



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.9.9

MAY 5, 2023

EFFECTIVE DATE

(05-05-2023)

PURPOSE

- (1) This transmits a revised IRM 5.9.9, Bankruptcy and Other Insolvencies, Processing Chapter 12 Bankruptcy Cases.

MATERIAL CHANGES

- (1) IRM 5.9.9, Processing Chapter 12 Bankruptcy Cases, has been updated and expanded to provide clarification of existing material. The table below shows substantive changes within this IRM revision.

Number	IRM	Change
1	IRM 5.9.9.1.3(1)	Added Responsibility IRM reference.
2	IRM 5.9.9.1.7(4)	Updated the site page to the Insolvency Knowledge Base Home Page.
3	IRM 5.9.9.1.7(5)	Added TBOR site.
4	IRM 5.9.9.2(2)	Updated debt limits.
5	IRM 5.9.9.3.1(3)	Change timeframe to work APOC flags from “calendar days” to “business days”. IG SBSE 01-0223-0007 dated 2/22/2023.
6	IRM 5.9.9.3.2(2)	Divided paragraph (1). Moved 341 Meeting information into new paragraph (2). Included foreign assets as part of specific assets to question the debtor on at the 341 meeting.
7	IRM 5.9.9.3.2(7)	Removed paragraph on reviewing ATFR on some corporations and LLCs, since a TFRP review should be conducted on all cases that meet the criteria.
8	IRM 5.9.9.3.2(14)	Added review of FATCA data when applicable.
9	IRM 5.9.9.10.5(1)	Added the SRP was reduced to zero after December 31, 2018.
10	IRM 5.9.9.10.5(2)	Added SRP liabilities can be claimable as an income and/or excise tax.
11	IRM 5.9.9.10.6	Updated to reflect changes in how ESRP liabilities are handled.
12	IRM 5.9.9.12	New section was added to provide guidance on closing no liability cases.
13	Throughout	Changed “Service” to “IRS”.
14	Throughout	Updated “Form 6338(A)” to “Form 6338(A)(C)”.
15	Throughout	Removed outdated BAPCPA information.

Number	IRM	Change
16	Throughout	Moved lists into tables, remove breaks, and rearranged sections to meet 508 compliance.
17	Throughout	Changed “Responsible parties” to “Responsible persons”.
18	Throughout	Editorial changes were made throughout this section to add clarity and to update, correct, or add citations.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.9.9, dated October 4, 2018. This revision incorporates content from interim guidance SBSE-01-0223-0007, Temporary Guidance Related to The Generation, Use and Retention of Business Object Reports (BOE) dated February 22, 2023.

AUDIENCE

Small Business/Self-Employed, Specialty Collection Insolvency

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5.9.9
Processing Chapter 12 Bankruptcy Cases

Table of Contents

- 5.9.9.1 Program Scope and Objectives
 - 5.9.9.1.1 Background
 - 5.9.9.1.2 Authority
 - 5.9.9.1.3 Responsibilities
 - 5.9.9.1.4 Program Management and Review
 - 5.9.9.1.5 Program Controls
 - 5.9.9.1.6 Terms and Acronyms
 - 5.9.9.1.7 Related Resources
- 5.9.9.2 Chapter 12 Eligibility
- 5.9.9.3 Initial Case Processing
 - 5.9.9.3.1 Initial Case Review Time Frames
 - 5.9.9.3.2 Aspects of the Initial Case Review
- 5.9.9.4 Adequate Protection in the Chapter 12 Case
- 5.9.9.5 Chapter 12 Plans
 - 5.9.9.5.1 Determinations of Tax Implications of Chapter 12 Plans
 - 5.9.9.5.2 Plan Modification
- 5.9.9.6 Reasons to Object to the Plan
- 5.9.9.7 Chapter 12 “Pay-out” Arrangements
- 5.9.9.8 Confirmation
- 5.9.9.9 Chapter 12 Plans and Restitution Assessments.
- 5.9.9.10 Monitoring Compliance
 - 5.9.9.10.1 Referral to Counsel
 - 5.9.9.10.2 After-Acquired Property
 - 5.9.9.10.3 Post-petition Liabilities in Chapter 12 — Individual Cases
 - 5.9.9.10.4 Post-Petition Liabilities in Chapter 12 — Non-Individual Cases
 - 5.9.9.10.5 Individual Shared Responsibility Payment
 - 5.9.9.10.6 Employer Shared Responsibility Payment
- 5.9.9.11 Conversions
- 5.9.9.12 Closing No Liability Cases

5.9.9.1
(09-29-2015)
Program Scope and Objectives

- (1) **Purpose.** This IRM section contains guidance for processing bankruptcy cases filed under Chapter 12 of the United States Bankruptcy Code (USBC).
- (2) **Audience.** Caseworkers and management in Field Insolvency (FI) within Specialty Collection Insolvency (SCI) are the primary users of this section. Caseworkers at the Centralized Insolvency Operation (CIO) within SCI, Advisors, Revenue Officers, and other SB/SE employees may also refer to this section. Employees in other functions may also refer to this section when dealing with a taxpayer that has filed a Chapter 12 bankruptcy.
- (3) **Policy Owner.** The Director of Collection Policy is responsible for issuing policy for the insolvency program.
- (4) **Program Owner.** The program owner is Collection Policy, Insolvency, an organization within Small Business Self Employed (SB/SE) division.
- (5) **Primary Stakeholders.** The primary stakeholders are SCI and SB/SE Collection.
- (6) **Program Goals.** The goal is to provide fundamental knowledge and procedural guidance for working Chapter 12 cases. Following the guidance in this IRM will ensure cases are worked in accordance with bankruptcy laws and regulations.

5.9.9.1.1
(10-04-2018)
Background

- (1) **Reorganization.** Chapter 12 allows family farmers/fishermen with regular income to reorganize and pay their debts through a payment plan. A Chapter 12 case closely resembles a Chapter 13 case, however, Chapter 12, incorporates some aspects of a Chapter 11 case.
- (2) **Permanent Reenactment of Chapter 12.** Since its enactment in 1986, Chapter 12 has been subject to reenactments for periods of limited duration. The passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) made Chapter 12 a permanent part of the Bankruptcy Code effective July 1, 2005.
- (3) **Voluntary Filing Only.** Relief under this chapter is “voluntary.” Only the debtor may file a petition for Chapter 12 bankruptcy relief (11 USC 303). There are no provisions for an “involuntary” Chapter 12.

5.9.9.1.2
(10-04-2018)
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, also contains Insolvency caseworkers’ authority in the insolvency program.

5.9.9.1.3
(05-05-2023)
Responsibilities

- (1) IRM 5.9.1.4, The Role of Insolvency and IRM 5.9.3.1.3, Responsibilities, provides a list of titles and responsibilities with an explanation of their roles and authority.
- (2) **Centralized Insolvency Operation (CIO).** CIO loads Chapter 12 cases onto the Automated Insolvency System (AIS), runs the Insolvency Interface Program (IIP) and works errors such as Potential Invalid TIN (PIT) report, and status reports for those cases. If an MFT 31 split for a non-debtor spouse is required for an individual Chapter 12 case, CIO Operation Support Team (OST) will perform all required mirroring actions. Chapter 12 mail received at the national

mailing address in Philadelphia will be mailed, shipped overnight, or faxed to the FI group assigned the case depending on the urgency of the correspondence. (See IRM 5.9.11.4.2, Time Sensitive Mail, and IRM 5.9.11.4.3.1, Routine Notice Requiring Further Processing.)

- (3) **Field Insolvency (FI).** With the exception of initial clerical processing and MFT 31 mirroring, Chapter 12 casework remains the responsibility of FI groups. Chapter 12 caseworkers should ask trustees or debtor-in-possession (DIP) to send plans, schedules, disclosure statements, and payments directly to the FI office assigned to the case.
- (4) **Counsel.** Certain issues in a Chapter 12 case may be referred to Area Counsel or directly to the U.S. Attorney's Office (USAO). Within this IRM, the term "Counsel" refers to Area Counsel or the USAO, whichever is appropriate. For more information on referrals, see the following subsections in IRM 5.9.4, Common Bankruptcy Issues:
 - IRM 5.9.4.15, Referrals — Representing IRS in Bankruptcy Court
 - IRM 5.9.4.15.1, Direct Referrals
 - IRM 5.9.4.15.2, Referrals to Counsel (Non-Direct Referrals)
 - IRM 5.9.4.15.3, Significant Bankruptcy Case Referrals
 - IRM 5.9.4.15.4, Referral Tolerances

5.9.9.1.4
(05-05-2023)

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 Reviews, and IRM 1.4.51.17.5, Program Reviews, for more information.

5.9.9.1.5
(05-05-2023)

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).

5.9.9.1.6
(05-05-2023)

Terms and Acronyms

- (1) A glossary of terms used by Insolvency can be found in Exhibit 5.9.1-1, Glossary of Common Insolvency Terms.
- (2) Common acronyms acceptable for use in the Automated Insolvency System (AIS) history are listed in Exhibit 5.9.1-2, Acronyms and Abbreviations.
- (3) Additional acceptable acronyms and abbreviations are found in the ReferenceNet Acronym Database, which may be viewed at: <https://rnet.web.irs.gov/Resources/AcronymSearch.aspx>

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

Acronyms	Definitions
AIS	Automated Insolvency System
APOC	Automated Proofs of Claim
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
CIO	Centralized Insolvency Operation
CPM	Confirmed Plan Monitoring
DIP	Debtor-In-Possession
EPOC	Electronic Proofs of Claim
FI	Field Insolvency
IIP	Insolvency Interface Program
NFTL	Notice of Federal Tax Lien
PACER	Public Access to Court Electronic Records
POC	Proof of Claim
SOFA	Statement of Financial Affairs
USC	United States Code

5.9.9.1.7
(05-05-2023)
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) Knowledge Base Home Page <https://portal.ds.irsnet.gov/sites/vl114/pages/default.aspx>
- (5) Pub 5170, Taxpayer Bill of Rights and Taxpayer Bill of Rights page <https://www.irs.gov/taxpayer-bill-of-rights>

5.9.9.2
(05-05-2023)
Chapter 12 Eligibility

- (1) **Income Requirements.** The Bankruptcy Code provides that only a family farmer or family fisherman, whose annual income is sufficiently stable and regular to enable the debtor to make payments under a Chapter 12 plan, is eligible to file this type of bankruptcy (11 USC 101(19) and (19B)).
- (2) **Eligibility.** The following table contrasts the eligibility requirements between the family farmer and the family fisherman. Debt limits are adjusted at three year intervals to reflect changes in the Consumer Price Index (11 USC 104(b)). The limits below are based on the April 1, 2022 adjustment. The next scheduled adjustment will be on April 1, 2025.

Characteristics	Family Farmer	Family Fisherman
Entity	Individual, partnership, Limited Liability Company (LLC), or corporation	Individual, partnership, Limited Liability Company (LLC), or corporation
Debt Limit	\$11,097,350, subject to periodic adjustment for inflation pursuant to 11 USC 104(b)	\$2,268,550, subject to periodic adjustment for inflation pursuant to 11 USC 104(b)
Percent of Debt from Operation of Business	50% of liabilities must be attributable to farming operations (excluding debt for personal residence of the farmer or residence of the farmer partner/shareholder)	80% of liabilities must be attributable to fishing operations (excluding debt for personal residence of the fisherman or residence of the fisherman partner/shareholder)
Gross Income (Individuals Only)	More than 50% of the debtor's income is received from a farming operation in the tax year prior to the petition or more than 50% of the debtor's income is received from a farming operation in each of the second and third years before the petition	More than 50% of the debtor's gross income is received from commercial fishing operations for the tax year preceding the commencement of the case

- (3) **Partnerships/Corporations.** A family farmer/fisherman partnership or corporation must follow these rules.
- The family farmer/fisherman partnership or corporation must have more than 50 percent ownership by one family.
 - The family or relatives must conduct the operation.
 - More than 80 percent of the value of its assets must consist of farm or fishing related property.
 - The same debt levels for the family farmer or family fisherman apply to the farming or fishing partnership/corporation, respectively.
 - If the family farming/fishing corporation issues stock, that stock may not be publicly traded (11 USC 101(18)(B) and (19A)(B)).

5.9.9.3
(05-05-2023)
Initial Case Processing

- (1) **Initial Actions.** Upon notification of a Chapter 12 filing, Insolvency must follow the processing procedures outlined in IRM 5.9.5, Opening a Bankruptcy Case. IRM 5.9.9.3.1, Initial Case Review Time Frames, discusses acceptable time frames for completion of the initial case review. Aspects of the initial case review are discussed in IRM 5.9.9.3.2, Aspects of the Initial Case Review.

5.9.9.3.1

(05-05-2023)

Initial Case Review Time Frames

- (1) **General Time Frame.** FI caseworkers must conduct an initial case review at least five calendar days prior to the 341 meeting. The initial case review must be completed within thirty calendar days of assignment when the case is not received at least five calendar days prior to the 341 meeting or 30 calendar days from the APOC run date when APOC is down due to the dead cycles. When the bar date or confirmation of the plan is within 30 days of assignment, the review must be completed earlier.
- (2) **Aspects of the Review that Are Required Earlier.** Certain elements of the initial case review are required sooner. Some of these elements are:
 - Resolving stay violations
 - Responding to pending motions or defensive litigation
 - Addressing adequate protection when the IRS has a pre-petition Notice of Federal Tax Lien (NFTL) on file
- (3) **Aspects of the Review Requiring Action within Five Business Days.** The caseworker must work APOC flags within five business days of APOC identifying a potential violation of the stay. See IRM 5.9.14.2.7, APOC Flag Condition Time-Frame Requirements. Flags that identify possible stay violations are the “Credits Posted After Petition Date” and “Lien Recorded Date Blank” flags.
- (4) **Action Required within Ten Calendar Days.** The caseworker must address the potential for adequate protection within ten calendar days of APOC identifying the “Secured Period” flagged condition. See IRM 5.9.14.2.7(1)(b), Time Frame Requirements.

5.9.9.3.2

(05-05-2023)

Aspects of the Initial Case Review

- (1) **Bankruptcy Petition, Schedules, and SOFA.** Numerous electronic tools are available to assist the caseworker with an initial case review. At minimum, the caseworker must review the debtor’s bankruptcy petition, bankruptcy Schedules A - J, and the Statement of Financial Affairs (SOFA). The debtor’s attorney may mail these documents to the IRS. The bankruptcy petition, bankruptcy schedules, and SOFA are also available electronically on Public Access to Court Electronic Records (PACER).
- (2) **341 Meeting.** Issues requiring clarification at the 341 meeting may be identified as the caseworker completes the initial case review. The caseworker must determine and document if attendance at the 341 meeting is required. The AIS history should clearly state any issues to be discussed. If there are no issues, state in the history that there are no issues requiring attendance at the 341 meeting. See IRM 5.9.8.4.2(2), 341 Meeting, for a list of issues that may be clarified at the 341 meeting. The caseworker can also gather information regarding the taxpayer’s business prior to the 341 meeting by sending the debtor Form 13648, Request for Business Information.
- (3) **IDRS.** A review of IDRS will assist the caseworker in determining if the debtor is compliant with tax laws. The review will also assist the caseworker in determining post-petition monitoring requirements. The caseworker must review IDRS to determine the debtor’s:
 - Filing requirements and return filing history
 - Current balances due and delinquent returns
 - The latest period for which a Form 941 or Form 943 was filed, if applicable
 - Requirements for federal tax deposits (FTDs), if applicable

- Currency with making FTDs since the latest Form 941 or Form 943 was filed, if applicable
 - Failure to make any FTDs, if applicable
 - Currency in making estimated tax payments, when applicable
- (4) **Integrated Collection System (ICS).** Caseworkers must review any ICS history for prior Field Collection (FC) involvement. Consider contact with the Revenue Officer (RO).
- (5) **Notice of Federal Tax Lien (NFTL) Refile Determination.** The caseworker must determine if any Notices of Federal Tax Lien (NFTL) should be refiled and take necessary actions to request the refiling of the NFTL. See IRM 5.9.5.9.2, Refiling Notices of Federal Tax Liens (NFTLs). The caseworker must schedule a follow-up on AIS to refile the NFTL when the “refile window” for the NFTL is expected to occur during the pendency of the bankruptcy case.
- (6) **Adequate Protection.** If the IRS is a secured creditor in the Chapter 12 case, the caseworker must determine if adequate protection should be pursued during the initial case review. See IRM 5.9.9.4, Adequate Protection in the Chapter 12 Case, for information regarding adequate protection in the Chapter 12 case.
- (7) **TFRP Issues.** The TFRP is assessed against a “responsible person. Examples of a **responsible person** include:
- Officers or other responsible person of a corporation
 - Members of a LLC taxed as a partnership
 - Members, managers, or other responsible person of the LLC taxed as a corporation
 - The single-member of a LLC with liabilities for withholding periods that began on or after January 1, 2009
 - Another corporation
 - Payroll Service Provider (PSP)
 - Responsible person within a PSP
 - Professional Employer Organization (PEO)
 - Responsible person within a PEO
 - Responsible person within the common law employer (client of the PSP or PEO)
- Note:** See IRM 5.9.13.14, Limited Liability Companies (LLC), for guidance on LLCs. See IRM 5.7.3.3.1, Establishing Responsibility, for additional information regarding persons that may be assessed the TFRP.
- (8) **TFRP Actions for Debtors.** If unpaid trust fund taxes are part of the balance owed by the business, a Trust Fund Recovery Penalty (TFRP) investigation must be considered.
- a. Based on local procedures, the investigation may be conducted by a RO in Field Collection or by a FI caseworker. If local practice is to refer the investigation to Field Collection, and the case is not currently assigned to a RO, an Other Investigation (OI) must be issued to Field Collection through the Integrated Collection System (ICS). FI caseworkers should

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Trust Fund Considerations in Chapter 11, IRM 5.9.3.10, Trust Fund Recovery Penalty, and IRM 5.9.13.13, TFRP Assessments - Priority Status, provide additional TFRP investigation information.

- b. When requesting a TFRP investigation through an OI on ICS, provide the RO with information to assist them in completing the investigation. The information may be provided by updating the ICS history. (See *Business Object Environment (BOE) Report Job Aid*, and IRM 5.9.3.10, Trust Fund Recovery Penalty.)

Caution: A RO may not work an OI to assert the TFRP if the Assessment Statute Expiration Date (ASED) will expire within 6 months.

- c. TFRP issues must be thoroughly documented in the AIS history. (See IRM 5.9.5.4, Automated Insolvency System (AIS) Documentation.) If the TFRP is not applicable, notate the AIS history accordingly. The TFRP may not be applicable because there are no outstanding trust fund liabilities or the outstanding aggregate trust fund liability is minimal for assertion of the TFRP.

- (9) **Exam Issues.** IRM 5.9.4.4, Examination and Specialty Collection Insolvency, provides guidance for addressing examination issues. A review of IDRS command code (cc) AMDISA and contact with the Revenue Agent (RA) or examiner may be beneficial.

- (10) **LLCs.** The caseworker must identify the presence of LLCs and determine how the LLC should be treated for tax and proof of claim filing purposes. Consultation with Counsel is advised. IRM 5.9.13.14, Limited Liability Companies (LLC), and IRM 5.9.14.2.8(4), LLC Flags, provide more information about LLCs.

- (11) **Prior Bankruptcies.** The caseworker must check for evidence of prior bankruptcies. A prior case may affect tolling or the automatic stay. It may indicate possible lack of feasibility of the plan in the case. In some cases, where the debtor has previously filed a bankruptcy case, the automatic stay may not apply. 11 USC 362(c) and 11 USC 362(n) contain additional information regarding the automatic stay. In some instances, debtors may contend, in as much as prior plans were supposed to have addressed the tax liabilities, those liabilities are no longer considered to be a tax claim. Chapter 12 individual debtors who file Chapter 12 bankruptcy petitions are eligible to receive a discharge in the current case even when they received a discharge in a prior bankruptcy case. The provisions in Exhibit 5.9.5-3, Allowable Elapsed Time Between Bankruptcy Filings and Discharges, are not applicable in Chapter 12 cases. See the following subsections and exhibits in IRM 5.9.5, Opening a Bankruptcy Case, for additional information:

- IRM 5.9.5.7, Serial Filers
- IRM 5.9.5.7.1, Systemic Identification in Serial Filer Cases
- Exhibit 5.9.5-4, Common Processing Steps in Serial Filer Cases
- Exhibit 5.9.5-5, Processing the Serial Filer Case When the Stay Terminates After 30 Days
- Exhibit 5.9.5-6, Processing the Serial Filer Case When No Stay Goes into Effect

- (12) **Letter to Non-Debtor Spouse.** The Letter 4521, Non-Debtor Letter, must be sent to non-debtor spouses who owe joint liabilities with the individual Chapter 12 debtor. The liability may not be fully abated for the non-debtor spouse when included in the debtor's bankruptcy filing.

- (13) **CSED Protection.** Per IRC 6503(h), the running of the statutory period for collection (CSED) is suspended and collection is prohibited while the debtor is in bankruptcy, plus 6 months after discharge or dismissal. This suspension only applies to the debtor. If only one spouse files bankruptcy but joint income tax returns were filed, the caseworker is required to review the CSED and address any imminent CSEDs. See IRM 5.9.4.3, ASED/CSED, for additional information.
- (14) **Additional Aspects.** Facts and circumstances in the case may warrant additional research. Additional research that may be necessary include:
- A review and analysis of locator services, such as Accurant.
 - A review of any available online courthouse records.
 - A review of IDRS cc IRPTRL for possible mortgage interest paid for identification of real property ownership.
 - A review of Department of Motor Vehicle (DMV) records when expensive or collectible vehicles are listed in the bankruptcy schedules.
 - A review of Foreign Account Tax Compliance Act (FATCA) data (if applicable).

5.9.9.4
(05-05-2023)

Adequate Protection in the Chapter 12 Case

- (1) **Adequate Protection.** If the IRS is a secured creditor in the Chapter 12 case due to the filing of a NFTL prior to the filing of the bankruptcy case, it is just as important for the IRS to obtain adequate protection in the Chapter 12 case as in other cases. The secured creditor is only entitled to the types of adequate protection specifically provided for in Chapter 12 (11 USC 1205). The provisions for adequate protection available for use in other chapters may not be applicable in the Chapter 12 case.
- (2) **Situations in which the Secured Creditor is Entitled to Adequate Protection.** A secured creditor in a Chapter 12 case is entitled to adequate protection when the value of the creditor's collateral decreases after the petition date. Because the use of cash collateral may result in a decrease in the creditor's collateral, a Chapter 12 debtor may not use cash collateral unless the secured creditor agrees or the court authorizes the debtor's use of the cash collateral.

Note: Proceeds from the sale of a farmer's crops or livestock or the sale of a fisherman's catch will be cash collateral.

Note: A secured creditor may also be entitled to adequate protection because the value of the creditor's collateral has decreased due to other circumstances, such as the debtor's use, sale, or lease of the property. If the value of the collateral remains constant, the secured creditor is not entitled to any adequate protection. There is no adequate protection in Chapter 12 for lost opportunity costs.

- (3) **Ways Adequate Protection May be Provided.** In a Chapter 12 case, adequate protection may be provided in the following ways, to the extent that either the value of the property or the secured creditor's ownership in the property has decreased:
- a. By the trustee making cash payments to the secured creditor
 - b. By giving the secured creditor an additional or replacement lien
 - c. When the collateral is farmland, by paying the secured creditor a reasonable rent customary in the community where the property is located

- d. By granting the creditor other relief which will protect the value of the property or the creditor's interest in the property, except by giving the creditor an administrative claim

- (4) **Referring to Counsel for Adequate Protection.** While an adequate protection agreement in a Chapter 12 case may provide for less than the agreement in other chapters, a failed adequate protection agreement will still provide the IRS with the super priority of Bankruptcy Code 507(b). Caseworkers must refer the case to Counsel when the debtor fails to provide the IRS with adequate protection on its secured claim. The referral is subject to the tolerances in IRM 5.9.4.15.4(4), Adequate Protection.

5.9.9.5
(05-05-2023)
Chapter 12 Plans

- (1) **Time Frames.** Generally, a debtor is required to file a plan *within 90 days* of the petition date. A confirmation hearing is to be held *within 45 days* of the plan filing. In practice, the date for filing a plan is often extended. Plans range *from three to five years*. However, pursuant to 11 USC 1222(b)(9), payments to secured claims may extend beyond five years.

Reminder: Payments on secured claims may go beyond the last day to refile the NFTL. To ensure the NFTL does not “self-release,” the caseworker must schedule a follow-up on AIS to refile the NFTL during the “refile window.”

- (2) **Notice to Creditors.** Creditors must be given at least 21 days prior notice of the confirmation hearing. (Federal Rule of Bankruptcy Procedure 2002(a)(8))
- (3) **The Chapter 12 Plan.** The bankruptcy caseworker must secure a copy of the debtor's plan and schedules for evaluation, as soon as possible. 11 USC 1222 and 1225 deal with Chapter 12 plans. The debtor's plan must provide for payment of the IRS's claim as follows:
 - a. Full payment of secured claims with post-confirmation interest at the compound IRC rate in the month of confirmation (11 USC 1225(a)(4) and 511);
 - b. Full payment of priority claims in deferred cash payments, unless the holder of the claim agrees to different treatment; and

Note: Per 11 USC 1232, pre-petition or post-petition unsecured tax claims that arise prior to discharge as the result of the sale, transfer, exchange or other disposition of farm assets used in the debtor's farming operation are treated as a general unsecured claim in the Chapter 12 case. Any balance remaining on this unsecured general claim is dischargeable. (See IRM 5.9.9.10.3 (1), 11 USC 1232, for guidance on post-petition tax incurred from the sale of farm assets.)

- c. Payment of general unsecured claims in an amount not less than the IRS would receive in a Chapter 7 liquidation and debtor has committed all of their disposable income to the plan over the life of the plan. (11 USC 1225(a)(4) and 1225(b)(1)(B))

Note: A feature unique to Chapter 12 bankruptcies allows plan payments to be due *seasonally* when the debtor receives income (such as, after the harvesting of crops).

- d. The plan may provide for post-petition interest on unsecured claims that are non-dischargeable. Interest is provided only when the debtor has dis-

posable income available to pay interest after making provisions for full payment of all allowed claims (11 USC 1222(b)(11) and 1228(a)(1) and (2)). Interest on the unsecured non-dischargeable taxes is collected at the rate provided for in the plan. If there are no interest provisions, no interest is collected under the plan. Any unpaid tax and interest on the non-dischargeable tax survives the bankruptcy.

Note: See IRM 5.9.9.6, Reasons to Object to the Plan, for common reasons for the IRS to object to a Chapter 12 plan. Discharge in the Chapter 12 case is discussed in IRM 5.9.17, Closing a Bankruptcy Case. In particular, see IRM 5.9.17.14, Chapter 12 Discharge, IRM 5.9.17.14.1, Chapter 12 Hardship, and IRM 5.9.17.14.2, Exceptions to Discharge in the Individual Chapter 12 Case.

5.9.9.5.1
(05-05-2023)
**Determinations of Tax
Implications of Chapter
12 Plans**

- (1) **Tax Effects of Proposed Plans.** BAPCPA amended 11 USC 1231(b). Bankruptcy courts can authorize proponents of Chapter 12 plans to request determinations of the federal income tax effects of reorganization. Determinations are limited to questions of law. Should a controversy arise between the IRS and the debtor, the court may declare the tax effects of the plan. The court may not make such a declaration until after the earlier of the date on which the governmental unit responds to the request or 270 days after the request.

Note: See Rev. Proc. 2006-52, IRB 2006-48, page 995, for additional information on the procedure the plan proponent must follow to request a determination of the income tax effects of a proposed plan.

- (2) **Mailing Address.** Requests for determinations of income tax effects must be filed in writing with CIO. The envelope must be marked, "Request for Determination of Tax Effects of Chapter 12 Plan." The correct mailing address for the request for determination depends on whether or not the request contains a remittance.

Requests with remittance must be mailed to:
Internal Revenue Service
Post Office Box 7317
Philadelphia, PA 19101-7317

Requests without remittance must be mailed to:
Internal Revenue Service
Post Office Box 7346
Philadelphia, PA 19101-7346

- (3) **Required CIO Action.** CIO caseworkers must forward the Chapter 12 determination requests via overnight carrier to the appropriate function. Contact information and mailing addresses for the various functional coordinators can be found on the Prompt Determination Contact List on the CIO shared Drive. The requests must be forwarded to the appropriate function within three workdays of receipt of the tax return by Insolvency based on the receipt date stamped on the return. The appropriate function will complete all review and follow-up actions required. If the debtor's total assets listed on the Form 1120 or Form 1120S are greater than \$10 million, the request is sent to the Large Business (LB&I) Division at:

Internal Revenue Service
Arka Monterey Park Building
1973 North Rulon White Blvd.
M/S 4912 Attn: LB&I Bankruptcy Coordinator
Ogden, Utah 84404-5402

- (4) **Time Frame.** Within 270 days from receipt of a processable application, the appropriate function will notify the plan proponent of the determination.
- (5) **Effects of Determination.** Unless the bankruptcy court declares otherwise pursuant to 11 USC 1231(b), a field office examining the debtor's return must follow the determination when each of the following is met:
- A copy of the determination is attached to the tax return to which it relates
 - The determination is properly reflected in the return
 - The representation upon which the determination was made reflected an accurate statement of the controlling facts
 - The transactions proposed in the plan were carried out substantially as proposed
 - A change has not occurred in the law that applies to the period during which the transactions were consummated

Note: Caseworkers should see IRM 5.9.4.9, Prompt Determination Requests from Trustee, and IRM 5.9.4.9.1, Processing Prompt Determination Requests, for additional information.

5.9.9.5.2
(05-05-2023)
Plan Modification

- (1) **Modified Plans.** The debtor's circumstances may require the debtor to modify or amend a Chapter 12 plan either before or after confirmation. *Insolvency should review a modification of a plan as carefully as if it were the original plan.* Insolvency may confer with Counsel if plans require clarification. An objection may be needed to protect the government's interests.
- (2) **Modification after Confirmation.** In order to modify a plan after confirmation, the criteria for confirming a plan must be met, including the requirement that the IRS receives no less than it would have recovered in a Chapter 7. See 11 USC 1229(b)(1) and 1225(a)(4). When applying 11 USC 1229(b)(1) to a case involving a claim described in 11 USC 1232(a), the amount that would be paid on such claim would be the amount paid by the estate in a Chapter 7 case if the claim were an unsecured claim arising before the date of the petition and were not entitled to priority under 11 USC 507. See 11 USC 1232(b) and IRM 5.9.9.10.3 Post-petition Liabilities in Chapter 12 – Individual Cases.
- (3) **Plan Modification Exceptions.** 11 USC 1229(d) lists exceptions to post-confirmation plan modifications. These exceptions serve to protect the debtor against any increase in payments beyond their disposable income. This particularly protects the debtor against increases in the last year of the plan. Only the debtor may seek payment increases under these circumstances.

5.9.9.6
(05-05-2023)

Reasons to Object to the Plan

- (1) **Inadequate Plan Provisions.** If the plan does not provide for appropriate payment of the IRS's claims, the Insolvency caseworker should contact debtor's counsel to discuss the deficiencies. If the debtor can demonstrate acceptance of a deficient plan is in the best interests of the government, the case should be referred to Counsel. The caseworker should recommend acceptance of the plan in lieu of objection. Include the debtor's TIN(s) in the referral.

Note: This recommendation may be made only if no other creditor benefits to the detriment of the IRS. *Under no circumstances will the IRS accept less than would be recoverable in a Chapter 7 case.* In making that determination, determine the value of the assets of the estate and subtract valid liens, the debtor's exemptions, and costs of administration that would be incurred in a Chapter 7 case. For a case involving a claim described in 11 USC 1232(a) IRM 5.9.9.5.2 (2), Modification after Confirmation.

- (2) **Decision Factors for Evaluating Deficient Plans.** IRM 5.9.10.5.5(6), Factors for Evaluating Deficient Plans, lists factors to consider when determining if the IRS should agree to treatment of its claim. Consider the factors when the plan provides less than required by the Bankruptcy Code.
- (3) **Acceptance of Deficient Plans.** If a debtor can demonstrate that agreeing to treatment different from statutory requirements under the Bankruptcy Code is in the best interest of the government, the specific payment terms:
- Must be incorporated in the debtor's plan.
 - Are subject to the approval of the bankruptcy court.

Note: Provisions protecting the government's rights to collect upon a default in plan payments should be included in the terms of the plan. IRM 5.9.10.5.5(7) , Acceptance of Deficient Plans, outlines other requirements for deficient plan provisions. The AIS history must reflect the factors considered in the decision to accept treatment of the IRS's claims irrespective of Bankruptcy Code requirements.

- (4) **Prompt Objections.** Insolvency must refer the case to Counsel to object to the plan when IRM 5.9.4.15.4, Referral Tolerances, criteria are met and:
- Debtor's counsel is unresponsive to Insolvency contacts,
 - Debtor's counsel is unable to demonstrate that it is in the best interest of the government to agree to a deficient plan, and
 - Interests of the government are at risk.
- (5) **Contents of Objection Referral.** IRM 5.9.10.5.5(9), Contents of Objection Referral, explains information needed on the referral to Counsel when objecting to a deficient plan.
- (6) **Common Problems with Plans.** The debtor may add provisions to a plan adversely affecting the IRS's position. Insolvency should consult Counsel if the plan does not appear to provide for the IRS' claim. Subject to the tolerances in IRM 5.9.4.15.4, Referral Tolerances, the caseworker must refer the plan to Counsel for an objection to confirmation when the debtor's attorney refuses to amend the unacceptable plan prior to confirmation.

Common reasons for the IRS to object to a Chapter 12 plan include the following:
The debtor does not meet the requirements for a Chapter 12 bankruptcy.
The debtor is not in compliance.
The plan is not feasible. Payments to creditors provided by the plan are more than the net income of the debtor after necessary living and operating expenses are taken into account.
The plan proposes to discharge taxes not dischargeable under the Bankruptcy Code. For example, a plan containing language discharging post-petition income taxes not covered by 11 USC 1232, should be referred to Counsel.
The plan proposes to discharge individual(s) other than the debtor, in the discharge. For example, the plan proposes to discharge a related Trust Fund Recovery Penalty for another responsible person.
The plan allows the debtor to change provisions of the plan affecting the payment of the IRS's claim without a court hearing. This deprives the IRS of an opportunity to object.
In lieu of cash payments, the plan proposes to distribute physical property to the IRS in payment of the IRS' claim. (See 11 USC 1222(b) and IRM 5.9.9.7 (3), When Property is Proposed as Payment, below.)
The plan allows for payments to be made <i>outside</i> the plan.
All of the debtor's disposable income is not committed to the plan while the general unsecured tax claim will not be paid in full under the plan
The plan proposes a balloon payment at the end of the plan instead of consistent regular payments throughout the plan.
The plan discriminates against the general unsecured claims of the IRS. The plan proposes to pay a larger percentage of the general unsecured claims of other creditors.
The plan does not provide for the payment of interest on the secured claim per 11 USC 511. The IRS is entitled to compound interest at the IRC rate for the month of confirmation during the life of the plan. Any interest rate provided for in the plan <i>locks in</i> at the rate provided for in the plan during the life of the plan.

5.9.9.7
(05-05-2023)
**Chapter 12 "Pay-out"
Arrangements**

- (1) **Debtor's Disposable Income.** All of the debtor's disposable income (which excludes amounts reasonably necessary for post-petition domestic support obligations) must be committed to the plan if unsecured claims are not paid in full (11 USC 1225(b)(2)).
- (2) **Secured Claims and Collateral.** The time allowed for payment of secured claims must be evaluated based on the nature and worth of the collateral securing the claim.
- (3) **When Property Is Proposed as Payment.** 11 USC 1225(b)(1)(C) provides that a plan may be confirmed if the value of property being distributed under the plan is not less than the debtor's projected disposable income for the plan period. An objection to the plan may be in order if the plan proposes distribution of property in lieu of cash payments. Some factors to consider when determining if an objection is warranted are:
 - Value of the property is less than the allowed amount of the claim
 - Disposition of the property is burdensome or costly
 - Costs may be incurred to store/maintain the property (i.e. livestock)

- Costs incurred to dispose of the property result in reduction of the value of the property to less than the allowed amount of the claim
- Overall not in the best interest of the government
- Holders of other claims in the same classification receive different or more favorable repayment options
- Proposes property in lieu of deferred cash payments to claims entitled to priority under 11 USC 507, in violation of 11 USC 1222(a)(2)

Note: If property, other than cash payments, is received as part of the plan, Insolvency should follow procedures in IRM 5.9.8.19.1 , Disposition of Acquired Property. Under no circumstance should the IRS accept less than would be recoverable in a Chapter 7 case.

5.9.9.8
(04-18-2013)
Confirmation

- (1) **Confirmed Plan.** When no objections are filed, or after objections are resolved, the plan will be confirmed by the court. The trustee or DIP then begins distribution of the funds to the creditors. Once the court confirms the plan, it is incumbent upon the debtor to make it succeed.
- (2) **Confirmation Actions.** The caseworker must add the “Confirmed Plan Monitoring (CPM)” screen to AIS upon confirmation. (See Exhibit 5.9.8-1, Adding the Confirmed Plan to AIS, for instructions on adding the CPM screen.) Terms of the plan must be documented in the AIS history per IRM 5.9.5.4(4), Chapters 11 and 12 Plan Documentation.

5.9.9.9
(05-05-2023)
Chapter 12 Plans and Restitution Assessments.

- (1) **General Information.** Chapter 12 cases with restitution assessments are treated in the same manner as Chapter 11 cases with restitution assessments. For general information regarding restitution assessments and Chapter 12 plans, see the following subsections in IRM 5.9.8, Processing Chapter 11 Bankruptcy Cases:
 - IRM 5.9.8.17.2, Chapter 11 Plans and Restitution Assessments
 - IRM 5.9.8.17.2.1, Restitution Assessment Paid Outside the Chapter 11 Plan
 - IRM 5.9.8.17.2.2, Restitution Assessment Paid in the Chapter 11 Plan
- (2) **Proofs of Claim in Chapter 12 Cases with Restitution Assessments.** For information about filing proofs of claim in cases with restitution assessments, see IRM 5.9.13.18.5, Restitution Assessments.
- (3) **Discharge and Restitution Assessments in Chapter 12 Cases.** For general information regarding restitution assessments and dischargeability, see IRM 5.9.17.8.8, Discharge and Restitution Assessments.

5.9.9.10
(05-05-2023)
Monitoring Compliance

- (1)
- (2) **Monitoring Liability Cases.** Insolvency must monitor post-petition compliance of the Chapter 12 debtor owing pre-petition debts. Compliance monitoring can be discontinued at dismissal, discharge, conversion, or closing of the case. See IRM 5.9.8.13, Post-petition/Pre-confirmation BMF Monitoring.
 - a. Insolvency should establish a follow-up schedule to monitor plan payments after confirmation or use AIS plan reports.

- b. Systemic monitoring for Forms 941 can be conducted in the same manner as in Chapter 11 proceedings. (See IRM 5.9.8.13, Post-petition/ Pre-confirmation BMF Monitoring.)
- c. Manual monitoring for Form 943 will be necessary. However, the Last Return Amount code (LRA-CD) may be input with a TC 136 to cause post-petition Form 943 delinquencies to appear on the Post-petition Monitoring Report.
- d. If the debtor becomes delinquent on plan payments, the Insolvency caseworker must contact the DIP or trustee, if appointed, by phone. The cause and a cure for the delinquencies/default must be determined. Caseworkers must *establish a deadline* for the payments to become current. Advise the DIP or trustee that the IRS will request dismissal of the case if the payments are not current by the deadline. Confirm the contact *in writing*.
- e. If the debtor fails to comply with current filing and payment requirements, the Insolvency caseworker must contact the debtor by phone. Advise the debtor of the non-compliance. Give the debtor a *deadline* to come into full compliance. Advise the debtor of the consequences for failing to come into filing or paying compliance. Confirm the conversation with the debtor *in writing*.

Note: The caseworker may *only* contact the debtor's attorney instead of the debtor regarding post-petition noncompliance *when* the IRS has filed a court action or filed a response to a court action regarding the debtor's post-petition tax liability.

- f. If the IRS has an unpaid secured claim, Insolvency must make a NFTL refile determination. The NFTL must be refiled during the NFTL "refile window" when that window occurs during the pendency of the bankruptcy (IRM 5.9.5.9.2, Refiling Notices of Federal Tax Liens (NFTLs)).

5.9.9.10.1
(04-18-2013)
Referral to Counsel

- (1) **Serious Delinquencies.** The debtor may continue to incur significant post-petition tax liabilities. Problems with unfiled tax returns may continue. The Insolvency caseworker must take appropriate actions to protect the interest of the government when:

- The debtor is not addressing compliance concerns
- The debtor cannot resolve the concerns given present circumstances

- (2) **Referral.** The debtor may have continuing non-compliance problems with plan provisions. If the debtor's explanation for the delinquencies is unsatisfactory, and the delinquencies are not cured, Insolvency should consider a referral to Counsel. The options generally available to the IRS are to have the debtor's case dismissed or to have the stay lifted so administrative collection can be pursued.

5.9.9.10.2
(01-01-2006)
After-Acquired Property

- (1) **Property of the Estate.** Much of the property the debtor acquires after the bankruptcy petition is filed becomes property of the bankruptcy estate. Therefore, such property is not subject to administrative collection (11 USC 1207(a)).

5.9.9.10.3
(10-04-2018)

**Post-petition Liabilities
in Chapter 12 —
Individual Cases**

- (1) **11 USC 1232.** Congress added 11 USC 1232, Claim by a Governmental Unit Based on the Disposition of Property used in a Farming Operation, to the Bankruptcy Code to overrule *Hall v. United States*, 132 S. Ct. 1882 (2012). In *Hall*, the Supreme Court had ruled in favor of the IRS on the interpretation of 11 USC 1222(a)(2)(A). The Supreme Court had ruled that an individual debtor cannot treat post-petition taxes as an administrative expense of the bankruptcy estate and must pay the post-petition taxes as they become due. Effective October 26, 2017, 11 USC 1232(a), provides that any unsecured claim of a governmental unit against the debtor or the estate that arises before the filing of the petition, or that arises after the filing of the petition and before the debtor's discharge under 11 USC 1228, as a result of the sale, transfer, exchange, or other disposition of any property used in the debtor's farming operation:
- a. will be treated as an unsecured claim arising **before** the date on which the petition is filed;
 - b. will **not** be entitled to priority under 11 USC 507;
 - c. will be provided for under a plan;
 - d. and will be discharged in accordance with 11 USC 1228.

Note: Caseworkers should consult Area Counsel with any questions on how to determine if income relates to the sale, transfer, exchange, or other disposition of any property used in the debtor's farming operation, per 11 USC 1232, or how the tax claim is to be calculated if required.

- (2) **Post-petition Tax Debts in Individual Cases.** Post-petition income tax liability of an individual Chapter 12 debtor cannot be paid or discharged through a Chapter 12 plan UNLESS the debt arose a result of the sale, transfer, exchange, or other disposition of any property used in the debtor's farming operation per 11 USC 1232 . The IRS may file a proof of claim (POC) for such claim described in 11 USC 1232(a) that arises after the date on which the bankruptcy petition is filed. If a debtor files a tax return after the filing of the petition for a period in which a claim described in 11 USC 1232 arises, the debtor shall serve notice of the claim to the IRS at the address and in the manner designated in 11 USC 505(b)(1). See IRM 5.9.4.9., Prompt Determination Requests from Trustee. The notice must:
- a. state the debtor has filed a petition under Chapter 12,
 - b. state the name and location of the court in which the case is pending,
 - c. state the amount of the claim,
 - d. include a copy of the filed tax return,
 - e. include documentation supporting the calculation of the claim.
- (3) **CIO and Section 1232 Notices.** When CIO receives a notice of claim per 11 USC 1232 and the attached return is a copy, CIO will document the history and forward the notice and the return via fax or overnight mail to the FI caseworker assigned to the case. If CIO receives an original return with an 11 USC 1232 notice, CIO must follow the procedures outlined in IRM 5.9.11.4.1(2), Tax Returns. In addition, the caseworker must forward the notice and a copy of the return to the FI caseworker. The AIS history should be documented with the receipt of the notice, tax period, amount of the claim and actions taken.
- (4) **FI and Section 1232 Notices.** When an FI caseworker receives a notice of claim per 11 USC 1232 from CIO, the caseworker will:

- a. input "11 USC Section 1232" case classification on the AIS case classification screen,
- b. check IDRS for the filing of the return,
- c. input a TC 520 to IDRS and to the AIS freeze screen,
- d. add the tax liability to the pre-petition POC, and use POC statement "92", *Section 1232*,
- e. document the AIS history with actions taken.

Note: The caseworker should contact the trustee and request an updated notice if the notice is missing any required information listed in IRM 5.9.9.10.3 (2), Post-petition Tax Debts in Individual Cases.

- (5) **Proof of Claim.** If notice of a claim has been served on the IRS in accordance with 11 USC 1232(d)(2), the caseworker may add this liability to the pre-petition POC no later than 180 days after the date on which the notice was served. If the caseworker does not file a timely POC, the debtor or trustee may file a POC that is consistent with the notice served under 11 USC 1232(d)(2). If a POC is filed by the debtor or trustee, the IRS may not amend it.
- (6) **Refer for Dismissal.** The post-petition income tax liability of an individual Chapter 12 debtor not covered under 11 USC 1232 cannot be paid or discharged through a Chapter 12 plan. If an individual debtor does not pay significant post-petition liabilities timely, Insolvency should consider a referral to have the bankruptcy dismissed. The caseworker should make the decision to refer the case to Counsel for dismissal early in the case. The court is more inclined to grant a dismissal request on a plan in its early stages, rather than in its advanced stage.
- (7) **Removal of Debtor as DIP.** When the debtor incurs post-petition liabilities, Insolvency should consider referring the case to Counsel to request removal of the DIP and appointment of a trustee (11 USC 1202 and 1204). The trustee supervises the administration of the debtor's affairs. The court may remove the debtor as DIP for cause including:
 - Fraud
 - Dishonesty
 - Incompetence
 - Gross mismanagement of the affairs of the debtor
- (8) **Notice of Federal Tax Lien (NFTL).** The filing of a NFTL is an effective action to protect the interest of the government and to promote compliance. The FI caseworker should make a NFTL filing determination when:
 - a. The plan has been confirmed
 - b. The post-petition liability has not been made a part of the plan and the plan does not prohibit taking collection actions for the periods included
 - d. There is a sound business reason to file a NFTL
 - e. The automatic stay is not in effect for the periods included in the NFTL
 - f. A reasonable effort has been made to contact the taxpayer per IRM 5.12.2.2, Taxpayer Contact. Issuance of the statutory assessment notice and the balance due notices during the collection process will generally constitute a reasonable effort to contact the taxpayer. Caseworkers may

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still wish to contact the debtor to request full payment and warn of the possible filing of a NFTL in an attempt to resolve the case without the need to file the NFTL.

Note: Caseworkers must document the AIS history with the decision to file, not file, or defer filing of the NFTL. The history must include a description of any NFTL filing actions taken. In addition, caseworkers and their managers must follow the approval for **do not file** and **deferral** found in IRM 5.12.2.5.3, NFTL **Do-Not-File** and Filing Deferral Determination Approvals.

(9) **Installment Agreement (IA) Requests on Post-Petition Liabilities.**

Taxpayers who are in Chapter 12 may incur post-petition liabilities. To prevent any inadvertent collection action against property of the bankruptcy estate, a TC 520 cc 84 should be input to post-petition liabilities. The TC 520 cc 84 will alert IRS employees to contact Insolvency before taking any collection actions on the post-petition modules. These taxpayers may submit a request for an installment agreement (IA) for post-petition liabilities. When a taxpayer is in bankruptcy, a request for an IA on post-petition liabilities is non-processable. Administrative appeal rights are not provided for a non-processable IA. A TC 971 ac 043 should not be input on these accounts. For additional information, see IRM 5.9.4.20.1, IA Requests for Post-Petition Liabilities Submitted During Bankruptcy.

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.

5.9.9.10.4
(05-05-2023)
**Post-Petition Liabilities
in Chapter 12 —
Non-Individual Cases**

- (1) **Requests for Payment of Administrative Expense Taxes in Non-Individual Cases.** The bankruptcy estate of a corporation, partnership, or LLC in Chapter 12 may incur an administrative expense liability for taxes incurred prior to confirmation. The IRS may file an “administrative claim”, Form 6338-A(C), Request for Payment of Internal Revenue Taxes, for these post-petition liabilities in non-individual cases.
- (2) **Corporations.** If a corporation in Chapter 12 fails to timely pay post-petition income, employment, or excise taxes incurred prior to confirmation, Insolvency may file a Form 6338-A(C), Request for Payment of Internal Revenue Taxes, (an “administrative claim”), in the Chapter 12 case. (See IRC 6012(b)(3), which requires the trustee or the DIP of a corporation in bankruptcy to file income tax returns for the corporation.)
- (3) **Partnerships and S-Corporations.** Partnerships and S-Corporations are flow-through entities for income tax purposes therefore, they do not incur an income tax liability. The income is reported on the partner or shareholder return. However, a partnership or S-Corporation in Chapter 12 can incur a post-petition employment tax liability. If a partnership or S-Corporation in Chapter 12 fails to timely pay post-petition employment taxes incurred prior to confirmation, Insolvency may file a Form 6338-A(C), Request for Payment of Internal Revenue Taxes, (an “administrative claim”), in the Chapter 12 case.
- (4) **Limited Liability Companies (LLCs).** A LLC can be treated as a sole proprietorship, partnership, corporation, or S-Corporation. Consequently, not all LLCs will be treated the same in Chapter 12 for tax purposes.

Income Taxes.	Employment Taxes
<p>If a LLC that is treated as a corporation for income tax purposes fails to timely pay post-petition income taxes incurred prior to confirmation, Insolvency may file a Form 6338-A(C), Request for Payment of Internal Revenue Taxes, (administrative claim), for those taxes in the LLC's Chapter 12 case</p>	<p>In general, a LLC is liable for employment taxes. However, if a single member LLC that is treated as a disregarded entity paid wages <i>before January 1, 2009</i>, the single member owner (SMO) is the taxpayer, not the LLC. (See IRM 5.1.21.8, Bankruptcy Proceedings). If a single member LLC that is treated as a disregarded entity pays wages <i>on or after January 1, 2009</i>, it is treated as a corporation for employment tax purposes and the LLC is the taxpayer. The following explains when a Form 6338-A(C), Request for Payment of Internal Revenue Taxes, may be filed for unpaid employment taxes in a Chapter 12 case filed by a LLC:</p> <ul style="list-style-type: none"> • LLC Classified as a Corporation, S-Corporation, or Partnership. Insolvency may file a Form 6338-A(C) for post-petition employment taxes incurred prior to confirmation in the Chapter 12 case of a LLC that is classified as a corporation, S-Corporation, or partnership. • LLC Classified as a Disregarded Entity — Wages Paid Before January 1, 2009. Do not file a Form 6338-A(C) for post-petition/pre-confirmation employment taxes on wages paid by the LLC before January 1, 2009. The SMO, not the LLC, is liable for those taxes. • LLC Classified as a Disregarded Entity — Wages Paid After January 1, 2009. Insolvency may file a Form 6338-A(C) for post-petition/pre-confirmation employment taxes on wages paid by the LLC on or after January 1, 2009. The LLC is treated as a corporation for employment tax purposes with respect to wages paid on or after January 1, 2009. The LLC, not the SMO, is the taxpayer in this instance.

See the following IRM subsections for additional information on LLCs:

- IRM 5.1.21.8, Bankruptcy Proceedings
- Exhibit 5.1.21-2, Income Taxation for LLCs
- Exhibit 5.1.21-3, Employment Taxation for LLCs
- IRM 5.9.13.14, Limited Liability Companies (LLC)
- IRM 5.9.14.2.8(4) , Case Flag Conditions and Resolutions, LLC Flag
- IRM 5.9.17.12, Closing Corporate Chapter 7 and Chapter 7 Limited Liability Companies (LLCs)
- IRM 5.9.17.13, Closing Liquidating Chapter 11 Corporations and Liquidating Chapter 11 LLCs

- (5) **Post-confirmation Taxes.** In general, an “administrative claim”, Form 6338-A(C), Request for Payment of Internal Revenue Taxes, cannot be filed for post-confirmation taxes incurred in a non-individual Chapter 12 case. Insolvency should follow the procedures in IRM 5.9.9.10.3(2), Referral for Dismissal, and

IRM 5.9.9.10.3(8), Notice of Federal Tax Lien (NFTL), when a non-individual Chapter 12 debtor incurs post-confirmation taxes.

Note: Except as otherwise provided in the plan or order confirming the plan, confirmation vests property of the estate in the debtor (11 USC 1227(b)). This means the property is the debtor's property again. When property vests in the debtor, the estate generally terminates and there is no estate left to incur an administrative expense. However, courts interpreting a similar provision in Chapter 13 (11 USC 1327(b)) vary on when the estate terminates. In addition, some Chapter 12 plans specifically provide that property of the estate will remain in the estate post-confirmation. In jurisdictions or cases where the estate does not terminate after confirmation, it may be possible to file a Form 6338-A(C), Request for Payment of Internal Revenue Taxes, in a non-individual case, if such a request could have been filed in the case prior to confirmation. Insolvency should contact Counsel for guidance on filing an administrative claim in a non-individual Chapter 12 case if a confirmed plan or confirmation order provides that property of the estate will remain in the estate post-confirmation.

5.9.9.10.5
(05-05-2023)
**Individual Shared
Responsibility Payment**

- (1) **General Information.** Effective 2014, the Affordable Care Act (ACA) required all individuals to have qualifying health care coverage (called minimum essential coverage (MEC)) in each month of the year, qualify for an exemption, or make an individual shared responsibility payment (SRP) when they file their tax return for the year. The SRP was reduced to zero after December 31, 2018. For more information see IRM 5.9.4.19.1, Individual Shared Responsibility Payment (SRP).
- (2) **Assessment and Treatment in Bankruptcy.** SRP liabilities are claimable as an income and/or excise tax on the IRS's proof of claim under USC 507 (a)(8)(E). See IRM 5.9.13.18.6(1), IRC 5000A- Individual Shared Responsibility Provision for additional information.
- (3) **Discharge and SRP Liabilities.** When a debtor receives a discharge upon completion of a Chapter 12 bankruptcy plan under 11 USC 1228(a), the remaining balance of debts "provided for" by the bankruptcy plan including any SRP liabilities are generally discharged unless they are an exception to discharge. See IRM 5.9.17.14, Chapter 12 Discharge, for more information on discharges.

5.9.9.10.6
(05-05-2023)
**Employer Shared
Responsibility Payment**

- (1) **General Information.** 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. For more information see IRM 5.9.4.19.2, Employer Shared Responsibility Payment (ESRP).
- (2) **Assessment and Treatment in Bankruptcy.** ESRP liabilities are claimable as an excise tax on the IRS's proof of claim. For additional information on claiming these liabilities, see IRM 5.9.13.18.6(3), IRC 4980H-Employer Shared Responsibility Provision.
- (3) **Post-petition ESRP MFT 43 Liabilities and Chapter 12 Cases.** The enrollment date and the Letter 226-J issuance date need to be considered when determining to file a pre-petition, post-petition or a pre-petition and post-petition

claim. See IRM 5.9.4.19.2(10), Determining if the ESRP Liability is Pre-Petition/Post-Petition. The enrollment date is usually 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.

- a. Individual Chapter 12 Cases. An individual in a Chapter 12 case may be a sole-proprietor that is an ALE that incurs a post-petition ESRP MFT 43 liability. There are no provisions in Chapter 12 cases for filing a claim for a post-petition liability incurred by the debtor (11 USC 1305 does not apply in Chapter 12 cases). Since an individual debtor may have property that remains property of the bankruptcy estate while the plan is being administered, a TC 520 cc 84 should be input to post-petition ESRP MFT 43 liabilities on IDRS. The TC 520 will alert IRS employees to contact Insolvency before taking any collection actions on post-petition liabilities.

Note: If the Chapter 12 bankruptcy estate, rather than the debtor, filed employment tax returns, it is possible that the estate rather than the debtor incurred the ESRP. Contact Counsel to determine if an administrative expense claim should be filed if the estate had filed employment tax returns.

- b. Non- Individual Chapter 12 Cases. The Chapter 12 case filed by a non-individual debtor is very similar to the Chapter 11 case filed by a non-individual. When the non-individual debtor in a Chapter 12 case incurs a post-petition/pre-confirmation ESRP liability, the ESRP liability is an administrative expense claimable on Form 6338-A(C), Request for payment of Internal Revenue Taxes. Include proof of claim statement Z9 on the Form 6338-A(C) to clarify that the ESRP liability is a post-petition debt. Generally, post-confirmation ESRP liabilities of the Chapter 12 non-individual debtor are not claimable as administrative expenses on Form 6338-A(C).

Note: If the enrollment date is pre-petition and the L 226-J issuance date is post-petition, then file a pre-petition and a post-petition claim. When both claims will be filed, Proof of Claim statements “Y5” and “Y6” needs to be added to the pre-petition claim. It states, “While one or more ESRP assessments are post-petition, the pre-petition claim is being filed as a protective measure.” See IRM 5.9.13.18.6(3), IRC 4980H – Employer Shared Responsibility Provision.

- (4) **Discharge and ESRP Liabilities.** Individual or non-individual debtors may receive a discharge upon completion of their bankruptcy plan. Pre-petition priority ESRP liabilities are non-dischargeable when the Letter 226-J issuance date, F1094-C due date, or employees’ return due date are within three years before the petition date. . If pre-petition ESRP liabilities are non-priority tax debts because the Letter 226-J issuance date, F1094-C due date, or employees’ return due date are more than three years prior to the filing of the bankruptcy petition, the ESRP liabilities are generally dischargeable.

Note: Liabilities may be non-dischargeable if the IRS was not notified timely of the bankruptcy case.

Post-petition/pre-confirmation ESRP liabilities owed by non-individual debtors should be claimed as administrative expenses on Form 6338-A(C) and may also require the caseworker to file a pre-petition protective claim. See IRM

5.9.13.18.6(3), IRC 4980H – Employer Shared Responsibility Provision. If the plan in the non-individual Chapter 12 case provided for the post-petition/pre-confirmation ESRP liability, the ESRP liability is dischargeable. If the plan in the non-individual Chapter 12 case **did not** provide for the post-petition/pre-confirmation ESRP liability, the ESRP liability is non-dischargeable.

5.9.9.11
(04-18-2013)
Conversions

- (1) **Conversion Only for Fraud.** Chapter 12 is not like Chapters 11 and 13. A creditor cannot move for conversion of the Chapter 12 case to Chapter 7 unless the debtor has committed fraud in connection with the case (11 USC 1208(d)). Referrals to Counsel in a Chapter 12 case will usually be to request a motion for dismissal rather than conversion.

5.9.9.12
(05-05-2023)
**Closing No Liability
Cases**

- (1) Chapter 12 no liability cases should be treated in the same manner as in Chapter 11 proceedings. See IRM 5.9.8.12, Closing Chapter 11 No Liability Cases