, the TFRP Other Investigation (OI)

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ering Trust Fund Balance Owed Amounts, when determining if an OI may be necessary on cases below the dollar criteria. Local guidelines must be followed on:

- When to generate a field investigation
- How to monitor the case
- A determination of the responsible parties

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- (12) **TFRP OI Responses.** RO group managers will ensure investigations meeting underlying balance due priority factor categories *presently being worked* will be worked to conclusion. For cases meeting the criteria, the RO will issue Letter 1153, Proposed Trust Fund Recovery Penalty Notification, to propose a TFRP assessment, complete Form 9327, Non-assertion Recommendation of Uncollectible Trust Fund Recovery Penalty or of Uncollectible Personal Liability for Excise Tax, if making a non-assertion recommendation, or Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, to secure necessary ASSED waivers. Investigations not meeting the investigation criteria will be returned to SCI with no action. Additionally, RO group managers may reject an OI for a TFRP investigation when there is less than 6 months remaining on the ASSED. (See Exhibit 1.4.51-18, Guide for ASSED Report (Field Insolvency), for additional information.) SCI employees must document the findings of the OI in the AIS history.

- (13) **Chapter 11.** In corporate Chapter 11 bankruptcies, the TFRP investigation should be initiated and completed promptly. Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty, should be secured from all potentially responsible parties only when the TFRP ASSED will expire before the TFRP can be assessed. An approved Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment, should be completed for all corporate Chapter 11 cases requiring a TFRP determination. An assessment may be withheld when specific conditions are met. (See IRM 5.9.8.11(6), Trust Fund Considerations in Chapter 11, In Chapter 11 - Withholding Assessment Against Responsible Persons.) Generally, caseworkers will consider the following when determining if assessment of the TFRP will be withheld:

- a. An assessment must be made if the expiration of the statute is imminent, #
waiver has not been signed to extend the statute.
- b. *Bankruptcy does not suspend the running of the TFRP ASED.* The filing of a corporate bankruptcy does not extend or suspend the statute for assessment of the TFRP against a responsible person.
- c. The duration of payout for many Chapter 11 plans extends well beyond the normal ASED time period.

Note: The TFRP is generally recommended against officers of a corporation. However, the TFRP may be recommended against *any* person/entity determined to be willful and responsible for collecting and paying trust fund taxes, including a limited partner, corporate entity, trustee, spouse, etc.

Caution: *A waiver, which will extend the ASED to the date agreed to by a responsible person, will not extend the ASED for any other responsible person.*

SCI may withhold collection of assessed TFRPs in certain situations. See IRM 5.9.8.11(7), Trust Fund Considerations in Chapter 11, Withholding Collection of Assessed TFRPs, for additional information.

- (14) **Chapter 7.** In corporate Chapter 7 (liquidating) bankruptcies, unless compelling evidence indicates assets in the bankruptcy estate are sufficient to satisfy the trust fund liability, SCI will generally recommend assessment of the TFRP. This may be the last opportunity the government will have to collect.
- (15) **Expedite Information to Specialty Collection Insolvency.** The TFRP investigation must be completed promptly and the case file forwarded to SCI according to local procedures. SCI should receive the proposed TFRP liability amount on an expedited basis.
- (16) **Potential TFRP Assessments - Estimated.** If a potentially responsible person has filed bankruptcy and the TFRP has not yet been assessed, and an investigation is pending, the FI caseworker should be notified so the liability can be included on the proof of claim prior to the bar date (or by confirmation date, if SCI so requests). If necessary, SCI should be provided with as accurate an estimate as possible of the TFRP so it can be included in a timely-filed proof of claim. An amendment will be prepared later when the exact assessment amount is known.
- (17) **Monitoring of Corporate Bankruptcies.** SCI offices must establish a follow-up system for trust fund taxes in corporate bankruptcies to ensure:
 - a. All periods to which a TFRP applies have been addressed appropriately; and
 - b. The statute for assessment of the trust fund penalty does not expire.
- (18) **Chapter 13.** When a potentially responsible person is in a Chapter 13 bankruptcy, due to the quick confirmations that take place in these proceedings, prompt contact with the FI caseworker is essential. If the FI assignment is unknown, the RO can either call CIO to get the caseworker's phone number or use the Insolvency National Field/Centralized Site Directory on SERP to locate the correct phone number.

- (19) **Coordination – ROs and Specialty Collection Insolvency.** ROs and Insolvency caseworkers must maintain close contact to coordinate actions required for the TFRP process and suspension of accounts assigned to Field Collection.
- (20) **“TFRP” Case Classification.** Whenever there are unpaid trust fund taxes subject to assertion of the TFRP, caseworkers must open a “TFRP” case classification on AIS. The classification must remain open on AIS until the TFRP assessment has posted to IDRS or until a non-assertion has been approved. Adding the “TFRP” case classification alerts caseworkers of the pending assessment, as well as provides an AIS tool to monitor for imminent ASERDs.
- (21) **ASERD Indicator.** Once a claim has been added to the proof of claim screen, the caseworker needs to verify and adjust the ASERD date, if necessary, as well as update the “TFRP” drop down for each period to reflect the TFRP status. This indicator is used to create the ASERD Follow up Report. The caseworker can select from the following options:
 - a. TFRP Assessed
 - b. No Responsible Officer
 - c. No Collection Potential
 - d. All Trust Fund Amount Paid
 - e. Not Applicable
 - f. OI Issued- Awaiting Determination
 - g. Pending
 - h. Below Tolerance for Assessment
 - i. Stayed
 - j. Waiver

5.9.3.10.1
(05-26-2022)
Calculating Trust Fund

- (1) **Overview.** The term “penalty” in the Trust Fund Recovery Penalty (TFRP) can be misleading in that the TFRP is actually a withholding tax for bankruptcy purposes. As such, the TFRP is never an unsecured general liability. For additional information and guidance on the administration of the TFRP, see IRM 1.2.1. 6.3, Policy Statement P 5-14 (Formerly P-5-60), Trust Fund Recovery Penalty Assessments, IRM 5.7, Trust Fund Compliance, IRM 5.17.7, Legal Reference Guide for Revenue Officers - Liability of Third Parties for Unpaid Employment Taxes, and IRM 5.19.14.3.2, Trust Fund Calculation.
- (2) **Calculating the Trust Fund.** Calculate the TFRP amount prior to issuing an OI to Field Collection for investigation. Insolvency caseworkers with access to the Integrated Automation Technologies (IAT) Tools, should use the TFRP Calculator to calculate trust fund and non-trust fund taxes. A job aid for this tool can be found on the IAT website at <https://organization.ds.irsnet.gov/sites/WiMttlat/IATJobAids/default.aspx>. Those who do not have access to IAT must follow guidance and examples in IRM 5.19.14.3.2, Trust Fund Calculation, for instructions on how to calculate the trust fund and non-trust fund portion on employment tax returns.

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

5.9.3.10.2
(08-11-2014)
**ICS Other Investigations
(OIs) to Request a TFRP
Investigation**

- (1) **ICS Other Investigations (OIs).** Whenever possible, OIs to request a TFRP investigation by a RO should be generated through the Integrated Collection System (ICS). This allows the RO group manager to manage inventory assignments within the group. The due date of the OI should be 90 days to allow the RO sufficient time to complete the TFRP investigation and issue Letter 1153, Proposed Trust Fund Recovery Penalty Notification.
- (2) **Assigning OIs on ICS.** OIs created and assigned to RO groups should be assigned systemically to the group designation hold file, i.e., AOTO.nn00. After populating the OI, Insolvency should choose "system assign" rather than selecting "specific assign" *even if the case was assigned to a RO prior to the bankruptcy filing.*
- (3) **ICS History.** To assist the RO in completing the TFRP investigation, SCI must include any information in the ICS history that will assist the RO with the TFRP investigation. For example, include the following when known:
 - Responsible party information identified by a review of the Statement of Financial Affairs (SOFA). If possible, include the name and address of the responsible parties and the capacity they served in the business.
 - If the caseworker went to the 341 meeting of creditors, include any relevant information secured during the 341 meeting of creditors questioning that may assist the RO with the TFRP investigation. For example, if a bookkeeper left the business prior to the bankruptcy filing and there were allegations of misappropriation of funds, this may be pertinent in the TFRP investigation.
 - If the banking institution of the business is disclosed at the 341 meeting of creditors or in the bankruptcy schedules, provide the banking information in the ICS history. The RO may need to secure signature cards or other information from the bank.
 - To assist with ASER management, include "Upon receipt of this OI, please create an Automated Trust Fund Recovery (ATFR) case, if one is not already established" in the ICS history.

Note: An appropriate follow-up should be conducted to ensure an RO has been assigned and has all relevant information.

5.9.3.10.3
(05-26-2022)
**The TFRP Assessment
Decision**

- (1) **TFRP Determination by Insolvency.** When the TFRP information is received and the trust fund investigation completed, SCI will decide if the TFRP will be assessed during the bankruptcy of the business entity.
- (2) **Considerations.** To make the TFRP assessment determination, SCI caseworkers should consider all available information, including the following:
 - a. Potentially responsible individuals signed/not signed Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty;
 - b. Pyramiding of additional unpaid liabilities after the petition date;
 - c. Business entity continuing to operate at a loss;
 - d. Liquidation of assets (appears) insufficient to pay liability;
 - e. Excessive compensation being paid to officers, members or other responsible parties during the proceeding;
 - f. Inability to effectuate a plan;
 - g. Unreasonable delay in proposing a plan; and

- h. Default occurring on plan (e.g., pattern of late plan payments, missing or sporadic plan payments, plan in arrears, etc.).

(3) **Factors Determining Suspension of Collection.** Once SCI determines assessment of the TFRP is appropriate, collection may or may not be suspended against responsible parties. Pertinent factors to consider include the following:

- a. A plan is (or has been) confirmed in the bankruptcy of the business entity.
- b. The bankruptcy plan of the business entity appears feasible and includes payment of the trust fund liability.
- c. An adequate protection agreement is in place requiring regular payments from the business entity in bankruptcy.
- d. (If plan is confirmed), all payments are being made regularly, no arrearage exists, and the debtor is meeting all other plan provisions.

Note: Absent statute considerations, assertion recommendations normally will be withheld in cases of approved and adhered to business installment agreements and bankruptcy payment plans. To the extent necessary, gather sufficient information to support a possible assessment in the event the agreement is defaulted. See IRM 1.2.1.6.3, Policy Statement 5-14 (Formerly P-5-60), Trust fund Recovery Penalty Assessments, for additional information.

- e. No problems with current tax compliance are evident (e.g., all tax returns are filed – business entity and personal).

(4) **Coordinate With Insolvency.** ROs must contact the controlling I SCI office for local guidelines addressing NFTL filing determinations and conditions under which accounts are to be suspended, if applicable.

5.9.3.11
(08-11-2014)

**Courtesy Investigations
for Reasons *Other Than*
a TFRP Investigation**

(1) **Protection of the Government's Interests.** Prompt completion of SCI initiated courtesy investigations enables FI to file proofs of claim by the bar date, timely respond to objections and other motions before the court, and recommend appropriate legal action. When working these assignments, ROs and RO advisors are encouraged to:

- a. Exercise caution to avoid violations of the automatic stay, the discharge injunction, or other provisions of the Bankruptcy Code as taxpayer rights must be protected, and IRS may be required to pay damages, if such acts occur;
- b. Work closely with Insolvency to protect the government's interests; and
- c. Take only the actions and obtain only the information specified by Insolvency. Should additional pertinent information develop during the course of the investigation, advise the controlling Insolvency office promptly to determine an appropriate plan of action.

(2) **Exempt or Abandoned Property Investigations.** FI may initiate asset investigations requiring Field Collection actions relating to exempt property, if a previously-filed Notice of Federal Tax Lien *is valid*. FI may also initiate asset investigations requiring Field Collection actions relating to abandoned property due to the IRS's statutory lien. Coordination with FI is necessary when legal questions and issues arise. (See IRM 5.9.17.5, Exempt, Abandoned or Excluded Property (EAEP).)

Note: Insolvency has assumed responsibility for pursuing collection from retirement plans, so OIs to Field Collection for excluded property will not be issued.

(3) **Field Collection Actions.** Required RO actions may include the following:

- Reviewing and analyzing Bankruptcy Court–filed information
- Valuation of the subject property
- Levy
- Seizure

(4) **RO Report to Insolvency.** ROs should furnish timely reports containing relevant facts to the FI group requesting the investigation, including, but not limited to the following:

- The date and manner (e.g., telephonic, personal contact) of any request made for payment of the tax or the filing of tax return(s)
- The nature of the debtor's response
- An estimate of the debtor's liability
- The basis for the estimate of any unfiled returns
- A report on apparent declines in value of the estate, if applicable, such as negative cash flow or reduced inventory levels
- Any information/data on a pending trust fund assessment
- Other areas of concern, including non-compliance of tax obligations

(5) **Required Actions on Post-petition Accounts.** When seeking post-petition unfiled tax returns or payment of a post-petition balance due account, ROs should take the following actions:

1. Request immediate filing of the returns giving a short, specific deadline.
2. Request payment of post-petition amounts due, and, if appropriate, try to work out alternatives if the debtor is unable to full pay.
3. Inform the debtor of actions the government may take if non-compliance continues (such as a motion for dismissal from bankruptcy or a conversion to a Chapter 7 bankruptcy).
4. Seek guidance from Insolvency and/or Counsel (through Insolvency), if necessary.

Caution: Enforcement actions may be taken only through the direction and guidance of Insolvency and Counsel.

5.9.3.12
(08-03-2017)
**Summons and
Bankruptcy**

(1) **Bankruptcy Code.** The Bankruptcy Code does not prohibit the gathering of tax information, unless it is an act to collect a pre-petition tax in violation of the automatic stay.

(2) **Alternatives Preferred.** Although a summons may be served during bankruptcy, it is not a preferable course of action unless recommended by Counsel. The following actions should be attempted in lieu of issuing a summons:

- a. The first meeting of creditors may be attended in order to question potentially responsible parties (regarding potential TFRP assessment).
- b. Under Bankruptcy Rule 2004, court ordered production of records can be requested and examined for liability information.
- c. IRC 6020(b) provisions may be used (note paragraph (5) below), and Substitutes for Return (SFRs) may also be prepared by the IRS.
- d. Motions to compel may be filed.

- e. The proof of claim may list unassessed (estimated) liabilities for unfiled tax returns and/or a potential TFRP assessment.

Note: The amount(s) listed should be as factual as possible, based on internal sources and/or from information contained in the debtor's bankruptcy filings.

- (3) **Production of Records.** Service of a summons is permitted when production of records is needed to prepare a personal or corporate tax return of a debtor-in-possession (DIP). It is also permitted when production of records is needed to prepare post-petition employment or excise tax returns of an officer of a DIP.
- (4) **Collection Summons Prohibition.** During the pendency of the automatic stay, service of a *collection* summons is not permitted.

Note: A summons to determine a TFRP liability is not considered a collection summons and is allowable.

- (5) **IRC 6020(b) Returns.** Normally, delinquent employment tax returns are prepared under IRC 6020(b). When a tax return is secured or prepared under these procedures by Field Collection, a copy must be expeditiously sent to Insolvency. If the RO knows the case is being handled by FI, copies of the returns may be sent to the FI office handling the case. If the RO does not know which Insolvency office controls the account, the copies of the returns should be mailed to CIO address to be forwarded appropriately. (See IRM 5.9.11.2, Insolvency Mail, IRM 5.9.11.3, Field Insolvency Mail, or the Insolvency National Field/Centralized Site Directory <http://serp.enterprise.irs.gov/databases/who-where.dr/insolvency/national-field-centralized-site-directory.html> for additional information.) The return information is needed for proof of claim purposes.

5.9.3.12.1
(05-26-2020)

Third Party Contacts

- (1) **RRA 98.** To provide protection to the taxpayer regarding IRS's collection and examination activities, legislation was enacted that requires the IRS to notify the taxpayer of certain contacts the IRS makes with third parties. (See IRC 7602(c) and Treas. Reg. 301.7602-2.)
- (2) **IRS Third Party Contact Requirements.** For certain third party contacts made for the purpose of collecting or determining a tax liability, as of August 15, 2019 IRC 7602(c) requires the IRS to:
 - a. Provide notice to the taxpayer at least 45 days prior to contacting a third party.
 - b. State that the IRS intends to contact third parties.
 - c. Specify in the notice the time period, not to exceed a year, in which IRS intends to make the third party contacts. This time period may begin on the 46th day after the date of the notice.
 - d. Provide a list of third-party contacts to the taxpayer "upon request."
- (3) **A Third Party Contact.** A third party contact has been made when an IRS employee discloses their association with the IRS and initiates contact with a person other than the taxpayer and asks questions about a specific taxpayer with respect to the determination or collection of that taxpayer's federal tax liability.

Caution: *Unless an adversary proceeding or contested matter exists, contacts made by Insolvency might be considered third-party contacts.*

- (4) **Exceptions.** IRM 25.27.1.3.2, Exceptions to IRC 7602(c) Notification Requirements, through IRM 25.27.1.3.7, Jeopardy Situations, list exceptions to the requirement for completing Form 12175, Third Party Contact Report Form. Contacts made during litigation, including bankruptcy proceedings, relating to a matter being litigated are not third party contacts and do not require completion of Form 12175. Counsel should be contacted with questions regarding the litigation exception and bankruptcy.

Note: Contacts made during a criminal investigation generally are not subject to IRC 7602(c). A criminal investigation is initiated when an administrative referral based on a firm indication of fraud or other criminal conduct is made to Criminal Investigation (CI).

Caution: *Third party contacts to develop cases for referral to CI are contacts under IRC 7602(c) and must be reported.*

- (5) **Third Party Summonses.** A summons issued for an examination (or collection) purpose to a third party with respect to an identified taxpayer is considered a third party contact that must be preceded by advance notice to the taxpayer that third party contacts may be made. IRM 5.17.6.5, Third Party Summonses Subject to IRC 7609. If the third party summons is subject to the notice requirement of IRC 7609(a), such as a summons served on a bank to determine whether a person may be liable for the TFRP, then a post contact record of that third party contact is not required. Treas. Reg. 301.7602-2(e)(4) Example 4.

Note: Summonses to determine equity during an exempt, abandoned, or excluded property (EAEP) investigation is considered a third party contact.

- (6) **Release of Levy.** A release of levy *is considered a third party contact* and, unless approved by the debtor, must be recorded by Insolvency. IRM 5.9.5.8(6) covers third party contacts and release of a levy.

Note: Levies should be released immediately, even if no advance third-party contact notice has been given, to avoid violation of the automatic stay.

- (7) **Attorneys and Trustees.** IRM 5.9.19.4, CIO Telephone Procedures, gives details on disclosure to attorneys of record and bankruptcy trustees.
- (8) **Form 12175 Requirements.** A third party contact must be recorded the date the contact is made (or as soon as possible thereafter) on Form 12175, Third Party Contact Report Form. Multiple contacts with the same third party on different dates require a separate Form 12175 for *each contact*. When Form 12175 is completed (instructions are on the reverse of the form), it is forwarded to the Third Party Contact Coordinator at the address found at <http://mysbse.web.irs.gov/Collection/toolsprocesses/3rdParty/contacts/default.aspx>. (See IRM 25.27.1.4, Recording and Reporting TPCs, for additional information.)

Note: A copy of Form 12175 need not be retained at the local level. The form is retained by the input unit for a year. The form is then forwarded to the records center for retention for ten years.

- (9) **Third Party Contact Notification to Taxpayers.** The caseworker must send Letter 3164-B, Third Party Contact Letter, to the taxpayer before a third party contact is made to collect an assessed tax. Contact cannot be made until the 46th day after the letter has been sent. The notice is valid for one year from the 46th day after sending the notice.

Note: If a taxpayer was issued a version of Letter 3164-B that was updated July 2019 or later and the contact will take place within the time period specified in the letter, a new notice is not required.

When the caseworker issues Letter 3164-B, Third Party Contact Letter, a TC 971 AC 611 must be input on each tax period included on the letter. See IRM 25.27.1.3, Notification Requirements and IRM 5.1.1.12.1, TPC Advance Notification Procedures, for more information.

Note: As of August 15, 2019, Publication 1, Your Rights as a Taxpayer, no longer satisfies the advance notice requirement of IRC Section 7602(c)(1). Issue Letter 3164, Third Party Contact Letter, (revised July 2019 or later) to satisfy IRC 7602(c)(1).

- (10) **AIS Recordation of Contact.** In addition to completing Form 12175 to report third party contacts, Insolvency caseworkers must document third-party contacts and all resulting actions taken in the AIS history. The caseworker must include the name(s) and title(s) of the person(s) contacted, the date of contact, business entity information, if applicable, and the purpose of the contact.
- (11) **Assistance.** The local Third Party Contact Coordinator or local Counsel is available should additional guidance be needed by FI. CIO should contact the Campus Third Party Contact Coordinator or the Associate Area Counsel assigned to CIO, if guidance is required.
- (12) **Taxpayer Authorization.** IRC 7602(c) does not apply to any contacts the taxpayer has authorized. Form 12180, Third Party Contact Authorization Form, may be used to document the taxpayer's authorization. Although oral authorization is allowed, it is preferable to have Form 12180 completed and retained.

Note: The taxpayer may not prevent an IRS employee from contacting a third party by refusing to provide prior authorization. IRM 25.27.1, Third Party Contact Program, provides additional information.

5.9.3.13
(05-26-2022)
**Passport Certification
and Bankruptcy**

- (1) **Overview.** The Fixing America's Surface Transportation (FAST) Act created a new code section (IRC 7345) which authorizes the IRS to notify the State Department that an individual is certified as owing a seriously delinquent tax debt. The State Department generally will not issue or renew a passport to an individual after receiving the certification from the IRS. See IRM 5.19.25, Passport Program, for more information.
- (2) **Seriously Delinquent Tax Debt.** For the purposes of the FAST Act, a taxpayer has "serious delinquent tax debt" if they have unresolved tax debt of

over \$50,000, which is adjusted to \$55,000 (as of January 1, 2022) due to inflation *that has been assessed and* for which:

- a NFTL has been filed and all administrative remedies *under IRC 6320* have lapsed or have been exhausted, or
 - a levy has been issued
- (3) **Identifying Certified Cases.** A TC 971 AC 641 will be systemically uploaded to identify certified cases. The TC 971 AC 641 will be added to CC *ENMOD* and CC *IMFOLE* to identify the certified individual by their SSN and date of certification notice certified cases.
- (4) **Bankruptcy Exclusion.** In general, bankruptcy cases will be excluded from certification.

