MANUAL TRANSMITTAL

5.9.4

Department of the Treasury
Internal Revenue Service

MARCH 17, 2023

EFFECTIVE DATE

(03-17-2023)

PURPOSE

(1) This transmits a revised IRM 5.9.4, Bankruptcy and Other Insolvencies - Common Bankruptcy Issues.

MATERIAL CHANGES

(1) IRM 5.9.4 has been updated to provide clarification and expansion of existing material. The following table details changes in this IRM revision:

Number	IRM Section	Description of Change
1	IRM 5.9.4.12.3(2)	Added undisclosed foreign assets as an indicator of fraud.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.9.4, dated February 3, 2023. The Interim Guidance SBSE 05-0821-0015 Foreign Account Tax Compliance Act (FATCA) research and use in Field and Specialty Collection Programs.

AUDIENCE

All operating divisions

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5.9.4
Common Bankruptcy Issues

Table of Contents

5.9.4.1 Program Scope and Objectives
5.9.4.1.1 Background
5.9.4.1.2 Authority
5.9.4.1.3 Responsibilities
5.9.4.1.4 Program Management and Review
5.9.4.1.5 Program Controls
5.9.4.1.6 Terms and Acronyms
5.9.4.1.7 Related Resources
5.9.4.2 Property of the Estate
5.9.4.3 ASED/CSED
5.9.4.3.1 BAPCPA and BRA 94's Effect on Assessments
5.9.4.4 Examination and Specialty Collection Insolvency
5.9.4.4.1 Examination and MFT 31 Mirrors
5.9.4.4.2 MFT 31 Mirroring Requested by Appeals and Other Organizations
5.9.4.5 Credits, Refunds, and Offsets
5.9.4.5.1 Addressing Credits, Refunds, and Offsets
5.9.4.5.2 Post-Petition Payments and Credits
5.9.4.5.3 Offsets to Other Agencies
5.9.4.5.3.1 Offset Bypass Indicators
5.9.4.5.3.2 Referral of Taxpayer to BFS
5.9.4.5.3.3 IRS's Offset to Taxes
5.9.4.5.4 Federal Payment Levy Program (FPLP)
5.9.4.5.5 Offsets, Payments, and the Individual Shared Responsibility Payment (SRP)
5.9.4.5.6 Offsets and the Employer Shared Responsibility Payment (ESRP)
5.9.4.6 Sale of Property
5.9.4.6.1 Sale of Property Considerations
5.9.4.6.2 Escrow Payoff Requests during a Bankruptcy
5.9.4.7 Preferences
5.9.4.8 Bankruptcy Court Tax Determinations
5.9.4.9 Prompt Determination Requests from Trustee
5.9.4.9.1 Processing Prompt Determination Requests
5.9.4.9.2 Immediate Assessment
5.9.4.10 Prompt Refund Requests from Trustee
5.9.4.10.1 Processing Prompt Refund Requests
5.9.4.11 Offers in Compromise and Bankruptcy

5.9.4.11.1 Accepted but Not Completed Administrative OICs
5.9.4.12 Bankruptcy Fraud
5.9.4.12.1 Fraud Referrals
5.9.4.12.2 Fraud Enforcement Advisor
5.9.4.12.3 Fraud Indicators
5.9.4.12.4 Property Held by a Third Party
5.9.4.13 Criminal Investigation (CI) Controls on Tax Accounts
5.9.4.14 Failure to Pay Tax Penalty and Failure to Pay Estimated Income Tax Penalty
5.9.4.15 Referrals – Representing IRS in Bankruptcy Court
5.9.4.15.1 Direct Referrals
5.9.4.15.2 Referrals to Counsel (Non-Direct Referrals)
5.9.4.15.3 Significant Bankruptcy Case Referrals
#
5.9.4.16 Unfiled Pre-Petition Returns
5.9.4.17 Unfiled Post-Petition Returns
5.9.4.18 Innocent Spouse Requests and Bankruptcy
5.9.4.19 Affordable Care Act
5.9.4.19.1 Individual Shared Responsibility Payment (SRP)
5.9.4.19.2 Employer Shared Responsibility Payment (ESRP)
5.9.4.20 Installment Agreements and Bankruptcy
5.9.4.20.1 IA Requests For Post-Petition Liabilities Submitted During Bankruptcy
5.9.4.20.1.1 Previously Granted Post-Petition Installment Agreements
5.9.4.21 Report of Foreign Bank and Financial Accounts (FBARs)
5.9.4.22 Criminal Restitution Assessments
5.9.4.22.1 Working Criminal Restitution Cases
5.9.4.23 Section 965 Transition Tax
5.9.4.24 Disaster Areas and Bankruptcy

Exhibits

5.9.4-1 Inputting Follow-up Dates
5.9.4-2 Prompt Determination and Refund Processing Chart
5.9.4-3 Prompt Determination Request 505(b) Checklist
5.9.4-4 Prompt Refund Request 505(a) Checklist

5.9.4.1
(02-03-2023)
Program Scope and Objectives

(1) **Purpose.** This IRM section contains guidance on various topics Insolvency caseworkers may encounter during the course of a bankruptcy case.

(2) **Audience.** Insolvency caseworkers and management in Specialty Collection Insolvency (SCI), Field Insolvency (FI) and Centralized Insolvency Operation (CIO) are the primary users of this IRM section. Advisors, Revenue Officers, and other SB/SE employees may also refer to these procedures. 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.** Director, Collection Policy, SB/SE, is the policy owner of this IRM.

(4) **Program Owner.** The program owner is Collection Policy, Insolvency an organization within Small Business Self Employed (SBSE) division.

(5) **Primary Stakeholders.** The primary stakeholders are Specialty Collection Insolvency, SB/SE Collection, Exam, Criminal Investigation, and Counsel.

(6) **Program Goals.** The goal 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.

5.9.4.1.1
(02-03-2023)
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.

5.9.4.1.2
(12-18-2017)
Authority

(1) The Insolvency program operates within the guidelines of the US Bankruptcy Code (11 USC) and the Federal Rules of Bankruptcy Procedure.

(2) IRM 5.9.3.1.2, Authority, and IRM 5.9.3.1.3, Responsibilities, also contain Insolvency caseworkers' authority and responsibilities in the insolvency program.

5.9.4.1.3
(12-19-2019)
Responsibilities

(1) IRM 5.9.1.4, The Role of Insolvency, provides a list of titles and responsibilities and explains the roles and authority.

5.9.4.1.4
(02-03-2023)
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 Review, and IRM 1.4.51.17.5, Program Reviews, for more information.

5.9.4.1.5
(02-03-2023)
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 System (AIS).

5.9.4.1.6
(02-03-2023)
Terms and Acronyms

(1) A glossary of terms used by Insolvency can be found in IRM 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/Acronymdb.aspx*

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

Acronyms	**Definitions**
AIS	Automated Insolvency System
APOC	Automated Proofs of Claim
ASFR	Automated Substitute for Return
AUR	Automated Underreporter
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
BFS	Bureau of the Fiscal Service
BPI	Bypass Indicator
CIO	Centralized Insolvency Operation
DIP	Debtor-In-Possession
EPOC	Electronic Proof of Claim
FI	Field Insolvency
FTD	Federal Tax Deposit
IIP	Insolvency Interface Program
NFTL	Notice of Federal Tax Lien
PACER	Public Access to Court Electronic Records
POC	Proof of Claim
SCI	Specialty Collection Insolvency
SFR	Substitute for Return

Acronyms	Definitions
TEGE	Tax Exempt/Government Entities

5.9.4.1.7
(02-03-2023)
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) Taxpayer Bill of Rights, Pub 5170, and Taxpayer Bill of Rights page *https://www.irs.gov/taxpayer-bill-of-rights*

5.9.4.2
(02-03-2023)
Property of the Estate

(1) **The Bankruptcy Estate.** The filing of the bankruptcy petition creates the bankruptcy estate. The estate consists of all of the debtor's interests in any property at the time the case is filed (11 USC 541(a)(1)). It also encompasses the interest of the debtor and the non-debtor spouse in certain community property states. (See 11 USC 541(a)(2) and IRM 5.9.3.5.1.1, Community Property; IRM 5.9.10.8.1, Property of the Estate After Confirmation; IRM 5.9.6.14, Bankruptcy Estate Income Taxes – Separate Taxable Entity; and IRM 5.9.8.14, Internal Revenue Code 1398 Issues.)

(2) **After-Acquired Property.** In a Chapter 12 or 13 bankruptcy, property acquired after the petition date but before the case is closed, dismissed, or converted to another chapter, including wages and community property, becomes property of the estate (11 USC 1207 and 1306). In general, some property, especially wages or other income used to fund the plan, may continue to be property of the estate after confirmation. IRM 5.9.10.8.1, Property of the Estate After Confirmation, gives additional information about the post-confirmation estate in a Chapter 13 bankruptcy.

(3) **Individual Chapter 11.** As with Chapter 12 and 13 cases, property of the estate for individual Chapter 11 cases includes wages and other property acquired post-petition but before the case is closed or converted (11 USC 1115). Guidance on how to address the tax consequences is discussed in further detail in:

- IRM 4.27.1.2, Bankruptcy Estate and Filing Requirements
- IRM 4.27.1.9.4, Individual Chapter 11 Debtors Required Filings
- IRM 5.9.8.14, Internal Revenue Code 1398 Issues
- IRM 5.9.8.14.1, Post-Petition Debts, Chapter 11 Individuals
- IRM 5.9.8.19.4.2, Post Confirmation Tax Liabilities of the Individual Debtor (Post-BAPCPA)
- IRM 5.17.10.11, Individuals in Chapter 11
- Publication 908, Bankruptcy Tax Guide
- Notice 2006-83, Individual Chapter 11 Debtors

(4) **Counsel Guidance.** Complex issues determine what constitutes the property of a bankruptcy estate. Counsel should be contacted for guidance when case-specific issues arise.

(5) **Exempt, Excluded, and Abandoned Property.** Property may be exempted or excluded from the estate or abandoned by the trustee. IRM 5.9.17.5, Exempt, Abandoned or Excluded Property (EAEP), provides a full discussion of these property issues as they affect possible post-petition collection.

5.9.4.3
(12-19-2019)
ASED/CSED

(1) **Automatic Statute Computations.** Master file computes appropriate statute extensions for assessment and collection in most instances when a Transaction Code (TC) 521 posts and reverses the bankruptcy freeze code.

Note: The statutory period for assessment is not directly affected by bankruptcy for cases filed after October 22, 1994, the effective date of the Bankruptcy Reform Act (BRA), *unless* the Tax Court petition period is suspended by the automatic stay. (See IRM 5.9.4.3.1, BAPCPA and BRA 94's Effect on Assessment.)

(2) **Assessment Statute Expiration Date (ASED) Suspension Time Frames.** For bankruptcy cases filed before the enactment of BRA 94, the running of the statutory period for assessment (ASED) is suspended during the period the assessment is prohibited (while the automatic stay is in effect) and for 60 days thereafter (IRC 6503(h)(1)). To compute a new ASED, 60 days are added to the unexpired time (number of days) remaining on the original statute as of the petition date. Then that amount of time is added to the date of discharge or dismissal (or the date the stay was lifted) to establish the new ASED. (For ASEDs on exam cases, Examination should be consulted.)

(3) **Collection Statute Expiration Date (CSED) Suspension Time Frames.** The running of the statutory period for collection (CSED) is suspended for the period collection is prohibited by the reason of the bankruptcy case. Collection is so prohibited when:

- The automatic stay prohibits collections, or
- In a Chapter 11 case, post confirmation during the period in which the confirmed plan provides for payment of the tax debt, and the plan is not in substantial default.

Computation of a new CSED is similar to an ASED computation. Per IRC 6503(h)(2), six months are added to the unexpired time (number of days) remaining on the original statute as of the petition date and that total is added to the discharge or dismissal date (or the date the stay was lifted) to establish the new CSED.

Note: The IRS will never receive less than the original statute plus 60 days for an ASED extension, or the original statute plus six months for a CSED extension.

(4) **CSED Recomputation – Manual Input of TC 550.** For non master file (NMF) accounts, a manual input of TC 550 is necessary. The input of a TC 550 must be timely (for example, when the court grants a discharge or dismisses a case). The presence of an unreversed TC 520 in the module will not prevent

TC 550 from posting. If a TC 550 is input to a module with an un-reversed TC 520 with a bankruptcy closing code, automatic computation of the CSED when the TC 521 posts will not occur.

(5) **CSED - Taxpayer Identification Number (TIN) Indicators.** The CSED for a tax module is displayed on IDRS. This information is used by Collection employees to determine the time remaining on a collection statute (i.e., if collection actions may be taken on a balance due account).

a. **Individual Tax Return.** If a debtor filed an income tax return in any status other than "married filing joint", the CSED is extended for the period the stay is in effect plus six months, regardless of the debtor's marital status or if the bankruptcy was an individual or joint filing.
b. **Joint Return - Spouses Filed Joint Bankruptcy.** If the tax module is for an IMF joint assessment and both spouses have filed a joint bankruptcy, the collection statute is extended against both spouses.
c. **Joint Return - Both Spouses Filed Individual Bankruptcies.** If the spouses filed a joint return, but filed individual bankruptcies, the CSED is extended individually for each debtor with each spouse's extension being dependent upon the duration of the stay in his or her own bankruptcy case. In this situation the MFT 30 module usually must be mirrored to two MFT 31 modules, with taxpayers residing in community property states being possible exceptions.
d. **Joint Return - Only One Spouse in Bankruptcy.** If only one spouse files bankruptcy, and the joint (pre-petition) tax return was filed under the non-debtor spouse's Social Security Number (SSN), then IRS personnel handling the account(s) must know to whose SSN the CSED extension and freeze code apply. CSED Indicator Codes make this identification possible. An Individual master file (IMF) CSED TIN indicator is input as part of the transaction data of the TC 520. MFT 31 mirroring is usually required when the bankruptcy is discharged or dismissed.
e. **CSED Indicator Codes.** The TC 520, closing code, and CSED TIN indicator, can identify which taxpayer spouse is in bankruptcy and to whom the CSED extension applies. The CSED TIN indicator is input by Insolvency Interface Program (IIP) during initial processing. The indicator codes can also be input manually (i.e., as part of the manual TC 550 extensions in bankruptcy). The applicable IMF CSED TIN indicator codes are: **P** — the CSED applies to the **P**rimary TIN; **S** — the CSED applies to the **S**econdary TIN; and **B** — the CSED applies to **B**oth TINs.

(6) **CSED Protection - MFT 31 for Non-Debtor Spouse.** To protect the collection statute, Insolvency must be aware of CSED problems that may develop on the non-debtor spouse account. (See IRM 5.9.3.5.1.1, Community Property, and IRM 5.9.17.7, Joint Account and Non-Debtor Spouse.) When considering collection from a non-debtor spouse, MFT 31 mirroring prior to case closure may be appropriate; for example, if a CSED is imminent or when both spouses have filed individual bankruptcy petitions but joint income tax returns. IRM 5.9.17.22.4, Mirroring Process, provides procedures for the MFT 31 mirroring process. Protection of the CSED on a non-debtor spouse is unnecessary if prior to the CSED expiration:

a. Plan payments are sufficient to satisfy the claim and pay the total outstanding liability to a level below the tolerance amount for an MFT 31 transfer.

b. The liability will be dischargeable against the debtor spouse and outstanding liabilities against the non-debtor spouse do not exceed the

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Caution: In community property states, Counsel's advice should be sought before taking collection action against a non-debtor spouse.

When a caseworker determines that it is necessary to mirror an account to protect the CSED of the non-debtor spouse, CIO should be contacted to complete MFT 31 mirroring, following the steps in IRM 5.9.4.4.2 (4), SCI's Required Actions. All actions regarding mirroring of the account, or the determination that mirroring is necessary, should be documented per IRM 5.9.5.4(2), History Documentation.

(7) **Additional Considerations.** The automatic stay will impact the ASED and CSED in various ways in different bankruptcy chapters, especially in Chapter 11 cases, where CSED expiration rules differ for individuals and non-individuals. See IRM 5.9.2.10(2), The Effect of Bankruptcy on Collection, Impact on Collection, IRM 5.9.3.5, Automatic Stay, IRM 5.9.5.6, Bankruptcy **Freeze** Code (TC 520), IRM 5.9.5.7, Serial Filers, and IRM 5.9.17.19, ASED/CSED Considerations.

(8) **Other Investigation (OI) Potential.** If a case is assigned to an RO at the time that a bankruptcy petition is filed, an OI may be initiated to ensure continuity of case actions. OIs may be useful in Chapter 7 cases (for example, investigating exempt, excluded, and abandoned property, as well as lien priorities).

5.9.4.3.1
(02-03-2023)
BAPCPA and BRA 94's Effect on Assessments

(1) **BAPCPA.** For cases filed on or after October 17, 2005, BAPCPA limits the stay on Tax Court proceedings regarding an individual debtor's tax liability only with respect to a taxable period ending before the order for relief (11 USC 362(a)(8)). Therefore, the indirect ASED stay, with respect to deficiency liabilities resulting from IRC 6213(a), does not apply with respect to an individual debtor's post-petition liabilities.

Note: The stay applies to both pre-petition and post-petition corporate liabilities, so long as it is a liability the bankruptcy court may determine.

(2) **Consent to Extend ASED.** The IRS may obtain a valid consent to extend the statute of limitations on assessment from entities in bankruptcy. A TC 560, input by Examination, indicates an extension of the ASED.

(3) **BRA 94.** The Bankruptcy Reform Act of 1994 (BRA 94) brought about significant changes affecting the IRS, including:

a. **Sovereign Immunity.** BRA 94 waived the government's sovereign immunity against judgments in connection with enumerated provisions (preferences, violations of stay, etc.). However, sovereign immunity remains in effect on the awarding of punitive damages, and attorney fees are capped.

b. **Assessments Allowed.** For debtors who filed bankruptcy on or after October 22, 1994 (but before the October 17, 2005, BAPCPA effective date), the automatic stay for assessment of any tax, including original tax returns, adjustments, Trust Fund Recovery Penalty (TFRP), *agreed* audit

deficiencies, *agreed* Substitute For Return (SFR) deficiencies, and *agreed* Automated Underreporter (AUR) deficiencies no longer apply(11 USC 362(b)(9)).

Note: Deficiencies in which the statutory period for petitioning the Tax Court has expired *prior* to the bankruptcy petition can also be assessed even though the assessment may post to IDRS after the petition date.

(4) **Impact on ASEDs.** BRA 94 has had an impact on ASED computations.

a. **Most Taxes Can Be Assessed.** The automatic stay does not prohibit the IRS from assessing any tax where the IRS would not be required to issue the taxpayer a statutory notice of deficiency. These include 1) the taxpayer's self-assessments arising from filed returns; 2) agreed audit, AUR, or SFR deficiencies; 3) Trust Fund Recovery Penalty (TFRP) assessments; and 4) audit, AUR, or SFR deficiencies where the statutory period for petitioning the Tax Court has expired prior to the filing of bankruptcy.

b. **Unagreed Pre-Petition Audit Deficiencies.** 11 USC 362(a)(8) and IRC 6213(f) stay the debtor from filing a Tax Court petition for the period of the automatic stay plus 60 days thereafter. Accordingly, for debtors with an outstanding notice of deficiency, the ASED is suspended as a result of the bankruptcy petition.

(5) **Computation of the ASED in Bankruptcy Situations.** Due to 11 USC 362(a)(8) and IRC 6213(f), bankruptcy suspends the statute of limitations on assessment in cases where a statutory notice of deficiency has been issued and the stay prohibits the commencement or continuation of a Tax Court proceeding involving that tax liability. Rev. Rul. 2003-80, 2003-29 IRB 80 provides published guidance explaining the effects of bankruptcy on the limitations period for assessment.

5.9.4.4
(02-03-2023)
Examination and Specialty Collection Insolvency

(1) **Examination Contacts to SCI.** If a debtor is in bankruptcy and an examination is open on a pre-petition period, SCI would contact the Examination unit to determine if an additional assessment will be proposed. Exam contacts can be found on *AIMS Assignee Code (AAC) Contact Listing* when there is a TC 420 or *AUR Coordinators* when there is a TC 922. When an Examination employee discovers a taxpayer is in bankruptcy, the Examination employee will:

a. Contact SCI as soon as they are aware that a taxpayer under examination has filed for bankruptcy if there is no bankruptcy freeze on the account.
b. Notify SCI of the status of the examination.
c. Continue with established examination bankruptcy procedures; and
d. Advise SCI of any proposed Exam-initiated deficiencies or adjustments that might result in a refund or a credit to the taxpayer. This should be done no less than 30 days before the bar date (a fixed date set by the court to file a claim), by sending SCI a memorandum, or a locally developed form (along with a copy of the transmittal letter to the Examination report), or a copy of the Revenue Agent Report (RAR).

Note: SCI will not perform a periodic follow-up with Examination.

(2) **Exam's Suspense File.** Examination 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 under 11 USC 362(a)(8). The Examination Bankruptcy Coordinator will coordinate with SCI for any questions/issues that arise.

a. **Time Frame for Insolvency to Advise Exam.** Within *five workdays* of contact from Exam, SCI will advise Examination which assessments (if any) can be made. SCI's response will show the date the stay was lifted, if applicable.
b. **Determining the -L Freeze.** SCI must run IIP Process D to detect the -L freeze, which indicates accounts selected for an audit and which may require interoffice coordination.
c. Access to AIS (read only) and Public Access to Court Electronic Records (PACER) can be granted to the examination function.

(3) **Insolvency Referrals to Exam.** When SCI receives tax returns from debtors, and evidence exists that information provided by the debtor understates income or overstates deductions meeting the dollar criterion in IRM 4.27.1.7.1.1(2), a referral can be made to Planning and Special Programs (PSP). Procedures for preparing and forwarding referrals to Exam are provided in IRM 4.27.1.7.1.1, Returns Eligible for Review.

(4) **Abusive Tax Avoidance Transactions (ATAT).** During the initial case review process, SCI caseworkers must determine if a TC 420 (-L freeze) is present with ATAT project codes. CIO cases will be reassigned to the designated FI caseworker if an ATAT code is identified. The FI caseworker must review the following to identify inconsistencies:

- Bankruptcy schedules
- Statements of Financial Affairs
- Tax returns
- Financial statements

The FI caseworker must contact the Exam ATAT Coordinator to determine if further investigation is needed. In cooperation with the Fraud Enforcement Advisor, Area Counsel, and Exam and Collection ATAT Coordinators, SCI will decide if a bankruptcy fraud referral should be pursued.

(5) **Employee Plans.** SCI will advise the Employee Plan (EP) function of the Tax Exempt/ Government Entities (TEGE) division when a large dollar or significant case Chapter 11 bankruptcy is filed, so EP can research any impact the bankruptcy might have on the EP program. (See IRM 5.9.8.4.2(11), Notice to TEGE.)

(6) **SCI Follow–Up/Monitoring.** Because confirmations take place quickly in some bankruptcies (notably in Chapter 13), monitoring methods must be established by FI for cases involving examination issues. (See Exhibit 5.9.4-1, Inputting Follow-Up Dates.) If a proof of claim needs to be filed, and research indicates one or more tax periods are being examined, and the assigned Examination function has not contacted the SCI group, SCI should contact that Examination unit to gather current information on the status of the audit.

(7) **Reminders - Assessment of Taxes.** The IRS may, notwithstanding the automatic stay,:

- Assess an agreed tax deficiency (26 USC 6213(d)).

- Assess a tax shown on a return filed by the taxpayer (26 USC 6201(a)(1) and 11 USC 362(b)(9)).
- Assess taxes which are not subject to the deficiency procedures (e.g., the Trust Fund Recovery Penalty, whether the taxpayer agrees or not).

  Note: Unless the period for petitioning the Tax Court is suspended, the automatic stay no longer provides an extension of the ASED; therefore, the IRS must take timely action to protect the statute.

- Assess an otherwise assessable tax deficiency on an individual debtor's post-petition period (11 USC 362(a)(8)).

(8) **Unagreed Deficiency Assessments.** Post-petition assessments of unagreed deficiencies on pre-petition periods for which the statutory response time to file a Tax Court petition has not expired are violations of IRC 6213. Such assessments would not be valid because the debtor cannot petition the Tax Court while the automatic stay is in effect, and the time to file the petition is therefore tolled by the bankruptcy. They must be reversed within two days of identification.

a. **SCI Procedures.**. When an SCI caseworker determines that such an assessment has posted, the caseworker must contact the Exam or AUR bankruptcy coordinator by phone or secure e-mail to request a reversal of the TC 300/290 assessment. Exam or AUR will input the reversal upon SCI notification to meet the two-business day requirement. If contact with the bankruptcy coordinator cannot be made to ensure the reversal will be initiated within two business days, the SCI caseworker must input the reversal online, or, send an expedited request to Centralized Case Processing (CCP) to have the assessment reversed. If the reversal of the assessment is input by SCI or CCP, the SCI caseworker must advise the applicable bankruptcy coordinator, by phone or secure e-mail, of the reversal as soon as possible so the assessment file can be suspended until closure of the bankruptcy. To facilitate reassessment of the deficiency after the case is closed by the bankruptcy court, the caseworker must document all information regarding the assessment and reversal, and enter the "Re-Assess" classification on AIS.

b. **SCI Contact With AUR.**. AUR may contact SCI caseworkers to request mirroring of accounts, or to advise of assessment determinations. Any requests or information from AUR must be documented in the AIS case history.

c. **Orders Vacating Dismissal.** An order vacating dismissal may or may not reimpose the automatic stay. Therefore, SCI must work with Exam and AUR in situations where there is a pre-petition module with an unagreed examination deficiency and there is an order vacating dismissal in the case. See IRM 5.9.3.5, Automatic Stay; IRM 5.9.17.6.6, Orders Vacating Dismissal (Reinstatements); and IRM 5.9.5.7, Serial Filers, for more information.

Note: These statutory notice of deficiency procedures *do not apply to employment taxes*.

(9) **Documentation.** SCI must accurately document all contacts with Examination functions in the AIS history at the time of contact. IRM 5.9.5.4, Automated Insolvency System (AIS) Documentation, provides guidance on required AIS documentation.

5.9.4.4.1
(02-03-2023)
Examination and MFT 31 Mirrors

(1) **Mirroring Procedures.** Procedures are in place for creating MFT 31 mirror modules when Exam must make an assessment on a non-debtor spouse while a bankruptcy is pending. Requests should be sent via secure email to **CIO Issues.* CIO will accept mirroring requests on cases assigned to FI. In this situation, CIO will document the case history with the name, phone number, and organization of the requesting employee, and send an email to the FI employee assigned the case, advising them of the request.

Note: Chapter 7 cases are not usually mirrored due to the short time they are in bankruptcy (with exceptions for cases with imminent ASEDs). If a mirroring request is received for a Chapter 7 case, CIO will advise the requestor that mirroring will not be performed.

(2) **Petitions to Tax Court.** When one spouse is in bankruptcy during an examination of a joint pre-petition tax year, and the IRS issues a statutory notice of deficiency, the time for filing the debtor's Tax Court petition is suspended until the automatic stay terminates. The assessment statute is suspended until after the debtor's period for filing a Tax Court petition concludes. However, the time to file a Tax Court petition and the assessment statute for the deficiency is not extended on the spouse who did not file bankruptcy. If the non-debtor spouse does not timely file a Tax Court petition, the deficiency against the non-debtor spouse must be assessed to protect the ASED.

(3) **Exam's Request for Mirroring.** If Exam determines the deficiency assessment must be made on the non-debtor spouse because of the assessment statute, the Exam function will contact CIO. Because Exam does not have the ability to mirror assessments, Centralized Insolvency will mirror the module so the assessment can be made.

(4) **Exam's Required Actions.** Exam will:

1. Contact SCI with their determination that the non-debtor spouse must be assessed the deficiency;

   Note: If there are less than 12 weeks remaining on the statute, it must be noted in the mirroring request.

2. Input the TC 421 to reverse the MFT 30 –L freeze so mirroring of the MFT 30 module can be done;
3. Monitor for the TC 421 to post on the MFT 30 module and contact SCI; and
4. Monitor for the creation of the MFT 31 mirrored modules and re-input the TC 420 on the MFT 30 module.

(5) **SCI's Required Actions.** SCI will:

1. Maintain the bankruptcy freeze (-V or –W for closing code 81). The mirroring can be accomplished without the reversal of the bankruptcy freeze and will remain un-reversed to ensure the automatic stay is not violated;
2. Input the required transaction codes to mirror the module (see IRM 5.9.17.22.1, MFT 31 or MFT 65 Mirror Modules); and
3. Input TC 521 on the MFT 30 module after the TC 420 is re-input to ensure the module remains on the system. (See IRM 5.9.13.9(2), Examination Adjustments.)
4. Input TC 522 on the non debtor spouse's MFT 31.

Caution: Only SCI can reverse the bankruptcy freeze code on the modules when necessary.

5.9.4.4.2
(02-03-2023)
MFT 31 Mirroring Requested by Appeals and Other Organizations

(1) **Mirroring Procedures.** In certain situations, SCI may receive a request from Appeals, OIC, AUR, or another organization to complete MFT 31 mirroring on a non-debtor spouse while a bankruptcy is pending.

(2) **Collection Due Process (CDP) Cases.** When a married couple jointly requests a CDP hearing and only one of the spouses has filed a petition with the bankruptcy court, the CDP hearing as to the debtor spouse should be suspended. Based on certain circumstances, Appeals may decide to move forward with the CDP hearing with respect to the non-debtor spouse. If the non-debtor spouse has a joint liability with the debtor, MFT 31 mirroring is needed to reflect the separate activity on each spouse's account, i.e., non-debtor spouse's CDP hearing and the debtor's bankruptcy proceeding. Mirroring the account on IDRS accommodates Appeals' decision to conduct the non-debtor spouse's hearing without waiting for the resolution of the debtor's bankruptcy.

Note: A CDP hearing for the non-debtor spouse should generally be postponed during bankruptcy cases in community property states because in most cases the levy sources will be community assets that are property of the estate.

(3) **Mirroring Requests.** Appeals may contact SCI to request MFT 31 Mirroring of a joint tax period when an individual's Chapter 11 or Chapter 13 bankruptcy plan has been confirmed. The request should be sent via secure email to **CIO Issues* after managerial approval. If the ASED is expiring in less than 12 weeks, it *must* be noted in the request. The request for mirroring of the account must be documented in the AIS history.

(4) **SCI's Required Actions.** When the bankruptcy caseworker becomes aware that a Chapter 11 or Chapter 13 plan has been confirmed, and a request for MFT 31 mirroring has been noted in the AIS history, the FI employee should contact CIO to mirror the joint tax period(s), taking the following actions:

1. Send a secure e-mail requesting up-front mirroring to your manager providing the debtor's name, docket number, court jurisdiction, and the specific modules to be mirrored. After the manager approves the request, then forward the e-mail to the **CIO Issues* mailbox. CIO will respond to the e-mail to verify receipt, and will perform mirroring as described in IRM 5.9.17.22.1, MFT 31 or MFT 65 Mirror Modules.
2. Input the "Man Mirror" classification on the AIS Classification Screen.
3. As part of case follow-up, monitor for the completion of the mirroring. When it is completed, update the CPM to change the MFT(s) from 30 to 31 to ensure the appropriate posting of future payments. See IRM 5.9.13.9(2), Examination Adjustments, for additional information.
4. Document the AIS history with all actions taken.

5.9.4.5
(02-03-2023)
Credits, Refunds, and Offsets

(1) **Authority of Right to Offset.** The IRS has a right to offset credits owed to a taxpayer against debts the taxpayer owes to the IRS. The IRS has both a common law right to offset and a statutory right to offset that is codified at IRC 6402(a) and IRC 6411(b). The Bankruptcy Code preserves the IRS's non-bankruptcy rights to setoff in 11 USC 553.

(2) **Mutuality of Debts.** Although 11 USC 553 expressly preserves the right to setoff only when both the credit and the debt occur pre-petition, the Bankruptcy Code does not prohibit the IRS's non-bankruptcy right to setoff. Thus, setoff may also be available when the credit or the debt occurs post-petition *as long as the debts are mutual*; meaning when the debt and the credit both belong to the taxpayer, regardless of tax type. (See IRM 5.9.4.5.2, Post-Petition Payments and Credits.)

(3) **BAPCPA Provision.** BAPCPA allows pre-petition income tax refunds to be offset against pre-petition income tax liabilities without a lift stay for bankruptcies filed on or after October 17, 2005. The exception does not apply if an action is pending to determine the amount or legality of a tax liability. (11 USC 362(b)(26)) However, the IRS may hold any pre-petition income tax refund until the validity of the liability is resolved.

(4) **Violations of the Automatic Stay.** After a bankruptcy is filed, accounts should be examined and research completed promptly to determine if credits are present that need to be resolved, if refunds should be retained or turned over to the debtor or trustee, and if any illegal offsets have occurred. This should be done during the initial review of accounts in SCI. (See IRM 5.9.13.4, Case Reviews.)

a. **Time Frame to Correct.** If a violation of the Bankruptcy Code has inadvertently occurred, corrective actions must be initiated within *two workdays*.

b. **Erroneous No Liability Case.** An offset may be discovered in an apparent "no liability" case where a tax refund was applied to full pay an existing balance due tax account after a bankruptcy petition was filed. If the bankruptcy freeze code was not input timely, the account could erroneously appear to be one of "no liability" when it is reviewed later in SCI. An offset action of this type may be a violation of the automatic stay.

Note: Whenever such an offset is discovered, immediate steps to correct the violation must be taken by the IRS, including expedited refund issuance and filing or amending a claim, if appropriate.

(5) **Refunds Not Offset but Retained by the IRS.** The IRS may freeze refunds to protect its right of setoff. These refunds may be frozen whether they arise pre-petition or post-petition. IRS policy emphasizes making prompt decisions on how to treat refunds. Counsel advice may be needed when a refund will be frozen for a substantial length of time.

(6) **Time Frame.** When SCI discovers refunds are being frozen, the SCI caseworker will begin the refund credit resolution process within *20 calendar days.* Refunds must not be held solely in anticipation of a future dismissal or discharge that will lift the stay and allow for the IRS to offset a credit generated during the pendency of the bankruptcy.

(7) **Refund Determination.** SCI must make a refund determination within 20 calendar days of identification of the credit, to:

1. Issue the refund to the trustee or debtor, as required by local rules/agreement, order, plan or practice; or
2. Make an expedited referral to Counsel (if necessary) to file a motion to lift the automatic stay to complete a refund offset; or

3. Retain the refund to protect the IRS's right of offset, but only with the concurrence of Counsel.

When reviewing the credit balance module, the presence of a -L freeze with or without a -R freeze indicates that the return is being reviewed by Exam. The SCI caseworker should contact Exam to determine if a manual refund should be requested or if the credit should remain on the account, pending completion of the examination of the tax return. The AIS history should be noted with the name of the Exam employee contacted and any response received. If the refund is to be held, pending completion of the examination, the AIS history should be noted accordingly. The Manual Refund screen on AIS, if loaded, should be updated with "Hold" in the "Issue To" field. Exam is responsible for notifying SCI of any deficiencies or adjustments that result in a refund or credit. See IRM 5.9.4.4, Examination and Specialty Collection Insolvency. Contact with Compliance Services Collection Operations (CSCO) may be needed in situations where the refund hold shows a TC 570 with a Julian date of 999, or Automated Substitute for Return (ASFR) shows a TC 150 for .00 with document code 10 and a Julian date of 887.

(8) **Guidelines for Refund Determination.** SBSE Counsel has issued tolerance criteria for referrals of issues to Associate Area Counsel offices. IRM 5.9.4.15.4 #, Referral Tolerances. These criteria may be adjusted by local Counsel depending on staffing and case loads. If a referral for offset is not appropriate, general refund guidelines are set forth in IRM 5.9.4.5.1 (3), Table - Credits, Refunds, Offsets.

a. **Stay Lifted to Allow Refund Offset.** It is IRS policy not to offset a refund unless the automatic stay has been lifted for periods protected by the automatic stay.

Reminder: Pre-petition income tax refunds can generally be offset to pre-petition income tax liabilities without requesting a lift of the automatic stay.

b. **Secured Status.** Generally, the refund entitles the IRS to a secured status on the proof of claim – to the extent of the outstanding tax liabilities. Any refund excess will be refunded to the debtor or trustee, per local guidelines or Counsel advice.

c. **Clarify Claim Status.** SCI must amend or withdraw a claim or issue a credit letter to the trustee, per local procedures, after the offset is completed to clarify the IRS's claim for the court.

(9) **Chapter 13.** After a Chapter 13 confirmation, CIO must make a prompt decision either to retain a refund, forward it to the debtor or the trustee, or if the refund arose post-petition, offset it against other post-petition liabilities.

(10) **Contacts to SCI.** If an IRS employee (outside of SCI), receives a written inquiry regarding a refund, credit, or offset issue on a debtor whose bankruptcy case is still active (i.e., unreversed TC 520 with a bankruptcy closing code), the employee must promptly contact CIO for resolution. If the inquiry is received by phone, after disclosure verification, the caller can be directed to call CIO toll free at 800-973-0424. (See the "exception" below.) SCI actions will depend upon the bankruptcy chapter, the petition date, when the credit became available, and standing orders or local rules covering a specific bankruptcy court. If appropriate, CIO will direct the initiating employee or the debtor to a FI caseworker to handle the issue.

Exception: If IDRS shows the refund in question is being systemically refunded to the taxpayer (TC 846 is present), the non-Insolvency IRS employee can provide that information to the correspondent or caller, after disclosure verification, along with the date the refund can be expected to be mailed or electronically transferred to the taxpayer's financial account. When an unreversed TC 846 is present, CIO does not need to be contacted.

(11) **Refund Considerations/Problems:** SCI must consider issues surrounding potential refunds for accounts under bankruptcy protections such as the following:

- Improper TOP offset potential exists
- Offset for domestic support obligations
- Inability to generate a systemic refund (the manual refund issuance process takes longer)
- Court order or plan dictating how refund disposition is to be handled
- Potential or actual violation of the automatic stay
- Potential for duplicate refunds
- Change of venue (i.e., case relocated to another court after bankruptcy petition filed)
- Mailing address problems
- Mandated redirection of the refund to an entity other than the debtor
- Debtor and non-debtor spousal issues on a joint return/joint refund situation

(12) **Preparation of Manual Refunds.** The Manual Refund screen on AIS shows IDRS overpayment information on cases in AIS and has options to generate the Form 5792, Request for IDRS Generated Refund, to be completed by the SCI caseworker. Form 3210, Document Transmittal, can also be generated from AIS to transmit Forms 5792 for processing. IRM 5.9.16.3, Manual Refunds, details steps to be taken by both FI and CIO in processing refund requests.

5.9.4.5.1
(02-03-2023)
Addressing Credits, Refunds, and Offsets

(1) **Pre-Petition Credits.** A pre-petition credit is a credit available on a tax module when the taxable period ends *prior* to the petition date. Although the pre-petition credit may be available and is valid as a credit to the debtor's account (e.g., tax refund), transferring the funds to offset a liability may be a violation of the automatic stay (unless allowed by local standing orders or local rules).

Note: BAPCPA generally allows pre-petition income tax refunds to be offset to pre-petition income tax liabilities for cases filed on or after October 17, 2005.

(2) **Payment Application.** Undesignated payments should be applied in the best interest of the government. This generally requires application to the oldest assessed tax, oldest assessed penalty, and then oldest assessed interest.

(3) **TABLE — Credits, Refunds, Offsets (Post-BAPCPA).** Unless any standing orders, local rules, or agreements allow for different treatment, pre-petition credits and refunds may be resolved using the following table:

IF	THEN...
the credit is a pre-petition income tax refund and the debtor owes a pre-petition income tax liability,	the IRS can offset the credit to the pre-petition income tax liability (11 USC 362(b)(26)). Any remaining credit must be refunded to the debtor or trustee, per local guidelines.
the pre-petition credit is not an income tax refund or if the pre-petition liability is not for income tax,	the setoff cannot be completed without court approval while the stay is in effect, unless there is a standing order or local rule that allows the setoff. If the setoff is allowed, 1. The credit must first be applied to dischargeable tax, penalty, and interest due as of the date of petition. 2. Second, the credit must be applied to any non-dischargeable tax, penalty, or interest due. 3. Finally, any balance must be refunded to the trustee or the debtor, per local guidelines. ***Note:*** If the IRS seeks relief from the stay to allow setoff, the court denies the relief and orders turnover of the refund, and the IRS does not appeal, the refund should be paid to the debtor or trustee as appropriate.
a Chapter 7 trustee requests turnover of a pre-petition income tax refund credit for the estate,	after applying any credits against any pre-petition income tax liability, the remaining balance of the refund is refunded to the trustee. ***Note:*** See IRM 5.9.6.2.3, Chapter 7 Tax Refunds to Trustees, for procedures for turnover of refunds to Chapter 7 trustees.
a proof of claim is required, a pre-petition income tax refund is available,	SCI may apply the refund to the liability according to the offset scheme described above so the proof of claim, when filed, will reflect the remaining outstanding liability after the refund has been offset. If there is no outstanding liability remaining, the claim should be amended to $.00 or withdrawn (as required by any local rules or standing orders) and refund should be issued. Absent any local rules or orders, any excess funds that are available after the refund has been offset should refunded to the taxpayer.
Chapter 12 and Chapter 13 plans have been confirmed or the credit is not an income tax refund,	local guidelines and the tolerance set in IRM 5.9.4.15.4 #, Referral Tolerances, should be followed to seek a refund offset. (See IRM 5.9.4.5 (7), Refund Determination). If the lifting of the stay is not requested and the plan is not in default, SCI will generally request a prompt refund be issued. If the refund is to be retained, Counsel must concur. ***Exception:*** In some jurisdictions standing orders or local rules permit a setoff.

IF	THEN...
no tax debt is currently showing on IDRS, but an offset has occurred in violation of the automatic stay,	IRM 5.9.4.5 (4), Violations of the Automatic Stay, provides guidance. IRM 5.9.4.5 (4)(b), Erroneous No Liability Case, deserves special attention. • Corrective actions must be initiated within two business days of discovery of such an offset. • If appropriate, an expedited manual refund should be requested to go to the trustee or debtor. • The SCI employee initiating the refund request must ensure the case is monitored to guard against issuance of duplicate refunds. ***Note:*** For additional information, see IRM 5.9.4.5.3, Offsets to Other Agencies, and IRM 5.9.4.5.4, Federal Payment Levy Program (FPLP).

(4) **Language for Claiming Setoff Amounts.** IRM 5.9.13.21(3), Language for Insertion on Claim, provides wording to include on the proof of claim when the IRS is claiming a right of setoff.

5.9.4.5.2
(02-03-2023)
Post-Petition Payments and Credits

(1) **Post-Petition Credits and Post-Petition Debts.** Generally, post-petition credits (e.g. tax refunds) owed to the taxpayer can be offset directly against post-petition tax periods for taxes owed by the taxpayer as explained in IRM 5.9.4.5 above.

Note: This also applies to a liability claimed on a Section 1305 claim, unless the plan explicitly provides otherwise.

(2) **Post-Petition Credits and Pre-Petition Debts.** Although 11 USC 553 preserves the IRS's non-bankruptcy rights to allow offsets, most courts have held the IRS does not have a right to set off post-petition credits against pre-petition liabilities. Therefore, it is the IRS' general position not to offset post-petition credits to pre-petition debts unless there are standing orders or local rules/agreements that allow these offsets while the taxpayer is in bankruptcy. Prior to initiating any setoffs in these situations, SCI should consult Counsel to determine the action to be taken, especially in Chapter 13 cases.

(3) **Non-Mutual Debts - Chapters 7 and 11 Individuals.** In a Chapter 7 or 11 individual case, the bankruptcy estate generally is a separate taxable entity. A credit owed to a debtor in these chapters cannot be set off against a tax owed by the estate due to the lack of mutuality.

(4) **Chapter 7 Discharge/Payments/Offsets.** If payments are received from taxpayers for taxes that have been discharged under Chapter 7, or refunds have been offset to dischargeable periods, corrective actions must be initiated within *two workdays* of the date the IRS becomes aware of the violation of the Bankruptcy Code. (See IRM 5.9.6.5, Automatic Stay, and IRM 5.9.17.9, Discharge Injunction.) Paragraph (5) below discusses an exception to this general rule.

Caution: The IRS is prohibited by the discharge injunction imposed by 11 USC 524 from applying payments to taxes that have been discharged. Sanctions can be imposed against the IRS if this provision is disregarded. This does not apply to payments made voluntarily by the debtor.

(5) **Voluntary Payments – Guidelines.** At times an individual debtor may make a *voluntary* post-petition payment. Acceptance of such payments does not violate the automatic stay as long as the payments are *truly* voluntary. Voluntary payments by an individual Chapter 7 debtor can be accepted if they are truly voluntary, and *are not made from property of the estate*. (See IRM 5.9.4.20 (6), Payments Received on a Pre-Existing Installment Agreement.) If an *undesignated* voluntary payment is received, it is not property of the estate, and the debtor has both dischargeable and non-dischargeable liabilities, the payment should be applied to the non-dischargeable liabilities first.

(6) **Table - Post-Petition Payments and Credits.** The table below provides additional information on post-petition payments and credits.

IF...	THEN...
the automatic stay is in effect, but standing orders or local rules/ agreement allow the offset,	application of a credit to pre-petition tax period(s) can be made pursuant to such rules or orders. In Chapter 7, application should be made to *non-dischargeable* period(s) with any remaining balance being refunded to the debtor or trustee.
the automatic stay is in effect and no standing orders or local rules apply,	the credit can generally be applied to post-petition tax period(s) with any remaining balance being refunded to the debtor or trustee. Counsel may be consulted, if necessary.
the automatic stay is in effect, no post-petition liabilities exist, an offset to a pre-petition period might be deemed a violation of the stay, and the IRM criteria are met for referral to Counsel,	FI should consider retaining the refund and sending a referral to lift the stay to allow an offset with any remaining balance being refunded to the debtor or trustee. ***Note:*** Referrals for offset are not made on Chapter 7 No Asset accounts.
the automatic stay is *not* in effect,	the credit should first be applied to non-dischargeable pre-petition tax, penalty, and interest, then to post-petition tax periods, and finally any excess must be refunded to the debtor.
the Chapter 7 trustee of an individual debtor requests the credit and no post-petition tax liability exists,	telephone contact should be made with the trustee to advise them that the credit is post-petition and not property of the estate. After *20 calendar days* without further explanation or complaint by the trustee, the credit can be refunded to the debtor.
the credit module begins pre-petition and ends post-petition, ***Example:*** Tax period 30/201812 has a credit of $500 and debtor filed bankruptcy on 04/20/2018; the credit module of 30/201812 begins 1/1/2018 (pre-petition) and ends 12/31/2018 (post-petition)	in all cases except individual debtors in Chapter 7, the credit should be treated as a post-petition credit. ***Note:*** In Chapter 7 if the trustee of an individual debtor requests the refund, and the IRS has determined it will not file a motion for lift of the stay or a motion has been filed and not granted, follow procedures outlined in IRM 5.9.6.2.3, Chapter 7 Tax Refunds to Trustees.

5.9.4.5.3
(02-03-2023)
Offsets to Other Agencies

(1) **Offset Situations.** By statute, any credits not needed for federal tax liabilities are offset by certain debts owed to certain other federal and state agencies before the remainder is refunded to the taxpayer. This may be impacted if a taxpayer is in bankruptcy. However, if the creditor agency is aware of a credit due the debtor, the government can request a lift of stay to have the credit applied to the debt owed. But, because of current disclosure provisions, the IRS cannot advise a creditor agency of a pending credit refund to the debtor in an active bankruptcy. If SCI receives a request to freeze a refund on behalf of another federal agency or offset a refund, the FI caseworker assigned to the account must consult with Counsel before taking any action. If an interagency offset is required:

a. Review the plan (if confirmed) to determine if there is any unusual language which would prevent the refund from being issued to any person or entity other than the debtor.
b. Verify the Federal Agency requesting the offset has received court approval to lift the automatic stay to allow the refund to be offset.
c. Prepare either Form 5792 , IDRS Generated Refund, or Form 3753 Manual Refund Posting Voucher(depending on the amount of the refund) and how the refund will be issued. IRM 21.4.4, Refund Inquiries, Manual Refunds. The court settlement or any documentation that give consent, will need to be included in the back up documents.

(2) **Treasury Offset Program (TOP) Offsets.** The Bureau of the Fiscal Service (BFS), holds the responsibility for administering tax refund offsets to outstanding child support or state and federal agency debts. These offsets are referred to as TOP offsets. A TOP offset is generated on the module as a TC 898 with an offset trace number (OTN), an offset amount, and a debtor-TIN field which is present if the offset is for a secondary spouse.

(3) **Mechanics of TOP Offsets.** TOP offsets occur after the IRS has certified a refund to BFS for payment (TC 840/846 on account), but before BFS direct deposits or mails the refund check. A TOP offset reduces the amount of the IRS refund by the amount of the TC 898 offset. TOP offsets can occur against either or both SSNs on a Filing Status 02 (married taxpayers filing a joint return), so one or two TC 898s may be input for each TC 840/846 refund issued, one with and one without a debtor TIN.

Note: IRM 21.4.6, Refund Offset, provides additional information on the program. Document 6209, IRS Processing Codes and Information, serves as a source for additional transactions and reason codes.

(4) **Guidelines for Debtor Assistance.** The BFS database relies on timely notifications from governmental agencies to keep accounts information accurate, reflecting eligibility for offsets. When an offset to another federal/state agency does occur, the BFS database may not reflect current information from that agency, thereby resulting in violations of the automatic stay. If the debtor contacts SCI for help, SCI is required to take the appropriate steps listed in IRM 5.9.4.5.3.2, Referral of Taxpayer to BFS, to assist the debtor.

Note: Often, the correct response from SCI is to refer the taxpayer directly to the agency (if known) who has the refund, or if not, to BFS.

5.9.4.5.3.1
(02-03-2023)
Offset Bypass Indicators

(1) **Bankruptcy TOP Bypass Indicator.** All manual and systemic refunds are assigned a TOP Offset Bypass Indicator (BPI) which tells BFS if the refund is eligible for offset by TOP. BAPCPA allows offsets for domestic support obligations which were not permissible prior to the implementation of this bankruptcy act. This change in law has necessitated a coding modification for processing manual refunds for modules under bankruptcy protection. Where before BAPCPA, only BPI 03 was used for bankruptcy cases, now BPI 07 is also used, as well as sometimes BPI 08 or 09.

Note: The indicator will only be present when there is a TC 520 present on IDRS due to an actual or potential liability, or a refund turnover order.

(2) **BPI 03.** BPI 03 indicates that a refund is not eligible for TOP offset. In the case of systemic refunds, BPI 03 is generated automatically when a TC 520 (with closing codes 60-67, 81, or 83-89) was entered prior to October 17, 2005. In the case of manually processed refunds, BPI 03 should be input in the following situations:

- Income tax refunds where the TC 520 was entered on the case prior to October 17, 2005 but BPI 03 was not systemically input;
- Levy payments received in violation of the automatic stay;
- Installment agreement payments received after the petition date;
- Trustee payments sent to the IRS in error; or
- Trustee overpayments on the IRS's proof of claim.
- Voluntary payments from the debtor(s) received after the petition date, posted to a dischargeable tax year, and no non-dischargeable or post petition tax years exist.

Caution: BPI 03 should *not* be used for income tax refunds where the TC 520 was entered *on or after* October 17, 2005.

(3) **BPI 07.** BPI 07 indicates that a refund is eligible for TOP offset to domestic support obligations. Since BAPCPA allows offsets of income tax refunds to delinquent domestic support obligations on bankruptcies. BPI 07 alerts BFS that the taxpayer is in bankruptcy and informs them that offsets to domestic support obligations will be permitted because they do not violate the automatic stay. Therefore, BPI 07 should be input on requests for income tax refunds to debtors or trustees for cases filed *on or after* October 17, 2005.

Note: The IRS has the right to offset a refund against taxes, if allowed, before BFS has an opportunity to claim part or all of the remaining refund for offset against domestic support obligations. BFS is responsible for forwarding any funds not offset to the debtor or trustee.

(4) **BPI 08 and 09.** Bypass indicator 08 should be used when a secondary spouse has filed an injured spouse claim, thereby bypassing offsets to debts owed by the primary spouse. BPI 09 should be used when a primary spouse has filed an injured spouse claim, thereby bypassing offsets to debts owed by the secondary spouse. The Injured Spouse Unit will inform SCI when a bypass indicator should be placed on a Form 5792 being initiated by SCI. When the Injured Spouse Unit advises SCI of the need to change the BPI to 08 or 09, the caseworker must annotate the AIS history documenting the requirement to use the 08 or 09 indicator code.

(5) **AIS-Generated Forms 5792.** The Form 5792 screen is accessed by selecting the "Manual Refund" tab on the AIS home screen for Case Files. This screen includes a drop down menu for the BPI code. "Pre-BAPCPA or Levy/IA/TTEE$(03)" for BPI 03 or "Post-BAPCPA (07)" for BPI 07 will be selected systemically depending upon the date of the bankruptcy petition. If the Injured Spouse Unit has advised SCI that the correct BPI should be 08 or 09 rather than BPI 03 or BPI 07, the Insolvency caseworker must select "Injured Spouse (Secondary)" for BPI 08 or "Injured Spouse (Primary)" for BPI 09, as appropriate. For information on issuing manual refunds, see IRM 5.9.16.3, Manual Refunds, and Exhibit 5.9.16-1, Instructions for Preparing Form 5792.

(6) **BPI Postings.** The BPI will be posted/displayed along with the TC 840/846 on all output screens such as TXMOD, IMFOL, BMFOL, and on IDRS transcripts. The BPI will also show with the pending transaction.

(7) **Debt Indicators.** Debt indicators which may signal a refund offset are found on line 13 of command code INOLES. Exhibit 2.3.47-8, Command Code INOLE IMF Specific Screen, explains the significance of each letter code used as a debt indicator. This information allows the caseworker to determine if a refund may potentially be offset rather than fully refunded to the debtor or trustee.

5.9.4.5.3.2
(02-03-2023)
Referral of Taxpayer to BFS

(1) **Appropriate Referral of Taxpayer.** Complaints involving Treasury Offset Program (TOP) offsets require the agency receiving the refund to handle any subsequent unlawful refund offset complaint, including the issuance of the refund. The IRS should not be involved in the refund process.

(2) **Agency for Taxpayer Contact.** If a taxpayer contacts SCI and requests help in retrieving a tax refund from a state or other federal agency, SCI is to refer the taxpayer immediately to "the offending agency" (i.e., the agency who received the refund) for the required assistance.

a. **Taxpayer to Contact Agency.** If the taxpayer knows the name of the agency, SCI should advise the taxpayer to contact that agency.

Note: IDRS does not provide information on the specific agency.

b. **Telephone Assistance.** If the taxpayer does not know the name of the agency, SCI will tell the taxpayer to call the TOP Call Center at (800) 304–3107, through which the taxpayer can receive assistance on their offset issue.

c. **TOP Notice to Taxpayer.** When a taxpayer's refund is offset for child support or a federal agency debt, BFS issues a TOP offset notice to the taxpayer. The notice includes the name, address, and phone number of the agency and the telephone number of the TOP Call Center. It will be helpful for debtors to have this information on hand when they call the TOP Call Center.

(3) **Complaint to Proper Agency.** The majority of complaints involving TOP offsets require the agency receiving the offset to issue the refund, and the IRS is generally not involved. Any resulting legal dispute is between the debtor and that agency, not the IRS.

Reminder: Offsets for domestic support obligations are allowed (11 USC 362(b)(2)(F)). SCI should advise a debtor of this provision of the Bankruptcy Code before directing the debtor to call the TOP Call Center.

5.9.4.5.3.3
(01-14-2011)
IRS's Offset to Taxes

(1) **When IRS Has Violated the Stay.** When the IRS has made an illegal offset (applying a debtor's refund against a tax debt) in violation of the automatic stay, the IRS is considered the offending agency. The responsibility for correcting the violation rests with SCI.

(2) **No Liability Error.** On a preliminary case review, the debtor may appear to owe no federal taxes. However, the "no tax" determination may be inaccurate if the IRS made an offset to full pay an IRS balance due account in violation of the automatic stay. When an illegal offset has occurred to a balance due account, a debt is still due the IRS. The refund may have erroneously paid the account, partially or in full, due to the illegal offset. Therefore, the IDRS account balance (either showing zero or a minimal balance remaining) will not be accurate. The IRS must initiate corrective actions within two work days of discovery of the illegal offset.

(3) **Centralized Insolvency Operation Actions.** If an offset meets the criteria for referral to Counsel and the case resides in CIO inventory, CIO caseworker must transfer the affected case to FI to consider referral actions. The reason for the transfer must be annotated in the AIS history. When the case has been reassigned to FI, AIS sends an email via the Microsoft Exchange to the FI caseworker on Outlook to notify them that the case has been reassigned. Employees must monitor their incoming emails for receipt of these cases that are awaiting their action.

(4) **Field Insolvency Referrals.** The FI caseworker, following the criteria set by Counsel, must determine if the offset warrants referral for a lift stay, negotiations for adequate protection, or refund to the debtor or trustee.

IF...	THEN...
the case meets criteria for referral to Counsel,	the FI caseworker makes the referral, documents the AIS referral and history screens, and sets a follow up date to review the case for Counsel action.
the case does not meet local criteria for referral to Counsel and the case belongs in the Field inventory (wasn't transferred from CIO),	the FI caseworker updates the AIS history with the reason no referral has been made and prepares a manual refund to the debtor or trustee. The FI caseworker will prepare or amend a proof of claim as necessary.
the case does not meet local criteria for referral to Counsel and the case was transferred from CIO for referral consideration and no proof of claim filings or amendments are required,	the FI caseworker updates the AIS history with the reason no referral has been made and transfers the case back to CIO for preparation of a manual refund to the debtor or trustee.
the case does not meet local criteria for referral to Counsel and the case was transferred from CIO for referral consideration and a proof of claim should be filed or amended,	the FI caseworker updates the AIS history with the reason no referral has been made and prepares a manual refund to the debtor or trustee. The FI caseworker will prepare or amend a proof of claim as necessary before transferring the case back to CIO.

IF...	THEN...
Counsel does not file a motion for a lift of stay or the motion is denied by the Court and the case was transferred to FI by CIO,	the FI caseworker updates the AIS history with the lift of stay information and transfers the case back to CIO for preparation of a manual refund to the debtor or trustee.
Counsel does not file a motion for a lift of stay or the motion is denied by the Court and the case belongs in FI's inventory (was not transferred from CIO),	the FI caseworker updates the AIS history with the lift of stay information and prepares a manual refund to the debtor or trustee.

5.9.4.5.4
(02-03-2023)
Federal Payment Levy Program (FPLP)

(1) **Collection of Federal Payments Due to Taxpayer.** The Federal Payment Levy Program (FPLP) is an automated levy program the IRS has implemented with the Department of the Treasury, Bureau of Fiscal Service (BFS). Outside of bankruptcy, the FPLP collects funds due to the taxpayer from federal payments (e.g., federal contracts, federal pensions, and Social Security payments). It applies these funds towards federal taxes the taxpayer owes. (See IRM 5.11.7, Automated Levy Programs.)

Note: This program is exempt from third party contact notice.

(2) **Authorization.** The Taxpayer Relief Act of 1997 (Public Law 105–34) 1024, codified at IRC 6331(h), authorizes the IRS to levy up to fifteen percent of specified payments continuously. The FPLP was developed to implement this law.

Note: The American Jobs Creation Act of 2004 increased the amount that can be seized for payments due to a vendor of goods or services sold or leased to the federal government to 100 percent.

(3) **Bankruptcy Prohibition.** During regular collection activity of the IRS (non-bankruptcy), the FPLP allows systemic continuous levies on certain federal disbursements using a paperless process. However, the IRS is prohibited from using this levy program against persons in bankruptcy unless the automatic stay has been lifted. IRM 5.9.4.5.4 (8) below outlines SCI actions regarding this program as it impacts accounts in bankruptcy.

(4) **Selection of Cases.** Cases which were in status 22, 23, 24, 26, or 53 *prior to* bankruptcy status 72, may be selected for potential levy issuance through the FPLP. Status 53 is restricted to modules with a TC 530 and a closing code of 03, 06, 09, 10, 12, or 39.

(5) **FPLP Indicators.** Modules selected for the FPLP remain in their original master file status codes. (NMF is not included.) Command codes TXMOD, ENMOD, IMFOL, and BMFOL can be used for research.

Command Code	Research
I/BMFOLE	Displays the indicator BFS CD:1 on the entity screens if at least one module has been selected in the FPLP.

Command Code	Research
TXMOD	Displays the indicator FMS-CD>1 on the entity screen if at least one module has been selected in the FPLP.
Each tax module (TXMOD, IMFOLT/ BMFOLT) also displays the following:	• FMS LEVY/CD>1: Currently **not** included in the FPLP; however, at one time the module was included for FPLP • FMS LEVY/CD>3: Currently included in FPLP (TC 971 AC 060); this indicator requires further action by SCI. See IRM 5.9.4.5.4 (8) below. • FMS LEVY/CD> (other alpha/ numeric code): Current or pending block from FPLP

If there are no modules selected,then the indicator will display 0 or no digit.

(6) **Action Codes.** Tax liabilities sent to BFS for levy under the FPLP can be identified by 97X action codes (AC) listed below:

- *TC 971 AC 060* — module selected for FPLP
- *TC 972 AC 060* — reversal of module selected for FPLP (computer generated only)
- *TC 971 AC 061* — block or release of module from FPLP

  Note: When a module is “blocked”, a Federal Payment Levy cannot occur.

- *TC 972 AC 061* — reversal of block on module
- *TC 971 AC 062*— module matched or levied under FPLP with identifying DLN of federal agency source
- *TC 971 AC 662, 762, and 677— Levied under FPLP* may also denote that a FPLP levy was issued on an account.

Note: See IRM 5.11.7.3.3, FPLP Systemic Processes and Indicators, for more information.

(7) **Selected/Match/Levy Indicators.** If a module is *selected* for the FPLP, a TC 971 AC 060 posts. Once BFS matches a federal disbursement with a delinquent module, a TC 971 AC 062 posts. *TC 971 AC 062 also indicates a levy has been issued.*

Note: Cases assigned to CI with transaction codes 910, 916, and 918 are subject to FPLP levies.

(8) **SCI Actions.**

The actions an SCI caseworker must take to recognize and resolve FPLP cases are:
1. When an SCI caseworker identifies a tax module that has been selected for the FPLP (the tax module displays a TC 971 AC 060), a TC 520 must be input timely. The input of the TC 520 should reverse the module in time to prevent a levy action (TC 972 AC 060), since these are cases sent to BFS but not yet matched. ***Reminder:*** When SCI becomes aware of a match/levy made in violation of the automatic stay, corrective actions must be initiated by the IRS *within two workdays* after discovery.
2. These cases are identified during a normal review of cases in SCI.
3. SCI must notify the FPLP Coordinator expeditiously when the following transactions are present on a module: • TC 971 AC 062 ***and*** TC 971 AC 662; or • TC 971 AC 062 ***and*** TC 971 AC 762; or • TC 971 AC 662 ***and*** TC 670 DPC 18 or 19; or • TC 971 AC 762 ***and*** TC 670 DPC 18 or 19.
4. To determine which FPLP Coordinator should be contacted, determine the IDRS status prior to status 72, and the state in which the taxpayer resides. Using that information, access the SERP tool at *http://serp.enterprise.irs.gov/databases/who-where.dr/fplp-coordinators.html*
5. SCI employees must use Form 4844 and indicate "*FPLP LEVY RELEASE*" so the Coordinator can have the module(s) removed from the FPLP. This will facilitate a prompt release of a levy if necessary.
6. Form 4844 must be digitally signed by the requestor, a typed name in the signature line is not sufficient.
7. The request for an FPLP levy release must be sent by secure email to the FPLP coordinator. All requests for an FPLP levy release originating at the CIO must be sent by secure email. Emailed levy release requests should be sent with a request for a "read receipt" to satisfy the receipt verification requirement in item (8) below
8. SCI must verify that the FPLP Coordinator received Forms 4844 on all cases and document it in the AIS history.
9. Copies of Forms 4844 and any attachments must be retained in SCI until the levy release has been confirmed.
10. If a levy payment is received by the IRS as a result of a FPLP levy action while the automatic stay is in effect SCI must request a manual refund, following procedures for returning or refunding levy proceeds.
Note: BFS is the levy source for all levies issued through the FPLP - *not the federal payment agencies.*

5.9.4.5.5
(02-03-2023)
Offsets, Payments, and the Individual Shared Responsibility Payment (SRP)

(1) **Offsetting Refunds to SRP Assessments.** In certain instances, the IRS may apply federal tax refunds or voluntary payments to the individual SRP balance due before sending anything to the trustee or debtor, if applicable. The IRS may not apply payments made in response to a levy on the taxpayer's property to a SRP assessment. In addition, the IRS will not apply to a SRP assessment payments from a levy on third-party property to which a lien for the collection of the SRP assessment attaches. Follow the guidance below, and remember to check local rules prior to offsetting.

(2) **Pre-Petition Offsets.** Although the Bankruptcy Code allows offset of pre-petition income tax refunds to pre-petition income tax liabilities, this does not apply to individual SRP liabilities. Individual SRP liabilities are not included in the exception to the automatic stay under 11 USC 362(b)(26), which refers only to income tax liabilities. Therefore, offsets are *not* permitted between pre-petition individual SRP modules, nor are they permitted between pre-petition MFT 30 and individual SRP modules, without a lifting of the stay.

(3) **Post-Petition Offsets.** Offsets between post-petition MFT 30 or individual SRP modules are generally permitted, as they are not prohibited by the Bankruptcy Code. No lifting of the stay is required.

(4) **Lien or Levy Payments.** When applying a payment to a SRP assessment, check the Designated Payment Code (DPC) of the payment.

Lien Payments	Levy Payments
While the lien arises normally on SRP assessments, the law prohibits filing of the NFTL. However, a taxpayer may request a lien payoff letter, which will properly include any SRP assessments under the heading "Other tax debt". DPCs indicating the payment derives from a filed NFTL payoff include: • 07: payment expressly for NFTL • 53: discharges • 55: subordinations • 56: withdrawals • 57: judicial and non-judicial foreclosures • 58: redemptions and releases of right of redemption • 59: estate tax liens and payments from a proof of claim in a probate proceeding. ***Note:*** Payments made in these lien situations are permitted to be applied to SRP assessments.	The IRS cannot apply payments made in response to a levy on the taxpayer's property to an SRP assessment. In addition, the IRS will not apply payments from a levy on third-party property to which a lien for the collection of SRP attaches, to an SRP assessment. The following are some common enforcement-related DPCs: • 05: most common levy • 06: seizure and sale • 18: primary TIN FPLP • 19: secondary TIN FPLP

For additional lien and levy designated payment codes, see Section 11 of Document 6209, IRS Processing Codes and Information, which may be viewed online at: *http://serp.enterprise.irs.gov/content/6209/section-11-10.html*.

5.9.4.5.6
(09-07-2018)
Offsets and the Employer Shared Responsibility Payment (ESRP)

(1) **Offsets and ESRP.** The Bankruptcy Code exception to the stay of pre-petition offsets only allows the offset of pre-petition income tax refunds to pre-petition income tax liabilities without lifting the stay. Since the ESRP MFT 43 liability is treated like an excise tax, offsets of pre-petition refunds to pre-petition ESRP modules are not permitted without the lifting of the stay. Offsets between post-petition modules are permitted without lifting of the stay. Pre-petition levy payments can be offset to an ESRP liability. See IRM 5.9.4.5.1, Addressing Credits, Refunds, and Offsets, for more information.

5.9.4.6
(01-01-2006)
Sale of Property

(1) **Motion to Sell.** This subsection contains the procedures to follow when motions are received for the sale of property of the estate. Also see IRM 5.9.6.17, Subordination of Tax Liens, and IRM 5.9.6.18, Sale of Property by the Trustee.

5.9.4.6.1
(02-03-2023)
Sale of Property Considerations

(1) **Receipt of Notice.** A debtor may file a motion for court approval to sell property. A notice must be sent to creditors who have a right to object to the sale.

(2) **Document Review.** SCI should provide quality customer service and protect the government's interests by a timely review of the schedules and proposed sale documents to ensure the sale is an arms-length transaction for fair value, and the proceeds of the sale are distributed in order of lien priorities.

(3) **Lien on Property.** If the IRS filed an NFTL prior to the bankruptcy petition, and the debtor seeks to sell personal property free of the tax lien, the debtor may be required to obtain consent for the sale from lienholders, including the IRS. In such cases, a discharge of property from the federal tax lien under IRC 6325(b) may be needed. If a certificate of discharge is required the case should be referred to Advisory for processing. See IRM 5.9.4.6.1 (6), Certificate of Discharge. SCI should refer the case to Counsel if there are questionable issues regarding the situation.

Note: If the debtor seeks to sell real property free of the federal tax lien, SCI should contact Counsel to determine if IRC 6323(f)(4) affects that specific case.

(4) **Sale Proceeds.** If the debtor sells exempt property, the proceeds of the sale will normally go to the debtor rather than into the estate. However, if the IRS filed a NFTL prior to the petition date, and the debtor sells exempt personal property, the IRS is entitled to the sale proceeds.

(5) **Sale of Property with Partial Exemption.** Trustees or debtors may move to sell assets for which the debtor has claimed a partial exemption under 11 USC 522. In those situations the trustee or the debtor will seek permission to pay a portion of the proceeds of the sale to the debtor as part of the motion to sell the property. If the IRS has filed a valid pre-petition NFTL or if the IRS has filed an allowable priority claim (11 USC 522(c)(1) and (2)), the IRS should object to the trustee's motion to sell and request the exempt amount (or the portion in which the IRS may claim an interest) be distributed directly to the IRS instead of to the debtor. Assuming the referral criteria in IRM 5.9.4.15.4 #, Referral Tolerances are met, these cases should be referred to Counsel for the filing of this objection.

(6) **Certificate of Discharge.** The order approving the sale may provide the property be sold free and clear of liens, with liens to attach to the sale proceeds. Usually this order is sufficient to clear the title, but the IRS may be requested to provide a certificate of discharge of the property from the lien. The federal tax lien will then no longer attach to the specific piece of property being sold. The certificate can be provided unless a legitimate reason exists not to do so. See IRM 5.12.10.4.1, Certificate of Discharge in Bankruptcy Court Sales. SCI should request the following:

1. Statement of facts concerning the sale
2. Legal description of the property

3. Copy of the court order approving the sale
4. Any other pertinent information

(7) **Discharge of Property from Lien.** After review, a discharge may be provided in the same manner as in a non-bankruptcy situation. The caseworker should refer the case to Advisory after gathering required information. See IRM 5.12.10.7.1, Submission of Application and IRM 5.12.10.7.3, Investigation of Discharge and Subordination Applications. The discharge will be worked and prepared by an Advisory employee assigned to handle certificates of discharge.

Note: The caseworker can work the certificate of discharge request and issue a certificate of discharge, if applicable, on time sensitive cases, with the approval of the SCI Group Manager who has the delegated authority to approve and issue certificates of discharge. See IRM 1.2.2.6.4(23) and (24).

(8) **Tax Consequences.** The tax impact of any sale should be evaluated. If the sale will result in a significant capital gains tax, this may be an administrative expense payable in a Chapter 11 case on the effective date of the confirmed plan. In individual Chapter 11 cases, this takes on additional importance because the bankruptcy estate is a separate, taxable entity. If the bankruptcy estate cannot pay the tax on the effective date, the case will likely convert to Chapter 7. *The argument can be made that without abandonment, the sale will significantly diminish the estate because of the capital gains tax.*

Note: In such cases, consideration should be given to objecting to the sale without the property first being abandoned to the individual debtor prior to the sale.

5.9.4.6.2
(02-03-2023)
Escrow Payoff Requests during a Bankruptcy

(1) **Sale or Refinance of Real Property.** Provisions for the sale or refinancing of real property may or may not be incorporated into a debtor's confirmed plan, and the property may or may not be property of the estate.

(2) **Trustee Involvement.** In some jurisdictions, trustees instruct the IRS to issue a written communication, often a Form 10492, Notice of Federal Taxes Due, to the escrow company so the IRS will be paid directly from the escrow funds. Other trustees make the demand to the escrow company directly so all funds flow through them for disbursement to the creditors. In either case, SCI must advise the trustee of the amount necessary to satisfy the IRS's secured claim so a release of the lien can be filed or a certificate of discharge provided.

(3) **Insufficient Proceeds.** If proceeds from a sale are insufficient to satisfy the lien, the lien cannot be released. Instead, a certificate of discharge can be provided to discharge the specific property sold from the lien. SCI caseworkers should consult Counsel with questions about the propriety of releasing a lien or providing a certificate of discharge. See IRM 5.9.4.6.1, Sale of Property Considerations.

(4) **Form 10492 Preparation.** To prepare an accurate Form 10492, the SCI caseworker must have copies of the IRS's claim and the plan (including amendments or modifications) as well as the order confirming the plan, if applicable. The preparation of Form 10492 varies depending upon the facts of a particular case, but most fall into one of the following scenarios:

IF	THEN
The IRS has an allowed secured claim, and the IRS's claim is oversecured. (See IRM 5.9.13.19.2(7), Oversecured.) The confirmed plan makes no provision for payment of the secured claim with post-petition interest under 11 USC 506(b).	Form 10492 should include post-petition interest computed at the IRC rate against the total amount of the secured claim, less any post-petition plan payments received from the trustee and allocated to the secured claim.
The plan contains a provision for payment of the IRS's secured claim at a specific interest rate.	Form 10492 should compute post-petition interest on the amount provided for in the plan at the interest rate set forth in the confirmed plan. Command code COMPA should be used to compute post-petition interest. Post-petition payments from the trustee allocated to the secured claim must be deducted.
The plan provides for payment of the IRS's secured claim for less than the amount shown on the IRS's proof of claim.	The SCI caseworker should consult with Counsel to determine if the IRS is bound by the terms of the confirmed plan or if the IRS may insist upon payment of the amount shown on its secured proof of claim.
The demand for lien payoff from the escrow agent or title company is made before the plan has been confirmed. This may occur when a sale or refinance of real property is pending at the time the bankruptcy is filed.	SCI should instruct the debtor to: • Refer to the trustee or local rules for instructions; • Ask their attorney about filing a motion to sell the property free and clear of the tax lien with the IRS's lien to attach to the proceeds of the sale; or • Ask their attorney about filing a motion for relief from the stay to allow the IRS to issue Form 10492 to be paid prior to confirmation of the plan.
The demand for lien payoff from the escrow agent or title company is made prior to the case being discharged or closed. This may occur when the debtor is attempting to sell or refinance real property.	Form 10492 should include post-petition interest computed at the IRC rate against the total amount of the secured claim.

IF	THEN
The debtor has accrued post-petition taxes, and a NFTL has been recorded for those post-petition liabilities. The SCI caseworker must review the plan and order for confirmation.	• If the subject property vested back to the debtor and the confirmation order permits the debtor to sell or refinance property without court approval, the IRS may be allowed to issue Form 10492 for the full amount of the post-petition liability including accruals. • If the plan specifically provides the subject property will be sold or refinanced to fund the plan, the IRS may be prohibited from making an escrow demand for the post-petition taxes unless sufficient equity exists to pay all of the debtor's pre-petition claims and post-petition tax debts. Counsel should be consulted in those cases. SCI may consider issuing a Certificate of Discharge or Subordination under IRC 6325 for the NFTL related to the post-petition taxes. ***Caution:*** SCI should not file a 1305 claim in these cases without first consulting Counsel. ***Note:*** FI is responsible for addressing escrow payoff requests for all chapters except Chapter 7 cases assigned to CIO. CIO will be responsible for addressing escrow payoff requests for all Chapter 7 cases assigned to CIO.

5.9.4.7
(01-14-2011)
Preferences

(1) **Definition.** 11 USC 547 allows a bankruptcy trustee to avoid and recover certain pre-petition transfers to creditors that benefit some creditors at the expense of other creditors.

(2) **Trustee Authority.** Generally, the trustee or debtor-in-possession in Chapter 11 cases has the authority under the Bankruptcy Code to avoid preferences. The trustee can recover a preferential payment for the benefit of the estate.

(3) **Preference Criteria.** To qualify as a preference, a tax payment must be:

a. Made *on or within 90 days* before the date of the bankruptcy filing;
b. Made while the debtor was insolvent;
c. An amount more than the IRS would have received in a Chapter 7 bankruptcy proceeding; and
d. A payment on account of an antecedent debt, in other words, a late payment of tax.

Note: Qualifications for preferences for other types of creditors under 11 USC 547 generally mirror those for tax payments outlined above.

(4) **Ordinary Course of Business Exception.** Debts incurred and paid by the debtor in the ordinary course of business or financial affairs cannot be avoided as preferences.

(5) **Trust Fund Payments.** Pre-petition voluntary payments of trust fund taxes cannot be avoided as preferential transfers, because they are not considered to be transfers of property of the debtor. Rather, the funds are held in trust for the United States.

(6) **Adversary Proceedings.** A preference action must be brought as an adversary proceeding in the bankruptcy case. Such actions must be referred to Counsel.

5.9.4.8
(01-01-2006)
Bankruptcy Court Tax Determinations

(1) **11 USC 505(a).** As a general rule, 11 USC 505(a) permits the bankruptcy court to determine the amount or the legality of any tax, addition to tax, or tax penalty. This applies to tax liabilities of the debtor or of the estate whether or not previously assessed, paid, or contested.

(2) **Prior Court Ruling.** The bankruptcy court may not re-examine a tax liability ruled on by a court of competent jurisdiction before the filing of the bankruptcy petition.

(3) **Criteria for Court Determination.** The bankruptcy court can determine the right of the estate to a tax refund if the taxing authority does not rule on the trustee's refund claim *within 120 calendar days* (11 USC 505(a)(2)(B)).

Note: The regular six-month determination period on a refund claim under IRC 6532(a) is reduced to 120 days in an effort to close the bankruptcy estate as soon as possible.

5.9.4.9
(02-03-2023)
Prompt Determination Requests from Trustee

(1) **Bankruptcy Court Authority.** The bankruptcy court has the authority to determine the amount of any administrative taxes due upon the completion of the IRS examination per 11 USC 505(b).

(2) **Prompt Determination Requests.** A trustee in a bankruptcy proceeding may ask the IRS to make a "prompt determination" of any unpaid liability of the estate for any tax incurred during the administration of the case. The trustee can request this by submitting a tax return and requesting a prompt determination of that return (11 USC 505(b)(2)).

(3) **Receiving Prompt Determination Requests.** A trustee can submit a prompt determination request by:

a. **Court's Mailing Matrix - IRS Address.** Pursuant to 11 USC 505(b)(1)(A), the clerk of each bankruptcy court is required to keep a list where government offices may designate an address for serving prompt determination requests. The CIO must ensure the local bankruptcy clerk lists the following national SCI address for serving prompt determination requests.

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

b. **Fax.** While trustees can still mail prompt packages, the IRS's preferred method to receive these request is via the fax number (844) 250-2035. This fax number is only for prompt packages. No other items should be faxed to that number.

(4) **Prompt Determination Review.** CIO will review prompt determination requests for completeness, as specified in IRM 5.9.4.9.1 (3), Elements of a Request, below. Incomplete requests will be returned to the trustee for perfection. Complete requests will be sent to the appropriate function through a secured shared drive. Form 3210 will be attached to the file. Caseworkers should consult the Prompt Determination and Refund Processing chart in Exhibit 5.9.4-2, for proper routing procedures. If no signed Form 3210 acknowledgment is returned, CIO will contact the recipient to verify receipt.

(5) **Critical Time Frames.** The government has *60 calendar days* from the date the request is received in SCI to notify the trustee if the return has been selected for examination. The government has a total of *180 calendar days* from the date of the request to complete the examination and to notify the trustee of any additional tax due. (A longer period may be granted with court permission.) Failure to notify the trustee within 60 days or to complete the examination within 180 days will discharge the estate, the trustee, the debtor, and any successor to the debtor from any liability for the tax. The discharge will occur upon payment of the tax shown on the return unless the return is fraudulent or contains a material misrepresentation.

5.9.4.9.1
(02-03-2023)
Processing Prompt Determination Requests

(1) **Trustee Requests for a Tax Determination.** Rev. Proc. 2006-24 establishes the steps for trustees to submit returns for a prompt determination. Requests must be for a Chapter 7, 11, 12, or 13 bankruptcy case (Chapter 9 and 15 cases are not eligible). All requests by a trustee for a prompt tax determination of any unpaid tax liability of the estate under 11 USC 505(b)(2) are to be submitted by a signed written request. The request must be filed with SCI at the national CIO address or faxed to CIO's prompt package fax number.

(2) **Copy of Return.** Filed with the request for prompt determination must be an exact copy of a valid return for the completed taxable period filed by the trustee or debtor-in-possession. To be valid, the return must be signed under penalties of perjury. If the section of the return form that requires it be signed under penalties of perjury is modified in any way, such as by striking out, deleting, or changing the language of that requirement, that return form will not qualify as a valid return.

Note: Unsigned returns may be accepted if they are accompanied by a **signed** Form 8879, IRS e-file Signature Authorization.

(3) **Elements of a Request.** Before forwarding the prompt determination request, CIO must review the request package to ensure it is acceptable for processing per Rev. Proc. 2006-24. A prompt determination request must include a signed written request submitted with:

a. A statement that the request is for prompt determination of a tax liability, specifying the type of return, and the tax period for which the request is being filed;
b. The name and location of the office where the original return was filed;
c. The name of the debtor;
d. The debtor's TIN;

e. The type of bankruptcy estate;
f. The bankruptcy case number; and
g. The location of the bankruptcy court.

Note: If any item of information listed above is missing from the request, the request will be determined to be incomplete.

(4) **Incomplete Packages.** CIO must determine that the documents with mandatory information specified in Rev. Proc. 2006-24 are received and are complete. If documents required from the trustee or debtor-in-possession are missing or incomplete, CIO will return the incomplete package to the requestor with Letter 5948, Missing Information for Prompt Determination 505(b) Request. All of the documents will be returned to the requestor, with the appropriate box checked off on Letter 5948 identifying the missing papers or information, and requesting that the package be resubmitted with the correct documentation to CIO. A copy of the letter should be retained in a hold file for 90 days in case contacted by the trustee. After 90 days, the letter should be properly disposed. *New time frames start on the date a complete package is received by SCI*.

(5) **TIN.** All requests must contain the TIN in the proper location in order to be considered complete for processing.

a. If the prompt determination request is for a bankruptcy estate where the debtor is an individual, the written request *must* include the debtor's SSN. It can also include the EIN of the bankruptcy estate, however it is not required on the letter. The Form 1041 would *only* include the bankruptcy estate's EIN.

Note: If the debtor's SSN is not included on the letter but can be located on AIS, the caseworker can handwrite the SSN on the letter.

b. If the prompt determination request is for a business entity, the written request and forms would *only* have the EIN of the entity.

(6) **Joint Bankruptcies.** When a joint bankruptcy is filed, the bankruptcy creates a separate estate for each debtor and each debtor is required to obtain their own individual EIN for their bankruptcy estate. A prompt determination is for one debtor per return. All Form 1041 returns should be filed for a single debtor. The letter can contain both debtors or just one debtor; however, it should be clear for whom the prompt determination is for, since Form 1041 should list one debtor with their individual EIN for their estate. If a bankruptcy estate is substantively consolidated, the requestor needs to provide a court order or local rule documentation with the package. Current areas known to have a local rules include: Eastern District of Oklahoma, and South Dakota. If the return lists more than one debtor and includes documentation stating the debtors are substantively consolidated, forward the package to Exam to make a final determination for processing.

Note: Substantive consolidation does not create a single estate for tax reporting purposes, however as a protective matter, the 505(b) package should be forwarded to Exam to protect the government's interests.

(7) **Verification and Transmittal.** Once a prompt determination request is determined to be complete, SCI must immediately transmit all documents to the appropriate function.

If the prompt determination is...	Then ...
Mailed	a. Date stamp with the date received. b. Mark the return "*COPY ONLY*" ***Note:*** CIO must verify the return sent to them is a copy. If an original return is received, CIO must make a copy to attach to the prompt determination package, and immediately forward the original for normal processing to the designated Campus. c. Complete the 505(b) checklist. d. If the package is not complete, follow guidance in IRM 5.9.4.9.1 (4), Incomplete Packages. e. If the package is complete, scan prompt determination package and checklist. f. Prepare Form 3210 Document Transmittal. g. Use Exhibit 5.9.4-2, Prompt Determination Processing Chart, to determine where the package should be sent. h. Place the scanned package, checklist, and Form 3210 in the appropriate area folder on the S Drive. i. Place a copy of the scanned package in a 90 day hold folder.
Large Mailed Packages	Large prompt determination packages should not be scanned. The above procedure should be followed, however, instead of scanning the package, it should be mailed. a. If the package is complete, forward the prompt determination package via overnight courier to the appropriate function. Contact information and mailing addresses for the various functions' coordinators can be found on the Prompt Determination Contact List on CIO shared drive. b. If the package is incomplete, they are to be forwarded using normal mail procedures to the requestor. c. Place copy of letter, checklist, and Form 3210 in a 90 day hold folder.
Faxed	All faxed packages are sent to the prompt package efax folder. a. Complete the 505(b) checklist. b. If the package is not complete, follow guidance in IRM 5.9.4.9.1 (4), Incomplete Packages. c. Prepare Form 3210 Document Transmittal. d. Use Exhibit 5.9.4-2, Prompt Determination Processing Chart, to determine where the package should be sent. e. Place the faxed package, checklist, and Form 3210 in the appropriate area folder on the S Drive. f. Place a copy of the faxed package in a 90 day hold folder.

(8) **Large Business Requests.** To determine if a corporation's account is handled by the Large Business and International (LB&I) Division, SCI caseworkers must review the total assets listed on the Form 1065, 1120 or 1120S. If the total assets are greater than $10 million, the request falls under the scope of LB&I.

(9) **Time Frames.** Transmittal to the appropriate function must be done within *three workdays* of the date the copy of the return is received by SCI. The transmittal must be done within this time frame because *within 60 calendar*

days from the date the request is received in SCI, Exam must review the copy of the return and advise the requestor if the return is to be selected for examination.

(10) **AIS Histories.** If the case *is* on AIS, the AIS history should address receipt of the request and the actions taken.

a. If the request is for a complete package, the history should state, "Request for Prompt Determination received for *[type of return received]* on MM-DD-YYYY for tax period(s) *[list tax period(s)]* with a tax due of *[amount]*. The EIN of the estate is *[EIN]*. Package complete. Forwarded to *[function, City, State]*."
b. If the request is incomplete, the history should state, "Request for Prompt Determination received for *[type of return received]* on MM-DD-YYYY for tax period(s) *[list tax period(s)]*. Package incomplete *[list incorrect or missing items]*. Returned package to *[requestor]*."

Some of the prompt determination requests are for cases not on AIS. Establishing a case on AIS for the sole purpose of monitoring a prompt determination request is not necessary.

(11) **Prompt Determination Requests Erroneously Forwarded.** If an incomplete package is erroneously forwarded to a prompt determination coordinator, the package should be returned to CIO via email. CIO will follow procedures stated in IRM 5.9.4.9.1 (4), Incomplete Packages.

5.9.4.9.2
(12-18-2017)
Immediate Assessment

(1) **Tax Determination by Court.** Under 11 USC 505(c), after the bankruptcy court determines a tax liability, the government may generally assess the tax against the estate, the debtor, or the successor of the debtor, notwithstanding applicable deficiency procedures. Once the tax is determined by the court, generally no bar to assessment exists. The ASED, if previously suspended in part by the bankruptcy case, may begin to run thereafter.

Note: Immediate assessments can be made for deficiencies incurred by the debtor and the debtor's estate pursuant to IRC 6871(b)(1) and IRC 6871(b)(2).

5.9.4.10
(02-03-2023)
Prompt Refund Requests from Trustee

(1) **Revenue Procedure 2010-27.** The trustee or debtor-in-possession representing the bankruptcy estate of a debtor may request a prompt refund determination from the IRS under 11 USC 505(a). Rev. Proc. 2010-27 was issued on July 15, 2010 to update the procedures for requesting the tax refund. The revenue procedure clarifies that the procedure does not apply to applications for a tentative carryback or refund adjustment under IRC 6411. The bankruptcy court may not determine any right of the bankruptcy estate to a tax refund before the earlier of:

- 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed.
- A determination by such governmental unit of such refund.

This revenue procedure applies to all cases except Chapter 9, Municipal Debt Adjustment cases and Chapter 15, Ancillary and Cross-Border cases.

(2) **Prompt Refund Requests.** A trustee or debtor-in-possession may request a tax refund from the IRS if the credit or refund of an overpayment was not

claimed on a return previously filed by the debtor. The trustee may do so by filing the appropriate amended return or form. If:

a. A Form 1040 or 1040A was filed by an individual debtor, the trustee can request the credit or refund on a Form 1040X, Amended U.S. Individual Income Tax Return.
b. A Form 1120 has been filed by a corporate debtor, a claim for refund can be made by the trustee on Form 1120X, Amended U.S. Corporation Income Tax Return.
c. A Form 720, 730, or 2290 was filed by the debtor, the trustee can request the credit or refund on a Form 8849, Claim for Refund of Excise Taxes, or Form 720X, Amended Quarterly Federal Excise Tax Return.
d. In the case of an overpayment other than income or excise tax for which the debtor has filed a return, the claim for credit should be made on Form 843, Claim for Refund and Request for Abatement.

Note: An exact copy of the return (or returns) that is the subject of the claim should also be submitted, together with a statement of the name and location of the office where the return was filed.

e. With regard to an overpayment of taxes of the bankruptcy estate incurred during the administration of the bankruptcy case, a properly executed tax return shall, at the election of the trustee, constitute a claim for credit or refund of the overpayment.

(3) **Prompt Refund Review.** CIO will review prompt refund requests for completeness, as specified in IRM 5.9.4.10.1 below. Incomplete requests will be returned to the requestor for perfection. Complete requests will be forwarded to the appropriate function via Form 3210. Caseworkers should consult the Prompt Determination and Refund Processing chart in Exhibit 5.9.4-2 for proper routing procedures. If no signed Form 3210 acknowledgment is returned, SCI will contact the recipient to verify receipt.

(4) **Critical Time Frames.** The IRS will complete the examination and notify the trustee of the decision rendered within 120 days from the date of the filing of the appropriate amended return, Form 843, or original return filed by the trustee on an expedited basis.

(5) **Receiving Prompt Refund Requests.** A trustee can submit a prompt determination request by:

a. **IRS Address.** Mailed to:

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

b. **Fax.** While trustees can still mail prompt packages, the IRS's preferred method to receive these request is via the fax number (844) 250-2035. This fax number is only for prompt packages. No other items should be faxed to that number.

The return or form must be marked "Request for Prompt Refund" and be accompanied by a written statement explaining that the request is being submitted pursuant to Section 505(a) of the Bankruptcy Code.

5.9.4.10.1
(02-03-2023)
Processing Prompt Refund Requests

(1) **Trustee Requests for a Prompt Refund.** Rev. Proc. 2010-27 establishes the steps for trustees to submit a request for a tax refund from the IRS. All requests by a trustee or debtor-in-possession for a refund under 11 USC 505(a)(2)(B) must be filed with SCI using one of the methods listed in IRM 5.9.4.10 (5).

(2) **Copy of Return.** If the request for a prompt refund is made using Form 843, and the debtor previously filed a tax return, an exact copy of the return (or returns) that is subject of the claim for refund should also be submitted with the request. To be valid, the return must be signed under penalties of perjury. If the section of the return form that requires it be signed under penalties of perjury is modified in any way, such as by striking out, deleting, or changing the language of that requirement, the return form will not qualify as a valid return. Any post-petition amended returns submitted must also be signed by the trustee or debtor in possession that is claiming the credit or refund.

Reminder: Pre-petition amended returns need to be signed by the debtor. The request must be returned as incomplete if the amended return is not signed by the debtor.

Note: Unsigned returns may be accepted if they are accompanied by a *signed* Form 8879, IRS e-file Signature Authorization.

(3) **Elements of a Request.** Before forwarding the prompt refund request, SCI must review the request package to ensure it is acceptable for processing per Rev. Proc. 2010-27. The return or form must be marked “Request for Prompt Refund.” The request must:

a. Contain a statement referencing Bankruptcy Code 505(a).
b. Be for a Chapter 7, 11, 12, or 13 bankruptcy case (Chapter 9 and 15 cases are not eligible).
c. If the debtor has filed a return and the trustee has submitted a Form 843, the package must also specify the name and location of the office where the original return was filed, and include a copy of the return(s) that is the subject of the claim for refund.

Note: If any item of information listed above is missing from the request, the request will be determined to be incomplete.

(4) **Incomplete Packages.** SCI must determine if the package is complete and the documents received contain the mandatory information specified in Rev. Proc. 2010-27. If the documents required from the trustee or debtor-in-possession are missing or incomplete, CIO will return the incomplete package to the requestor with Letter 5947, Missing Information for Prompt Determination 505(a) Request. All of the documents will be returned to the requestor, with the appropriate box checked off on Letter 5947 identifying the missing papers or information, and requesting that the package be resubmitted with the correct documentation to CIO. A copy of the letter should be retained in a hold file for 90 days in case contacted by the trustee. After 90 days, the letter should be properly disposed.*New time frames start on the date a complete package is received by SCI.*

(5) **Verification and Transmittal.** The CIO is responsible for the immediate transmittal of all documents in a complete prompt refund request to the appropriate function.

If the prompt refund is...	Then ...
Mailed	a. Date stamp with the date received. b. Mark the return "*COPY ONLY*" . ***Note:*** CIO must verify the return sent to them is a copy. If an original return is received, CIO must make a copy to attach to the prompt determination package, and immediately forward the original for normal processing to the designated Campus. c. Complete the 505(a) checklist. d. If the package is not complete, follow guidance in IRM 5.9.4.10.1 (4), Incomplete Packages. e. If the package is complete, scan the prompt determination package and checklist. f. Prepare Form 3210 Document Transmittal. g. Use Exhibit 5.9.4-2, Prompt Determination Processing Chart, to determine where the package should be sent. h. Place the scanned package, checklist, and Form 3210 in the appropriate area folder on the S Drive. i. Place the scanned package in a 90 day hold folder.
Faxed	All faxed packages are sent to the prompt package efax folder. a. Complete the 505(a) checklist. b. If the package is not complete, follow guidance in IRM 5.9.4.10.1 (4), Incomplete Packages. c. Prepare Form 3210 Document Transmittal. d. Use Exhibit 5.9.4-2, Prompt Determination Processing Chart, to determine where the package should be sent. e. Place the faxed package, checklist, and Form 3210 in the appropriate area folder on the S Drive. f. Place a copy of the faxed package in a 90 day hold folder.

(6) **Large Business Requests.** To determine if a corporation's account is handled by LB&I, SCI caseworkers must review the total assets listed on the Form 1065, 1120 or 1120S. If the total assets are greater than $10 million, the request falls under the scope of LB&I.

(7) **Time Frames.** Transmittal to the appropriate function must be done within *three workdays* of the date the complete package is received by SCI. The transmittal must be done within this time frame because *within 120 calendar days* from the date the request is received in CIO, that function must review the copy of the return, make a refund determination, and advise the requestor of their determination.

(8) **AIS Histories.** Some of the prompt refund requests are for cases not on AIS. Establishing a case on AIS for the sole purpose of monitoring a prompt refund request is not necessary.

a. If the case is *not* on AIS, the caseworker should review IDRS to determine if there are any pre-petition balances due or unfiled returns. If there are balances due and/or unfiled returns, information needed to open a case should be secured from PACER. The case should be added to AIS following the instructions in IRM 5.9.12.3(2), Adding New Cases Manually.

b. If the case *is* on AIS, or has been added from the refund request, the AIS history should address receipt of the request and the actions taken. If the request is for a complete package, the history should state, "Request for Prompt Refund for *[type of return received]* on MM-DD-YYYY for tax period(s) *[list tax period(s)]*. The EIN of the estate is *[EIN]* Package complete. Forwarded to *[function, City, State]*." If the request is incomplete, the history should state, "Request for Prompt Refund received for *[type of return received]* on MM-DD-YYYY for tax period(s) *[list tax period(s)]* . Package incomplete *[list incorrect or missing items]*. Returned package to *[requestor]*."

(9) **Prompt Refund Requests Erroneously Forwarded.** If an incomplete package is erroneously forwarded to a prompt determination coordinator, the package should be returned to CIO via email. CIO will follow procedures stated in IRM 5.9.4.10.1 (4)Incomplete Packages.

5.9.4.11
(02-03-2023)
Offers in Compromise and Bankruptcy

(1) **Introduction.** The Bankruptcy Code provides a means for balancing the interests of the taxpayer and the IRS, as does the administrative offer in compromise (OIC). An administrative OIC is one submitted in accordance with the guidelines and procedures set forth in Rev. Proc. 2003-71 and IRM 5.8, Offer in Compromise. Administrative and legal problems would be created if a tax liability were simultaneously the subject of a court-supervised bankruptcy case and the OIC process.

(2) **IRS Policy.** When a taxpayer has filed for bankruptcy protection, IRS's policy is not to consider an OIC from a taxpayer in bankruptcy. Instead SCI considers payment proposals, usually in the form of plans filed by the debtor in the bankruptcy case, under guidelines set forth in IRM 5.9.8.17.1, The Plan of Reorganization, IRM 5.9.9.5, Chapter 12 Plans, and IRM 5.9.10.5, The Chapter 13 Plan, depending upon the type of bankruptcy case filed.

(3) **Rule.** The rule to follow on OIC by the IRS:

a. An OIC is returned to the debtor as *"not processable"* if the taxpayer is a debtor in a bankruptcy case for which a discharge has not yet been entered.
b. However, even though an OIC is not considered when a taxpayer is in bankruptcy, in appropriate cases, the IRS may work with the debtor within the bankruptcy case to achieve a result that is in the best interests of both the debtor and the IRS. (See IRM 5.9.8.17.1(8), Deficient Plans - Exceptions, and IRM 5.9.10.5.5(4), Deficient Plans - Exceptions.)

(4) **Specific Bankruptcy Chapters.** Listed below is the IRS's policy for specific bankruptcy chapters which clarify the IRS's position on the processing and consideration of an OIC in bankruptcy-related situations.

a. **Chapter 7.** Only after a discharge or a dismissal has taken place, can an OIC be considered by the IRS in a Chapter 7 proceeding. Because a Chapter 7 discharge is usually issued quickly, the taxpayer is not harmed by the delay. Furthermore, once the discharge is entered, the IRS will be able to determine which taxes are discharged and will be able to make a determination of "Doubt as to Collectibility" under its administrative OIC procedures. (See IRM 5.8.10.2.3, Acceptance of Offer in Compromise After Chapter 7 Bankruptcy.)

b. **Chapter 11.** In Chapter 11 cases involving individual debtors, as in Chapter 13 cases, the IRS will not consider any OIC prior to discharge. When the Chapter 11 debtor is a non-individual, an OIC can be *considered* in unusual circumstances after plan confirmation, if the tax liabilities are the subject of a defaulted plan and the default cannot be cured or the plan cannot be modified. Such an OIC is only appropriate if unanticipated changes in circumstances cause an inability to meet the terms of the plan. The decision for consideration of an OIC must be made on a case by case basis. The IRS can decline to consider an OIC after a Chapter 11 default if the particular facts of the case show an OIC would be inappropriate.

Note: Before the IRS can consider processing an OIC in a Chapter 11 bankruptcy case involving a non-individual, the IRS must have made a determination that the debtor's plan has actually defaulted and cannot be cured, and the taxpayer has no other outstanding liabilities. Additionally, the bankruptcy court can no longer have jurisdiction over any tax liabilities which are the subject of the OIC submitted. The IRS's decision to *consider* an OIC submitted by a debtor does not indicate the IRS has *accepted* the offer.

c. **Chapter 12.** An OIC in Chapter 12 generally will not be considered. However, in unusual instances, changed circumstances may justify consideration of an OIC in defaulted Chapter 12 plan cases, just as in defaulted Chapter 11 plans, especially since Chapter 12 bankruptcies tend to involve struggling small businesses.

d. **Chapter 13.** An OIC will not be considered prior to discharge during the pendency of a Chapter 13 plan.

Note: This policy does not result in harm to the debtor because the debtor is not precluded from resolving his or her tax liabilities in the context of the bankruptcy proceeding.

(5) **Consideration of an OIC.** The IRS's decision to *consider* an OIC from debtors who have taken advantage of the relief offered under the Bankruptcy Code is limited to the situations described above. The IRS' decision to *accept* an OIC falls within the discretion of the IRS.

(6) **Pre-Petition OIC Payments.** When a debtor has submitted an OIC with a payment pre-petition, and they file bankruptcy while the OIC is pending, the IRS may generally retain the payment. A payment made within 90 days before the filing of a bankruptcy may qualify as a preferential transfer and be avoidable under 11 USC 547(b). However, the trustee has the burden of proving this payment is a preference. The IRS may retain this OIC payment until the trustee persuades the IRS the payment is a preference and not subject to the exceptions under 11 USC 547(c). Some payments, namely those to pay off trust fund taxes, are not avoidable as preferences, because the debtor has no property interest in the funds.

Note: The payments submitted with an OIC may be the application fee, amounts required by the Taxpayer Increase Prevention and Reconciliation Act (TIPRA) .

(7) **Post-Petition OIC Payments.** When a debtor submits an OIC with a payment post-petition, the payment should be treated in the following manner according to the bankruptcy chapter under which the debtor has filed for bankruptcy protection:

a. **Chapter 7.** The IRS can keep the payment submitted with the OIC, without violating the automatic stay, if the payment is made from post-petition earnings and is applied to non-dischargeable taxes. Post-petition earnings are not property of the estate, and the IRS may retain down payments made with such earnings even if the OIC is deemed not processable. In this situation, SCI should document the AIS history screen with pertinent information relating to such payments, including any contacts made with the debtor on this matter, and confer with Counsel should legal advice be required.
b. **Chapter 11.** The IRS cannot retain OIC payments submitted by a Chapter 11 debtor post-petition. In general, property of the estate in Chapter 11 may include property listed under 11 USC 541 that is obtained post-petition. For Chapter 11 debtors who are individuals, property of the estate includes post-petition earnings. The IRS may not retain OIC payments made with property of the estate.
c. **Chapter 12 and 13.** The IRS cannot retain OIC payments submitted by a Chapter 12 or 13 debtor post-petition. In Chapter 12 and 13, property of the estate includes property under 11 USC 541 that is acquired post-petition and earnings obtained post-petition. The IRS may not retain OIC payments made with property of the estate.

Note: The payments submitted with an OIC may be the application fee, amounts required by the Taxpayer Increase Prevention and Reconciliation Act (TIPRA)

5.9.4.11.1
(02-03-2023)
Accepted but Not Completed Administrative OICs

(1) **The IRS's Claim and Incomplete OICs.** When a taxpayer with an *accepted but not completed* OIC files for bankruptcy, the IRS has a claim for the full amount of the underlying tax liability because the OIC has not yet been satisfied. Section 7(m) of Form 656, Offer in Compromise, provides the tax being compromised remains a tax liability until the taxpayer meets all the terms and conditions of the offer.

(2) **Tax Claim.** If the taxpayer files for bankruptcy before the terms and conditions of an OIC are completed, any claim the IRS files in a bankruptcy proceeding will be a tax claim. The IRS's policy on treatment of an accepted OIC for specific bankruptcy chapters when payments have not yet been completed is discussed below.

(3) **Pending OIC Cases and Documentation.** The case classification "OIC PENDNG" must be entered on AIS to prevent case closure until the OIC is addressed. A summary history should also be entered on the AIS History Screen.

(4) **Chapter 7 Asset Case.** The IRS should file a proof of claim for the full amount of the unpaid tax liabilities.

a. In Chapter 7 cases, no mechanism exists for the debtor to assume an executory contract, such as an OIC.
b. However, if once the bankruptcy case is concluded and the taxpayer promptly resumes payments under the offer, or the amount of the offer

was paid in full as a result of distributions in the bankruptcy case, the IRS should honor the offer of the post-petition debtor.

Note: The five-year compliance provisions of the OIC still apply.

(5) **Chapter 9, 11, 12, 13.** When a taxpayer with an accepted but not yet completed offer in compromise files a Chapter 9, 11, 12, or 13 petition, the IRS should file a protective claim for the full underlying tax liability to protect the IRS's interests.

a. The proof of claim should cover the full amount of the unpaid underlying tax liability, because the IRS is entitled to collect the full amount of the unpaid underlying tax liabilities if the OIC is breached (non-performance of contract).
b. However, the debtor can choose to assume the OIC as an executory contract in a their plan. This means the debtor agrees, as part of the confirmation process, to honor the OIC and fulfill its terms during the bankruptcy case.
c. If the debtor assumes the OIC, the offer should not be treated as breached. The plan should clearly state the terms of the OIC and provide for the full amount due under the OIC. As noted above, *the proof of claim will list the full underlying tax liabilities.*

Note: The bankruptcy plan should clearly state if the payments will be made outside the plan or through the bankruptcy trustee. An OIC assumed in the plan as an executory contract is an unusual plan provision and it must be addressed in the *****SUMMARY***** history prior to transfer to CIO in Chapter 13 cases.

d. If the payments are made outside the bankruptcy plan, the debtor will continue making payments directly to the Monitoring Offers in Compromise (MOIC) group.
e. When the payments are made through the bankruptcy plan, the trustee will mail the payments to CIO.
f. To ensure that the payments received through the bankruptcy plan are applied correctly, the caseworker must contact MOIC for the terms of the accepted OIC. See *OIC Compliance Campus Locations for the Monitoring of Accepted Offers*, on SERP for OIC contact information. The CPM must be established according to the terms of the accepted OIC. Payments are generally applied to the oldest liability first, even if the oldest liability is an unsecured general liability. All periods must be classified as "unsecured priority" on the CPM screen so payments can be systemically downloaded. The classification on the proof of claim should not be changed to match the CPM screen.
g. Once the debtor chooses to assume an OIC, the debtor has agreed to pay in full the remaining obligation under the OIC. Accordingly, the IRS must honor the OIC by accepting its payment as satisfying the obligation.
h. The MOIC group assigned the case prior to the bankruptcy filing will continue monitoring the debtor's compliance with the terms of the accepted OIC.
i. The debtor will have a choice (1) to assume the OIC in the plan or (2) to be liable for the underlying tax liability, whichever is in the debtor's best interest.
j. The proof of claim should contain an annotation to reflect it is being filed as a "Protective Claim" in the event the debtor does not assume the OIC as an executory contract in the plan.

k. If the debtor assumes an OIC in their plan, but the case is subsequently converted to a Chapter 7, the IRS may claim the full underlying tax liability as listed on the proof of claim.

Caution: If the debtor does not assume the OIC or does not provide for payment of the unpaid underlying liability in the plan, the IRS should object to the plan.

(6) **Future Compliance Provisions.** A proof of claim should not be filed in any bankruptcy case, if the debtor has made all payments under the OIC but is still subject to the future compliance provisions of the offer.

a. **Chapter 13.** If the debtor later fails to pay post-petition taxes and is still in a Chapter 13 bankruptcy, the IRS can use the normal remedies available to collect liabilities that become payable during the bankruptcy plan. Generally, the IRS files a claim under 11 USC 1305 for the liabilities or seeks conversion or dismissal of the bankruptcy case.
b. **Chapters 11 and 12.** In a Chapter 11 or a 12 bankruptcy, if the case is still pending, the IRS can seek conversion or dismissal of the case for failing to pay post-petition taxes.
c. **Chapter 7.** In Chapter 7, the IRS can terminate the defaulted OIC after the automatic stay is lifted and collect non-dischargeable liabilities administratively.

Note: If a debtor, under any chapter, fails to file returns due, the IRS may request the court to convert or dismiss the case under 11 USC 521(j).

(7) **Re-Input of Status 71.** If a taxpayer wishes to continue to make payments *after bankruptcy*, to comply with the terms of a previously accepted OIC, SCI should request status 71 (OIC status) be re-input on IDRS when closing the bankruptcy.

(8) **OIC and SCI Contact.** The Monitoring Offer and Compromise (MOIC) group will contact SCI when they become aware of a bankruptcy. MOIC is required to ask questions listed in IRM 5.19.7.4.5, Bankruptcy Filed After Acceptance of an Offer.

(9) **IRS Coordination.** Close coordination and cooperation among SCI, Field Collection, MOIC, and Counsel is integral to the prompt and efficient handling of OICs in bankruptcy. IRM 5.8.10.2, Bankruptcy, provides additional information on OICs. Monitoring of OICs is addressed further in IRM 5.19.7.4.5, Bankruptcy Filed After Acceptance of an Offer. Counsel should be consulted for assistance and legal advice on case-specific issues.

(10) **Communication.** A contact list should be established between Field Insolvency and Centralized Insolvency units and other IRS offices who work on bankruptcy-related cases, including OIC groups and Campuses, to facilitate communication among these units. The list should be updated periodically to remain an effective communications tool for employees who work OICs and bankruptcies. SERP provides a list of OIC campus contact phone numbers under the “Who/Where” tab. This information can also be accessed at: *http://serp.enterprise.irs.gov/databases/who-where.dr/oic-backend.html*.

5.9.4.12
(02-03-2023)
Bankruptcy Fraud

(1) **Bankruptcy Fraud Program.** The IRS created the Bankruptcy Fraud Program to pursue alleged bankruptcy fraud (and related tax offenses) commonly encountered by Collection employees. Both Field Insolvency and Centralized Insolvency employees are charged with identifying cases of potential bankruptcy fraud, but FI is responsible for preparing and submitting evidence for fraud referrals.

(2) **Detection of Potential Bankruptcy Fraud.** During the pendency of a bankruptcy case, SCI caseworkers may obtain or develop information indicating a federal criminal offense may have been committed. The evidence may implicate the debtor, the trustee, a third party, or a representative in the proceeding.

(3) **Third Party Contacts and SCI.** If a FI caseworker submits a fraud referral to Criminal Investigation (CI), third party contact provisions under IRC 7602(c) apply until the actual referral is made to CI.

(4) **Development of Referral.** The information SCI gathers may indicate offenses over which the IRS has jurisdiction under Title 26 of the Internal Revenue Code, for example, filing false tax returns, and Title 18 tax-related violations. Also, SCI caseworkers may discover "pure" Title 18 violations, over which the IRS does not have responsibility.

Note: Title 18 violations may include: Title 18 USC 152, Concealment of Assets; False Oaths and Claims; Bribery and Title 18 USC 157, Bankruptcy Fraud.

(5) **Bankruptcy Fraud Information.** Information relating to bankruptcy fraud procedures is found in Document 9762, Desk Guide for Bankruptcy Tax Crime Referrals.

5.9.4.12.1
(02-03-2023)
Fraud Referrals

(1) **SCI Fraud Referrals.** Fraud referrals involving a bankruptcy case are to be routed to either:

a. Criminal Investigation, or
b. The Disclosure Office handling the jurisdictional area of the bankruptcy court where the case is filed.

(2) **Criminal Investigation (CI) Referrals.** Fraud referrals for tax-related violations based on Title 26 and related statutes are routed to CI by the bankruptcy fraud enforcement advisor as outlined in paragraph (5) below.

a. If a potential referral relates to bankruptcy tax offenses (for example, income tax evasion in conjunction with concealment of assets from the bankruptcy trustee), the matter should continue to be developed for referral to CI.
b. Likewise, if a referral relates to a concealment of assets from the bankruptcy trustee and indications of a money laundering violation are present, it is handled by CI.

(3) **Disclosure Referrals.** Fraud enforcement advisors (see paragraph (5) below) should send referrals to the local Disclosure Office when *non-tax* criminal activity is suspected that does not meet CI referral criteria, including activities relating to "pure" bankruptcy fraud under 18 USC 157, and Concealment of Assets; False Oaths and Claims; Bribery, under 18 USC 152. See IRM 11.3.28.6, IRS Initiated Disclosures of Return Information Concerning Non-Tax Criminal Violations.

(4) **Disclosure's Responses to Fraud Referrals.** If the Disclosure Officer determines the referral from SCI merits further review, the information will be forwarded to the appropriate agency for additional investigation. Instructions on the nature of information needed in the non-tax referral to Disclosure can be found in IRM 11.3.28.6.1, Disclosures of Return Information (Other than Taxpayer Return Information) Concerning Non-Tax Criminal Violations.

(5) **Working Fraud Referrals.** FI caseworkers should process a bankruptcy fraud referral as follows.

1. The SCI caseworker preparing a bankruptcy fraud referral, forwards the referral to the fraud enforcement advisor.
2. If assistance is needed to prepare a quality referral, the fraud enforcement advisor can advise the caseworker.
3. If the fraud enforcement advisor needs guidance with the referral, they may contact Counsel for assistance.
4. The fraud enforcement advisor routes the completed referral either to CI or the local Disclosure Office as appropriate.

5.9.4.12.2
(02-03-2023)
Fraud Enforcement Advisor

(1) **Bankruptcy Fraud.** When evidence of bankruptcy fraud is found through processing at CIO, the case and corroborating documentation should be transferred to the FI group handling that court's jurisdiction. When evidence of fraud is detected by FI, the case remains with the FI caseworker. FI should consult the Area fraud enforcement advisor for assistance in preparing a referral for any case of potential fraud identified by its office or any other office in the IRS.

(2) **Fraud Enforcement Advisor Responsibilities.** The fraud enforcement advisor ensures referrals are complete prior to sending them forward. For assistance in perfecting the referral, the fraud enforcement advisor may contact Counsel. Once a fraud referral package has been completed, the fraud enforcement advisor transmits it to the appropriate office.

(3) **Quality Referrals.** Each FI office should have a list of criteria for the selection of cases for referral consistent with local procedures. SCI groups should work closely with Counsel to develop referrals with a high probability of acceptance for prosecution.

5.9.4.12.3
(03-17-2023)
Fraud Indicators

(1) **Fraud Awareness.** IRS employees, in both SCI and Field Collection, who have information concerning a debtor's assets must be able to identify major indicators of bankruptcy fraud.

(2) **Bankruptcy Fraud Indicators.** Listed below are common indicators of bankruptcy fraud.

Bankruptcy Fraud Indicators
a) Absence of or evasiveness by knowledgeable officers for testimony purposes at the bankruptcy court's 341 meeting of creditors.
b) Concealment of assets.
c) Conduct contrary to industry practice.

Bankruptcy Fraud Indicators
d) Discrepancies between pre- and post-bankruptcy filing financial information provided to the IRS (e.g., to revenue officers).
e) Failure to keep usual business records
f) Fire, theft, or loss prior to or after the bankruptcy.
g) Frequent amendments to schedules, statements of financial affairs, and/or monthly operating reports.
h) Frequent cash transactions.
i) Claimed no bank accounts in their name. Debtor pays expenses using a related third-party bank account, money orders, certified checks or cash.
j) Inability to contact principals at debtor's stated business location.
k) Incomplete or missing books or records.
l) Inconsistencies between recent financial statements, tax returns, and debtor's schedules and statement of financial affairs.
m) Inflated salaries, bonuses, or cash withdrawals by officers, directors, shareholders, or other insiders.
n) Payoff of loans to directors, officers, shareholders, relatives, or other insiders shortly before bankruptcy.
o) Recent departure of officers, directors, or partners.
p) Serial bankruptcy cases.
q) Sudden depletion of inventory post-petition.
r) Transfer of personal residence, business or other assets for little to no consideration or less than fair market value within two years of filing the bankruptcy.
s) Unanswered questions, or incomplete information on debtor's schedules and statement of financial affairs.
t) Unusual depletion of assets shortly before the bankruptcy filing.
u) Engaging in illegal activities.
v) Indications that valuable assets belonging to the debtor are being acquired or held in the names of others.
w) Making false, misleading, or inconsistent statements.
x) Personal living standard and assets inconsistent with income.
y) Self-serving statements with no documentary proof.
z) Submitting a false document or affidavit.
aa) Trying to conceal a pertinent fact or record.
ab) Virtual currency transactions/assets that were not adequately disclosed on schedules.
ac) Assets transferred into a trust while retaining control and possession of the asset.
ad) Commingled personal income and expenses with Schedule C income and expenses, or with that of another business entity under the debtor's controls.

Bankruptcy Fraud Indicators
ae) Little or no income reported by third-parties (IRP) but reports significant expenses, in particular mortgage interest.
af) Operated or continues to operate more than one business using similar or like names, while failing to file tax returns or pay tax debts on the related entity.
ag) undisclosed foreign assets held in the taxpayer's name or business name such as those found on a Form 8966, FATCA report.

5.9.4.12.4
(02-03-2023)
Property Held by a Third Party

(1) **Property Held by a Third Party.** A device used to defraud creditors is the transfer of property to third parties to avoid liquidation by the Bankruptcy Court. Third party theories include:

Third Party Theory	Definition	For more information, see:
Alter Ego	This theory is where the debtor and the alter ego assets are so intermixed that their affairs are not readily separable.	• IRM 5.12.7.6.2 , Alter Ego NFTL • IRM 5.17.14.2.5 , Alter Ego Theory • IRM 5.17.14.7, Nominee, Alter Ego, and Transferee Element.
Nominee	This theory is where the debtor retains the benefit, use, or control of property held in the name of a third party.	• IRM 5.12.7.6.1, Nominee NFTL • IRM 5.17.14.2.4, Nominee Theory • IRM 5.17.14.7, Nominee, Alter Ego and Transferee Elements
Transferee	1. One use is where a debtor transfers the property through a gift, bequest, devise, or inheritance after an assessment and the statutory lien arise but before the NFTL filing. There is no requirement for the taxpayer's retaining use of or a beneficial interest in the property. 2. Another use of transferee theory is when criteria exists for making an IRC 6901 administrative assessment. 3. Other transferee options include pursuing a suit to establish a transferee liability or set aside a fraudulent transfer.	• IRM 5.12.7.6.3, Transferee NFTL • IRM 5.12.7.6.3, Transferee NFTL • IRM 5.17.14.2.1, Transferee Theory • IRM 5.17.14.3, Transferee Accountability in General • IRM 5.17.14.3.3, Establishing a Transferee Liability • IRM 5.17.14.5.7, Considerations: Assess Under IRC 6901 or File Suit • IRM 5.1.14.2, Transferee Liability and Fraudulent Conveyances • IRM 5.17.14.5.4, Establishing Transferee or Fiduciary Liability by Suit through • IRM 5.17.14.5.6.2, Defenses for the Transferee in a Fraudulent Transfer Suit

Third Party Theory	Definition	For more information, see:
Successor-in-Interest	This theory is dependent on state law. It occurs when the successor is liable under state law for the debts of the predecessor corporation. This could result from being the surviving corporation after a merger, *de facto* merger, consolidation, reorganization, or fraudulent conveyance.	• IRM 5.12.7.6.4, Successor-in-Interest NFTL • IRM 5.17.14.2.3, Successor Liability Theory • IRM 5.17.14.3.3.4, Successor Liability of a Corporation as a Transferee • IRM 5.17.14.6, Successor Liability as Primary Liability

(2) **Counsel Involvement.** If a caseworker has a case that may involve any alter-ego, nominee, transferee, or successor-in-interest situation, the caseworker should contact Counsel to discuss any questions they may have regarding how to proceed, including what liabilities to include on the proof of claim, what property constitutes property of the estate, and how the automatic stay impacts potential collection.

5.9.4.13
(02-03-2023)
Criminal Investigation (CI) Controls on Tax Accounts

(1) **CI Controls.** In the course of a bankruptcy proceeding, a debtor may contact SCI requesting assistance from the IRS (for example, asking about a delayed income tax refund). SCI, through case research or during a cursory review, may identify Criminal Investigation (CI) controls on the debtor's accounts (e.g., TC 914 or TC 916).

(2) **Confidentiality.** No indication or confirmation of CI involvement can be given to a debtor or debtor's representative attempting to obtain more specific information on a tax account or tax issue even if the debtor or representative is being persistent. If a debtor or debtor's attorney asks if a criminal investigation is open on the debtor's case, the SCI caseworker must contact Counsel and CI immediately to determine the proper response. *SCI must take no actions that might jeopardize an ongoing criminal investigation.*

(3) **Prompt CI Contact.** SCI must promptly contact CI at the Campus on all inquiries involving account(s) with CI controls. Campus CI can provide contact information for the CI Special Agent (SA) who requested the controls.

a. When CI controls are identified on accounts, even if the freeze is only on one of several tax modules, SCI must contact CI immediately to advise CI of the bankruptcy filing and SCI's plans to file a proof of claim (if applicable).
b. A meeting should be scheduled with the Special Agent in Charge (SAC), the SCI caseworker and manager, and SBSE and Criminal Tax Counsel to discuss coordinating the civil and criminal cases.

(4) **Counsel Advice.** If SCI requires legal advice on any case in which CI advises withholding collection (such as not filing a proof of claim), prompt contact with Counsel should follow according to local management direction. If any issues arise between SCI and CI, SCI should seek Counsel's advice. (See IRM 5.9.13.16, Criminal Investigation Involvement.)

5.9.4.14
(02-03-2023)
Failure to Pay Tax Penalty and Failure to Pay Estimated Income Tax Penalty

(1) **Provisions of IRC 6658.** IRC 6658 provides no addition to tax shall be made for failure to make timely payment of tax during the pendency of a bankruptcy case, except for taxes which arise from the failure to pay or deposit a tax withheld or collected from others and required to be paid over to the United States (for example, trust fund taxes).

a. In the case of a pre-petition tax for which a return becomes due during the proceeding (the due date of the return is after the petition date), no failure to pay penalty will be asserted during the pendency of the bankruptcy.
b. In the case of a tax for a pre-petition delinquent return which was recently filed, or if the pre-petition tax was assessed before the start of the proceeding, the penalty will be asserted up to the petition date.
c. In the case of an additional liability for a pre-petition tax year, the penalty will be asserted from the date of assessment to the petition date.
d. In all of the instances listed above, no penalty will be asserted while the bankruptcy case is active. The penalty is suspended from the petition date. The penalty resumes from the date the case is dismissed or closed on non-dischargeable liabilities.

(2) **Penalties Incurred by Trustee or DIP.** A failure to pay penalty will continue to accrue on tax incurred by the trustee or debtor-in-possession unless the failure occurred pursuant to an order of the court finding probable lack of funds in the estate to pay administrative expenses.

(3) **IDRS.** In most cases, IDRS will properly restrict failure to pay penalties unless a manual restriction has been placed on the account with a TC 270 and TC 271. For 941 taxes, IDRS will also suppress FTP penalties for the entire module because it cannot differentiate just the withheld portion.

(4) **IRC References.** The penalties described above are found in IRC 6651 (failure to pay penalty), IRC 6654, (estimated tax penalty - individual), and IRC 6655 (estimated tax penalties - corporations).

5.9.4.15
(02-03-2023)
Referrals – Representing IRS in Bankruptcy Court

(1) **Court Appearances.** Some cases require IRS representation in bankruptcy court, either to respond to actions or to initiate actions. FI is responsible for all referrals, since any case requiring action by Counsel or the U.S. Attorney is considered a complex issue. (See IRM 5.9.1.4(5), Complex Issues.) CIO will transfer cases to the appropriate FI office when a referral is needed. All such cases will be referred to one of the offices as listed in IRM 5.9.4.15.1, Direct Referral, below.

(2) **A Quality Referral.** A quality referral by SCI contains the specifics of why representation in court is necessary. All helpful information must be provided to the IRS's legal representative. Such information and data must be attached to the referral to ensure the government's interests are protected. If complete data is not available at the time of the initial referral, the remainder should be sent as soon as possible for association with the referral.

(3) **Referral Form.** To standardize referrals, Collection Policy, SBSE Division Counsel, and SCI have created a consolidated referral form to be used by Field Insolvency for referrals to SBSE Counsel and to the U.S. Attorney's Office (USAO). The consolidated referral form has drop down menus for the caseworker to make a selection as to the reason for the referral. The caseworker can use the **Additional remarks or other issues** section to provide

necessary information specific to a particular referral and provide information regarding NFTLs filed, unfiled returns, equity analysis, and other relevant information. The following form can be accessed in the Insolvency Knowledge Management site under Field Insolvency.*Technical Resources Field Insolvency - Referrals – Bankruptcy Referral Form (irsnet.gov)*

Note: All referrals must provide the debtor's TIN(s) in full (not redacted).

(4) **AIS Referral Screen.** All referrals must be entered on the AIS Referral Screen with a follow-up date seven days prior to any court established deadline. If the referral is not in response to a specific court action with a defined deadline, the follow-up date should be set 30 days from the date of referral.

(5) **Managerial Intervention.** If no response has been received from Area Counsel or the USAO by the referral follow-up date, the assigned caseworker must contact Area Counsel or the USAO to learn the progress of the referral. If the issue surrounding the referral has not been resolved, the caseworker must ask Area Counsel or the USAO for a date by when a response can be expected. If a response is not received by the date specified, the caseworker should elevate the referral to the group manager to contact Area Counsel or the USAO.

(6) **Reassignment to CIO.** FI must resolve all referral and follow-up actions prior to case reassignment to Centralized Insolvency. If there is an open referral or any type of litigation pending, the case may not be closed or transferred.

(7) **History Documentation.** Caseworkers must document all actions taken regarding the referral in the AIS history. Employees should include the rationale behind any decisions made not to proceed with the filing of a motion when a referral was previously initiated.

5.9.4.15.1
(02-03-2023)
Direct Referrals

(1) **Direct Referral Program.** The direct referral program allows for the referral of certain bankruptcy work directly from SCI to the United States Attorney's Office. The authority for directly referring matters to the USAOs for all districts is found in the delegation of authority published in Chief Counsel *Notice 2011-006* and in Delegation Order 25-9 (Rev. 1). FI is responsible for making all referrals in bankruptcy court. Based on the matter, referrals may be made to:

- The USAO, or
- Area Counsel.

Note: Delegation Order 25-9 Rev. 1 (05-27-2011) limits direct referral to bankruptcy cases. Other types of litigation, such as receiverships, FDIC cases, corporation dissolutions, etc., cannot be referred under the direct referral program. See IRM 1.2.14.9 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.

(2) **Role of the USAO.** The USAO is a division of the Department of Justice (DOJ). Local or Assistant United States Attorneys (AUSAs) will handle referrals made to the USAO. Depending on the type of matter involved, the representation may be handled by the US Attorney's Office, or by the Department of Justice Tax Division.

(3) **Role of Area Counsel.** Any cases that require involvement of the DOJ-Tax Division must be referred to Area Counsel first. IRM 5.9.1.3.1, Associate Area Counsel, discusses the role of Associate Area Counsel.

(4) **Authorizing Language.** All referrals to the USAO must contain the following authorizing language:

"You are hereby authorized under the provisions of IRC 7401 to take whatever action you deem necessary to aid the Internal Revenue Service in collection of the above debtor(s) outstanding federal tax liabilities. Specifically, we suggest and request that your office… "

- "…move to dismiss or convert this case… ", or
- "…object to confirmation of the debtor's proposed plan (or plan of reorganization)...", or
- " …defend the claims filed by the Internal Revenue Service against the debtor's objections...", or
- "…defend the claims filed by the Internal Revenue Service against the debtor's motion to determine the dischargeability of tax…"

Note: This language is included in the standardized referral form.

(5) **Direct Referral Authorization.**

The authorization to commence direct referrals to the USAO for cases where the IRS's proof of claim is *less than $1 million*, applies to the following matters:
a) Motions on behalf of the IRS and objections to plans based on the debtor's failure to file tax returns and responses to the debtors' objections to unassessed (estimated) claims filed by the IRS in cases where the debtor failed to file an income tax return.
b) Motions on behalf of the IRS and objections to plans based on debts in excess of the eligibility for Chapter 13 debtors.
c) Motions to dismiss or convert cases, except those involving organizations that claim an exemption from taxation under IRC 501.
d) Motions relating to the debtor's failure to make timely payments under a plan and/or accrual of post-confirmation liabilities.
e) Responses to objections to IRS claims that are based on the debtors' claimed payment of tax or claims that the debtor filed a return.
f) Responses to objections to IRS claims that are based on valuation of the property securing the claim.
g) Responses to objections to IRS claims that are based on the fact that the claim has been superseded by a subsequent claim.
h) Agreed cash collateral or adequate protection hearings, including stipulations or agreements for the use of cash collateral.
Responses to debtor's motion to determine dischargeability of a tax debt, except where: • The denial of discharge would be premised on 11 USC 523(a)(1)(C) (such as fraudulent returns or evasion of tax), or; • The determination concerns a tax for which the debtor filed a return or a document that purports to be a return, after the due date (including extension) or; • The determination of dischargeability is requested by IRS (late or no notice).

Note: If a case presents a new issue never addressed by the courts SCI must consult Area Counsel to determine whether the case is suitable for a direct referral.

(6) **Business Reason.** Before referring a case directly to Area Counsel or the USAO, the caseworker must consider if the desired result of the referral is based on a business reason that will benefit the IRS and possibly the debtor. If the contemplated direct referral serves no definable business purpose, the referral should not be made. A direct referral should never be made simply as a punitive action against a debtor.

Example: If a debtor files all delinquent returns except one before the first meeting of creditors, but files that last return before the confirmation of the plan, there may be no business purpose to seek dismissal based on an untimely unfiled return. The IRS's goal is to bring the debtor into filing compliance before confirmation of the plan. That way, an accurate claim may be filed and appropriate action can be taken at the confirmation hearing if the taxpayer has not yet complied with his filing obligations. Even though the debtor has not technically met the requirements of the Bankruptcy Code, the IRS is able to meet its goal.

(7) **Mixed Issues.** Many referral cases involve "mixed", or multiple, referral issues. For example, a referral is made because of unfiled returns, but the plan also has feasibility problems. These "mixed" issues cases may be considered direct referral cases, as long as *all* of the issues meet the direct referral criteria defined in IRM 5.9.4.15.1 (5), Direct Referral Authorization.

(8) **All Other Referrals.** All other referrals not falling into the above categories should be referred to Area Counsel, considering tolerance criteria in IRM 5.9.4.15.4 #, Referral Tolerances. Caseworkers should use the pattern referral form described in 5.9.4.15(3) Referral Form, if applicable. When in doubt about whether the direct referral criteria apply, caseworkers should consult Area Counsel.

5.9.4.15.2
(02-03-2023)
Referrals to Counsel (Non-Direct Referrals)

(1) **Counsel Referrals to the USAO.**

Matters which do not meet direct referral criteria but should be referred to Area Counsel for referral to the USAO include:
a)Issues that would meet direct referral criteria but the IRS's proof of claim is greater than $1 million.
b) Motions and/or objections concerning the adequacy of the disclosure statement.
c) Objections to confirmation other than those identified as direct referrals, except those based on USC 1129(d) (the principal purpose of the plan is tax avoidance).
d) Responses to objections to claims other than those identified as direct referrals, except those involving substantive tax issues, trust fund recovery penalties and evidentiary hearings on disputed matters, or important or novel issues.

Matters which do not meet direct referral criteria but should be referred to Area Counsel for referral to the USAO include:
e) Motions for relief from the automatic stay.
f) Motions to compel distribution and accounting.
g) Motions for segregation and/or deposit of post-petition trust fund taxes.
h) Motions for an order compelling production of records.
i) Responses to complaints or other pleadings to sell property.
j) Unagreed cash collateral proceedings.
k) Turnover hearings.

(2) **Counsel Referrals to the Tax Division.** Matters which should be referred to Area Counsel for referral to the DOJ Tax Division include:

Reason for Referral	**Description**
Objections to proofs of claim involving:	• Substantive tax issues • Trust fund recovery penalties • Evidentiary hearings on disputed matters
Responses to discharge motions/complaints where denial of discharge is based on:	• Fraud or an attempt to evade tax • A tax for which the debtor filed a return or purported return after the due date (including extension
Any suit letter recommending that the government:	• File an objection to confirmation under B.C. 1129(d) on the ground that the principal purpose of the plan is tax avoidance • Join with other creditors to commence an involuntary bankruptcy case against an individual, partnership, or corporation
All matters not specifically identified, involving prominent individuals or corporations, or novel/important issues.	N/A

Caution: Referrals to the Tax Division can only be initiated by Area Counsel. FI cannot refer directly to the Tax Division.

5.9.4.15.3
(02-03-2023)
Significant Bankruptcy Case Referrals

(1) **Significant Case Circumstances.** SCI must make expedited referrals on cases with significant case issues. These referrals will also be made to Area Counsel, and must be made regardless of chapter and whether or not IDRS shows balance due accounts.

(2) **Referral Criteria.** Once such a referral is made, Area Counsel assumes responsibility for coordinating the various IRS functions to ensure timely processing. When one or more of the following circumstances are present in a case, it should be referred to Area Counsel. (See Chief Counsel *Notice 2005-004*.)

Reasons for a Referral
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 Coordinated Industry Cases (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) 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.

Note: SCI must identify these cases as early as possible in the bankruptcy process so a timely referral is made to Area Counsel.

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5.9.4.16
(02-03-2023)
Unfiled Pre-Petition Returns

(1) **Debtor Compliance.** IRM 5.9.13.18.2, Addressing Unfiled Returns, provides in-depth procedures for securing and processing delinquent tax returns from debtors.

(2) **Valid Tax Return.** For what constitutes a valid tax return in bankruptcy proceedings, see IRM 5.9.2.10.1.2, A Valid Tax Return, and IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared.

5.9.4.17
(02-03-2023)
Unfiled Post-Petition Returns

(1) **Individuals.** No bankruptcy code provision specifically prescribes a requirement for individuals to file post-petition tax returns . However, 11 USC 521(j)(1) provides that if a debtor in a Chapter 7, 11, 12 or 13 bankruptcy, fails to file tax returns that become due after the commencement of the case, the IRS may request the court to convert or dismiss the case.

(2) **Chapter 11.** Debtors in Chapter 11 bankruptcies can face conversion to Chapter 7 or dismissal if they fail to file tax returns due after the date of the order for relief, or fail to pay taxes owed after the petition date in a timely manner (11 USC 1112 (b)(4)(I)).

(3) **Motions to Convert or Dismiss.** Since the courts or the trustees may be unaware of a debtor's noncompliance with tax laws, the government's interest may best be served by a FI caseworker referring the case to the USAO to request the filing of a motion to convert or dismiss bankruptcies.

5.9.4.18
(02-03-2023)
Innocent Spouse Requests and Bankruptcy

(1) **Requests for Innocent Spouse Relief and Bankruptcy.** Innocent spouse requests are formally known as requests for "Relief from Joint and Several Liability on Joint Return" under IRC 6015. For the remainder of this IRM, the more familiar term "innocent spouse request" will be used. An innocent spouse request for relief may be pending when a bankruptcy petition is filed or may be raised after a bankruptcy petition has been filed. Instances arise when the joint Master File Tax (MFT) 30 modules appear with a bankruptcy freeze, and one spouse files an innocent spouse request. In some cases, especially where the spouse requesting innocent spouse relief is the debtor, a determination must be made whether the requesting spouse is entitled to relief under IRC 6015 during the pendency of the bankruptcy case. If the debtor is granted relief, the bankruptcy discharge would not prohibit the debtor from receiving any related overpayment/refund they would otherwise be entitled to under applicable law.

Note: The automatic stay does not prohibit the IRS from issuing a final notice of determination granting or denying (in full or in part) innocent spouse relief. However, if the IRS issues a final notice of determination denying relief (in full or in part) while the automatic stay is in effect, the debtor is prohibited from petitioning the Tax Court while the automatic stay is in effect. Under section 6015(e)(6), the period for petitioning the Tax Court from the final notice of determination is suspended for the period during which the debtor is prohibited from filing a petition, and for 60 days thereafter.

(2) **Protecting the Taxpayer's Rights.** The presence of a bankruptcy freeze does not nullify a taxpayer's rights under the Bankruptcy Code or the innocent spouse provisions in the IRC.

Caution: The mirroring of joint MFT 30 modules to MFT 31 requires close coordination between SCI and the Cincinnati Centralized Innocent Spouse Operation (CCISO) to ensure taxpayers' rights are not violated.

(3) **Offsets.** Consistent with the IRS's policy not to take collection action when an innocent spouse claim is pending, the IRS generally will not make offsets while an innocent spouse claim is pending. (See IRM 25.15.3.1.4(1), Terms, Prohibited Collection Actions.) However, in cases when both innocent spouse claims and bankruptcies are pending, specific bankruptcy procedures should be followed as an exception to this general policy. In such cases, the IRS will claim secured status on its proof of claim based upon any offset rights it may have.

(4) **Mirroring of Joint MFT 30 modules.** If the IRS determines either spouse is relieved (fully or partially) of the joint liability on the MFT 30 module (due to the granting of the innocent spouse claim), MFT 31 mirror modules must be

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Note: **NMF Exception.** If a problem arises with the TIN (e.g., TIN invalid), then Examining Support will request transfer to non master file (NMF) and not to MFT 31.

(5) **Debtor's Filing of Innocent Spouse Claim.** The innocent spouse determination may become final before the disposition of the bankruptcy case requiring

the affected modules to be adjusted to reflect the determination. When MFT 30 modules require mirroring, all actions should be coordinated between functions to protect the debtors. CCISO will:

1. Contact SCI with their determination of the innocent spouse claim;
2. Maintain the bankruptcy freeze –V or –W for closing code 81;
3. Input the necessary actions to create the MFT 31 mirror modules;
4. Do the adjustment for the innocent spouse claim determination; and
5. Reverse their freeze on the MFT 30 and 31 modules.

(6) **Proof of Claim Preparation.** A proof of claim (POC) is prepared and filed (if applicable) in the regular manner while an innocent spouse claim is pending, disregarding the future outcome of the claim. If the innocent spouse claim determination is for a debtor spouse and the debtor spouse meets the criteria for (full or partial) relief, the IRS's proof of claim must be amended or withdrawn, as appropriate if a POC has been filed. SCI caseworkers must verify the MFT 30 and MFT 31 modules have been adjusted to reflect any relief granted by CCISO.

(7) **Reversal of TC 520 to Allow Processing of Claims.** *Only* SCI will reverse the bankruptcy freeze codes when applicable and take the following actions:

IF...	THEN...
the debtor spouse filed the innocent spouse claim and is *granted full relief* after a proof of claim has already been filed,	when the spouse's module has been adjusted to zero by CCISO, SCI must withdraw the POC or file an amended claim for $0 depending upon local practice and: • Input TC 521 with the petition date and closing code of the bankruptcy for the debtor spouse as long as debt indicators are not present • Input TC 522 for the non-debtor spouse
the debtor spouse filed the innocent spouse claim and is *granted partial relief* after a proof of claim has already been filed,	when partial adjustment by CCISO has posted on the debtor spouse, SCI will: • Amend the proof of claim or send a credit letter to the trustee based on local practice • Reverse the TC 520 when case can be closed • Input the TC 522 on the non-debtor spouse when there is no potential of violating the bankruptcy code regarding joint assets

IF...	THEN...
the debtor spouse filed the innocent spouse claim and is *granted full relief*, and a proof of claim has not been filed,	when the debtor spouse's module has been adjusted to zero by CCISO, SCI must: • Input TC 521 with the petition date and closing code of the bankruptcy for the debtor spouse as long as debt indicators are not present • Input TC 522 for the non-debtor spouse
the debtor spouse filed the innocent spouse claim and is *granted partial relief*, and a proof of claim has not been filed,	when partial adjustment by CCISO has posted on the debtor spouse. SCI will: • File a proof of claim for the amount the debtor spouse owes • Reverse the TC 520 when case can be closed • Input the TC 522 on the non-debtor spouse when there is no potential of violating the bankruptcy code regarding joint assets
the non-debtor spouse filed the innocent spouse claim and *full or partial relief* has been granted,	once the module is mirrored to MFT 31 for both spouses, SCI will: • Input TC 522 to the non-debtor spouse's MFT 31 after receiving notification CCISO has completed its actions. (This prevents the CSED from being extended for the non-debtor spouse.) • Ensure no potential violation of the automatic stay exists • Reverse the TC 520 on the debtor spouse's MFT 31 and MFT 30 when the bankruptcy case can be closed to prevent violation of the automatic stay

Note: CCISO is responsible for reversing their L- freeze on the MFT 30 and both MFT 31 modules.

(8) **Monitoring.** Coordination between functions is essential. CCISO should contact SCI when its actions have been completed.

(9) **Complete Documentation.** CIO caseworkers must document the AIS history with all actions taken to complete the process on the MFT 30 and MFT 31 modules.

(10) **Joint and Several Liability.** Master file is able to mirror MFT 30 to MFT 31s for both spouses. The MFT 30 module liability is cleared by the generation of TC 604. The liability is then mirrored to both spouses' MFT 31 modules and adjusted appropriately for the innocent spouse determination. Any remaining liabilities on the MFT 31 mirrored modules are linked systemically on master file. Payment made by one spouse is systemically credited to the other spouse's MFT 31 until one is satisfied. Prior to MFT 31 mirroring, innocent spouse claims(s) were processed via the split/transfer process and may have had a joint MFT 30 module where both taxpayers still owe jointly and severally for a portion of the surviving liability.

5.9.4.19
(02-03-2023)
Affordable Care Act

(1) **Definition.** Under the Affordable Care Act (ACA), the Federal government, state governments, insurers, employers and individuals are given shared responsibility to reform and improve the availability, quality, and affordability of health insurance coverage in the United States.

5.9.4.19.1
(02-03-2023)
Individual Shared Responsibility Payment (SRP)

(1) **Individual Shared Responsibility Payment.** Beginning in 2014, the individual shared responsibility provision calls for each individual to:

- Have qualifying health care coverage, known as minimum essential coverage (MEC), for each month,
- Qualify for a coverage exemption, *or*
- Make a Shared Responsibility Payment (SRP) when filing their Federal income tax return.

Note: Tax Cuts and Jobs Act (TCJA) reduced the shared responsibility payment to zero after December 31, 2018.

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

(3) **MFT 35**. MFT 35, Tax Class 2, File Source 1, is the IMF MFT code for the Individual Shared Responsibility Payment. As of January of 2016, certain joint MFT 35 liabilities are mirrored under MFT 65 on IDRS.

(4) **Standalone Module.** A standalone SRP occurs when a balance due is created for an individual SRP liability and there is no other:

a. Balance due module with a different MFT in Status 22, 24, or 26, or
b. TDI module in status 03.

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

(5) **Enforcement.** The individual SRP amount owed is not subject to penalties or the filing of a Notice of Federal Tax Lien, and the IRS will not levy on any property of the taxpayer for failure to pay the SRP. However, interest will continue to accrue until the total SRP is paid. The IRS may apply federal tax

refunds or voluntary payments to an SRP liability until it is paid. The IRS may *not* file NFTLs on, nor apply payments derived from a levy action to an SRP assessment.

(6) **Treatment in Bankruptcy**. The individual SRP liability will be treated as an income tax and an excise tax under 11 USC 507(a)(8). See IRM 5.9.13.19.3, Unsecured Priority, for additional information.

5.9.4.19.2
(02-03-2023)
Employer Shared Responsibility Payment (ESRP)

(1) **Employer Shared Responsibility Payment.** Effective January 1, 2015, the Affordable Care Act required applicable large employers (ALE) to offer affordable, minimum value health coverage to full-time employees (and their dependents) or potentially be liable for an Employer Shared Responsibility Payment (ESRP) under IRC 4980H.

a. An ESRP may be assessed under IRC 4980H(a) if the ALE did not offer minimum essential coverage (MEC) to at least 95% (70% for 2015) of its full-time employees (and their dependents), and at least one full-time employee was allowed a premium tax credit (PTC).
b. An ESRP may be assessed under IRC 4980H(b) if the ALE offered MEC to at least 95% (70% for 2015) of its full-time employees (and their dependents), but at least one full-time employee was allowed a PTC because the employer's self-only coverage was not affordable or did not provide minimum value, or the full-time employee was not offered coverage.

(2) **Premium Tax Credit (PTC).** PTC is a refundable credit available to eligible individuals and families to help purchase health insurance through a Health Insurance Marketplace.

(3) **Applicable Large Employer (ALE).** An ALE is an employer with an average of at least 50 full-time employees (including full-time equivalent employees) on business days in the prior calendar year. An ALE can be a corporation, a partnership, an LLC, or an individual.

Note: For calendar year 2015, employers with fewer than 100 full-time employees (and that satisfy certain conditions) will not be assessed an ESRP.

(4) **MFT 43 ESRP.** Master File Transaction (MFT) 43 is the MFT code for the ESRP. The ESRP is treated as an excise tax. IRC 6056 requires an ALE to file a return, which the ALE does by filing Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage. The ALE reports certain information about the health care coverage the ALE offered to each full-time employee (and their dependents) for one or more months during the calendar year, or reports that the ALE did not offer health care coverage to that employee. The ESRP is assessed based on the information the ALE provides on Forms 1094-C and 1095-C. There is no form where the ALE self-assesses the ESRP. Because the ESRP depends on whether one or more of an ALE's full-time employees is allowed a PTC or cost-sharing reduction, the assessment amount is calculated by the IRS, not the ALE. When an assessment is made, IDRS will show a Transaction Code (TC) 298 with an amount due.

(5) **Payment Amount.** The ESRP is not a flat dollar amount. The ESRP is the total of a monthly calculation based on either the number of full-time employees or the number of full-time employees that were allowed a PTC.

(6) **Letter 226-J.** Letter 226-J, ESRP Preliminary Contact, is a preliminary letter issued to notify the ALE of the proposed ESRP that may be assessed and certifying to the employer that one or more of its full-time employees were allowed a PTC. This letter explains how the ESRP is calculated, the proposed amount, and a list of the full-time employees who were allowed a PTC. This letter gives the ALE an opportunity to respond before any liability is assessed or notice and demand for payment is made. A TC 971 AC 782 will be input on IDRS with the date the Letter 226-J is issued.

(7) **ESRP Group.** The Ogden Campus 4980H Response Unit is responsible for the ESRP assessment process. The Tax Examiners (TE) in this group will process responses, calculate the ESRP and issue Acknowledgement Letters. #

ruptcy included in the subject line.

(8) **Enforcement.** The ESRP amount owed is not subject to penalties. However, interest will continue to accrue until the total ESRP is paid. The IRS can file a Notice of Federal Tax Lien and levy on any property of the taxpayer for failure to pay the ESRP.

(9) **Treatment in Bankruptcy.** The ESRP MFT 43 liability will be treated as an excise tax under 11 USC 507(a)(8)(E) . See IRM 5.9.13.19.3, Unsecured Priority, and IRM 5.9.13.18.6(3) IRC 4980H – Employer Shared Responsibility Provision, for more information. If the IRS has issued Letter 226-J, contact #

is not assessed on IDRS.

(10) **Determining if the ESRP Liability is Pre-Petition/Post-Petition.** The ESRP is an excise tax that arises when the IRS issues the Letter 226-J to the employer certifying to the employer that one or more of their full-time employees was allowed a PTC. However, the only court to have addressed when the ESRP arises held that the ESRP arises not when the Letter 226-J is issued, but when an employee enrolls in a qualified health care plan. (In re Creative Hairdressers, Inc., 639 B.R. 320 (Bankr. D.Md. 2022).) The enrollment year and the Letter 226-J issuance date therefore need to be considered when determining to file a pre-petition claim, post-petition claim, or both to protect the IRS's interests and ensure that the IRS has filed a timely claim. For purposes of filing a protective claim in bankruptcy, assume that the enrollment date is November 1st of the year before the ESRP year. The date the Letter 226-J was issued is identified by a TC 971 AC 782 in the MFT 43 module. See the chart below:

If the enrollment date is:	and the Letter 226-J Letter was issued:	Then file a:	Example
pre-petition	pre-petition	pre-petition claim	• Petition Date: 4/23/2020 • ESRP year: 2017 • Enrollment date: 11/1/2016 • L226-J issued: 10/8/2019

If the enrollment date is:	and the Letter 226-J Letter was issued:	Then file a:	Example
post-petition	post-petition	post-petition claim	• Petition Date: 4/23/2019 • ESRP year: 2021 • Enrollment date: 11/1/2020 • L226-J issued: 8/8/2022
pre-petition	post-petition	pre-petition **and** post-petition claim	• Petition Date: 4/23/2020 • ESRP year: 2018 • Enrollment date: 11/1/2017 • L226-J issued: 03/11/2021

- **Pre-Petition ESRP**: : A debtor files bankruptcy on 4/23/2020. The IRS issues Letter 226-J for 201712 on 10/8/2019. Since the enrollment date (11/1/2016) and the Letter 226-J issuance date are before the petition date, the ESRP is considered a pre-petition liability. The caseworker #

  amount to be listed on the pre-petition proof of claim if there is no TC 298 with an amount due on the module. If there is a posted amount due on the module, the Automated Proof of Claim (APOC) system will calculate and classify assessed balances due for ESRP liabilities.
- **Post-Petition/Pre-Confirmation ESRP**:A debtor files bankruptcy on 4/23/2020. The IRS issues Letter 226-J for 202112 on 08/8/2022. The bankruptcy plan has not been confirmed. Since both the enrollment date (11/1/2020) and Letter 226-J are after the petition date but before the confirmation date, the ESRP is considered a post-petition/pre- #

  #

  been provided and the administrative bar date has not passed.
- **Pre-Petition/Post-Petition ESRP** A debtor files bankruptcy on 4/23/2020. The IRS issues Letter 226-J for 201812 on 3/11/2021. The bankruptcy plan has not been confirmed. Since the enrollment date (11/1/2017) was pre-petition but the Letter 226-J was sent after the petition date, the ESRP potentially could be treated as either a pre-petition or a post-petition liability by the bankruptcy court. Regardless of whether the liability amount is assessed on IDRS, the caseworker must contact #

  pre-petition and protective administrative claim.
- **Post-Petition/Post-Confirmation ESRP**: A debtor files bankruptcy on 2/18/2018 and their plan is confirmed on 12/5/2020. Letter 226-J for 202012 is sent on 2/9/2022. Since both the enrollment date (11/1/2019) and the Letter 226-J issuance date are after the petition date, the ESRP is considered a post-petition liability. In addition, since the Letter 226-J was sent after the confirmation date, it should be treated like a post-petition/post confirmation liability.

Note: The calendar year and/or the date the ESRP liability is assessed are **NOT** used to determine the ESRP liability classification or dischargeability. Only the enrollment date and the Letter 226-J issuance date are used to determine whether an ESRP is a pre-petition or a post-petition liability.

5.9.4.20
(02-03-2023)
Installment Agreements and Bankruptcy

(1) **Status 60.** IRC 6159(a) allows the IRS to enter into installment agreements to facilitate the payment of a tax. When the IRS accepts an installment agreement from a taxpayer, IDRS status code 60 is entered on IDRS to reflect the agreement's validity.

Note: Status Code 60 accounts established with Agreement Locator Number XX08 are considered continuous wage levies, not installment agreements. See IRM 5.9.12.5.1(8), Stat 60 Notices, for additional information.

(2) **Form 900, Tax Collection Waiver.** Pursuant to IRC 6502(a), as amended by the IRS Restructuring and Reform Act of 1998 (RRA 98), the IRS can no longer obtain waivers of the statute of limitations (Form 900) for collection *except* in two situations: when in conjunction with a valid installment agreement, or a release of levy.

(3) **Bankruptcy Does Not Terminate a Valid Installment Agreement.** After an installment agreement becomes effective, the Internal Revenue Code limits the conditions terminating such an agreement; *a bankruptcy petition is not one of them.* (See IRC 6159(b) and *Treas. Reg. 301.6159-1(e)*.) An installment agreement is considered to be *suspended* by a bankruptcy filing, not *terminated*.

Note: A termination of an installment agreement while a taxpayer is in bankruptcy could be viewed as an act to collect the underlying tax liabilities, and hence, a violation of the bankruptcy automatic stay (11 USC 362).

(4) **Change to Status 72.** If a taxpayer files a bankruptcy petition after entering into an installment agreement, transaction code (TC) 520 bankruptcy freeze is input. This action causes the account status to change from 60 to 72.

(5) **Termination of Installment Agreement – Appeal Rights.** If an installment agreement appears to be in default, before an installment agreement can be terminated:

1. A notice and explanation of the reasons for termination must be given in writing to the taxpayer *30 days* in advance;
2. The IRS must provide for an independent administrative review of the proposed termination (26 CFR 301.6159-1; and IRM 5.14.11, Defaulted Installment Agreements, Terminated Agreements and Appeals of: Proposed Terminations (Defaults), and Terminated Installment Agreements); and
3. The taxpayer has the right to appeal the termination of the installment agreement to the IRS Independent Office of Appeals should the IRS still decide to terminate the installment agreement. (See and 26 CFR 301.6159-1(e)(5)IRM 5.14.11.7, Appeals of Defaulted and Terminated Agreements.)

(6) **Payments on a Pre-Existing Installment Agreement.** Individual debtors sometimes make voluntary post-petition payments (either by check or automatic debits from bank accounts or wages) for liabilities pursuant to an installment agreement that was entered into before the bankruptcy.

a. **Chapter 7 Individual.** Voluntary post-petition payment(s) made by an individual Chapter 7 debtor, either by check or automatic debits from bank accounts or wages for the above-stated purpose, can be accepted by the IRS. Such payment(s) will be applied to *non-dischargeable*

period(s). Acceptance of such payments is not considered to be a violation of the automatic stay as long as the payments are truly voluntary (i.e., no harassment or coercion by the IRS). (See IRM 5.9.4.5.2 (5), Voluntary Payments – Guidelines.)

Caution: Payments cannot be from property of the estate. However, since installment payments are typically made from current income, which is not property of the estate in individual Chapter 7 cases, it can be presumed in most cases that the payments are not from property of the estate.

b. **Chapter 13 and Individual Chapter 11 Cases.** Property of a Chapter 13 estate or of an individual Chapter 11 estate, generally includes all property acquired post-petition, including post-petition wages. Therefore payments should be made through the plan. So payments based on a pre-petition installment agreement *should not be accepted* from a debtor who has filed a Chapter 13 bankruptcy or who has filed an individual Chapter 11 bankruptcy.

Note: SCI must ensure no future installment agreement payments will be received by contacting the debtor or representative and also the payment source (e.g., employer), as appropriate. The Chapter 13 trustee should be advised of the suspension of such an agreement if the debtors' schedules claim payments as a current expense. Applicable documentation must be added to the AIS history.

c. If payments of this type are received in Chapters 11 and 12, consultation with Counsel may be necessary.

(7) **Re-input of Status 60.** At the end of a bankruptcy, the IDRS status code should be returned to its pre-bankruptcy status of "60" when criteria for reinstatement are met.

(8) **Criteria for Reinstatement.** To be eligible for reinstatement of an installment agreement, the debtor must be in full compliance and must meet all criteria for reinstatement of the installment agreement (See IRM 5.14.11.5, Considerations after Default or Termination, Including Reinstatement.) Most types of installment agreements can be reinstated without paying a reinstatement fee. SCI can only directly input or request input of installment agreements where the payments are remitted directly by the debtor through check or money order. For all other types of installment agreements, the debtor should call Accounts Management for reinstatement.

(9) **The Mechanics of Reinstatement.** Using "IADIS" print-outs generated by IIP, SCI caseworkers must annotate terms of installment agreements in the AIS history and flag status 60 cases meeting reinstatement criteria at the *beginning* of the bankruptcy process. Documentation must include the type of payment agreement (direct debit, payroll deduction, etc.), the periods included in the agreement, the date of monthly payment, and the monthly payment amount. Step-by-step instructions for SCI are found in Exhibit 5.9.17-2, Regular Installment Agreement Reinstatements; Exhibit 5.9.17-3, Reinstating Direct Debit or Payroll Deduction Agreements as a Regular Installment Agreement; and Exhibit 5.9.17-4, Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret).

a. **Centralized Insolvency.** At the closure of a bankruptcy case with a previous IA that meets criteria for reinstatement, the caseworker should

input the terms of the original installment agreement on IDRS using CC IAGRE. See the IRM exhibits referenced above for complete procedures.

b. **Field Insolvency.** Caseworkers must enter the "IA Issues" classification on the AIS Classification Screen, and ensure that all other case actions have been completed. See IRM 5.9.17.24, Addressing Prior Installment Agreements When Closing a Case, for additional information. At that point, the case may then be transferred to CIO.

Note: Continuous levy plans (Agreement Locator Number 08) are excluded from reinstatement.

(10) **SRP Liabilities and Reinstatement.** Normally, when a taxpayer has incurred an additional liability that was not part of the original IA, the IA cannot be reinstated. However, an MFT 35 SRP (or its mirror) is not considered an additional liability for the purposes of IA reinstatements. Therefore, if a stand-alone SRP module is the only new liability for a taxpayer who is otherwise entitled to an IA reinstatement, the installment agreement *should* be reinstated. See IRM 5.9.17.24, Addressing Prior Installment Agreements When Closing a Case, for more information.

(11) **ESRP Liabilities and Reinstatement.** When a taxpayer has incurred an additional liability that was not part of the original IA, the IA cannot be reinstated. An ESRP liability is considered an additional liability for the purposes of IA reinstatements. Therefore, if a debtor incurs an additional ESRP liability, the IA should not be reinstated. For more information, see IRM 5.9.17.24, Addressing Prior Installment Agreements When Closing a Case.

(12) **Protection of the Taxpayer's Rights.** The IRS protects taxpayers' rights while the debtor is under the protection of the bankruptcy court (11 USC 362). Therefore, *an installment agreement should be regarded as suspended – not terminated – during the pendency of a bankruptcy proceeding.* Even if the debtor incurs additional liabilities or does not remain in compliance, an installment agreement should not be terminated while the automatic stay is in effect, because a termination could be viewed as a violation of the automatic stay.

(13) **Documentation.** Proper documentation in the case history must reflect pertinent information relating to a valid installment agreement and the bankruptcy process. Documentation must include the type of agreement (direct debit, payroll deduction, etc.), the periods included in the agreement, the date of monthly payment, and the monthly payment amount. AIS histories may become a part of the bankruptcy court litigation process, so it is important that they are thorough. IRM 5.9.5.4, AIS Documentation, provides guidance on required AIS documentation.

5.9.4.20.1
(02-03-2023)
IA Requests For Post-Petition Liabilities Submitted During Bankruptcy

(1) **Post-Petition IA Requests.** Taxpayers in bankruptcy may incur additional liabilities, post-petition, and request an installment agreement (IA) for these liabilities. IA requests received by Compliance Services Collection Operations (CSCO), Accounts Management (AM), or any other function should be forwarded to CIO.

(2) **Non-Processable.** A request for an IA on post-petition liabilities made by a taxpayer in bankruptcy is considered non-processable. It should not be treated as "Pending" as it cannot be accepted, rejected, or withdrawn. Administrative appeal rights are not provided for a non-processable IA. A TC 971 AC 043 should *not* be input. Post-petition IA requests submitted by taxpayers who had

a *pre-petition* IA are also considered non-processable. The taxpayer may not be granted a post-petition IA, nor are they eligible to have the pre-petition IA reinstated. In addition to issuing Letter 2272-C as explained below, follow the steps in Exhibit 5.9.17-5, Installment Agreement Cannot Be Reinstated

Note: In a small number of cases, the debtor taxpayer may qualify for a guaranteed installment agreement under IRC 6159(c). See IRM 5.14.5.3, Guaranteed Installment Agreements.

(3) **Case Actions.**

Upon receipt of Form 9465, Installment Agreement Request, or any other IA request for post-petition liabilities from a taxpayer in bankruptcy, CIO caseworkers should:
Issue Letter 2272-C, Installment Agreement Cannot Be Considered, to the taxpayer. 1. Check Paragraph *C* and fill in tax periods 2. Check Paragraph *E* and fill in *Form 9465 (or other request form)* in [26 18V], and put the date of the IA request in [27 13D]. Fill in *Process* in [28 21V]. When completed, the sentence will read, *Thank you for your Form 9465 dated Month, DD, Year, about the unpaid tax for the tax years shown above. We cannot process your request at this time.* ***Note:*** For telephone requests, use Paragraph "G" rather than "E". Enter the date in [33 13D] and fill in "process" in [34 21V]. 3. Check Paragraph *Q We can't consider an installment agreement for you because you're in bankruptcy.* 4. *Do not include Paragraphs "i" or "j";* these do not apply as there are no administrative appeal rights for a non-processable request. 5. Check Paragraph *e* and fill in [C4 385V] with *You can make voluntary payments* 6. Check Paragraph *u* in the *How to Contact Us* section and fill in the toll-free number for CIO in [D9 23V]
Note: The detailed instructions in this section regarding preparation of Letter 2272-C are correct as of the letter revision effective 01-2021. If subsequent revisions of Letter 2272-C occur, caseworkers should direct questions regarding its proper completion to their manager.
If there is AMS history about receipt of an IA request, document the AMS history stating the IA request is non-processable due to bankruptcy, and that Letter 2272-C has been sent to the taxpayer
Input a TC 520 CC 84 on the post-petition modules on IDRS, using the bankruptcy petition date as the TC 520 date.
Add all TC 520 CC 84 added to modules on IDRS to the AIS Freeze Screen.
CIO will determine if the liability was addressed when a LTS New Assessment transcript generated. • If the post-petition liability was addressed by FI when a LTS transcript generated, go to Step g). • If the post-petition liability was not previously addressed, CIO should reassign the case to FI. CIO and FI should follow the guidance in IRM 5.9.16.2.2, New Assessment Reports.
If the post-petition module is in ST 22 on IDRS, check the ACS system. • If a levy was issued on the debtor's wages, release the levy and move the case to R4 (protected inventory). • If no levy was issued, move the case to R4.
Document all actions taken in the AIS history.

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5.9.4.20.1.1
(09-04-2015)
Previously Granted Post-Petition Installment Agreements

(1) Previously, Chapter 13 taxpayers in certain jurisdictions may have been granted an IA for post-petition liabilities. This practice will not be continued, as there could be potential for a stay violation. For those cases where a post-petition IA has already been granted and the taxpayer had a pre-petition IA for liabilities not discharged by the bankruptcy, Letter 2975-C, Notice of Intent to Levy - Intent to Terminate Your Installment Agreement, must be sent to the taxpayer at case closure. See IRM 5.9.17.24, Addressing Prior Installment Agreements When Closing A Case, for instructions.

5.9.4.21
(02-03-2023)
Report of Foreign Bank and Financial Accounts (FBARs)

(1) **Reporting Requirement.** Each U.S. person who has a financial interest in, or signature or other authority over, one or more foreign financial accounts that has an aggregate value greater than $10,000 at any time during a calendar year is required to report that financial interest in, or authority over, the foreign account on Schedule B of Form 1040, as well as on FinCEN Report 114, Report of Foreign Bank and Financial Accounts, on or before June 30 of the succeeding year (April 15th for calendar year 2016 and subsequent years). 31 USC 5314; 31 CFR 1010.350; Surface Transportation and Veterans Health Care Choice Improvement Act of 2014, Public Law 114-41. Each person who is required to report an interest in foreign financial accounts must also maintain adequate records of any accounts. Failure to maintain adequate records is an additional violation of 31 USC 5314.

(2) **Penalty for Violations.** 31 USC 5321(a)(5)(A) authorizes a civil monetary penalty for any person who violates (or causes any violation of) 31 USC 5314.

Note: 5321(a)(5)(A) authorizes the penalty for both non-willful and willful violations. The remaining provisions of 5321(a)(5) just set the amount of the penalty authorized in (A) and the reasonable cause exceptions to the penalty for non-willful violations.

(3) **Penalty Amount for Non- Willful Violations.** Under 31 USC 5321(a)(5)(B) , for each non-willful violation, the penalty cannot exceed $10,000 and is waived for reasonable cause. For violations occurring after November 2, 2015, the $10,000 penalty limit is adjusted for inflation as set out in the penalty adjustment table in 31 CFR 1010.821.

(4) **Penalty Amount for Willful Violations.** Under 31 USC 5321(a)(5)(C), for each willful violation, the penalty cannot exceed the greater of:

a. An amount equal to 50% of the balance in the account at the time of the violation; or
b. $100,000.

Note: The penalty can be for each violation. For violations occurring after November 2, 2015, the $100,000 penalty limit is adjusted for inflation as set out in the penalty adjustment table in 31 CFR 1010.821.

(5) **Delegated Authority.** Even though the penalty imposed under 31 USC 5321(a)(5) for failing to report these foreign financial interests or violating the record keeping provisions (commonly called the FBAR penalty) is not a tax penalty, the IRS has been delegated authority to examine, assess, and collect the penalty for the government. Delegation Order 25-13 (Rev. 1) signed March 8, 2022, authorizes bankruptcy specialists grade 9 and above to prepare and file proofs of claim for FBAR penalties and to take appropriate action to protect

the government's interest in bankruptcy, state and federal receiverships, and other state and federal insolvency actions.

Note: Delegation Order 25-13 (Rev.1) signed March 8, 2022, is in IRM 1.2.2.14.13, Delegation Order 25-13 (Rev. 1), Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements and posted on IRS.gov .

(6) **Systemic Tracking.** FBARs are filed electronically with the Financial Crimes Enforcement Network (FinCEN), and information reported on FBARs is entered into a database known as the FinCEN Query System (FCQ). FBAR penalties are maintained on a database in Currency Transaction Report (CTR) Operations and can only be checked by IRS personnel in Detroit. *FBAR cases are not loaded onto AIS or IDRS because FBAR cases are not tax cases.*

(7) **Notification.** T Bankruptcy court clerks usually notify BFS in Birmingham, Alabama, when debtors include FBAR penalties as debts in their bankruptcy petition and schedules. . BFS then forwards these bankruptcy notices to CTR Operations.

(8) **CTR Operations Duties.** When CTR Operations receives bankruptcy notices, it inputs the bankruptcy indicator on the FBAR penalty database. All FBAR bankruptcy penalty cases are processed by and assigned to the Dallas (Territory 3) Field Insolvency office. CTR Operations provides the following account information to the FBAR Penalty bankruptcy caseworker in the Dallas Insolvency office:

- Debtor name
- Debtor address
- Debtor SSN
- Balance(s) due for both the penalty and statutory additions
- Assessment date
- Civil Action Statute Expiration Date (CASED)

(9) **CASED.** The government has a two-year period in which to file a civil action to recover an FBAR penalty, beginning on the later of the date the penalty was assessed or the date any judgment becomes final in any criminal action under 31 USC 5322 in connection with the same transaction with respect to which the civil penalty was assessed. Currently, the IRS has no procedures for soliciting a waiver of this two-year statute of limitations. Filing a bankruptcy petition does not suspend the running of the CASED. However, if the CASED has not expired upon the date of filing of the bankruptcy petition, 11 USC 108(c) extends the time to file an FBAR collection suit until the later of:

a. The end of the two-year period in which to file collection action, or
b. 30 days after notice of the termination or expiration of the stay under 11 USC 362, 922, 1201, or 1301, as the case may be, with respect to the claim.

Note: SCI must coordinate any FBAR CASED issues closely with Counsel, since the government may have only a short period of time in which to initiate a collection suit after the termination of the bankruptcy case.

(10) **SCI's Duties.** SCI caseworkers must :

- Verify the bar date has not expired.

- Verify the FBAR CASED has not expired.
- Prepare and distribute the proof of claim (Form B410) .

(11) **Creditor Name.** SCI prepares manual FBAR proofs of claim listing the IRS as the creditor.

(12) **Claim Calculations.** FBAR claims are always classified as unsecured general and include the FBAR penalty amount and interest. SCI may have to coordinate with BFS or CTR Operations to determine the appropriate interest to report on a claim, because the interest rate on these penalties is subject to change. Also, a late payment penalty may be assessed under Title 31, and collection costs may be assessed.

(13) **Claim Distribution.** The FI caseworker files the FBAR proof of claim with the bankruptcy court and must provide copies of the FBAR claim to CTR Operations, the SCI Territory Manager, BFS, the debtor, and debtor's counsel. In addition, all FBAR cases must be referred to local Counsel along with a copy of the proof of claim.

(14) **FBAR Plan Review.** Area Counsel is responsible for reviewing bankruptcy plans as to the treatment of the unsecured general claim for the FBAR penalty. If the IRS is a creditor for unpaid federal taxes or statutory additions to taxes under the same docket number as the FBAR penalty, the assigned FI caseworker will process the non-FBAR assessments following established procedures for the chapter under which the bankruptcy has been filed.

(15) **Payments on FBAR Accounts.** FBAR payments received from the bankruptcy proceedings must be mailed for processing to BFS at:

United States Treasury
Bureau of the Fiscal Service
P.O. Box 830794
Attn.: Debit Services Branch
Birmingham, AL 35283-0794

(16) **FBAR Case Monitoring.** CTR Operations will:

a. Record payments if the bankruptcy indicator is on the account;
b. Process abatements;
c. Process full payment of the debt;
d. Reverse the bankruptcy indicator; and
e. Return the account to regular collection status if appropriate.

(17) **Dischargeability of the FBAR Penalty.** The FBAR penalty is excepted from discharge in individual Chapter 7 and 11 cases under 11 USC 523(a)(7). Counsel should be consulted if questions arise concerning the FBAR penalty and dischargeability.

(18) For additional information on FBARs, see IRM 5.21.6, Foreign Financial Account Report, and IRM 4.26.17.5.4, Bankruptcy Procedures in FBAR Cases.

5.9.4.22
(09-04-2015)
Criminal Restitution Assessments

(1) **Background.** When a party is convicted of a criminal tax violation or tax-related offense, the court may order them to pay restitution. This requirement will be contained in a document signed by the judge, called a Judgment and Commitment (J&C) Order. In 2010, Congress amended IRC 6201 to provide that the IRS shall assess and collect tax-related restitution in the same manner as if such amount were tax. This change in IRC 6201 applies to restitution in all J&C Orders *entered after August 16, 2010*.

(2) **Individual Assessments.** Restitution assessments against individuals will be made on MFT 31 and can be identified by TC 971 AC 102. Restitution ordered in the case of an individual will be assessed with one of the following:

- TC 290 with Reason Code (RC) 141 to 150
- TC 300 with RC 141 to 150
- TC 298 with RC 141 to 150

(3) **Business Assessments.** Restitution assessments against business entities will be made on MFT 02, 06, 05, etc. TC 971 with action codes 180 through 189 will reflect the type of tax and tax periods for which the restitution is ordered.

(4) **Mirror Assessments.** Restitution assessments will be a mirror assessment of (but not necessarily identical to) the tax liability assessed pursuant to a civil exam, creating two separate assessments. Although the restitution-based assessment and civil tax liability assessment are distinct, the IRS generally may not collect both in full for the same period because it would be double-collection. In these cases, any payments made to satisfy the restitution-based assessment must also be applied to the civil tax liability for the same tax periods.

(5) **SCI Actions.** When a Revenue Officer (RO) or Advisory learns that a taxpayer against whom a restitution assessment has been made has filed bankruptcy, the RO or assigned Advisor will contact CIO and inform them that the bankruptcy involves a restitution assessment. The CIO caseworker must then input the “CRIMREST” case classification on AIS, and note the AIS history with any information provided by the RO or Advisor. The case should then be transferred to FI. These types of cases cannot be worked by CIO as they are deemed complex issues.

5.9.4.22.1
(12-19-2019)
Working Criminal Restitution Cases

(1) **Proofs of Claim.** For bankruptcy purposes, a restitution assessment is classified in the same manner as the tax module to which it relates. The Automated Proof of Claim system (APOC) will recognize the assessment and classify it based on the tax module. See IRM 5.9.13.18.5, Restitution Assessments, for additional information on APOC processing and guidance on preparing manual proofs of claim.

(2) **Treatment of Restitution Assessments in the Plan.** If the plan provides for the restitution assessment to be paid according to the payment schedule in the J&C Order, caseworkers should verify that the plan complies with the terms of the order with regard to the payment amount and schedule.

a. If the plan mirrors the provisions of the J&C Order, no objection should be raised to the plan unless some other reason for objection exists. Upon plan confirmation, the caseworker should notify the assigned Advisor that the restitution payments are being made to the IRS pursuant to a bankruptcy plan, and that SCI will monitor for payments. In Chapter 11 and 12

cases, the caseworker should detail in the history the amounts paid under the plan for restitution that are to be applied to the restitution assessment. In Chapter 13 cases, the caseworker should note the provisions for the restitution payments in the AIS history, pursuant to IRM 5.9.10.6.1(4), Field Insolvency (FI) Actions Prior to Case Transfer.

b. If the plan does provide for the restitution assessment to be paid through the plan, but in lesser amounts or less frequently than required by the J&C Order, the case should be referred to Counsel to object to confirmation of the plan.

c. The taxpayer's plan may provide for restitution payments to be made to the office of the clerk of court outside the terms of the plan. Caseworkers should not object to the plan solely for this reason. The caseworker must remove the assessment amount from the Claim and Plan Screens, to ensure the trustee does not duplicate payments and that no plan payments are applied to the restitution assessment. After confirmation, the caseworker should notify Advisory that the taxpayer will continue to make payments to the office of the clerk of the court. The assigned Advisor will monitor that payment of the restitution is being made.

d. If the bankruptcy court confirms a plan in which the restitution payments do not mirror the J&C Order but are in accordance with the provisions of the Bankruptcy Code, the caseworker should notify the assigned Advisor that the plan does not comply with the provisions of the order and provide details of the confirmed plan.

Caution: In all cases, caseworkers must be alert for plan language that provides for discharge of the restitution assessment. If the plan contains such language, the case should be immediately referred to Counsel for objection.

(3) **Application of Payments.** Payments made pursuant to a plan for restitution must be applied to the restitution assessment. If it is necessary to determine how any payment(s) received in bankruptcy and designated for restitution should be applied, the SCI caseworker should contact Advisory for guidance.

a. The J&C order will usually contain a payment schedule specifying the manner in which the restitution amount must be paid, and will normally specify that restitution payments are to be made to the office of the clerk of the district court where the order was entered. The clerk of the court will disburse the payments to the victims. SCI caseworkers may obtain the restitution payment schedule contained in the J&C Order from the assigned Advisor.

b. If the court has confirmed a plan in which the restitution payments do not mirror the J&C Order but are in accordance with the provisions of the Bankruptcy Code, the caseworker should apply the payments in accordance with the provisions of the plan and the confirmation order. The AIS history should be documented with the details regarding the appropriate payment application.

c. In cases where the IRS is the victim, payments are mailed to the Kansas City Submission Processing Center (KCSPC), where payments are applied to the restitution assessment. The assigned Advisor will also monitor the payments, and report if the taxpayer fails to make any required payments.

(4) **Default.** If the person ordered to make restitution payments fails to make the required payments, the court may revoke or modify a term of supervised

release, or may resentence the individual. If the debtor defaults on a confirmed plan (through which the restitution is being paid) and the restitution assessment has not been fully paid, the caseworker should:

a. Immediately contact the assigned Advisor; and
b. Contact Area Counsel for guidance on whether a motion should be filed to dismiss the case. The caseworker should inform Counsel that there is an unpaid restitution assessment, and provide the contact information for the assigned Advisor.

(5) **Dischargeability.** Restitution assessments are generally not subject to discharge. These assessments may also accrue penalty and interest, which may or may not be dischargeable. For additional information, refer to IRM 5.9.17.8.8, Discharge and Restitution Assessments.

5.9.4.23
(02-03-2023)
Section 965 Transition Tax

(1) **General Information.** Section 965, as amended by the Tax Cuts and Jobs Act (TCJA) of 2017, requires certain taxpayers to pay a transition tax on the untaxed earnings of certain specified foreign corporations as if those earnings had been repatriated to the United States. A Section 965 liability is a one-time tax that could have been incurred in 2017 or 2018. A Section 965 liability is an increase in the taxpayer's income tax for the year in which it is required to be included on the taxpayer income tax return (the "inclusion year"). Any liability resulting from Section 965 is therefore an income tax and should be treated as such in bankruptcy. Further, a section 965 liability arises when the rest of the income tax liability arises (at the end of the income tax year), because that is when all the events that give rise to the income tax have occurred. The fact that the taxpayer may elect to defer payment does not change when the tax claim arises for bankruptcy purposes because bankruptcy claims include amounts that may not be due at the time the bankruptcy case was filed. The caseworker should therefore include on their proof of claim the entire amount of an income tax for any tax year that ended before the petition date, whether the tax includes a Section 965 liability, and whether or not any payment has been deferred under Section 965. See IRM 21.1.1.3.3.2, Section 965 Transition Tax, and IRM 21.6.4.4.21, IRC 965 - Transition Tax on Untaxed Foreign Earnings, for more information.

(2) **Eligibility.** Those potentially subject to the transition tax are:

- United States shareholders of a specified foreign income corporation
- Certain direct/indirect domestic partners in domestic partnerships that are United States shareholders of specified foreign corporations
- A shareholder in an S corporation that is a United States shareholder of a specified foreign corporation.
- Certain beneficiaries of another pass-through entity that is a United States shareholder of a specified foreign corporation.

A United States shareholder is generally one who owns 10% or more of the foreign corporation's stock, applying the indirect ownership principles of Section 958.

(3) **Section 965(h) Election.** The taxpayer may elect under IRC 965(h) to pay the transition tax liability in installments over an eight-year period as follows:

- 8% each year for first 5 years (40% paid)
- 15% 6th year (55% paid)
- 20% 7th year (75% paid)

- 25% 8th year (100% paid)

The first payment is due on the due date of the return (without regard to extensions) for the year of the inclusion, and each successive payment is due on the due date for the return (without regard to extensions) for the year following the year for which the previous payment was made. Certain events, including an addition to tax for failure to timely pay a required installment, can result in the acceleration of the remaining installments. In which case, the unpaid portion of the remaining installments is due on the date of the acceleration event. If an acceleration event occurs, the taxpayer will receive a notice to pay the remaining liability in full. Interest will start to accrue 30 days after the notice is issued if the taxpayer does not pay the remaining liability in full.

(4) **Section 965(i) Election.** A taxpayer who is a shareholder in an S corporation that is a United States shareholder of a deferred foreign income corporation may elect under IRC 965(i) to defer its section 965(i) net tax liability until a triggering event occurs. No assessment is made until the triggering event. Once a triggering event occurs, with certain exceptions, the taxpayer may still elect to pay the transition tax liability in installments over an eight-year period as described above in paragraph (3).

(5) **References.** See guidance below for more information on Section 965 transition tax:

- IRM 5.9.13.18.7, Section 965 Transition Tax
- *Questions and Answers about Reporting Related to Section 965 on 2017 Tax Returns*
- *Questions and Answers about Tax Year 2018 Reporting and Payments Arising under Section 965*
- *General Section 965 Questions and Answers (Including Transfer and Consent Agreements)*
- Pub 5292, How to Calculate Section 965 Amounts and Elections Available to Taxpayers

5.9.4.24
(12-19-2019)
Disaster Areas and Bankruptcy

(1) **Disaster Areas.** When the president declares a federal disaster or emergency, taxpayers located in the affected area are eligible for disaster tax relief. See IRM 25.16.1, Disaster Assistance and Emergency Relief, Program Guidelines. There are two types of disaster freeze codes, -O freeze and the -S freeze. Both freezes are established systemically for a specific period and for location(s) identified by postal zip code(s).

a. The -O freeze is a systemic disaster indicator that allows the IRS to provide special processing related to any filing, payment and interest relief, granted for a geographic area without the need for taxpayer self-identification. The -O freeze stops most compliance notices.
b. The -S freeze is a systemic disaster indicator that gives the IRS the flexibility to grant filing and payment relief without suspending compliance activities, when the impact and scope of a federally declared disaster does not warrant use of the -O freeze. The -S freeze will perform the same functions as the -O freeze but does not provide automatic compliance relief and will not stop generation of notices.

(2) **Allowed Actions.** In bankruptcy cases, caseworkers can continue to take the necessary steps regarding court-imposed deadlines such as:

- filing and amending proofs of claim

- objecting to plans (when appropriate)
- responding to objections to claims
- responding to objections to discharge
- responding to motions to determine dischargeability of tax debts

(3) **Suspended Actions.** For discretionary activities listed below, the **IRS will suspend actions through the disaster expiration date**, absent exigent circumstances which require managerial approval, on:

- filing NFTLs on dismissed cases
- issuing levies on exempt property
- referrals for conversion or dismissal
- securing delinquent returns

Exhibit 5.9.4-1 (02-03-2023)
Inputting Follow-up Dates

Some actions require caseworkers to review cases at a timed interval. The table below explains how to access and update AIS for a follow-up review.

STEP	ACTION
1	From the **Case File** screen enter the docket number or EIN to access the case file.
2	Select the “Follow-up” tab for the top of the screen.
3	On the “Follow-up Screen” select **Insert**. Input current date in the **Last Review** field and an appropriate follow-up date in the “Follow Up Date” field.
4	Explain the nature of the follow-up action in the “Comments” field.
5	Select the “Save” button on the navigation tool bar. To return to the Taxpayer screen select the **Taxpayer** tab at the top of the screen.

Exhibit 5.9.4-2 (02-03-2023)
Prompt Determination and Refund Processing Chart

The following chart advises caseworkers on where to properly route requests received for prompt tax refund or prompt tax determination consideration. Screen the following Prompt Tax Refund and Prompt Tax Determination requests using the 505(a) or 505(b) checklist:

TAX RETURN OR ENTITY TYPE	*IF COMPLETE, FORWARD TO:*
720	SBSE Excise Tax PD Coordinator
843	SBSE Exam Area PD Coordinator
940 Series (940, 941, 942, 943, 944, or 945)	Research IDRS for BOD code. If: • BOD is TEGE send to TEGE/EO PD Coordinator • It is any other BOD send to SBSE & Large Business & International (LB&I) Employment Tax PD Coordinator
990 Series	TEGE-EO PD Coordinator
1040 or 1040X	SBSE Exam Area PD Coordinator
1041 or Amended 1041 (for Chapters 7 & 11, Form 1040 must also be attached to Form 1041)	SBSE Exam Area PD Coordinator
1120, 1120S, 1120X, 1120-PC, or 1120-H Total assets under $10 million (do not use the IDRS BOD)	SBSE Exam Area PD Coordinator
1120, 1120S, 1120X, 1120-PC, or 1120-H Total assets over $10 million (do not use the IDRS BOD)	LB&I PD Coordinator
1120F or 1120C Regardless of asset amount	LB&I PD Coordinator
1120POL Regardless of asset amount	TEGE-EP PD Coordinator
8804 or 8805	LB&I PD Coordinator
1042	Research IDRS for BOD code. If: • BOD is TEGE send to TEGE/EO PD Coordinator • Any other BOD, send to SBSE & LB&I Employment Tax PD Coordinator
1045	SBSE Exam Area PD Coordinator
1065 (total assets under $10 million)	SBSE Exam Area PD Coordinator
1065 (total assets over $10 million)	LB&I PD Coordinator
1094-C or 1095-C	SBSE Excise Tax PD Coordinator

Exhibit 5.9.4-2 (Cont. 1) (02-03-2023)
Prompt Determination and Refund Processing Chart

TAX RETURN OR ENTITY TYPE	*IF COMPLETE, FORWARD TO:*
1096 or 1099 (standalone request)	Research IDRS for BOD code and if: • BOD is TEGE, send to TEGE-EO PD Coordinator • Any other BOD, send to SBSE Employment Tax PD Coordinator
1139	SBSE Exam Area PD Coordinator
4720	TEGE-EO PD Coordinator
4810	Campus where returns filed based on trustee information provided. If not listed in trustee letter, send to campus where returns processed based on debtor location.
5500	TEGE-EP PD Coordinator
8955-SSA	TEGE-EP PD Coordinator
Liquidating Trust (Any Tax Return)	SBSE Exam Area PD Coordinator
Assignment of the Benefit of Creditors (Any Tax Return)	SBSE Exam Area PD Coordinator
Receivership (Any Tax Return)	SBSE Exam Area PD Coordinator. Reject to the sender if not related to a bankruptcy. Does not qualify for a prompt determination unless they are in bankruptcy.
Settlement Trust (Form 1120-SF)	SBSE Exam Area PD Coordinator
W-2/W-3 (standalone request)	Research IDRS for BOD code and if: • BOD is TEGE, send to TEGE-EO PD Coordinator • Any other BOD, send to SBSE Employment Tax PD Coordinator

Note: Requests for determinations relating to Chapter 12 plans should be sent to SBSE Exam Area PD Coordinator.

Exhibit 5.9.4-3 (02-03-2023)
Prompt Determination Request 505(b) Checklist

The following checklist is used by CIO to process prompt tax determination requests. See IRM 5.9.4.9, Prompt Determination Requests from Trustee and Rev. Proc. 2006-24

Prompt Determination Request Checklist	**Section 505(b), Rev. Proc. 2006-24**
Name of Debtor:	**TIN of the Estate:**
Review Criteria:	**(Y)**es, **(N)**o, or **N/A** (not applicable)
1. Does the request contain a written statement signed by the trustee (or the debtor in possession), requesting a prompt determination of a tax liability?	Y or N
2. Does the letter include the name and location of the office where the original return was filed (including if filed electronically)?	Y or N
3. Does the letter include the name of the debtor?	Y or N
4. Does the request include the EIN of the debtor, or SSN if individual? If No, research AIS.	Y or N
4a. What is the debtor SSN, if an individual?	SSN or N/A
5. Is the bankruptcy a joint bankruptcy? If no, go to Q6.	Y or N
5a. If the bankruptcy is a joint bankruptcy, does the return list one debtor's name and EIN?	Y, N, or N/A
5b. If not, is the case substantively consolidated?	Y, N, or N/A
6. Does the letter include the type of return and the tax period?	Y or N
7. Does the letter include the type of bankruptcy estate (e.g., Chapter 7, 11, 12, or 13)?	Y or N
8. Does the letter include the bankruptcy case number?	Y or N
9. Does the letter include the bankruptcy court where the case is pending?	Y or N
10. Does the request include a signed copy of the return?	Y or N
11. If the return is a Form 1041, is Form 1040, (1120, 1120S, 1065, if a liquidating business) attached?	Y, N, or N/A
12. Other:	Misc.

Exhibit 5.9.4-3 (Cont. 1) (02-03-2023)
Prompt Determination Request 505(b) Checklist

Prompt Determination Request Checklist	**Section 505(b), Rev. Proc. 2006-24**
Name of Debtor:	**TIN of the Estate:**
Package **complete** and forwarded to: • SBSE Exam Area Prompt Determination (PD) Coordinator • SBSE & LB&I Employment Tax PD Coordinator • SBSE Excise Tax PD Coordinator • LB&I Non Employment PD Coordinator • TEGE Exempt Organizations (EO) PD Coordinator • TEGE Employee Plans (EP) PD Coordinator	Package **incomplete** and routed to requestor with Letter 5948.
Name of Employee:	*Date:*

Exhibit 5.9.4-4 (02-03-2023)
Prompt Refund Request 505(a) Checklist

The following checklist is used by CIO to process prompt refund requests. See IRM 5.9.4.10, Prompt Refund Requests from Trustee and Rev. Proc. 2010-27 .

Prompt Refund Determination Checklist	**Section 505(a), Rev. Proc. 2010-27**
Name of Debtor:	TIN:
Review Criteria:	**(Y)**es, **(N)**o, or **N/A** (not applicable)
1. Is the request for a Chapter 7, 11, 12, or 13 bankruptcy case?	Y or N
2. Is the request marked “Request for Prompt Refund” on either the amended return or Form 843?	Y or N
3. Does the request contain a statement referencing Bankruptcy Code 505(a)?	Y or N
4. If Form 843 was submitted: • Does the request include a copy of the return which is the subject of the claim, **AND** • Is the name and location of the office where the original return was filed (unless electronically filed) provided?	Y, N, or N/A
Package complete and forwarded to: • SBSE Exam Area Prompt Determination (PD) Coordinator • SBSE & LB&I Employment Tax PD Coordinator • SBSE Excise Tax PD Coordinator • LB&I Non Employment PD Coordinator • TEGE Exempt Organizations (EO) PD Coordinator • TEGE Employee Plans (EP) PD Coordinator	❑ **Package incomplete** and routed to requestor of Letter 5947.
Name of Employee:	*Date:*