



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.9.13

SEPTEMBER 2, 2022

EFFECTIVE DATE

(09-02-2022)

PURPOSE

- (1) This transmits a revised 5.9.13, Bankruptcy and Other Insolvencies, Manual Proofs of Claim and Common Claim Issues.

MATERIAL CHANGES

- (1) IRM 5.9.13 has been updated to provide clarification and expansion of existing material. The following table details changes to this IRM section:

IRM	Change
IRM 5.9.13.1(4) IPU 20U1005 issued 09-14-2020	Changed program owner to Collection Policy, SB/SE.
IRM 5.9.13.1.4(1)	Updated to reflect AIS reports are now on Business Objects.
IRM 5.9.13.1.4(2)	Changed assigned duties to assigned roles
IRM 5.9.13.1.7	Consolidated bankruptcy rules and added Pub 5170 and Taxpayer Bill of Rights website. Added the Insolvency Knowledge Base Home Page.
IRM 5.9.13.4(1)	Clarified to state an initial case review is required on all cases assigned to FI caseworkers.
IRM 5.9.13.4.1(1)(e)	Changed AIS POC menu to AIS Lien tab .
IRM 5.9.13.4.1(1)(h)	Removed Lexis-Nexis as a research tool and added Bloomberg Tax and Westlaw, which can be requested through BEARS.
IRM 5.9.13.4.1(4)	Removed Chapter 7N are excepted from initial case review. All cases assigned to FI need an initial case review.
IRM 5.9.13.4.2	Added references IRM 5.9.6.11.1 Initial Case Review of Large Dollar 7 No Asset (7N) Reassigned by FI and IRM 5.9.6.11.2, Initial Case Review of the 7A Individual Case by FI.
IRM 5.9.13.12(3)	Added form and POC statements to be used when filing a claim for gap expenses.
IRM 5.9.13.18.1(13)	Added reminder to close cases as no liability if a claim is withdrawn and there are no other open issues or requirements to address.
IRM 5.9.13.18.2(4) IPU 21U0837 issued 06-14-2021	Updated to state the caseworker will set a 15 day follow up date on all cases when the Letter 1714 is issued.
IRM 5.9.13.18.2(5) IPU 21U0837 issued 06-14-2021	Added actions needed when the caseworker verifies the debtor is not required to file a tax return.

IRM	Change
IRM 5.9.13.18.2(6) IPU 21U0837 issued 06-14-2021	Updated to state the caseworker must contact the debtor or debtors attorney by phone to secure returns or return information if they do not receive a response from Letter 1714.
IRM 5.9.13.18.2(9) IPU 21U0837 issued 06-14-2021	Added requirement to input the appropriate transaction code to satisfy the module if the caseworker determines the debtor is not liable to file.
IRM 5.9.13.18.8 IPU 20U1005 issued 09-14-2020	Added new section on procedures for identifying and addressing the new CARES Act Section 2302 deferment in bankruptcy.
IRM 5.9.13.18.8(4)	Added command code that can be used to determine deferred tax amount.
IRM 5.9.13.20(4) IPU 21U0837 issued 06-14-2021	Updated to state it is necessary to separately calculate the amount of interest attributed to the tax and the amount of interest attributed to the penalty in all case classifications, when manually computing a claim.
IRM 5.9.13.21(1)	Added procedure for manually loading a claim on AIS.
IRM 5.9.13.22(1)	Clarified language on the various ways to generate a proof of claim.
IRM 5.9.13.23(3)	Added information on how to provide debtors and trustees transcripts, when requested.
Throughout	Moved lists into tables to meet 508 compliance.
Throughout	Removed outdated BAPCPA information
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 5.9.13 dated June 14, 2021. The IRM IPU 20U1005 issued September 14, 2020 and IRM IPU 21U0837 issued June 14, 2021, have been incorporated into this IRM.

AUDIENCE

Field Insolvency Groups and the Centralized Insolvency Operation

Kareem Williams,
Director, Collection Policy

5.9.13

Manual Proofs of Claim and Common Claim Issues

Table of Contents

- 5.9.13.1 Program Scope and Objectives
 - 5.9.13.1.1 Background
 - 5.9.13.1.2 Authority
 - 5.9.13.1.3 Responsibilities
 - 5.9.13.1.4 Program Management and Review
 - 5.9.13.1.5 Program Controls
 - 5.9.13.1.6 Terms and Acronyms
 - 5.9.13.1.7 Related Resources
- 5.9.13.2 Claim Systems
- 5.9.13.3 Filing Entities
- 5.9.13.4 Case Reviews
 - 5.9.13.4.1 Case Resource Materials
 - 5.9.13.4.2 Liens and Claims
- 5.9.13.5 Claims Forms
- 5.9.13.6 Proof of Claim Retention
- 5.9.13.7 Bar Dates
 - 5.9.13.7.1 Late Filed Claims
- 5.9.13.8 Amended Claims
- 5.9.13.9 Post-petition Mirroring and Claims
- 5.9.13.10 Section 1305 Claims
- 5.9.13.11 Administrative Claims
- 5.9.13.12 Gap Period Expenses in an Involuntary Bankruptcy
- 5.9.13.13 TFRP Assessments - Priority Status
- 5.9.13.14 Limited Liability Companies (LLC)
 - 5.9.13.14.1 Limited Liability Company as Debtor
 - 5.9.13.14.2 Owner of Limited Liability Company as Debtor
- 5.9.13.15 Consolidated Chapter 11 Filings
- 5.9.13.16 Criminal Investigation Involvement
- 5.9.13.17 Below Tolerance - Non-Filing of a Proof of Claim
- 5.9.13.18 Claim Periods
 - 5.9.13.18.1 Unassessed Claims
 - 5.9.13.18.2 Addressing Unfiled Returns
 - 5.9.13.18.3 Federal Unemployment Tax Act Tax Claims
 - 5.9.13.18.4 Duplicate and Mirror Assessments and NMF Periods
 - 5.9.13.18.5 Restitution Assessments

-
- 5.9.13.18.6 Affordable Care Act Provisions
 - 5.9.13.18.7 Section 965 Transition Tax
 - 5.9.13.18.8 CARES Act - Section 2302
 - 5.9.13.19 Classifying Claims
 - 5.9.13.19.1 Determining Debt Type
 - 5.9.13.19.2 Secured Claim
 - 5.9.13.19.3 Unsecured Priority
 - 5.9.13.19.4 Unsecured General
 - 5.9.13.20 Claim Calculations
 - 5.9.13.21 AIS Claim Screen
 - 5.9.13.22 Printing Claims
 - 5.9.13.23 Allowable Claims
 - 5.9.13.24 Signatory
 - 5.9.13.25 Sale of Claims

Exhibits

- 5.9.13-1 Threshold for Claims

5.9.13.1

(09-14-2020)

Program Scope and Objectives

- (1) **Purpose.** This Internal Revenue Manual (IRM) section describes the process and procedures for filing proofs of claim. Filing an allowable proof of claim (POC) with the bankruptcy court is the primary method creditors have of receiving funds in a bankruptcy case. A proof of claim is a statement filed with the bankruptcy court listing debts owed by the debtor to a particular creditor. This section explains the forms to file with the court, discusses eligible entities, time frames (bar dates), types of claims, and the criteria for filing amended claims. It provides additional guidance to Insolvency on the proof of claim process, including calculations, tolling, claim classification, reviews, late filed claims, refiling Notices of Federal Tax Lien (NFTL), Section 1305 claims, Limited Liability Companies (LLCs), and trust fund considerations.
- (2) **Audience.** This IRM is designed for use by Specialty Collection Insolvency personnel.
- (3) **Policy Owner.** Director, Collection Policy, SB/SE.
- (4) **Program Owner.** Collection Policy, SB/SE, Insolvency is the program owner of this IRM.
- (5) **Primary Stakeholder.** The primary stakeholder is Specialty Collection Insolvency (SCI).
- (6) **Program Goals.** The goal is to protect the government's interest and ensure taxpayer rights are protected when filing proofs of claim.

5.9.13.1.1

(06-05-2018)

Background

- (1) Internal Revenue Manual (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.
- (2) This IRM specifically addresses the IRS's position, procedures, information, instructions, guidance, and references on filing proofs of claim.

5.9.13.1.2

(06-05-2018)

Authority

- (1) The Insolvency program operates within the guidelines of the Bankruptcy Code (11 USC) and the Federal Rules of Bankruptcy Procedure.
- (2) The United States Code (USC) authorities referenced in this IRM are:
 - 11 USC 303, Involuntary Cases
 - 11 USC 326, Limitation on Compensation of Trustee
 - 11 USC 341, Meetings of Creditors and Equity Security Holders
 - 11 USC 362, Automatic Stay
 - 11 USC 501, Filing of Proofs of Claims or Interests
 - 11 USC 502, Allowance of Claims or Interests
 - 11 USC 503, Allowance of Administrative Expenses
 - 11 USC 506, Determination of Secured Status
 - 11 USC 507, Priorities
 - 11 USC 521, Debtor's Duties
 - 11 USC 523, Exceptions to Discharge
 - 11 USC 541, Property of the Estate
 - 11 USC 553, Setoff
 - 11 USC 726, Distribution of Property of the Estate
 - 11 USC 1112, Conversion or Dismissal

- 11 USC 1116, Duties of Trustee or Debtor in Possession in Small Business Cases
- 11 USC 1129, Confirmation of Plan
- 11 USC 1305, Filing and Allowance of Post-petition Claims
- 11 USC 1308, Filing of Pre-petition Tax Returns
- 11 USC 1328, Discharge
- 28 USC 960, Tax Liability

(3) The Internal Revenue Code (IRC) section authorities referenced in this IRM:

- IRC 1398, Rules Relating to Individuals' Title 11 Cases
- IRC 3302, Credits Against Tax
- IRC 4971, Taxes on Failure to Meet Minimum Funding Standards
- IRC 4980H, Shared Responsibility for Employers Regarding Health Coverage
- IRC 5000A, Requirement to Maintain Minimum Essential Coverage
- IRC 6020(b), Execution of Return by Secretary
- IRC 6213, Restrictions Applicable to Deficiencies; Petition to Tax Court
- IRC 6321, Lien for Taxes
- IRC 6411, Tentative Carryback and Refund Adjustments
- IRC 6503, Suspension of Running of Period of Limitation
- IRC 6601, Interest on Underpayment, Nonpayment, or Extensions of Time for Payment, of Tax
- IRC 6658, Coordination with Title 11
- IRC 6672, Failure to Collect and Pay Over Tax, or Attempt to Evade or Defeat Tax

5.9.13.1.3
(09-02-2022)
Responsibilities

- (1) The Director, Specialty Collection Insolvency is responsible for program oversight.
- (2) Territory and Frontline managers are responsible for ensuring reviews are completed as required per IRM 1.4.51.17.2, Operational Review, IRM 1.4.51.16.2, EQ Consistency Reviews, and IRM 1.4.51.5.2, Reviews.
- (3) Employees are responsible for following the provided guidance to process cases.

5.9.13.1.4
(09-02-2022)
Program Management and Review

- (1) **Program Reports.** Reports housed on the Business Objects system are used to support the insolvency program. The required AIS reports are described in IRM 5.9.12, Insolvency Automated Processes, IRM 5.9.16, Insolvency Case Monitoring, and in IRM 1.4.51.8.3, Case Management Tools.
- (2) **Program Effectiveness.**
 - a. 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.
 - b. National quality reviews are conducted on a monthly basis. Consistency reviews are conducted at least annually. See IRM 1.4.51.16.1, NQRS, and IRM 1.4.51.16.2, EQ Consistency Reviews, for more information.

5.9.13.1.5
(09-02-2022)
Program Controls

- (1) Insolvency 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 insolvency and non-bankruptcy insolvency cases. See IRM 5.9.3.2, Automated Insolvency System (AIS). IRM 1.4.51.8.3, Case Management Tools, contains reports for managing and controlling inventory. AIS users have various levels of authorized access based on their assigned roles.

5.9.13.1.6
(09-02-2022)
Terms and Acronyms

- (1) A glossary of terms used in this IRM can be found in Exhibit 5.9.1-1, Glossary of Common Insolvency Terms.
- (2) Common acronyms acceptable for use in the 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/Acronymbdb.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
EPOC	Electronic Proofs of Claim
PACER	Public Access to Court Electronic Records
POC	Proof of Claim
NFTL	Notice of Federal Tax Lien
SCI	Specialty Collection Insolvency
SOFA	Statement of Financial Affairs

5.9.13.1.7
(09-02-2022)
Related Resources

- (1) AIS Insolvency System (AIS) User Guide, Document 13219.
- (2) Automated Proof of Claim User Guide, Document 13163.
- (3) Insolvency Knowledge Base Home Page <https://portal.ds.irsnet.gov/sites/vl114/pages/default.aspx>
- (4) Taxpayer Bill of Rights, Pub 5170, and Taxpayer Bill of Rights page <https://www.irs.gov/taxpayer-bill-of-rights>

5.9.13.2
(09-10-2013)
Claim Systems

- (1) **Automated Proof of Claim (APOC).** Automated proofs of claim are generated by Field Insolvency offices through the APOC system. APOC notifies assigned caseworkers of its inability to complete a proof of claim. The APOC User Guide and IRM 5.9.14, Automated Proofs of Claim, provide detailed information on use of this system.
- (2) **Manual Reviews and Calculations.** At times SCI caseworkers may have to prepare entire claims without the aid of APOC. More often they will manually calculate a single claim period to insert into the APOC process so an automated claim can be completed systemically. Regardless of the reason for manual claim preparation, Field caseworkers must be proficient in calculating and classifying claims without reliance on APOC. (See IRM 5.9.13.19, Classifying Claims, for guidance in the manual classification of claims, and IRM 5.9.13.20, Claim Calculations, for basic details on calculating proofs of claims.)

5.9.13.3
(09-02-2022)
Filing Entities

- (1) **Who May File a Claim.** 11 USC 501 provides any of the following persons may file a proof of claim for periods considered to be pre-petition (accrued prior to the bankruptcy filing date):
 - Creditor
 - Debtor
 - Co-debtor
 - Trustee
 - Indenture trustee (trustee representing creditors)
- (2) **Claims Filed on Behalf of IRS.** If the IRS does not timely file a proof of claim, the debtor, co-debtor, or trustee may file a proof of claim on behalf of the IRS. SCI will, in most jurisdictions, subsequently prepare and file a claim (usually in the form of an amendment) to report the correct amount owing according to internal tax data.

Note: Because the trustee may make payments on a claim filed by a third party, the easiest method for a caseworker to account for the payments on Automated Insolvency System (AIS) is to file an amended claim, even if the amount is less than the tolerance contained in Exhibit 5.9.13-1, Threshold for Claims.

5.9.13.4
(09-02-2022)
Case Reviews

- (1) **Initial Review.** Caseworkers must conduct an initial case review on all cases assigned to them. Initial case reviews must include, at a minimum, items listed in IRM 5.9.6.11, Initial Case Review by Field Insolvency (FI) and subsequent sections for Chapter 7 cases, IRM 5.9.8.4, Initial Case Review for Chapter 11, IRM 5.9.9.3, Initial Case Processing for Chapter 12 cases, and IRM 5.9.10.3, Initial Case Review for Chapter 13 Bankruptcy.
- (2) **Manual POC Review.** Prior to creating a manual proof of claim, the following issues (beyond the initial case review issues) must be considered:
 - a. Previous bankruptcy filings which may affect classification of the claim.
 - b. Cross referenced TIN(s) which may indicate liability.
 - c. Correspondence sent and responses received.
 - d. Bankruptcy freeze input to pre-petition balance due or other pre-petition periods, including creating dummy accounts, as necessary. (See IRM 5.9.15.6, Unassessed Liability/No Open Modules.)

- e. Any changes noted between initial case processing and POC preparation.

Caution: Caseworkers should remember that when a Chapter 7 NA case converts to Chapter 7 Asset (A) case after the discharge was entered, any liabilities that were abated must be added to the proof of claim manually, as previously abated periods will not be processed through APOC. For more information, caseworkers should review IRM 5.9.14.2.2(5), Reopened Chapter 7 Cases, and IRM 5.9.14.2.8(4)(f) , Discharged, Dismissed, or Closed Date on AIS Flag.

- f. Bankruptcy schedules and Statement of Financial Affairs (SOFA) when appropriate.
- g. Stay violations: new/unresolved/status.
- h. Current status on AIS (discharged, dismissed, or converted) which may require processing by another unit prior to claim consideration and preparation.
- i. The Integrated Data Retrieval System (IDRS) Transaction Codes (TC) outlined in the table below:

TC	Indication
922	Underreporter Program (URP) case which may require contact with the URP bankruptcy coordinator to determine the proposed liability, if the account is not on Account Management Services (AMS).
420	Examination case requiring contact with the Exam bankruptcy coordinator to determine the proposed liability.
360/ 582	Notice of Federal Tax Lien (NFTL), noting the date and location of filing which is necessary to prepare a secured claim, determine if the NFTL was filed in violation of the automatic stay, or for Field Insolvency, consideration of adequate protection request. (See IRM 5.9.8.6, Adequate Protection.)
320	Fraud.
914	Criminal Investigation (CI) involvement requiring contact with CI to determine appropriate bankruptcy case actions which will not hinder the CI investigation.
480/ 780	Pending or accepted offers in compromise (OIC) which may affect classification of the claim periods due to tolling and/or may yield information to affect equity/asset determinations.

- (3) **Review for Potential Liability from the Debtor's Business Entities.** When the bankruptcy schedules or the SOFA show that the debtor is or has been an officer of a corporation, a partner in a partnership, or a member of an LLC, the caseworker should research IDRS to determine if the debtor is liable for unpaid taxes of the entity which should be included on the proof of claim. These may include:

- Trust Fund Recovery Penalty (TFRP) assessments.
- Potential TFRP liability for unpaid employment taxes of a corporation or an LLC.

Note: The debtor may also owe a TFRP liability that has not yet been assessed. Caseworkers should review the Automated Trust Fund Recovery Penalty program (ATFR), which shows TFRP liabilities that have been proposed but are not yet assessed on IDRS.

- Liability for employment taxes of an LLC treated as a disregarded entity for periods prior to January 1, 2009.
- Liability for excise taxes of an LLC treated as a disregarded entity for periods prior to January 1, 2008.
- Liability for employment taxes of a partnership in which the debtor was a general partner.

These liabilities may also be shown on a non-master file account, as explained in IRM 5.9.13.4.1, Case Resource Materials. Information on determining whether the debtor is liable for a business entity's taxes is contained in IRM 5.9.13.14, Limited Liability Companies (LLC), and IRM 5.17.7, Liability of Third Parties for Unpaid Employment Taxes.

5.9.13.4.1
(09-02-2022)

Case Resource Materials

- (1) **Resource Gathering.** As part of any review and in preparation for working proof of claim issues, case resource materials should be gathered to perform a quality case analysis. Some of the materials that may be used include:

- a. **IDRS Documents.** IDRS materials are necessary research tools used in the calculation and classification of a claim, in determining if the liability is assessed or unassessed, and in identifying freezes or controls on the account that may affect the tax liability computation or the need to file a POC. The caseworker must review command codes INOLE, IMFOL, and/or BMFOL on IDRS.

Note: Assistance with IDRS command codes is available on SERP by clicking the "Job Aids" button and scrolling down to "Miscellaneous" or at: <http://serp.enterprise.irs.gov/job-aids/command-code/command-code.html>.

- b. **Command Codes.** The table below identifies useful command codes and their purposes.

CC	Reference	Purpose
INOLE/ ENMOD	IRM 2.3.47, Command Codes INOLE, EOGEN and SPARQ, and IRM 2.3.15, Command Code ENMOD	Verify debtor's name, address and filing requirements. Identify cross reference (XREF) taxpayer identification numbers (TINs) for which research may be required.

CC	Reference	Purpose
IMFOL/ BMFOL	IRM 2.3.51, Command Code IMFOL, and IRM 2.3.59, Command Codes BMFOL and BMFOR	IMFOL (for Individual Master File) and BMFOL (for Business Master File). Verify if required returns have been filed. Give a complete history of returns required and filed. Note: These command codes do not reflect pending actions.
SUMRY/ TXMOD	IRM 2.3.11, Command Codes TXMOD and SUMRY	Depict current activity on an account summary or on individual modules reflecting such data as pending adjustments, notices, collection activity, revenue officer (RO) assignment, bankruptcy freezes, NFTL indicators, and Exam and CI controls.
INTST/ COMPA	IRM 2.3.29, Command Codes INTST, ICOMP, and COMPA	Calculate the tax, penalty and interest for claim preparation.
FFINQ	IRM 2.3.13, Command Codes FFINQ, REINF, and REMFE	Displays return fact-of-filing and refund information.
NAMEE/ NAMES	IRM 2.3.60, Command Codes NAMES, NAMEE, NAMEI, NAMEB, FINDS, FINDE and TPIIP	Search for potential IMF and BMF TINs when limited information is known.
IRPTR	IRM 2.3.35, Command Code IRPTR	Provides document data from the Information Returns Master file (IRMF). Used in preparation of estimated claims.
UNLCE	IRM 2.4.41, Command Code UNLCE	Identifies parties assessed a TFRP and periods covered by the assessment.

CC	Reference	Purpose
MFREQ	IRM 2.3.10, Command Codes MFREQ and RECON	Establishes a tax module on SUMRY. Used for an INTST calculation. Note: If the module is not on SUMRY, then INTST cannot be used. COMPA must be used instead to calculate penalty and interest. InterestNet/Automated Computation Tool (DMI/ACT) may also be used to compute interest and is preferred for more complex calculations.
AMDIS	IRM 2.8.3, AIMS Command Code AMDIS	Requests information on current audits.

- c. **Non-Master File (NMF).** NMF research differs from IDRS research and is conducted through the Automated Non-Master File system (ANMF). (See IRM 4.4.22.2.1, Automated Non-Master File Accounting, and IRM 3.17.46, Automated Non-Master File Accounting.) NMF accounts are centralized at the Cincinnati Submission Processing Campus. Debtors may have accounts on ANMF when the IRS is not able to make normal assessments on IDRS, such as Tax Court cases where one debtor in a joint return has agreed to assessment and the other debtor on the joint return is contesting the assessment.
- d. **Bankruptcy Court Documents.** Court documents may be accessed through the electronic court records or can be requested directly from the court.

Note: Depending on the court, electronic records may be accessed through Public Access to Court Electronic Records (PACER), Case Management/Electronic Case Files (CM/ECF), or the website:
<https://pcl.uscourts.gov/pcl/index.jsf>

They potentially provide, among other things, cross referenced business information, corporate officer information for TFRP investigations, income and expense information and asset information. They consist of:

Bankruptcy Court Document	Definition
Schedules	<ul style="list-style-type: none"> • A/B - Property • C - Property You Claim as Exempt • D - Creditors Who Hold Claims Secured By Property • E/F - Creditors Who Have Unsecured Claims • G - Executory Contracts and Unexpired Leases • H - Your Co-debtors • I - Your Income • J - Your Expenses • J-2 - Expenses for Separate Household of Debtor 2
Statement of Financial Affairs (SOFA)	The SOFA lists questions and answers about the debtor's finances and provides income information for the current year and the last two years, business interests and corporate officer information (for TFRP investigations).
Statement of Monthly Income and Means Test Calculation	This statement must be completed by all individual Chapter 7 debtors who file bankruptcy on or after October 17, 2005. It provides income and expense information in addition to information given in Schedules I/J.
Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income	This statement must be completed by Chapter 13 debtors who file bankruptcy after October 17, 2005. It provides income and expense information given in Schedules I/J.
Other Court Documents	These can include motions, pleadings and filings from other parties with an interest in the case and can yield information not previously disclosed in the SOFA or schedules, such as other income/expense items, issues concerning potentially fraudulent activities, or sale of assets.

- e. **Notices of Federal Tax Lien (NFTL).** Notices of Federal Tax Lien reflect the secured claim of the IRS. Facsimiles may be used as attachments to the POC. To be used to secure a claim in bankruptcy, the Notice of Federal Tax Lien must have been properly recorded pre-petition. Lien facsimiles may be printed individually from the AIS Lien Tab (see AIS User's Guide) or the Automated Lien System (ALS) (see ALS User's Guide) for review. However, only the redacted Social Security Number (SSN) lien facsimiles that accompany the printed POC may be used as attachments to the claim.

- f. **Standardized Correspondence.** The IRS may send correspondence, either manually or systemically, to secure returns or information relative to the preparation of the claim or to establish liability. Written referrals may be sent to internal customers such as Exam, CI, and Area Counsel. Standardized letters may be sent to external customers such as trustees, attorneys for the debtors, or the debtors' accountants. Letters initiated by SCI may include AIS Letter 1714, Request for Returns or Return Information, to secure missing or unfiled returns, or other AIS letters as appropriate.

Note: Caseworkers can generate and print AIS letters by going to the AIS Letter Tab and selecting the applicable AIS letter. In addition to AIS letters/memos, caseworkers may also generate documents by using any approved customized document in Microsoft Word, Integrated Collection System (ICS), IDRS, SERP, or letters available on the IRS intranet.

- g. **Ad Hoc Correspondence.** If the suite of standardized letters does not fit a specific situation, caseworkers may write an ad hoc letter, with managerial approval, to a debtor or debtor's attorney. Counsel input should be sought if the nature of the ad hoc letter is technical.
- h. **Commercial Systems.** Other information systems may be researched on an as needed basis and may include "Accurint," an Internet based research tool for finding people, businesses and assets, and "Bloomberg Tax," or **Westlaw** electronic legal research tools.

Note: Access to "Accurint", **Bloomberg Tax** and "Westlaw" can be requested through the Business Request Entitlement Access Request System (BEARS).

- (2) **341 Meeting Review.** The first meeting of creditors, also known as the 341 meeting, will usually occur soon after the commencement of the bankruptcy. Caseworkers should conduct a timely initial case review, allowing ample time to determine if an IRS presence is needed at the hearing. IRM 5.9.2.5, First Meeting of Creditors, provides more information on 341 meetings. The case history should address whether or not attending the 341 meeting is necessary, and include a discussion that clearly and fully documents any of the following that apply:

- Any case issue which needs to be addressed at the 341 meeting;
- Any case issue for which an objection to confirmation of the plan is being contemplated;
- Unfiled returns; and
- Problems with the plan or motions, including not recognizing the IRS secured or priority claims.

The following are examples of AIS case histories that satisfy the requirement to make a 341 determination:

Example: "Unfiled returns, deposits not being made, TFRP not addressed by the Field, NFTL filed, possible adequate protection, schedules show personal property and accounts receivable, need to attend 341 meeting."

Example: "All returns filed, deposits current; no other issues, no need to attend 341 meeting; will contact debtor regarding need to remain current with filing and depositing."

- (3) **Plan Review.** Field Insolvency caseworkers should evaluate bankruptcy plans or plan summaries prior to the confirmation date. Ample time should be allowed for a referral to Counsel should an objection to the plan be required. Area Counsel can advise Field Insolvency of lead time needed for effective referral preparation.
- (4) **Stay Violation Review.** When initially reviewing cases, caseworkers should access IDRS to determine if stay violations have occurred. (See IRM 5.9.3.5, Automatic Stay.) For individual Chapter 7, 11, and 13 cases filed on or after October 17, 2005, this review should include checking for previously filed bankruptcies that may affect the imposition of the stay. (See IRM 5.9.5.7, Serial Filers.)
- (5) **Review for Nondischargeability.** If the requisite time between previous bankruptcy discharges and a current bankruptcy filed on or after October 17, 2005, has not elapsed, the debtor may not be allowed a discharge in the current proceeding. (See Exhibit 5.9.5-3, Allowable Elapsed Time Between Bankruptcy Filings, and IRM 5.9.5.7.1(5), Discharge Limitations.)

5.9.13.4.2
(09-02-2022)
Liens and Claims

- (1) **Lien Information.** IRM guidance regarding liens, NFTLs, and refiling for cases in bankruptcy is found in IRM 5.9.6.11.1, Initial Case Review of Large Dollar 7 No Asset (7N) Reassignments by FI, IRM 5.9.6.11.2, Initial Case Review of the 7A Individual Case by FI, IRM 5.9.8.4, Initial Case Review for Chapter 11, IRM 5.9.10.3, Initial Case Review for Chapter 13 Bankruptcy, IRM 5.9.5.9.1, NFTL Filing after Bankruptcy Filing, IRM 5.9.5.9.2, Refiling Notices of Federal Tax Lien (NFTLs), and IRM 5.9.17.18(10), Lien Release Revocation and Refile.

5.9.13.5
(09-02-2022)
Claims Forms

- (1) **Form B410.** SCI completes the AIS-generated Form B410, Proof of Claim, with an attachment (Form B410, Attachment) to provide detailed information on the tax liabilities claimed by the IRS.
- (2) **Lien Attachment.** Depending on local court requirements, a facsimile NFTL generated by AIS may be included as an attachment to the proof of claim to support the IRS's secured status. (See IRM 5.9.13.4.1(1)(e), Notices of Federal Tax Lien (NFTL).)
- (3) **Admin Claim/Gap Period Claims.** Form 6338-A is used for filing any required claims for administrative (admin) and involuntary gap period taxes. Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) makes the filing of admin claims optional for cases filed on or after October 17, 2005. Caseworkers generally should still file a Form 6338-A so the debtor, the trustee, and any other interested parties are aware that administrative expenses are being claimed. (See IRM 5.9.8.17.1(4), Plan Provisions, IRM 5.9.13.11, Administrative Claims, and IRM 5.9.13.12, Gap Period Expenses in an Involuntary Bankruptcy.)

5.9.13.6
(09-02-2022)
Proof of Claim Retention

- (1) **Proof of Claim Data.** The IRS may have to provide expert testimony in bankruptcy court regarding proof of claim data and computations. Whether the information is compiled automatically by APOC or manually by the caseworker, SCI's data showing the background work on the claim must be documented on AIS and retained where appropriate when:
 - a. An objection to the IRS's claim has been filed.

- b. A referral is made to Counsel to object to a debtor's plan.
- c. Contact from a debtor or debtor's attorney, the trustee, or another party indicates the potential for contested or adversary action.
- d. A POC is amended or withdrawn.

- (2) **Destruction.** POC copies are maintained electronically on the AIS database for a period of 8 years from the date the case is closed. Offices are not required to maintain paper copies of proofs of claim, unless required by Area Counsel or local procedures. For those offices that maintain paper copies, with the exception of Chapter 11 claims, destruction of the claim copies should be scheduled one year after generation unless:

- The case has ongoing litigation.
- Litigation is anticipated.
- Otherwise directed by Area Counsel.

If paper copies of the claims in Chapter 11 cases are maintained, the claims should be associated with the case file and destroyed according to the retention schedule for the file.

5.9.13.7
(06-05-2018)
Bar Dates

- (1) **Court Deadlines.** Proofs of claim must be filed by *bar dates*, deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the courts, for timely filing proofs of claim. To share in distribution from the bankruptcy estate or to receive payments under a plan, generally a creditor must file a timely proof of claim. Usually, SCI should file a proof of claim as soon as possible after a bankruptcy is filed and at least 30 calendar days prior to the general bar date in all asset cases where the unpaid tax liability exceeds the amount noted in Exhibit 5.9.13-1, Threshold for Claims.
- (2) **Governmental Bar Dates.** A governmental unit's claim is timely if filed before *180 days* after the petition date, or such later date as the Bankruptcy Rules may provide, to file timely proofs of claim. (See 11 USC 502(b)(9).)
- (3) **General Bar Dates.** Bankruptcy Rules 3002(c) and 3003(c) define time limits for filing claims by non-governmental creditors. They are:
- a. Under BR 3002 - for Chapters 7, 12 and 13, the time limits are *within 70 days* of the order of relief in voluntary cases; and
 - b. Under BR 3003 - for Chapters 9 and 11, set by the court.
- (4) **AIS and Bar Dates.** AIS systemically displays a presumptive general bar date on the entity screen rather than the governmental bar date. When notice of the bankruptcy case is received electronically (through the Bankruptcy Noticing Center), AIS processing automatically sets the bar date using the bar date provided on the electronic notice. In the absence of a bar date, AIS defaults the bar date to *70 days* from the petition date unless a caseworker overrides the automatic date. In the event that the caseworker changes the date to reflect the governmental bar date or some other date, the caseworker should document the history with the original bar date and the reason for the change.
- (5) **Bar Date Extension.** Bankruptcy Rule 3002(c)(1) allows the government to file a request for an extension before the expiration of the governmental bar date (180-day period) for cause. SCI should consult with Area Counsel, if necessary, to determine if an extension is merited. The bankruptcy court has the discretion to grant or deny the extension.

- (6) **Chapter 13.** In Chapter 13 cases, the bar date for the IRS to file a proof of claim in some jurisdictions is often *after* the confirmation date of the Chapter 13 plan. Whenever possible, in these jurisdictions, SCI should file Chapter 13 proofs of claim *prior* to confirmation. This allows the trustee access to as many claims as possible (including the IRS claim) by the confirmation hearing date to determine if the plan is feasible.
- (7) **Chapter 13 Bar Date Extensions.** For Chapter 13 cases, 11 USC 502(b)(9) allows the IRS to file a claim the later of 60 days after the debtor's filing of a pre-petition return or the governmental bar date. This provides the IRS an opportunity to file claims where the return may not be filed until after the governmental bar date and where the IRS may not have filed an estimated claim.
- (8) **Bar Dates and Conversions.** In the event of conversion, the court will often state the new bar date on the conversion notice or provide a special notice to indicate a bar date. If the bar date is not stated, SCI may establish the new bar date by *adding 70 days* to the conversion date in a Chapter 7, 12, or 13 case. (Bankruptcy Rule 3002(c))
- (9) **Bar Dates, Conversions, and Administrative Taxes.** In cases of conversion, where administrative taxes of the original case remain unpaid, interest and failure to pay penalty are claimed and allowed as an administrative expense only to the date of conversion.
- (10) **Reporting Expired Bar Dates.** If a bar date has expired, the person identifying the missed bar date will, within 10 days, complete Part A of Form 14167, Bar Date Expiration Report, and will enter a statement in the Automated Insolvency System (AIS) case history indicating that a preliminary Form 14167 has been prepared. If not prepared by the group manager, the completed Form 14167 should be forwarded to the group manager for review.

Note: The report will not be required for expired bar dates in cases where the IRS did not receive notification of the bankruptcy prior to the last day for filing a proof of claim as defined in Bankruptcy Rule 3002(c) or 3003(c), whichever is applicable.

5.9.13.7.1
(09-02-2022)
Late Filed Claims

- (1) **Late Claim May Not Be Allowed or Paid.** Except in Chapter 7 cases, a late claim may be disallowed under 11 USC 502(b)(9) and may not be paid. If the IRS did not receive notice of the bankruptcy case in order to file a timely claim, caseworkers should follow the procedures outlined in paragraph (6) below.

Note: 11 USC 502(b)(9) allows additional time to file a claim for taxes with respect to a return required to be filed under 11 USC 1308. Because some taxes are nondischargeable under 11 USC 1328(a), the IRS should consider filing a late claim to give the debtor an opportunity to pay those taxes under the plan.

- a. If a liability is discovered after the bar date for filing claims has passed, and if the liability was not listed on a timely filed original or amended claim, an amendment may be warranted within certain constraints. (See paragraph (4) below.)
- b. An untimely tax claim may be disallowed solely on the basis it was filed late (11 USC 502).

- (2) **Chapter 7 Late Claim Allowed.** For Chapter 7 cases filed prior to October 17, 2005, if a claim was untimely filed, the IRS can still receive full payment of priority tax claims as long as the claim is filed *before* the trustee begins distribution (11 USC 726). For Chapter 7 cases filed on or after October 17, 2005, late filed priority claims are to be paid with timely filed priority claims (11 USC 726(a)(1)) if they are filed by the earlier of:

- The date that is ten days after the mailing to creditors of the summary of the trustee's final report, or
- The date on which the trustee commences final distribution.

Note: In a Chapter 7 case, untimely claims should generally be filed because the IRS may be entitled to a share of the assets.

- (3) **Chapter 13 Caution.** When a liability is discovered after the governmental bar date in a Chapter 13 proceeding and SCI cannot cite special circumstances for its tardiness (for example, the IRS was not given timely notice of the bankruptcy filing), the late claim may be disallowed unless the IRS can justify it as an amendment to a timely filed proof of claim.

Note: IRM 5.9.13.7(7), Chapter 13 Bar Date Extensions, discusses special consideration given in Chapter 13 cases for tax claims based on returns filed after the government bar date.

- (4) **Considerations for Late Filing.** If a proof of claim is not filed prior to the bar date, SCI must decide if a late filed claim is warranted. *If a claim was not filed because the IRS did not receive sufficient notice for a timely claim to be filed, the procedures in paragraph (6) below should be followed.* A decision to file a proof of claim after the bar date has passed should be based on:

- Reasons the claim was not filed prior to the government's bar date
- Amount of the claim
- Type of taxes
- Chances that the claim will be paid by the trustee in a specific court jurisdiction
- Collection potential from a non-debtor spouse in a case where a joint income tax return was filed
- Favorable legal rulings on late filed claims in a specific jurisdiction
- Support of Area Counsel to file a late claim
- Likelihood the tax will not be discharged and therefore the debtor may be willing to modify a plan to pay the liability
- Likelihood of future collection (either through or outside of the case)
- If the claim meets the criteria noted in Exhibit 5.9.13-1, Threshold for Claims

- (5) **Counsel Review.** Generally, Counsel should be consulted after SCI determines a late claim should be filed to add a tax debt, exceptions being for claim filing changes cited previously in this IRM section for cases commencing on or after October 17, 2005. Bankruptcy courts are more likely to consider late filed claims in some bankruptcy chapters and in some jurisdictions than in others.

Caution: *If the IRS does not attempt to add a liability under the above circumstances, and a discharge is subsequently granted, the liability may be discharged. However, in Chapter 13, if the IRS did not receive notice and the plan does not provide for the liability, the liability should not be discharged if a late claim is not filed.*

- (6) **Notice Received with Insufficient Time to File A Timely Proof of Claim.** 11 USC 523(a)(3) states that an *individual* debtor is not discharged of a debt if the creditor does not receive notice in time to file a timely proof of claim because the debtor failed to include the creditor on the schedules and statements. This provision does not apply if the creditor otherwise has timely notice or actual knowledge of the case.

Note: This provision applies in Chapter 7 asset, Chapter 11, Chapter 12, and Chapter 13 cases. It does not apply to Chapter 7 no asset cases, as no proof of claim is filed.

The Bankruptcy Code does not give a minimum time period by which a debtor must give notice of the bankruptcy filing in order for the notice to be timely. Based on court decisions and the procedures used to create and file a proof of claim, notice received 30 calendar days or more before the expiration of the bar date will always be considered to be timely. Notice received less than 18 calendar days before the bar date will be considered to be untimely. Caseworkers should follow the procedures below when notice is received 18 days or more but less than 30 days before the bar date.

Exception: If the bar date has not expired when notice is received, caseworkers should make every effort to file a proof of claim before the bar date passes, even when notice is received less than 18 calendar days before the bar date. Caseworkers should not refrain from filing a proof of claim in order to have the taxes treated as non-dischargeable because the notice was not received timely.

- a. When notice is received late based on the time periods above, the caseworker should first check to see if the Internal Revenue Service was listed as a creditor prior to receipt of the current notice. It will be necessary for caseworkers to check the creditor mailing matrix, the original Schedules D, E and F, any amendments to Schedules D, E and F, any documents stating an amendment has been made to the creditor mailing matrix, and any other pertinent documents on PACER to determine if the Internal Revenue Service was listed as a creditor prior to receipt of the current notice. Caseworkers should be aware that when the creditor mailing matrix is amended to show additional creditors, the creditors are added to the matrix but there is no indication to show when they were added. However, any amendments made to the creditor mailing matrix will be shown on the PACER docket report. The method of reflecting these amendments varies between courts. If notice was previously given to the correct address 30 calendar days or more before the expiration of the bar date, the notice should be treated as timely even if the Internal Revenue Service did not receive this notice. In this situation, caseworkers should note the details of the prior notice in the history and process the case without following the procedures below for a late notice.

Caution: The bar date field on AIS generally displays a presumptive general bar date. Caseworkers should not rely on this as being the bar date, but should also compute whether the governmental bar date has expired, using the period of 180 days from the filing of the petition (excluding the 180th day). Additionally, if the bar date has not expired because of some other procedure,

5.9 Bankruptcy and Other Insolvencies

such as when a new bar date is set after a case is converted, the bar date should also be considered to be open even if AIS shows it as expired.

- b. If the bar date has expired when notice is received, but the proof of claim will still be allowed under provisions of the Bankruptcy Code or under local procedures, the proof of claim should still be filed.

Example: The Internal Revenue Service can still receive payment for priority taxes on a proof of claim filed after the bar date in a Chapter 7 asset case if the proof of claim is filed on or before the earlier of: (1) the date that is 10 days after the mailing of the summary of the trustee's final report; or (2) the date on which the trustee commences final distribution of the estate.

Example: In some jurisdictions, a proof of claim is considered to be timely in a Chapter 13 case even when filed after the bar date if the debtor failed to give timely notice of the bankruptcy to the affected creditor.

- c. If notice is received less than 18 calendar days before the bar date or after the bar date has expired, and a late proof of claim will not be allowed under the Bankruptcy Code or local procedures, no proof of claim is required to be filed where the caseworker determines the claim cannot be timely filed. The caseworker should obtain managerial approval for any decision not to file a proof of claim. The caseworker should document the history as to when and how the notice was received, and why it was not possible to file a timely proof of claim. The manager should document the history with a concurrence that a claim should not be filed. The case should then be processed as non-dischargeable as set out below.
- d. If the case was received 18 calendar days or more but less than 30 calendar days before the bar date, the caseworker should consider consulting Area Counsel on whether the courts in the jurisdiction where the case is pending have established a firm date by which notice will be considered to be untimely. The caseworker may also want to consult Counsel if notice was received during this time period and exceptional circumstances, such as a system outage, prevented the caseworker from filing a proof of claim before the expiration of the bar date. When notice is received less than 30 calendar days before the bar date or after the bar date expiration and the caseworker has determined that a proof of claim could not be timely filed, the caseworker should consider whether a suit referral should be made to Counsel. A referral should be made for a suit to determine dischargeability when it is questionable if the notice was untimely before treating the taxes as non-dischargeable. Caseworkers should apply the tolerance amounts for referrals contained in IRM 5.9.4.15.4, Referral Tolerances, absent exceptional circumstances.
- e. At the time the caseworker determines that a timely proof of claim cannot be filed, the "NoNotice" classification must be added to the case classification screen on AIS. Caseworkers need to follow the procedures in IRM 5.9.5.4(6), Classifications and Summary Histories, for AIS history documentation, but should use the "NoNotice" classification rather than inputting "PDSC".
- f. When a caseworker makes a determination that a timely proof of claim cannot be filed and the manager concurs, the history should be documented to show: (1) when notice was received, (2) when the bar date

expired, (3) if notice was received prior to the expiration of the bar date, a detailed explanation as to why a proof of claim could not be timely filed, (4) concurrence by the manager in any decision not to file a proof of claim when notice was received prior to the expiration of the bar date, (5) any opinion received from Counsel, and (6) a statement that the liabilities are non-dischargeable due to lack of timely notice.

5.9.13.8
(06-05-2018)
Amended Claims

- (1) **Amendments.** If a proof of claim has been timely filed and situations warrant, an amended claim may be filed as necessary to claim the correct liability owed the IRS. However, SCI should minimize, as much as possible, the number of amended claims filed. Generally, caseworkers should avoid amending a claim involving multiple unassessed (estimated) liabilities until:

- all returns are filed, and/or
- examinations are completed, and/or
- all liabilities are determined (for example, TFRP).

Note: If a claim is amended, the plan information on the AIS Confirmed Plan Monitoring (CPM) screen must be changed to match the amended claim. See IRM 5.9.15.3.4(3), Amended Claims.

- (2) **Post-Audit Increase in Claim.** When the amount of a proof of claim may substantially increase upon the completion of an examination, IRS should inform the court and other interested parties through an amended claim so no reliance is placed on an earlier claim filed for a lesser amount.

Reminder: To protect the government's interests (for example in a pending TFRP assessment or audit/unfiled returns), SCI should promptly file an unassessed (estimated) proof of claim. Examination, underreporter, and field functions may not have tax information available for SCI *prior* to confirmation or bar date.

- (3) **Amendments after the Bar Date.** The standards vary for allowing amendments to proofs of claim after the bar date. Generally:
- a. Courts consider the *similarity* between the initial claim and the late-filed amendment;
 - b. Courts generally require the additional *tax be of the same type* as that on the original proof of claim; and
 - c. Courts consider if the *debtor and the other creditors will be prejudiced* by the amended claim.

Reminder: For cases filed on or after October 17, 2005, courts must allow amendments for taxes under 11 USC 502(b)(9) where a return is filed under 11 USC 1308 or for amendments under 11 USC 726(a)(1).

- (4) **No Amendment Required for Court Payments.** No amendment or withdrawal of claim is required to reflect decreases in the amount of the claim as a result of payments received from the bankruptcy proceeding.

Note: However, if any payments are received from sources other than the bankruptcy estate and the IRS is entitled to retain them, SCI must file an amendment or send a credit letter to the trustee to clarify for the trustee the correct amount (balance) of the IRS's claim.

- (5) **Setoffs.** An amended claim or a credit letter, depending on local procedure, must be sent to the trustee when the IRS exercises its right to setoff a pre-petition income tax refund against a pre-petition income tax liability under 11 USC 362(b)(26) or when the IRS exercises its right to setoff a pre-petition tax refund against a pre-petition tax liability when a court order lifts the automatic stay for that purpose.
- (6) **Amendments after Confirmation.** Some courts will not permit amended claims to list larger liabilities after confirmation. Also, some courts will not allow the classifications of the claim to be changed after the plan has been confirmed unless a motion for reconsideration is filed. If this is required in a given area and IRM 5.9.4.15.4, Referral Tolerances, criteria are met, SCI should send a request to Counsel to have such a motion prepared to protect the government's interests.

5.9.13.9
(09-02-2022)

Post-petition Mirroring and Claims

- (1) **Decedent Primary Taxpayer.** When a primary taxpayer on a joint return dies, the case is generally closed with a TC 530 cc 08. The CSED is not systematically suspended by the TC 520 on those tax modules if the surviving secondary spouse subsequently files bankruptcy. The tax modules will need to be mirrored or split for MFT 30 and mirrored for MFT 35. When appropriate, the same general process should be followed to mirror MFT 35 as is used to mirror MFT 30. IRM 5.9.17.22..3, Decedent Secondary Spouse, provides instructions when a module will be mirrored or will require split processing. (IRM 5.9.17.221.6, MFT 31 Splits, provides instructions on generating a manual MFT 31 split.) If this decedent condition is identified prior to filing a proof of claim, the claim and the AIS plan screen (excepting Chapter 7 Asset cases) must reflect the secondary spouse's SSN. If a claim has already been filed with the court under the decedent's SSN, an amended claim need not be filed, but the AIS plan screen (excepting Chapter 7 Asset cases) must be updated to reflect the proper MFT code (31) and the debtor's SSN. The TC 530 cc 08 must be reversed on the surviving spouse's MFT 31 module(s).
- (2) **Examination Adjustments.** Examination may request that the CIO generate an MFT 31 mirror for an innocent spouse situation or petitions to Tax Court. (See IRM 5.9.4.4.1, Examination and MFT 31 Mirrors.) If the proof of claim has been filed and the AIS plan screen loaded, the MFT on the AIS plan must be changed from 30 to 31. If the non-debtor primary spouse's liability has been abated in part or in full in the case of an innocent spouse claim, the SSN on the plan screen must be changed to reflect the secondary spouse. It is not necessary to amend the proof of claim unless the balance owed by the debtor spouse is adjusted by Examination. The CIO unit creating the MFT 31 mirrors must transfer the case to the Field Insolvency group responsible for the proof of claim after completion of the MFT 31 mirror if an amended claim is required. If only the plan screen needs to be updated, the assigned CIO unit will make the necessary corrections.

5.9.13.10
(09-10-2014)

Section 1305 Claims

- (1) **Post-Petition Debts.** Because of the complexity of procedures and considerations relating to 1305 claims, the discussion of this type of claim is contained in IRM 5.9.10.9.2, 11 USC Section 1305 Claims.

5.9.13.11
(09-02-2022)
Administrative Claims

- (1) **“Admin” Claims.** Administrative tax claims (often referred to as “admin” claims) are filed for tax liabilities incurred post-petition by the bankruptcy estate. The date a tax liability is incurred, the date of the bankruptcy filing, and the entity incurring the tax are the primary factors determining if a tax is a pre-petition claim against the estate, a post-petition administrative expense of the estate, or a post-petition liability of the debtor. For cases filed on or after October 17, 2005, 11 USC 503(b)(1)(D) provides that the IRS does not have to file a request for payment of administrative expense tax or any penalty related to such tax for the liability to be allowed as an administrative expense. However, an administrative expense claim generally should be filed because it puts the debtor and creditors on notice as to the amounts due. It also assists in the referral of the case to Counsel for dismissal or conversion and helps ensure the liabilities will be treated as an allowed administrative expense.

Caution: An administrative claim must be filed by the administrative bar date if the claim is for a penalty that does not relate to a tax. This includes penalties imposed for the failure to file information returns (IRC 6721), the failure to promptly file a partnership return (IRC 6698), or the penalty imposed on preparers for aiding or assisting in the understatement of another person’s tax (IRC 6701). These penalties are calculated using a predetermined amount that is imposed per occurrence or per document – e.g., generally \$1,000 per document in the case of the section 6701 preparer penalty.

Note: Excessive “quickie” tax refunds received by the estate after the petition date are also entitled to administrative claim priority status, pursuant to 11 USC 503(b)(1)(B)(ii), whether or not the “quickie” tax refund relates to a year ending before or after the petition date. This type of tax refund frequently relates to a business filing an application for a net operating loss (NOL) or a business credit carryback from any pre-petition or post-petition taxable year. (See IRC 6411 and IRM 5.9.8.9, Quickie Refunds.)

- (2) **Second Highest Priority.** Administrative expenses enjoy the second highest priority of payment under 11 USC 507.
- (3) **Characteristics.** Administrative expenses have the following unique characteristics:
- a. They accrue penalties and interest to the date of payment. In Chapter 11 cases, caseworkers should include the administrative taxes, interest, and penalties on Form 6338-A Request for Payment of Internal Revenue Taxes.
- Reminder:** In a Chapter 11 case, the interest and penalties on an administrative claim are also an administrative expense, entitled to payment as second priority.
- b. The debtor-in-possession or trustee may request relief under IRC 6658 from any penalties based on the failure to pay Chapter 7 or Chapter 11 administrative taxes, if the debtor-in-possession or trustee obtained an order from the bankruptcy court finding that there was a probable insufficiency of funds available to pay the taxes. No relief may be granted if the taxes which were not paid were trust fund taxes. Application of IRC 6658 is discussed in IRM 5.9.4.14, Failure to Pay Tax Penalty and Failure to Pay Estimated Income Tax Penalty.

- c. In Chapter 11 cases, administrative claims are required to be paid in full on the effective date of the plan, unless the plan provides otherwise (11 USC 1129(A)(9)(A)).
- d. Upon conversion to Chapter 7, administrative claims of the previous chapter retain their administrative status but are paid after the administrative claims of the Chapter 7 estate (11 USC 726(b)). Caseworkers should file a Form 6338-A for the Chapter 11 administrative taxes in the Chapter 7 case, and include all interest and penalties accrued up to the date of the conversion.

Note: After conversion, interest will continue to accrue on any administrative claims, including those incurred pre-conversion, but interest accruing post-conversion is not entitled to payment as an administration expense. It is relegated to fifth priority in the Chapter 7 distribution scheme. Any penalties accruing after the conversion will be entitled to payment as a fourth priority claim. As a matter of policy, the failure to pay penalty does not continue to accrue post-conversion with respect to trust fund taxes.

- e. Failure to pay administrative taxes is a specific reason for conversion or dismissal of a case under 11 USC 1112(b)(4)(I) and 1116(6)(B) and 28 USC 960.
- f. According to the Supreme Court's decision in *United States v. Noland*, 517 U.S. 535 (1996), a bankruptcy court cannot subordinate administrative penalties incurred in a Chapter 11 case which converts to Chapter 7 unless there are facts justifying "equitable subordination." The courts have split on whether this requires the trustee to show that the creditor committed misconduct. If a Chapter 7 trustee requests equitable subordination of penalties incurred in a Chapter 11 case, caseworkers should consult Area Counsel.

- (4) **Conversion of a Chapter 11 Case After Confirmation.** Confirmation of a Chapter 11 plan revests the property of the estate back in the debtor, unless the plan provides otherwise. When a Chapter 11 case converts to Chapter 7 after a plan is confirmed, there is no longer any property of the estate for the Chapter 7 trustee to administer. If a post-confirmation conversion occurs and the Chapter 7 case is classified by the debtor as an asset case, caseworkers should consult Area Counsel on how any outstanding liabilities should be treated on a proof of claim.

5.9.13.12
(09-02-2022)
**Gap Period Expenses in
an Involuntary
Bankruptcy**

- (1) **The Gap Period.** In the "gap period" between the filing of an involuntary bankruptcy petition and the earlier of (1) the appointment of a trustee or (2) the court's order for relief, the taxes incurred during this period are classified as *if the claim arose before the petition date*.
- (2) **Priority Status.** Such a claim is entitled to priority status after payment of administrative expenses under 11 USC 507(a)(3). Also see 11 USC 303 and 502(f).
- (3) **POC Filing.** A claim for gap period expenses should be filed as an administrative claim (F6338-A) and include POC statements B4 and B5 **Gap Expenses** or Z3 **Gap Period Tax**, as appropriate.

5.9.13.13
(09-02-2022)
**TFRP Assessments -
Priority Status**

- (1) **Trust Fund Recovery Penalty.** TFRP assessments are entitled to *priority* status on the IRS's claim, unless entitled to a secured position due to a valid Notice of Federal Tax Lien (NFTL). (See 11 USC 507(a)(8)(C) & (G))
- (2) **Treated as Tax.** Even though the Trust Fund Recovery Penalty may be thought of as a penalty, it is not treated as one. Rather, the TFRP is treated as a tax and is never listed as an unsecured general claim, regardless of the date of the TFRP assessment. See *United States v. Sotelo*, 436 U.S. 268, 275 (1978)
- (3) **Multiple Persons Assessed the TFRP.** Problems may arise with proofs of claim involving TFRPs that have been assessed against more than one party. Counsel should be consulted as needed. The IRS may need to enter into consent or agreed orders.
- (4) **Duplicate Spousal Trust Fund Assessments.** A proof of claim may list two identical TFRPs when a married couple files a joint bankruptcy, and each has been assessed a TFRP for the same module(s). The assessments may either be in the same or differing amounts. When AIS computes the total amount of a claim on Form B410, the sum equals the amounts of each module. That total amount computed by AIS cannot be systemically overridden, so when both spouses have duplicate trust fund assessments, the amount of the claim on Form B410 is overstated. Caseworkers should follow the procedures outlined in IRM 5.9.13.18.4, Duplicate and Mirror Assessments and NMF Periods, choosing the appropriate option based on local procedures.

Caution: Caseworkers should not assume that assessments made against both spouses for the same period are duplicates simply because they are for the same tax period. Before assessments are treated as duplicates, caseworkers should verify that the trust fund recovery penalties are for the same underlying business entity's liability, and are not for different entities.

- (5) **Collection of Proper Amount.** The IRS must not over-collect. The IRS's policy is to collect the unpaid trust fund taxes only once.
- (6) **Non-dischargeability in Individual Chapters 7, 11, 12 and 13.** As provided in 11 USC 523(a)(1)(A), trust fund taxes are not discharged in individual Chapter 7, 11, and 12 cases. BAPCPA amended 11 USC 1328(a)(2) so trust fund taxes in Chapter 13 cases filed on or after October 17, 2005, are also not dischargeable even if the IRS has not filed a claim.

5.9.13.14
(06-05-2018)
**Limited Liability
Companies (LLC)**

- (1) **LLC Proofs of Claim.** When the IRS receives notice an LLC has filed bankruptcy, SCI must determine how the LLC is classified for federal tax purposes before a proof of claim can be prepared. The classification of LLCs for federal tax purposes is determined by the provisions of Treas. Reg. 301.7701-3. (See IRM 5.1.21.3, Characteristics of a Limited Liability Company (LLC), and IRM 5.1.21.4, Classifications Available to LLC Entities.) For federal tax purposes, an LLC may be:
 - Classified as an association taxable as a corporation,
 - Classified as a partnership, or
 - Disregarded as an entity separate from its owner, known as a "disregarded entity."

Caution: An otherwise disregarded LLC is treated as a corporation for employment taxes on wages paid on or after January 1, 2009 and as a separate entity for certain excise tax liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.

Note: When an LLC is wholly owned as community property by both spouses and the income is reported on a Form 1040, the LLC is disregarded. If the income is reported on a Form 1065, the LLC is classified as a partnership.

(2) **Income Taxes.** The income tax filing requirements for an LLC are determined by its classification.

- An LLC that is classified as a partnership or as an association taxable as a corporation is required to report income in the name and EIN of the LLC.
- An LLC that is a disregarded entity has no income tax filing requirement. The income and expenses pass through to the single member owner (SMO) and are reported on the SMO's income tax return. If the SMO is an individual, items of income or expense pass through to the SMO as if the business were a sole proprietorship. If the SMO is another entity type, items of income or expense pass through as if the business were a branch or division of the SMO's business.

(3) **Employment Taxes on Wages Paid Prior to January 1, 2009.** Under applicable regulations, the liable taxpayer is determined by the classification of the LLC during each tax period. When the LLC is classified as a partnership or as an association taxable as a corporation, the LLC is liable for employment taxes. For tax periods ended before January 1, 2009, a disregarded LLC has no liability for employment taxes; the SMO of the LLC is the liable party.

Caution: Notice 99-6 allowed the owner of a disregarded entity to report employment taxes on wages paid prior to January 1, 2009 in the name and EIN of the LLC, even though the SMO is ultimately liable for their payment. Therefore, it may appear that the LLC owes the liability, when in fact the SMO is the liable taxpayer. You must identify the classification of the LLC to determine the liable taxpayer when employment taxes are assessed in the name and EIN of the LLC. Notice 99-6 is obsolete as of January 1, 2009.

Note: In community property states, when an LLC is wholly owned by both spouses as community property and the income from the LLC is reported on the spouses' Form 1040, the LLC is disregarded. The community of the spouses is the liable "taxpayer" for *employment* taxes on wages paid prior to January 1, 2009 that were reported in the name and EIN of the LLC. If the income was reported on a Form 1065, the LLC would be the liable taxpayer for employment tax purposes.

(4) **Employment Taxes on Wages Paid on or After January 1, 2009.** Under applicable regulations, the LLC is always liable for these employment taxes, even when it is a disregarded entity for federal *income* tax purposes. Treas. Reg. 301.7701-2(c)(2)(iv)(B). Caseworkers should consider whether it is necessary

to assert the TFRP against the members and/or managers of the LLC, if a TFRP determination has not already been made.

- (5) **Excise Taxes.** When the LLC is classified as a partnership or as an association taxable as a corporation, the LLC is liable for excise taxes. For excise tax periods ended prior to January 1, 2008, when the LLC is a disregarded entity, the owner is liable for excise taxes. Under the applicable regulations, the LLC is liable for certain excise tax liabilities imposed and actions first required or permitted in periods beginning on or after January 1, 2008.

Reminder: Excise taxes are reported in the name and EIN of the liable taxpayer; therefore, the taxpayer for excise taxes is identified in the assessment. When the assessment is made in the name and EIN of the LLC, the LLC is liable.

5.9.13.14.1
(09-10-2013)
**Limited Liability
Company as Debtor**

- (1) **Proof of Claim.** Include the following liabilities on a proof of claim in the LLC's bankruptcy:

- Income tax liabilities assessed in the name and EIN of the LLC.
- Excise tax liabilities assessed in the name and EIN of the LLC.
- Employment taxes reported in the name and EIN of an LLC that elected to be classified as an association taxable as a corporation or as a partnership.
- Employment taxes on wages paid on or after January 1, 2009, regardless of the classification of the LLC.

Reminder: Employment taxes on wages for tax periods ended before January 1, 2009 where the LLC is a disregarded entity are not included on a proof of claim in the LLC's bankruptcy, as the SMO is liable for those taxes.

- (2) **Disregarded Entity Employment Taxes.** A proof of claim will generally not be filed in the LLC's bankruptcy when the LLC is a disregarded entity for employment tax periods ended before January 1, 2009. However, even if an LLC is presently a disregarded entity, it may still be liable for taxes that arose out of periods when it was not a disregarded entity or when an entity of which the LLC is the successor was not disregarded. When a disregarded LLC is liable for taxes that arose out of periods when it was not a disregarded entity or when an entity of which the LLC is the successor was not disregarded, a proof of claim should be filed.
- (3) **Collection Against SMO.** When a single member disregarded entity LLC files bankruptcy, but the SMO does not, collection action may continue for employment tax liabilities owed by the SMO that were reported in the name and EIN of the LLC for wages paid prior to January 1, 2009. The liability is owed by the SMO rather than by the LLC in bankruptcy. In this case a TC 520 cc 84 should be input on the applicable modules under the LLC EIN as an alert to Field Collection to contact SCI before taking enforcement action. Upon contact, the revenue officer will be advised by SCI to pursue collection from the SMO and not the LLC.
- (4) **Protective Claim.** If the tax status of the LLC cannot be determined prior to the bar date, SCI should file a protective proof of claim with an annotation explaining the IRS has not been able to ascertain if the debtor is the entity liable for the tax. A protective proof of claim could also be filed when SCI is still in-

vestigating if the LLC is liable for taxes that arose out of periods when it was not a disregarded entity or when an entity of which the LLC is the successor was not disregarded.

- (5) **Counsel Guidance.** To ensure the government's interests are protected, Area Counsel may be consulted when issues arise related to claims against LLCs that cannot be easily resolved.

5.9.13.14.2
(09-10-2013)
**Owner of Limited
Liability Company as
Debtor**

- (1) **Proof of Claim.** Include the following liabilities on a proof of claim when the *owner* of an LLC files bankruptcy:
- Income taxes reported in the name and TIN of the owner.
 - Excise taxes assessed in the name and EIN of the owner.
 - Employment taxes on wages paid before January 1, 2009 for a disregarded entity LLC reported in the name and EIN of the SMO or the name and EIN of the LLC.
 - Trust fund recovery penalty liability against the SMO, if applicable, for employment or excise tax periods where the LLC was the taxpayer.
- (2) **Determining Liable Party.** When a single member owner is the bankruptcy petitioner, SCI may not be aware of a liability arising from the activities of a disregarded LLC. IDRS and CFOL do not identify if LLCs are disregarded, nor do they cross-reference LLC EINs to the single member's SSN. The debtor's bankruptcy plan or schedules may identify the debtor's ownership of an LLC and if it is a disregarded entity for tax purposes. If the plan or schedules do not identify whether an LLC is a disregarded entity, and the LLC's classification cannot be determined by checking internal sources identified in IRM 5.1.21, Collecting from Limited Liability Companies, the caseworker should consider questioning the debtor at the 341 meeting or directing an OI to a revenue officer to obtain this information. If the caseworker cannot determine the status of the LLC by following these avenues, the caseworker may consider referring the case to Area Counsel to pursue a Bankruptcy Rule 2004 examination of the debtor to obtain this information.
- (3) **Protective Claim.** If the tax status of the LLC cannot be determined prior to the bar date, a protective proof of claim should be filed with an annotation explaining the IRS has not been able to ascertain if the debtor is the person liable for the tax.
- (4) **Counsel Guidance.** To ensure the government's interests are protected, Area Counsel may be consulted when issues arise in determining liabilities that cannot be easily resolved.

5.9.13.15
(09-02-2022)
**Consolidated Chapter 11
Filings**

- (1) **Group Income Tax Liabilities on Proofs of Claim.** Because every member of a consolidated group is severally liable for the group's *income tax liability*, the IRS should generally file separate claims in each member's bankruptcy case and should list the group's *income tax liability*, even in a jointly administered case. Local rules or standing orders may specify filing of one proof of claim listing both separate and group liabilities for a jointly administered consolidated group.
- a. In all cases, Area Counsel and Large Business and International (LB&I) should be consulted before filing a claim for the group's liability.
 - b. Counsel is available to assist SCI with the preparation of the proofs of claim for the group's liability.

- c. Language on the claim must clarify, that although each member of the group is severally liable for the group's liability, the IRS seeks to collect the liability only once.

- (2) **Treatment of Employment Taxes.** Employment tax liabilities should be treated as belonging solely to the subsidiary that is shown as the employer of record. Claims for employment taxes can be filed only for the entity that incurred the employment tax liability.
- (3) **Excise Taxes.** Generally, excise taxes should be treated as belonging solely to the subsidiary that is liable for: (1) paying the tax itself; or (2) paying over the taxes it collected. But exceptions may apply. When claims for excise tax liabilities are being considered, Area Counsel must be consulted.

5.9.13.16
(09-02-2022)
**Criminal Investigation
Involvement**

- (1) **CI Involvement on Cases.** If, at any time, research identifies Criminal Investigation's (CI) involvement on accounts assigned to SCI, even if the CI freeze code is input to only one of several tax modules, SCI must promptly contact CI to notify them of the bankruptcy proceeding.
- (2) **CI and the Filing of a Proof of Claim.** SCI must inform CI a proof of claim may be filed in all cases with a CI freeze code. If CI indicates the filing of a claim may be detrimental to CI's case, SCI should schedule a meeting with the Special Agent, the Special Agent in Charge (SAC), the SCI caseworker and manager, and SBSE and Criminal Tax Counsel to discuss the coordination of the civil and criminal cases. (See IRM 5.9.4.12, Bankruptcy Fraud, and IRM 5.9.4.13, Criminal Investigation (CI) Controls on Tax Accounts.)

Reminder: SCI employees must exercise caution and discretion when dealing with debtors who are under criminal investigation by CI.

5.9.13.17
(09-10-2014)
**Below Tolerance -
Non-Filing of a Proof of
Claim**

- (1) **Tolerance for Filing a Proof of Claim.** The tolerances listed in Exhibit 5.9.13-1, Threshold for Claims, allow for the non-filing of proofs of claim when criteria listed in the Exhibit are met.
- (2) **Claim Considerations.** In cases where the outstanding balance is less than stated in Exhibit 5.9.13-1, Threshold for Claims, (*below tolerance*), SCI's determination to file a manual claim should be based on various factors, including:
 - Cost of filing a claim in relation to what is owed.
 - Potential for collection.
 - Consideration of the potential for collection from exempt, excluded, or abandoned assets or other sources, such as a non-debtor spouse.
- (3) **Filing of Claim Optional.** The established tolerance amount does not preclude or prohibit SCI groups from filing a proof of claim in any case, or in every case, if local practice allows.

#

5.9.13.18
(09-14-2020)
Claim Periods

- (1) **Determination of Categories/Liabilities.** When preparing a manual proof of claim, SCI determines the category of each liability listed on the claim. All tax liabilities accrued as of the petition date must be included on the claim.

- (2) **Pre-petition versus Post-petition Income Taxes.** During the proof of claim preparation, SCI must distinguish if a tax account is a pre-petition or a post-petition tax liability.
- a. **When Income Tax Liabilities Arise.** Income tax liabilities arise at the end of the taxable period. However, see paragraph (c) below with respect to corporate income taxes.
- Example:** The income tax liability for the calendar (tax) year 2018 arose on December 31, 2018, the date of the ending of that taxable period.
- b. **Chapters 7 and 11 - Individuals.** Pursuant to IRC 1398, individuals in Chapter 7 and 11 cases can elect to treat the taxable year in which the bankruptcy case was filed as two taxable years. The first year ends on the day before the commencement of the bankruptcy case. The liability for this year, therefore, becomes *pre-petition*. The second year begins on the day the bankruptcy petition is filed. The liability for this year is *post-petition*.
- c. **Corporate Income Tax – “Split” Liability Pre-BAPCPA.** For cases in the 8th, 9th, and 11th Circuits filed before October 17, 2005, petition-year liabilities in corporate Chapter 7 and 11 cases could be split into pre-petition and post-petition portions, usually by prorating the liabilities based on the number of pre-petition and post-petition days. These authorities should be followed in their respective jurisdictions, but only with respect to income tax liabilities in corporate Chapters 7 and 11 cases. Counsel should be consulted to determine the rule for a particular jurisdiction.
- d. **BAPCPA Provision.** For cases filed on or after October 17, 2005, in the case of priority income tax claims, there is no split liability as decided by the three Circuit Courts of Appeal. Pre-petition priority income tax claims are defined as taxes for taxable years ending on or before the petition date (11 USC 507(a)(8)(A)). This change overrules the decisions of the three Circuit Courts of Appeal for bankruptcy cases filed on or after October 17, 2005.
- (3) **Pre-petition Employment Taxes.** For bankruptcy purposes, an employer’s liability for employment taxes accrues when the wages in question are earned (11 USC 507(a)(4)). For debtors who owe employment taxes and file bankruptcy during a quarter, the employment taxes attributable to wages earned pre-petition should be included on the proof of claim as a pre-petition priority tax. The amount may need to be estimated until the employment tax return is actually filed.
- (4) **Post-petition Claims.** Administrative claims and 11 USC 1305 claims for *post-petition* liabilities may be filed by the IRS during the pendency of a bankruptcy. (See IRM 5.9.13.11, Administrative Claims, and IRM 5.9.13.10, Section 1305 Claims.)
- (1) **Protecting the Government’s Interests.** By meeting the bar date time frame, an “unassessed” (estimated) proof of claim protects the government’s interests before the exact liability is determined.

5.9.13.18.1
(09-02-2022)
Unassessed Claims

- a. An unassessed claim should be followed as soon as possible by an amended or a supplemental proof of claim stating the correct tax liability once a debtor files a return, or Examination determines the amount of a tax liability or tax deficiency.
- b. An unassessed claim may also be filed when Exam has determined a proposed tax amount, but an assessment is prohibited because the debtor's time for filing a Tax Court petition has not expired due to the automatic stay, or Tax Court proceedings are pending.
- c. APOC will estimate claims when return information is available. However, if no return information is available for a period from which to compute an estimate, APOC will default to "\$100.00" tax due.

Note: The \$100 APOC default should not be left on the claim unless all efforts to obtain a factual basis for the claim as described in IRM 5.9.13.18.1(4) thru IRM 5.9.13.18.1(7) have been exhausted.

- (2) **Combining Assessed and Unassessed Amounts.** One proof of claim form can include both assessed (i.e., the exact amount owing has been determined) and unassessed amounts.
- (3) **Factual Basis.** The IRS's unassessed claim must have a factual basis and cannot be inflated. The unassessed tax liability must be based on as much information as possible.

Caution: SCI employees should not expend unnecessary resources if evidence indicates the probability a refund or a no tax due situation exists.

- (4) **Base on Resources Available.** The resources SCI may use to obtain a factual tax basis include, but are not limited to:
 - IDRS data using command codes such as IRPTR, PMFOL, RTVUE, and BRTVU
 - Last filed return information
 - Income or expense schedules
 - Statement of financial affairs
 - Information available from revenue officers (from RO's files and/or oral communication)
 - Examination ("admin") files or information from Examination functions
 - Underreporter information
 - Information from debtor or debtor's attorney

Note: Recent bankruptcy filings (e.g., dismissals) may also provide information to use in the current case, especially if prior RO field involvement or prior litigation has taken place. SCI should review AIS, ICS, and paper files as available.

- (5) **Liability on Last Filed Return (LFR) for IMF.** In preparing a manual proof of claim, if the caseworker is relying on the LFR as a basis for estimating unfiled returns, the caseworker should use the LFR total of assessed tax transaction codes (TC 150, 290, 300, etc.) less any credits (TC 640, 650, 660, 670, etc.) appearing on the tax module being estimated in calculating the total tax due. To the LFR figure, the caseworker must increase the total tax due 5% on an annual basis to allow for inflation.

Example: The LFR is 2019, and the unfiled returns are for 2020 and 2021. The total tax due on the 2019 period is \$50,000. Using the 5% increase for 2020, the estimated tax due is \$52,500 ($\$50,000 \times 1.05$) less any credits showing on the 2020 tax module. The estimated tax for 2021 is \$55,125 ($\$52,500 \times 1.05$) less any credits appearing on the tax module for 2021.

(6) **Liability on LFR for BMF.** Business tax returns are based on quarterly filings (such as Form 941), calendar year filings (such as Form 940 or Form 944), or fiscal year filings (some Forms 1120). As such, manual calculations of estimated BMF tax are more involved than IMF calculations.

- a. **Quarterly Returns.** For estimating quarterly returns such as Forms 941, the caseworker should calculate the tax on the LFR period in the same calendar year and subtract credits shown on the unfiled period. For each subsequent unfiled quarterly period of that calendar year, the unassessed claim is based on the LFR for that calendar year. However, if an unfiled quarterly return occurs in the next calendar year when the LFR was received for the prior year, 5% is added to the tax liability for the LFR. That dollar amount, less any credits, is used for all four quarters of the subsequent calendar year.

Example: The second quarter Form 941 for tax year 2021 is the LFR and has a tax liability of \$10,000. Unfiled returns for the third and fourth quarters of 2021 are estimated at \$10,000. Forms 941 for the first and second quarters of tax year 2022 also have not been filed. The estimated amount for each of those periods is \$10,500 ($\$10,000 \times 1.05$).

- b. **Annual Returns/Fiscal Year Returns.** For estimating unfiled annual or fiscal year returns such as Forms 940, 944, or 1120, the estimated tax is calculated by adding 5% to the tax liability from the LFR and deducting any prepaid credits.
- c. **Sporadic Filings.** If unfiled returns are mingled between filed returns, the LFR period is based on the most recent LFR prior to the unassessed period.

Example: For tax year 2021, the second quarter Form 941 is the LFR with a liability of \$5,000. A Form 941 return has not been filed for the third quarter of that tax year. A return has been received for the fourth quarter of tax year 2021 with a liability of \$6,000, but no return has been received for the first quarter of tax year 2022. Following the instructions above, the unassessed claim for the third quarter of tax year 2021 is \$5,000. The estimated liability for the first quarter of tax year 2022 is \$6,300 ($\$6,000 \times 1.05$).

- (7) **Penalties and Interest.** All applicable pre-petition penalties and interest for *filed* returns with pending assessments should be computed and claimed. If unassessed liabilities are listed for *unfiled returns*, penalties and/or interest do not have to be computed unless required by local guidelines.
- (8) **IRC 6020(b) Returns.** Periods for which tax returns are prepared by the IRS under authority of IRC 6020(b) should be considered to be unassessed (estimated) liabilities *if the 30-day period for the taxpayer to respond to a proposed assessment is still open, and the taxpayer has yet to respond.*

Note: Delegation Order 5-2 (Rev. 1) gives designated Field Insolvency caseworkers the authority to prepare and execute IRC 6020(b) returns.

- (9) **Tax Subject to Deficiency Procedures.** Taxes subject to deficiency procedures remain estimates unless the taxpayer signs a consent to assessment or the liability is determined by the Tax Court. If the taxpayer disagrees with the proposed assessment or fails to respond within the 30 day period, the IRS must then issue a statutory notice of deficiency which allows the taxpayer to file a Tax Court petition. The automatic stay does not prevent the IRS from issuing the notice of deficiency. However, the stay prevents the individual taxpayer from filing a petition with the Tax Court during bankruptcy for pre-petition deficiencies. The stay prevents a corporate debtor from petitioning the Tax Court for a taxable period the bankruptcy court may determine, which includes pre-petition and post-petition periods.
- (10) **Closing Codes (cc).** When an estimated claim is filed, the closing code assigned to the TC 520 freeze on the estimated period should be cc 60 or cc 61 to prevent erroneous refunds. IRM 5.9.5.6.1, Closing Codes, explains the conditions for each closing code.
- (11) **AIS Statements.** The proof of claim should include a statement identifying the reason for the unassessed liability. A support file in AIS contains allowable standardized statements.
- (12) **Liability Not Pursued.** After a proof of claim has been filed with unassessed (estimated) amounts, and a determination is made the estimated liability has no factual basis and will not be pursued (for example, by examination process or underreporter unit) or a return is filed showing little or no tax due, the proof of claim should be amended or withdrawn, as appropriate. If a claim is withdrawn, any trustee payments received must be refunded to the trustee. If trustee payments have been applied to periods that are no longer being pursued, the payments need to be moved to other balance due periods, or refunded to the trustee, whichever action is appropriate.
- (13) **Zero Amendment.** The Electronic Proofs of Claim (EPOC) system does not allow for electronic withdrawal of claims. Because of this, for most courts a claim is withdrawn by filing an amended claim for \$0.00. When amending a claim to \$0.00, the caseworker must select the appropriate POC statement to indicate the claim is being withdrawn.

Caution: This POC statement should only be used when the **whole** claim is being withdrawn and should not be used when only specific periods are being amended to \$0.00.

A few courts do not accept this method as a withdrawal of the claim, and require the IRS to send a letter instructing the court to remove a specific claim from the claims register. For those courts, caseworkers can generate Letter 3931, Request to Withdraw Proof of Claim, on AIS for mailing to the court.

Reminder: Once the claim is withdrawn and there are no other open issues or IRM requirements to address, the case can be closed as a “no liability” case.

5.9.13.18.2
(09-02-2022)
**Addressing Unfiled
Returns**

- (1) **Delinquent Return Limits.** Standard IRS practice usually limits the pursuit of unfiled returns to the prior six years. In certain instances the IRS may find it advantageous to require filing of delinquent returns going back eight years. (See IRM 5.9.14.2.10, Case Compliance.) Pursuit of unfiled returns for periods preceding the prior six years requires managerial approval. (See IRM 5.1.11.7.1, Enforcement Determination.)
- (2) **Publication 1.** If a debtor has unfiled returns, but has no current assessed tax liabilities, the SCI caseworker must provide them with a copy of IRS Publication 1 upon initial contact to secure those returns whether that contact is made by phone, letter, or attendance at a 341 hearing or other in-person meeting.
- (3) **1714 Letters.** When a caseworker's initial review or APOC processing indicates a debtor is responsible for unfiled returns with tax potential, the caseworker usually should send AIS Letter 1714, Request for Returns or Return Information, to the debtor with a courtesy copy to the debtor's attorney. Caseworkers may follow local practice in sending courtesy copies to the trustee, and may choose not to send them where the trustee has indicated they are not of assistance. While most AIS letters do not require previous actions, a caseworker cannot generate and print AIS Letter 1714 unless a claim has been prepared which reflects an unassessed liability. This liability will be shown on the claim as estimated condition #1, "Estimated - SEE NOTE - LIABILITY IS ESTIMATED BASED ON AVAILABLE INFORMATION BECAUSE THE RETURN HAS NOT BEEN FILED. THIS CLAIM MAY BE AMENDED AS NECESSARY AFTER THE DEBTOR FILES THE RETURN OR OTHER REQUIRED INFORMATION". Letter 1714 is generated systemically when APOC computes a claim for an unassessed pre-petition liability. The letter is then available on AIS for printing.

Note: If APOC is unavailable for a protracted length of time, manual proofs of claim along with manual 1714 letters should be prepared.

- (4) **Letter 1714 Follow-up.** A 15- day follow-up date will be set on all cases where Letter 1714 is issued, including individual debtors and streamlined cases. (See Exhibit 5.9.4-1, Inputting Follow-up Dates, for steps in setting a follow-up date.) Upon follow-up, the caseworker must review the case to verify if the requested returns have been filed or if the debtor has provided pertinent information regarding the filing or non-filing of the delinquent returns.
- (5) **Reply to Letter 1714.** Responses to the 1714 letter may be written or telephonic. Written replies may contain copies of returns or original returns. The following table explains actions required for potential replies to Letter 1714.

IF...	THEN...
the debtor indicates the date and place the return was filed and the provided facts cannot be confirmed,	an unassessed claim may be considered, and the AIS history must be documented.
the debtor explains why filing is not required and the facts provided conflict with other case resource materials,	an unassessed claim may be considered, and the AIS history must be documented.

IF...	THEN...
the debtor explains why filing is not required and the facts provided are verified with other case resource materials,	the caseworker will request the input of the appropriate TC 590/591 for all modules the debtor is not liable to file. The caseworker will request to close the filing requirements for non-individual debtors. The history should be documented to explain why filing is not required and the research conducted or information provided to make that determination.
the debtor estimates the tax due, gives reasons the return has not been filed, and provides an estimated filing date,	the caseworker should compare the estimate of tax due provided by the debtor against the case resource materials, and prepare an unassessed claim as necessary, documenting actions in the AIS history.
the debtor replies to Letter 1714 and provides original returns,	the caseworker must: <ul style="list-style-type: none"> • ensure the return has been date stamped legibly on the first page; • prepare Form 3210 to transmit return; • forward return to Submission Processing in the appropriate Campus; and • document AIS history with return MFT/period, tax liability, and any estimated penalty for future claim consideration or preparation.
the debtor replies to Letter 1714 and provides copies of returns,	the caseworker must document the AIS history with return MFT/period, tax liability and any estimated penalty for future claim consideration or preparation.

- (6) **No Reply to Letter 1714.** In some cases, the debtor will not respond to Letter 1714. In those cases, the caseworker must contact the debtor or debtor's attorney by phone to secure returns or return information. If contact with the debtor or the debtor's attorney by phone does not bring the debtor into compliance, the caseworker should consider the appropriate next action which may include:

- Attendance at 341 hearing to secure the return(s);
- Creating an OI for a revenue officer to collect the return(s);
- Preparation of an IRC 6020(b) return;

Note: Delegation Order 5-2 (Rev. 1) gives specified bankruptcy advisors and specialists the authority to prepare and execute IRC 6020(b) returns. IRM 5.1.11.7.7, IRC 6020(b) Authority, IRM 5.1.11.7.7.1, Taxpayer Contact, and IRM 5.1.11.7.7.2, Preparation and Approval of 6020(b) Returns, provide guidance and instructions on IRC 6020(b) procedures.

- d. Referral to Counsel to dismiss; or

Note: No referral to Counsel should be made in a Chapter 13 case if the only unfiled returns contained in the referral relate to tax years that ended more than four years before the filing of the bankruptcy petition. See 11 USC 1307(e), 1308, 1325(a)(9).

- e. Preparation of an estimated claim or allowing an existing estimated claim to stand.

All actions taken to secure delinquent returns, must be documented in the AIS history.

- (7) **Securing Unfiled Returns at the 341 Hearing.** For cases filed on or after October 17, 2005:
 - a. 11 USC 521(e)(2) requires the debtor to provide the trustee with a copy of the federal income tax return for the last tax year ending before the petition date before the 341 hearing;
 - b. 11 USC 521(f) requires the debtor to file copies of selected income tax returns with the court at the same time it files the return(s) with the IRS at the request of the court, the trustee, or a party in interest; and
 - c. 11 USC 1308(a) requires Chapter 13 debtors to file all required returns for tax periods ending during the four-year period ending on the petition date.
- (8) **Unfiled Returns Below the Required Criteria.** Where returns are due and yet remain unfiled, and the caseworker has determined the aggregate liability of unfiled returns and assessed liability does not exceed the amount noted within Exhibit 5.9.13-1, Threshold for Claims, criteria, no proof of claim need be prepared. The case worker will:
 - 1. Update the “case class” field to indicate the case is below the required criteria for proof of claim processing; and
 - 2. Document the AIS History.
- (9) **No Longer Required to File Return.** If the caseworker determines the debtor is no longer required to file or is no longer in business, the caseworker should request to close the filing requirements and request the appropriate TC 590/ 591 to satisfy the module. See IRM 5.1.11.8.3, No Return Secured Taxpayer Not Required to File for This Period, and IRM 5.1.11.8.4, No Return Secured Taxpayer No Longer Required to File (Final). The history should be documented to explain why filing is not required and the research conducted or information provided, to verify the business is closed.
- (10) **No Claims Required Below Tolerance Criteria.** If completion of the initial review reveals all required pre-petition returns are filed and the liability does not exceed the claim tolerance criteria outlined in Exhibit 5.9.13-1, Threshold for Claims, no claim is required. However, SCI must maintain the bankruptcy freeze on the account. The caseworker will take the following steps:

STEP	ACTION
1	Access case on AIS. (See Exhibit 5.9.11-1, Accessing a Case on AIS.)
2	If a check mark appears in the "Proof Req'd" field, click the field to remove the check mark, and click "N" in the drop down list found to the right of the "Proof Req'd" field.
3	Click "Save" on the AIS tool bar.
4	Click the "History" button on the tool bar to access the History Screen.
5	Click the "Insert" button on the tool bar and type a history entry describing the actions taken.
6	Click "Save" on the History Screen tool bar to save the new history entry.

- (11) **Delinquent Returns Not Filed.** If the debtor does not respond to the IRS's request for unfiled returns and potential liabilities exist, the caseworker should take the actions in the table below.

IF returns remain unfiled and...	THEN...
the total liability of the unfiled periods exceeds the aggregate total in Exhibit 5.9.13-1, Threshold for Claims, OR while being below the required tolerance, the total liability for the unfiled periods when combined with the assessed liability exceeds the tolerance.	the caseworker will file a proof of claim for all periods with liabilities, both actual and estimated.

- (12) **SCI Responsibilities.** Although the trustee can move for dismissal or conversion if tax returns remain unfiled, Field SCI must assume the responsibility for filing a motion to dismiss on the grounds of non-compliance. If missing tax returns are not filed or the debtor does not give a credible explanation as to why the debtor is not liable for those returns by the deadline given on the 1714 letter, caseworkers should consult Exhibit 5.9.13-1, Threshold for Claims, and IRM 5.9.4.15.4, Referral Tolerances, to determine if the IRS should move for dismissal or conversion. Appropriate administrative actions (see paragraph (6) above) must be pursued, time permitting, before making a referral to Counsel for dismissal based on unfiled returns.

Reminder: If the aggregate (the sum total of) potential tax due is less than the amount stated in Exhibit 5.9.13-1, Threshold for Claims, further resources need not be expended to refer for dismissal or conversion.

Note: No referral to Counsel should be made in a Chapter 13 case if the only unfiled returns contained in the referral relate to tax years that ended more than four years before the filing of the bankruptcy petition. See 11 USC 1307(e), 1308, and 1325(a)(9).

5.9.13.18.3
(09-10-2014)
**Federal Unemployment
Tax Act Tax Claims**

- (1) **State Credit Adjustment.** IRC 3302 reduces the federal credit taken on a Federal Unemployment Tax Act (FUTA) return if the employer has made late payments to the state unemployment fund. Although it might be presumed the IRS can include this reduction in the FUTA credit on its proof of claim, 11 USC 502(b)(8) alters the ability of the IRS to file claims for these credits. In short, state credit adjustments to pre-petition FUTA accounts (MFT 10) that result in an additional liability to the debtor generally cannot be included on the IRS's proof of claim.
- (2) **Exceptions.** The disallowance of claims under 502(b)(8) for the reduction of the FUTA credit for state unemployment payments only applies to pre-petition payments of wages, salaries or commissions. If a trustee fails to make timely payment of state unemployment taxes, the IRS may assert an administrative claim for the reduction in the FUTA credit. If, however, the trustee is without fault for the failure to make a FUTA tax payment by the required date, the full state credit may be allowed to the debtor (IRC 3302(a)(5)) .
- (3) **Identifying State Adjustments.** A FUTA adjustment resulting from a state's reduction of the FUTA credit can be identified on an IDRS TXMODA for tax Form 940 by a TC 290 which is not preceded by an amended tax return identifier (usually TC 97X). Along with an extract number and the dollar amount a "T" (for "tax") will appear followed by the two letter state abbreviation, e.g., TFL. The amount of this TC 290 cannot be included on the IRS's proof of claim.

Caution: If a TC 290 appears with a transaction code denoting receipt of an amended return or contains a W (for wages) followed by the two letter state abbreviation, e.g., WFL, that dollar amount should be included in the IRS's proof of claim.

- (4) **APOC Update.** At this time APOC is not programmed to omit TC 290 assessments resulting from a reduction of a state credit on FUTA returns. Therefore, MFT 10 claims must be reviewed manually and adjusted if necessary prior to mailing or electronically transmitting the claims to the court.

5.9.13.18.4
(03-09-2016)
**Duplicate and Mirror
Assessments and NMF
Periods**

- (1) **Mirror Modules (MFT 31 and MFT 65) and NMF Modules.** All of a debtor's tax liabilities accrued as of the petition date should be included on the proof of claim. This includes MFT 31 and MFT 65 mirror modules and modules on the non master file (NMF). The claim procedures for an MFT 31 or MFT 65 mirror or NMF module are the same as for an MFT 30 module. The caseworker must determine:
 - If the tax liability is pre-petition or post-petition,
 - The correct classification of the mirror module, and
 - The accurate claim amount.

Note: Claim calculations for NMF modules must be computed manually.

Caution: MFT 31 is also used for restitution based assessments which are not mirrored assessments. Restitution based assessments can be identified as using MFT 31 and having TC 971 AC 102 on the module(s). (See IRM 5.9.13.18.5, Restitution Assessments, below for information on processing restitution assessments)

- (2) **Duplicate Spousal MFT 31, MFT 65, and Trust Fund Recovery Penalty (TFRP) Assessments.** A proof of claim may list two MFT 31, two MFT 65, or two TFRP modules for the same period when a married couple files a joint bankruptcy. The amounts of the assessments for the same period may be identical, or one may be larger than the other. When AIS computes the total amount of a claim on Form B410, the sum includes the amounts of each module. The total amount computed by AIS cannot be systemically overridden, so when both spouses have duplicate MFT 31, MFT 65, and/or TFRP assessments, the amount of the claim on Form B410 is overstated. Caseworkers should determine whether the assessments are for the same liabilities. If so, the claim should be filed according to local procedures in one of two ways.

Note: The Proof of Claim Statements on AIS contain several options for each procedure. The statement chosen by the caseworker may vary depending on local practice.

- a. The caseworker may omit one spouse's MFT 31, MFT 65, and/or TFRP assessment(s) from the claim and provide a clarifying statement on the proof of claim that both debtors are liable, but that only one assessment is being shown on the proof of claim to prevent overpayment. If the assessments are in differing amounts, the caseworker should determine which assessment should be included on the proof of claim. In most cases, this will be the higher assessment, but in some situations, the lower assessment should be used. For example, when payments have been made on one account, but have not yet been cross-referenced to the other account, the lower assessment should be included on the proof of claim to prevent overpayment.

Example: Proof of Claim Statement 20 is one option for providing this information. It states: "Separate assmnts, one assmnt is being claimed to avoid overpayment." There are other options available in the Proof of Claim statements on AIS.

- b. The caseworker may include both spouses' MFT 31, MFT 65, and/or TFRP assessments and provide a suitable clarifying statement on the proof of claim that both assessments are included, but the amount is to be paid only once.

Example: Proof of Claim Statement 30 is one option for providing this information. It states: "Separate Assmnts. Both are shown, but the amt is to be collected once." There are other options available in the Proof of Claim statements on AIS.

Caution: Because the Confirmed Plan Monitoring (CPM) screen populates systemically from the proof of claim, with this option the duplicate assessments will both populate to the CPM screen. Caseworkers must remember to delete the duplicate assessment from the CPM so the assessment is not being paid twice through the plan. If the assessments are in different amounts, the caseworker will need to determine which assessment should be included on the proof of claim, as discussed above.

5.9.13.18.5
(09-02-2022)

Restitution Assessments

- (1) **Restitution Assessments on APOC.** Restitution based assessments can be identified as using MFT 31 and having TC 971 AC 102 on the module(s). For purposes of a bankruptcy case, a restitution assessment is classified in the same manner as the tax module to which it relates. The Automated Proof of Claim (APOC) system will recognize the assessment and classify it based on the tax module. No flag will be raised solely due to the fact that the assessment is for restitution.

Example: The Judgment and Commitment (J&C) Order directs the taxpayer to pay restitution for income tax the taxpayer evaded for the tax year 2014. The amount of restitution is assessed on September 12, 2020. On September 12, 2021, the taxpayer files a Chapter 13 bankruptcy case. The restitution assessment is not classified as priority, as the return was due more than three years prior to the filing of the bankruptcy petition, and the restitution assessment was more than 240 days prior to the bankruptcy petition. Because the restitution assessment does not fall within any of the reasons for classifying it as priority, APOC will classify the restitution assessment and the related interest as general unsecured on the proof of claim.

Note: An APOC flag will be issued if a Notice of Federal Tax Lien (NFTL) was filed for the period. If the NFTL was filed with respect to the restitution assessment, the NFTL will carry an "R" and the form number of the underlying tax source, such as "R1040." The flag should be cleared in accordance with the instructions in IRM 5.9.14.2.9(5)(j), Secured Period Flag.

Chief Counsel Notice 2019-004 on the accrual of interest and the IRC 6652(a)(3) penalty on restitution-based assessments requires that Counsel determine whether the accrual of interest and the penalty are appropriate in a given case. Any case in which interest and/or the penalty is included in a module containing a restitution-based assessment should be referred to Counsel prior to filing a proof of claim so that Counsel can determine whether the interest and/or penalty is proper.

Example: If the restitution ordered is \$100,000 and the module shows that the amount assessed was \$100,000, no interest was assessed then there is no need to have the case considered by Counsel. On the other hand, if the restitution ordered is \$100,000 and the module shows that interest was assessed on the \$100,000, then Counsel should review the module to determine whether the interest is proper.

- (2) **Manual Proof of Claim Preparation.** If it is necessary for a caseworker to create a proof of claim manually, caseworkers should follow the regular classification rules for the type of tax for which restitution is to be made. Interest on the restitution assessment will have the same classification as the tax assessment. If the failure to pay penalty accrued on the restitution assessment, it will either be secured or general unsecured.
- (3) **Mirror Assessments.** A mirror assessment of the restitution-based assessment for the same type of tax is created based on a return filed, an assessment made after an audit, or the creation of a 6020(b) return. The caseworker must determine:
- If the tax liability is pre-petition or post-petition,
 - The correct classification of the mirror module, and
 - The accurate claim amount.

Example: The taxpayer is convicted of income tax evasion for the 2019 tax year. In the J&C Order, the court directs the taxpayer to pay restitution of the evaded income tax in the amount of \$10,000. The IRS conducts a civil exam of the taxpayer after his conviction and determines that the deficiency for the 2019 tax year was \$15,000. There will be two assessments made: the first one for \$10,000 based on the restitution order and a second, separate assessment will be made pursuant to a civil exam in the amount of \$15,000.

As the above example illustrates, the proof of claim may list two modules (MFT 30 and MFT 31) for the same period when a restitution assessment is made. The amounts of the assessments for the same period may be identical, or one may be larger than the other. The same duplicate assessment shall be made for restitution arising from taxes other than income taxes, such as employment taxes.

Example: If restitution is ordered against an individual defendant for failure to pay business employment taxes, the restitution is actually based on the employment tax liability of the business, not the individual's personal liability. Nonetheless, business tax liability ordered as restitution can be assessed against the individual.

When AIS computes the total amount of a claim on Form B410, the sum includes the amounts of each module. The total amount computed by AIS cannot be systemically overridden, so when both the civil tax assessment and restitution assessment are on the claim, the amount of the claim on Form B410 is overstated. The civil tax assessment should always be included on the proof of claim. Caseworkers will need to determine whether the civil tax assessment and the restitution-based assessment are for the same liabilities and taxpayer.

IF	Then
The assessments are for the same liabilities.	<p>The claim should be filed in one of two ways:</p> <p>a. If the civil tax assessment is greater than the amount of the restitution-based assessment, then the restitution-based assessment should be omitted, but the caseworker should provide a clarifying statement that the restitution-based assessment is omitted to avoid overpayment.</p> <p>Example: Proof of Claim Statement 20 is one option for providing this information. It states: "Separate assmts, one assmt is being claimed to avoid overpayment." There are other options available in the Proof of Claim statements on AIS.</p> <p>b. If the restitution-based assessment is greater than the civil tax assessment, then BOTH assessments should be included on the proof of claim and a clarifying statement should be included to provide that both assessments are included but the amount should only be paid once.</p> <p>Example: Proof of Claim Statement 30 is one option for providing this information. It states: "Separate Assmts. Both are shown, but the amt. is to be collected once." There are other options available in the Proof of Claim statements on AIS.</p> <p>Caution: Because the Confirmed Plan Monitoring (CPM) screen populates systemically from the proof of claim, with this option the duplicate assessments will populate to the CPM screen. Caseworkers must remember to delete one of the assessments from the CPM so the assessment is not being paid twice through the plan. If the assessments are in different amounts, the caseworker will need to determine which assessment should be included on the proof of claim and CPM.</p>
The assessments are NOT for the same liabilities	No clarifying statements are needed.

Any payments made towards the restitution-based assessment shall be applied towards the tax liability assessed pursuant to the civil exam to avoid double collection of the assessment. Any payments made towards the individual defendant's restitution-based assessment for failure to pay business employment taxes shall be applied towards the employment tax liability assessed against the business pursuant to the civil exam to avoid double collection of the assessment against the business. The IRS cannot collect in full both the restitution-based assessment and the business employment tax liabilities of that separate business. The prohibition against double collection will come into play. The caseworker must adjust the unpaid tax liability of the corresponding business entity to account for any payments made through restitution or the restitution-based assessment against the individual defendant. The prohibition against double collection would not apply, however, with respect to the collection of both the individual defendant's restitution-based assessment based on the employment tax and his personal civil tax liabilities for the same periods.

5.9.13.18.6
(06-05-2018)
**Affordable Care Act
Provisions**

(1) **IRC 5000A - Individual Shared Responsibility Provision.**

- a. **Assessment and Treatment under Bankruptcy.** When applicable, the Individual Shared Responsibility Payment (SRP) liability will be assessed under MFT 35 or for mirrored accounts, MFT 65. Even though the SRP may be thought of as a penalty, it is not treated as one when filing a proof of claim. Rather, for bankruptcy purposes, the SRP will be treated as an excise tax under 11 USC 507 (a)(8)(E). See IRM 5.9.13.19.3, Unsecured Priority for additional information.

Note: The SRP follows the tax year Form 1040, 1040A, or 1040EZ information from which it arose. Since there is no “tax return” on the SRP module, the caseworker must use the Form 1040, 1040A, or 1040EZ from the same year as the SRP assessment for all information needed in order to correctly classify the liability.

- b. **Including the SRP on a Proof of Claim.** APOC will calculate and classify assessed balances due for the Shared Responsibility payment; however, it will NOT compute unassessed claims or issue a flag. Caseworkers will not file estimated claims for an unassessed SRP.

Caution: If the taxpayer incurs a pre-petition SRP liability prior to the bar date it should be included on the Proof of Claim. If the IRS discovers a pre-petition SRP after the bar date, please see IRM 5.9.13.7.1, Late Filed Claims, or IRM 5.9.13.8, Amended Claims, for guidance.

Note: If needed, IRM 5.9.13.20, Claim Calculations, explains how to manually calculate an assessed SRP liability.

- c. **Multiple Persons Assessed the SRP.** Problems may arise with proofs of claim involving SRPs that have been assessed against both spouses under MFT 65 mirrored accounts.
- d. **Duplicate Spousal SRP Assessments.** A proof of claim may list two identical SRPs when a married couple files a joint bankruptcy, and each has been assessed a SRP for the same module(s). The assessments may either be in the same or differing amounts. When AIS computes the total amount of a claim on Form B410, the sum equals the amounts of each module. That total amount computed by AIS cannot be systemically overridden, so when both spouses have duplicate SRP assessments, the amount of the claim on Form B410 is overstated. Caseworkers should follow the procedures outlined in IRM 5.9.13.18.4, Duplicate and Mirror Assessments and NMF Periods, choosing the appropriate option based on local procedures.

Caution: Caseworkers should not assume that assessments made against both spouses for the same period are duplicates simply because they are for the same tax period. Before assessments are treated as duplicates, caseworkers should verify that the shared responsibility payment assessments are for the same underlying liability (jointly filed Form 1040), and are not for separately filed Forms 1040.

- e. **Collection of Proper Amount.** The IRS must not over-collect. The IRS’s policy is to collect the unpaid SRP only once.
- f. **Post-Petition SRP assessments in Chapter 13.** An 11 USC 1305 claim may be filed for taxes that become payable while the case is pending. This includes any amounts due for the SRP. If the Form 1040, 1040A or

1040EZ is a post-petition module (see IRM 5.9.10.9(1), Post-Petition Tax Liabilities), the SRP is also post-petition.

(2) **ACA Provision Section 9008 - Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers (Branded Prescription Drug Fee or BPD Fee)**

- a. **General Information.** The Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers (Branded Prescription Drug Fee or BPD Fee), imposes an annual fee on manufacturers and importers of branded prescription drugs (BPDs) with gross sales to specified government programs exceeding \$5 million. See IRM 25.21.1, Branded Prescription Drug Fee for further information.

Note: An entity that owes a BPD fee may be a debtor in a bankruptcy case.

- b. **Assessment and Treatment under Bankruptcy.** When applicable, the Branded Prescription Drug (BPD) liability will be assessed under MFT 03, however it will have a period ending in 08 to distinguish it from all other assessments under the same MFT. For bankruptcy purposes, it will be treated as an excise tax under USC 507(a)(8)(E). See IRM 5.9.13.19.3, Unsecured Priority, for additional information.

Note: Since no return is required to report the BPD fee, the BPD fee is considered to be incurred in the year that is two years before the fee year, at the time the entity sales to the Government programs exceed \$5 million. The bankruptcy three-year priority period would begin when the tax is incurred.

- c. **Including the BPD on a Proof of Claim.** APOC will not calculate and/or classify assessed balances due for the BPD. Caseworkers will be required to calculate and classify the period manually. APOC will not compute unassessed claims or issue a flag for unassessed periods; however, caseworkers should file estimated claims for an unassessed BPD, where necessary. If the sales were made in the year in which the petition was filed, the portion of the fee based on pre-petition sales would be a pre-petition claim, and the portion based on post-petition sales would be a post-petition administrative expense. The pre-petition portion could be estimated based on the ratio of pre-petition sales to total sales by the taxpayer for that year. In order to prepare an accurate estimate and file a protective claim, the caseworker would have to request the amount of pre-petition sales from the debtor, since the debtor is the only entity that may have that information. If that information can not be obtained, the IRS could either file a protective claim based on the information it has from the last year that it has data for (noting that it's an estimate), or refer the case to Counsel for a BR 2004 exam/request.

Note: Since the treatment of the BPD fee presents novel legal issues, SCI should work with Local Counsel in any bankruptcy case where the debtor owes, or may owe, the BPD fee.

(3) **IRC 4980H – Employer Shared Responsibility Provision.**

- a. **Assessment and Treatment under Bankruptcy.** When applicable, the Employer Shared Responsibility Payment (ESRP) liability will be assessed under MFT 43. The ESRP will be treated as an excise tax

under 11 USC 507(a)(8)(E)(ii). Unless secured by a valid NFTL, the ESRP MFT 43 assessment is considered priority if the Letter 226-J, date (TC 971 AC 782) is less than 3 years from the petition date. See IRM 5.9.13.19.3, Unsecured Priority, for additional information. If not secured by a valid NFTL and the Letter 226-J date is more than 3 years prior to the petition date, the liability is unsecured general.

Note: Since there is no “tax return” on the ESRP module, the caseworker must use the date of the Letter 226-J, which is identified by the transaction code TC 971 AC 782 to determine classification of the tax period.

- b. **Including the ESRP on a Proof of Claim.** APOC will calculate and classify assessed balances due for the ESRP; however, it will NOT compute unassessed claims. A flag will be issued in the situation where a Letter 226-J has been issued, but no assessment has been made. Caseworkers will determine if a protective claim is required. See IRM 5.9.14.2.8(4), Case Flag Conditions and Resolutions, for more information.

Caution: If the IRS discovers a pre-petition ESRP after the bar date, please see IRM 5.9.13.7.1, Late Filed Claims, or IRM 5.9.13.8, Amended Claims, for guidance.

Note: If needed, IRM 5.9.13.20, Claim Calculations, explains how to manually calculate an assessed ESRP liability.

- c. **Post-Petition ESRP assessments in Chapter 13.** An 11 USC 1305 claim may be filed for taxes that become payable while the case is pending. This includes any post-petition amounts due for the ESRP. Proof of Claim statement ‘Z9’ is available and should be used to identify the ESRP assessment as post-petition on the 1305 claim. It states, “ESRP is post-petition since Letter 226-J was issued post-petition.”
- d. **Administrative claims in Chapter 11.** Administrative claims may be filed for post-petition ESRP assessments in Chapter 11 bankruptcy cases. Proof of Claim statement ‘Z9’ is available in order to identify the ESRP assessment as post-petition on the Administrative claim. It states, “ESRP is post-petition since Letter 226-J was issued post-petition.”

5.9.13.18.7
(12-19-2019)
**Section 965 Transition
Tax**

- (1) **Classification.** Section 965 requires certain taxpayers to pay a transition tax on untaxed earnings of certain specified foreign corporations. See IRM 5.9.4.23, Section 965 Transition Tax, for more information. A Section 965 tax liability is an increase in the taxpayer’s income tax liability for the year in which it was required to be included on the debtor’s income tax return (generally, 2017 and/or 2018). It is classified in the same manner as the income tax period of the inclusion year, even if the payment is not yet due because of an election under section 965(h) or 965(i).
- (2) **Inclusion Year.** The tax generally should have been reported on a U.S. shareholder’s 2017 tax return if the specified foreign corporation’s last taxable year beginning before January 1, 2018 ended on December 31, 2017 (i.e., for calendar year specified foreign corporations). If the foreign corporation’s last tax year beginning before January 1, 2018 ended after January 1, 2018 (i.e., for non-calendar year specified foreign corporations), the tax generally would be included on the U.S. shareholder’s 2018 tax return. In certain circumstances, due to the presence of one or more domestic pass-through entities, the tax may be reported on a U.S. shareholder’s 2019 or later tax return.

- (3) **Identifying Section 965 Tax.** The debtor is required to report their Section 965 tax on their income tax return. For the 2017 tax year, the debtor was also required to file a Section 965 Transition Tax Statement; for tax years 2018 and subsequent, the debtor is required to file Form 965, Inclusion of Deferred Foreign Income Upon Transition to Participation Exemption System, for the year of the inclusion. When a debtor reports a Section 965 tax, a TC 971 Action Code (AC) 114 will post with the return. The Miscellaneous (MISC) Field will show the total amount of the Section 965 tax as shown on the return and it will be included in the TC 150.

Note: If the debtor made a deferral election under Section 965(i), the MISC field will show zeros.

- a. Employee User Portal (EUP) can be used to identify e-filed tax returns with Section 965 liabilities. The taxpayer is required to report the net tax liability and any deferred amount. If a paper return is filed, the case-worker will need to use IDRS command code RTVUE or TRDBV to research the 965 liability.
- b. See IRM 3.14.1.6.9.16, IRC 965 Transition Tax for IMF cases, and IRM 3.14.2.7.5, IRC 965 Transition Tax, for BMF cases, for details on where the debtor is required to report their Section 965 liability on their income tax return and transition statement.
- c. For tax years 2018 and subsequent, the debtor is required to file either Form 965-A, Individual Report of Net 965 Tax Liability or Form 965-B, Corporate and Real Estate Investment Trust (REIT) Report of Net 965 Tax Liability and Electing REIT Report of 965 Amounts, for the year of the inclusion and to report Section 965 activity in subsequent years.

Note: All taxpayers with Section 965 inclusions, including a debtor with a Section 965 inclusion for 2017 who did not make a deferral election, and who paid the liability in full, are still instructed to file Forms 965 and 965-A or -B with their 2018 tax return.

- (4) **Identifying Section 965(h).** If the debtor elects to pay the tax over 8 years, IDRS will show:
- a. A TC 150 for the combined amount of the Section 965 tax liability and the income tax liability.
 - b. A TC 971 AC 114 containing the Section 965 liability amount in the MISC field without decimal points or cents included.
 - c. A TC 766 Credit Reference Number (CRN) 263 credit for the portion of the Section 965 liability that will be deferred for future payment to bring the period into compliance. IDRS will show a zero-balance due for the Section 965 liability, after the TC 766 CRN 263 adjustment when the taxpayer is current on installment payments. The account will show a balance due for any non - Section 965 liability owed for that period.
 - d. A TC 971 AC 115 with the deferred amount in the MISC field without decimal points or cents included.

Note: If the TC 766 CRN 263 is input manually, the account will not reflect a TC 971 AC 115.

- e. Payments received should be posted on IDRS as TC 670 Designated Payment Code (DPC) 64.

- f. When a future payment is made, an identical amount will then be systematically posted on IDRS as TC 767 CRN 263, reducing the Section 965(h) deferred balance.

- (5) **Section 965(h) Transfer Elections.** Section 965(h) net tax liabilities can be transferred to another person if certain requirements are met. When a Section 965(h) net tax liability is transferred, both the transferor (if still in existence) and the transferee become jointly and severally liable for payment of the liability (like a trust fund recovery penalty). The transferee will be assessed under a new MFT 82 (individual) or MFT 83 (non-individual) account. These transferee assessments will start to be assessed under MFT 82 and MFT 83 in 2020. The transferor accounts will have a TC 971 AC 507 to reflect the cross referenced TIN.
- (6) **Identifying Section 965(i).** If the debtor made a deferral election under Section 965(i), no assessment will be made. A taxpayer with a Section 965(i) election, will show a TC 971 AC 114 reflecting zeros in the MISC field. In the future, the TC 971 AC 114 will be replaced by a TC 971 165, which will have the amount of the Section 965 liability in the MISC field.

Note: TC 971 AC 114 MISC field with zeros could also indicate the Section 965 liability is below tolerance or the tax was paid but the debtor failed to provide a tax statement specifying the amount.

The caseworker must review the income tax return for all cases with a TC 971 AC 114 reflecting zeros in the MISC field, to determine if there is any Section 965 tax liability that needs to be added to the claim.

- (7) **Proof of Claim.** The caseworker is required to add the total Section 965 liability on the claim.
 - a. **No 965(h) or 965(i) Election.** The liability will be reflected as a balance due on the account. Command code INTST can be used to calculate the liability if there is no income tax liability. If there is an income tax liability, each liability needs to be computed manually and added separately to the claim.
 - b. **Section 965(h) Election Made.** The caseworker will need to manually compute the remaining Section 965 liability and add it on the claim. If the sum of all TC 766 CRN 263 transactions is zero, the remaining Section 965 liability is zero and nothing needs to be added. If the sum is less than zero (credit), then that amount needs to be added. The TC 150 date would be used as the assessment date. No interest or penalty should be added on the claim for this liability if the taxpayer is compliant on their installments.

Note: IMF taxpayers owing less than one million dollars for tax year 2017 will not be considered defaulted if they pay the first installment prior to the due date of the second installment. However, the taxpayer will be liable for interest on such amount from the due date of the installment until the date the payment is made.

- c. **Section 965(i) Election Made.** The caseworker will need to manually compute the Section 965 liability and add it on the claim. The TC 150 date would be used as the assessment date.

5.9.13.18.8
(09-02-2022)
**CARES Act - Section
2302**

- (1) **General Information.** Section 2302 of the CARES Act allows employers to defer the deposit and payment of the employer's portion of Social Security taxes and certain railroad retirement taxes. Employers are still responsible for timely payment of the employee's share of FICA tax, full amount of Medicare tax, and total withheld income tax. The payroll tax deferral period is 3/27/2020 – 12/31/2020. Impacted tax forms include:

- Form 941 series - MFT 01
- Form 943 series - MFT 11
- Form 944 series - MFT 14
- Form 1040 series - MFT 30

Note: Self-employed individuals may defer 50 percent of the social security tax imposed under Section 1401(a) of the Code on net earnings from self-employment income for the deferred period.

- Form CT-1 MFT 09

- (2) **Payments.** Employers must timely deposit 50 percent of the eligible deferred amount of the tax by 12/31/2021 and deposit the remaining amount by 12/31/2022.

Note: These payment due dates are fixed dates for all impacted tax returns.

- (3) **Identifying Deferred Amount.** If the debtor elects to defer the deposit and payment of the employer's portion of Social Security taxes and certain railroad retirement taxes, IDRS will show a TC 766 Credit Reference Number (CRN) 280 with the deferred amount. When the debtor makes a payment towards the deferred amount, IDRS will show the transaction code of the payment and a TC 767 CRN 280 with amount of the payment to reverse the false credit.

Note: Since the debtor is still responsible for timely depositing the employee's share of FICA tax, full amount of Medicare tax and total withheld income tax, an account can have a balance due and a deferred amount.

- (4) **Proof of Claim.** The **full amount owed** for the tax period needs to be included on the proof of claim. Caseworkers are required to manually review all 2020 periods that qualify for this deferment and calculate the total amount owed for the tax period. Use the following chart to calculate the amount of tax to add to the claim :

If	Then
The debtor has a balance due showing on IDRS,	<ul style="list-style-type: none"> • Use INTSTB to calculate the tax, interest and penalties due. • Calculate the deferred balance by using the TC 766 CRN 280 amount and subtracting any TC 767 CRN 280 amounts. This will be the total deferred amount owed. <p>Note: If the total TC 767 CRN 280 amounts equal the total TC 766 CRN 280 amounts, there is no deferred amount owed.</p> <ul style="list-style-type: none"> • Add the total deferred amount owed to the tax amount calculated from using INSTB. This will be your total tax. <p>Note: BMFOLM has been programmed to show the total deferred amount owed. This amount should be added to the claim in addition to any liability on INTSTB.</p>
The debtor has no balance due or credit balance showing on IDRS,	<p>Calculate the deferred balance by using the TC 766 CRN 280 amount and subtracting any TC 767 CRN 280 amounts. This will be the total deferred amount owed. BMFOLM will also show the total deferred amount owed.</p> <p>Note: If the total TC 767 CRN 280 amounts equal the total TC 766 CRN 280 amounts, there is no deferred amount owed.</p>

- (5) **Interest and Penalties.** The debtor is required to pay the deferred tax in two equal payments that are due on 12/31/2021 and 12/31/2022, respectively. Interest and penalties do not accrue on the deferred tax unless the debtor defaults on making the required payments. If the debtor defaults on the making a payment, the false credit will be reversed for that payment only and the tax will show on INTSTB.

5.9.13.19
(12-19-2019)
Classifying Claims

- (1) **Claim Steps.** Although the APOC system prepares most claims, SCI caseworkers must understand the steps in classifying claims and calculating dollar amounts. Amended claims or APOC flags may require manual computations by assigned caseworkers. This involves separately identifying tax, interest on tax, penalty and interest on penalty. Locally designed worksheets may be used to record these computations before inputting them into the AIS proof of claim database or the APOC claim record. The steps for preparing a proof of claim are listed below and in the following subsections.
1. Identification of claimable liability.
 2. Determination of debt type.

3. Determination of claim classification.
4. Calculation of tax, penalty and interest.
5. Loading claim amounts to the AIS database or APOC claim record.
6. Printing the claim (in courts without the Electronic Proof of Claim system (EPOC)).
7. Signing the claim (in courts without EPOC).
8. Mailing the claim or transmitting it electronically through the EPOC system.

- (2) **Claimable Liability.** The date of the bankruptcy petition and dates of the taxable period determine if a liability is *pre-petition* or *post-petition* and if the IRS should include it on its proof of claim.

Liability	Definition
Pre-petition	<p>Regardless of whether taxes are assessed, all tax liabilities incurred <i>before</i> or on the petition date are determined to be pre-petition periods and, if above the aggregate criteria noted within Exhibit 5.9.13-1, Threshold for Claims, should be included on a proof of claim.</p> <p>Note: The due date of a return does not determine if a claim is classified as pre-petition.</p> <p>Example: If the petition is filed on 2/15/19, the 2018 tax liability is pre-petition.</p> <p>Example: If the petition is filed on 12/31/18, the 2018 tax liability is pre-petition.</p>
Post-petition	<p>All tax liabilities incurred <i>after</i> the petition date, whether or not assessed, are considered post-petition. Administrative claims and 1305 claims may be filed by the IRS during the pendency of a bankruptcy.</p> <p>Example: If the petition is filed on 2/15/18, the 2018 tax liability is post-petition.</p>
Split-period	<p>An income tax liability (both IMF/BMF) arises at the end of the taxable period and should not be split. However, returns for certain taxes, such as employment, unemployment, or excise taxes, may be split between pre-petition and post-petition periods on a proof of claim where the bankruptcy petition date falls within the taxable period.</p>

Liability	Definition
Divisible Taxes	Some BMF returns are filed on a quarterly basis, such as Form 941. If at least one period or quarter of the same tax year is on the original, timely-filed proof of claim, then additional periods or quarters of the same year may be added in an amended claim. Note: Although many courts allow additional taxes of the same type as on the original, timely-filed claim to be claimed in an amended claim on the grounds that the claims are the same or similar, some courts may disallow the amended claim as an untimely claim for a different tax period on the grounds that the claims are not sufficiently similar. (See IRM 5.9.13.8(3), Amendments after Bar Date.)
IRC 1398 Election of “Short Year” Return	Pursuant to IRC 1398, individuals in Chapters 7 and 11 cases can elect to treat the taxable year in which the bankruptcy case is filed as two taxable years. The first year ends on the day before the commencement of the bankruptcy case. The liability for this year, therefore, becomes <i>pre-petition</i> . The second year begins on the day the bankruptcy petition is filed. The liability for this year is <i>post-petition</i> .
Corporate Income Tax	See IRM 5.9.13.18(2)(c), Corporate Income Tax Split Liability Pre-BAPCPA, and IRM 5.9.13.18(2)(d), BAPCPA Provision.

5.9.13.19.1
(09-10-2013)
Determining Debt Type

- (1) **Three Categories.** The three basic types of debt are *secured*, *priority*, and *unsecured general*. Tax debts on a proof of claim are designated as being within one of these three categories. A claim is secured when a valid NFTL was filed prior to the bankruptcy and there is equity to secure the lien, or there is an amount subject to setoff. A priority claim is not secured, but is entitled to priority treatment in the bankruptcy case before certain other creditors according to the payment schemes set out in the Bankruptcy Code. An unsecured general claim is not secured and is not entitled to priority treatment. Absent APOC, the caseworker must determine if the debt is to be claimed as secured, unsecured priority, or unsecured general. Balances due on a module may be split among these categories on a proof of claim.
- (2) **Counsel Guidance.** If the claim classification of a tax liability cannot be easily determined, Counsel can offer advice. Exceptions and special circumstances may govern how taxes are classified from one judicial district to another.

5.9.13.19.2
(09-02-2022)
Secured Claim

- (1) **Secured.** The IRS may assert a secured claim for taxes, penalties, and interest under IRC 6321. A tax debt is secured by an NFTL or by setoff.
- (2) **Notice of Federal Tax Lien.** A valid pre-petition NFTL attaches to debtor's property, whether real or personal, and includes exempt/abandoned property listed in the debtor's schedules filed with the court.

Note: The proper place(s) for the NFTL to be filed to reach the debtor's real and personal property is discussed in IRM 5.12.7.10, Filing, and IRM 5.17.2.3.2, Place of Filing. In some jurisdictions, the NFTL must also be indexed before it is considered filed. This is discussed in IRM 5.17.2.3.1, Purpose and Effect of Filing Notice, and the State Law Guides on the My SB/SE Counsel website <https://ccintranet.prod.irsounsel.treas.gov/OrgStrat/Offices/sbse/Pages/LawGuides.aspx>. Discussions of the property to which the federal tax lien attaches and determining the priority of the federal tax lien can be found in IRM 5.17.2, Federal Tax Liens.

The IRS's secured status is limited to the debtor's equity under 11 USC 506(a). Property excluded from the bankruptcy estate under 541(c)(2), such as a pension plan that contains an enforceable anti-alienation clause under non-bankruptcy law, cannot be included in determining the amount of the IRS's secured claim. Questions regarding particular retirement plans should be addressed to Counsel.

Note: Under 11 USC 506(a)(2) for Chapters 7 or 13 individual bankruptcies, the value of personal property securing the claim is determined based on the replacement value of the property as of the petition date without deduction for costs of sale or marketing.

- (3) **Tenancy by the Entirety.** The Supreme Court has ruled state law cannot preclude the attachment of a federal tax lien to property held as tenancy by the entirety in states permitting this form of ownership. When determining the value of the IRS's secured interest on a proof of claim when only one spouse has filed bankruptcy, 50% of the equity in property held as tenancy by the entirety generally can be used. See *United States v. Craft*, 535 U.S. 274 (2002)
- (4) **Secured Setoffs.** A pre-petition setoff exists when the IRS holds a pre-petition credit for a debtor who owes the IRS a pre-petition debt. The POC is secured to the extent of the amount subject to setoff. Both the credit due to the debtor and the debit due to the IRS are considered mutual debts. The Bankruptcy Code preserves the right of setoff of mutual debts (11 USC 553). It is not necessary for the IRS to have filed a NFTL to be secured for the amount of the setoff.
- (5) **Setoffs under BAPCPA.** 11 USC 362(b)(26) allows the IRS to setoff a pre-petition *income* tax refund to a pre-petition *income* tax liability without a lift of the automatic stay. This section applies to pre-petition income taxes only. It does not apply to:
 - Non-income taxes such as Form 941 employment taxes or TFRP assessments.
 - Pre- to post-setoffs.
 - Post- to pre-setoffs.
 - Post- to post-setoffs.
- (6) **Setoffs in the Government's Best Interest.** The IRS has the right to allocate the secured status from setoffs in its own interest.

Example: The IRS's Chapter 13 claim is for \$10,000 in priority tax, \$2,000 in unsecured general tax with \$4,000 on penalties and interest on penalties. The debtor files a pre-petition return resulting in a \$5,000

refund credit. The \$4,000 of penalty and interest on penalty plus \$1,000 of the unsecured general period can be secured by the refund credit.

- (7) **Oversecured.** When equity in a debtor's property *exceeds* the amount of the IRS claim, the IRS is fully secured (oversecured) and is entitled to post-petition interest. (See 11 USC 506(b).) The interest rate equals the statutory IRS rate effective during the calendar month of confirmation. In cases where the IRS is entitled to post-petition interest, the caseworker must annotate the AIS plan screen accordingly.
- (8) **Undersecured.** If the IRS is undersecured, the claim amount not covered by equity in the debtor's property may be reclassified as a priority claim if it qualifies. Otherwise, it must be relegated to unsecured general claim status.
- (9) **Unsecured.** Tax debts that cannot be secured by a pre-petition NFTL attaching to equity in assets or those debts that cannot be secured by setoff are determined to be unsecured debt. The unsecured debt is therefore classified and claimed as either unsecured priority debt or unsecured general debt.
- (10) **Unable to Determine Value of Secured Claim.** On rare occasions, caseworkers may not be able to determine the equity in the debtor's property, either because it is not possible to determine the extent of the property owned by the debtor, or the value of the property cannot be estimated. In these situations, it may be necessary to file the claim showing the periods for which NFTLs have been filed as fully secured until a determination of the debtor's property is made by the bankruptcy court. Caseworkers should consult Area Counsel in these situations.
 - For the IRS to preserve its rights to claim any unsecured portion of its claim as either priority or unsecured general, caseworkers should add a statement to the proof of claim. Proof of claim statements 90 and 91 can be used for this purpose. This statement will provide: "If any portion of the secured claim is unsecured, the IRS claims this portion as priority and/or unsecured general, as appropriate."
 - Note:** Proof of claim statements 90 and 91 can be selected from the Claim Statement drop down menu on the Proof of Claim screen on AIS. Both statements must be selected for the entire statement to print on the proof of claim.
 - Once an equity determination is made, if an amended proof of claim is filed showing the correct amount of the secured claim and reclassifying the remainder as priority and/or unsecured general, proof of claim statements 90 and 91 should be removed.
- (11) **Creditor's Option.** The existence of a valid NFTL does not obligate the IRS to file a secured claim if the government's interest can best be served by filing a priority claim.

Example: In certain jurisdictions courts allow for confirmation of debtors' plans even though the plans do not provide for the IRS's secured claim. If the probability of collecting on the secured period(s) outside of bankruptcy is questionable, filing a priority claim rather than a secured claim may be warranted.

- (12) **Converted Cases.** It is not uncommon for a case to convert from one chapter to another, and caseworkers frequently review converted cases to see if an amended claim is needed. Regardless of the status of the NFTL at the time of the review of the converted case, caseworkers should continue to treat a claim as secured when IRS was secured on the petition date.

5.9.13.19.3
(09-02-2022)

Unsecured Priority

- (1) **Priority Classification.** USC 11 507(a)(8) defines pre-petition taxes entitled to priority status. See the following table.

11 USC	Description
507(a)(8)(A)(i)	Income tax for a return due, including extensions (TC) 460, after three years before the filing of a petition. ("Three Year Rule") (See paragraph (3) below.)
507(a)(8)(A)(ii)	<p>Income tax assessed <i>within 240 days before the petition date</i>. ("240 Day Rule"):</p> <ul style="list-style-type: none"> Pre-BAPCPA: The 240 day period is suspended when an offer in compromise (OIC) is pending for any time after the assessment is made. To compute the 240 day period, do not include the time period in which the OIC is pending. Add 30 days to the 240 day period when an OIC was pending within the 240 days. An OIC is pending when it is accepted for processing. This date will be reflected by a TC 480. An OIC ceases to be pending when the OIC is returned, rejected, withdrawn, or accepted. BAPCPA: The 240 day period is suspended when an OIC is pending or is in effect. To compute the 240 day period, do not include the time period in which the OIC is pending or in effect. Add 30 days to the 240 day period when an OIC is pending or is in effect within the 240 days. An OIC is pending as outlined above. An OIC is in effect once it has been accepted. It remains in effect until the offer is defaulted, or the compromised amount is paid in full and the future compliance period has ended. <p>Acceptance of an OIC is shown on IDRS by the existence of a TC 780. The completion of the OIC, including the future compliance period, is reflected by the existence of a TC 788. If the taxpayer defaults on the OIC before completion, this will be shown by the existence of a TC 781. If TC 788 is not shown on the module(s), and the OIC has not been defaulted, it is still in effect.</p>

11 USC	Description
507(a)(8)(A)(iii)	Income tax not yet assessed but is assessable because the ASER is still open due to an audit or other extension of the ASER. Exception: Fraud by the debtor, unfiled returns and returns filed late (within two years of the petition date), do not fall within the category of assessable, but not yet assessed liability. These taxes will be unsecured general. However, if the ASER is open because of fraud committed by the debtor's spouse on a joint return, or by a return preparer, and the debtor was not involved in the fraud, the tax will be priority.
507(a)(8)(C)	Trust fund tax including withheld FICA and employment taxes, the Trust Fund Recovery Penalty (IRC 6672) and collected excise taxes.
507(a)(8)(D)	Employment taxes, for a return due within three years prior to the petition date.
507(a)(8)(E)	Excise taxes, for a return due within three years prior to the petition date. Exception: Assessments arising under IRC 4971 for failure to meet minimum funding standards of a pension plan are considered a "tax" in the IRC. However, the Supreme Court has ruled that the liability assessed under IRC 4971 is a penalty. For USBC proof of claim classification purposes, unsecured IRC 4971 liabilities are general unsecured claims. IRC 4971 liabilities may be a secured priority claim when the liability is secured by a NFTL or right of setoff. See U.S. versus Reorganized CF&I Fabricators of Utah, Inc., 518 U.S. 213 (1996).
507(c)	Claims arising from erroneous refunds or credits have the same priority as the claim for tax to which they relate.

Reminder: Accrued pre-petition interest on tax is given the same classification status as the underlying tax.

- (2) **The Concept of Tolling.** Tolling interrupts the running of a statute of limitations in certain situations. Tolling can occur due to statutory provisions providing for tolling or equitable tolling created by the courts. In bankruptcy

cases, tolling applies to the periods used to determine priority and dischargeability of taxes. Tolling in bankruptcy occurs as a result of Bankruptcy Code provisions and Supreme Court decision in the case of *Young v. United States*, 535 U.S. 43, 122 S. Ct. 1036 (2002).

- (3) **Pre-BAPCPA Tolling.** The Supreme Court confirmed the three-year lookback period of 11 USC 507(a)(8)(A)(i) is a limitations period subject to traditional notions of equitable tolling with their decision in *Young v. US*, 535 US 43, 122 S. Ct. 1036 (2002). In light of the rationale used by the Court in *Young*, the IRS no longer takes the position that it is entitled to an additional six months based upon IRC 6503(h).
- (4) **BAPCPA Tolling.** For cases filed on or after October 17, 2005, BAPCPA tolls the “look back” priority periods in 11 USC 507(a)(8):
 - While the automatic stay is in effect in a prior bankruptcy case.
 - During a Collection Due Process (CDP) hearing for a proposed levy action and any related appeals.
 - While collection is precluded because of the existence of a confirmed plan in a prior bankruptcy case.

The IRS’s position is that an additional 90 days is added to each situation noted above. Tolling suspends all the “look back” priority periods in 11 USC 507(a)(8), including:

- Income taxes due within 3 years.
- Income taxes assessed within 240 days, including extensions of the 240 day period during which an offer in compromise is pending or in effect.
- Employment taxes due within 3 years.
- Excise taxes due within 3 years.

Note: The postponement of the time to file a return under 26 USC 7508 or 7508A, due to the president declaring a federal disaster or emergency, is not tolled for bankruptcy purposes and does not change the priority of a tax period.

Example: An assessment for tax year 2013 is made against the taxpayer on January 10, 2018. The taxpayer submits an offer-in-compromise which becomes pending on February 10, 2018, and is rejected on February 15, 2019. On March 10, 2019, the taxpayer files a Chapter 13 bankruptcy, which is dismissed on March 10, 2021. On April 10, 2021, the taxpayer files a Chapter 7 bankruptcy. At the time the taxpayer filed the first bankruptcy, only 31 days of the 240-day look back period had run (January 10, 2018 to February 10, 2018), because the 240-day period had stopped running when the offer was submitted for the time the offer was pending, plus up to 30 days after rejection. The 240-day period continued to be tolled while the automatic stay was in effect in the first bankruptcy, plus up to 90 days thereafter. The second bankruptcy was filed while the 240-day period was still tolled by the first bankruptcy. When the second bankruptcy was filed, therefore, only 31 days of the 240-day period had run, and the claim for the 2013 liability should be classified as priority.

Since applicable law provides that the 240-day period is tolled while an OIC is pending, plus 30 days, and during a prior bankruptcy, plus 90 days, the running of the 240-day period in this example continued to be tolled (i) between the time the OIC was rejected and the filing of the first bankruptcy,

and (ii) between the dismissal of the first bankruptcy and the filing of the second bankruptcy. When add-on periods overlap with a later tolling event, the overlapping period cannot be counted twice when determining the number of days for which tolling applied.

5.9.13.19.4
(09-10-2014)
Unsecured General

- (1) **Unsecured General Claims.** The term “unsecured general” does not appear in the Bankruptcy Code. Liabilities classified as unsecured general claims do not fall into either secured or priority status. These include all penalties where the IRS did not suffer an actual loss (also referred to as “non-pecuniary loss” penalties) and any interest associated with that penalty. The following chart can aid in determining claim status.

STEP	DETERMINE IF ...	BY...
1	claim is secured	<ul style="list-style-type: none"> • reviewing for NFTL • reviewing for setoff of pre-petition credit
2	claim is unsecured priority	reviewing 11 USC 507(a)
3	claim is unsecured general	not being secured or unsecured priority

- (2) **Failure to Pay Penalties.** IRM 5.9.4.14, Failure to Pay Tax Penalty and Failure to Pay Estimated Income Tax Penalty, discusses when failure to pay penalties are included on a proof of claim for pre-petition tax liabilities.

5.9.13.20
(09-02-2022)
Claim Calculations

- (1) **Tax, Penalty, and Interest.** Absent APOC, the caseworker can calculate the tax, penalty and interest for the claim using IDRS command codes:

- INTSTB
- TXMOD
- IMFOLT
- BMFOLT
- COMPAF (if necessary)
- COMPA (if necessary)

Note: ACT/DMI is a new program which also computes interest, and is preferred for more complex interest computations, as discussed in IRM 20.2.1.6.1, Automated Computation Tools (ACT)/InterestNet. Information on ACT/DMI and information on how to obtain the software is located at <https://portal.ds.irsnet.gov/sites/vl022/Lists/ACTDMIInterestNet/LandingView.aspx>

- (2) **INTSTB.** Command code INTSTB shows the tax, the assessed failure to pay penalty (FTP), the assessed interest, and assessed penalties other than FTP. These amounts comprise the “Assessed Total.” INTSTB also reflects the accrued interest, accrued FTP and total accruals. Finally, it gives the total FTP (assessed and accrued), and the total interest (assessed and accrued) for a “Total Balance Due ”(assessed total and accrued total).
- (3) **COMPA and COMPAF.** If INTSTB is not available, command codes COMPA and COMPAF are used to calculate interest and failure to pay (FTP) penalty. Refer to the tables in IRM 5.9.13.20, Claim Calculations, below when perform-

ing specific calculations using COMPA. Refer to IRM 2.3.29, Command Codes INTST, ICOMP, and COMPA for further guidance on using COMPA and COMPAF.

- (4) **Manual Calculations.** If there is more than one tax assessment on a single tax module, in order to appropriately claim the amounts owed, the caseworker must calculate each assessment separately. Claims not fully secured by a debtor's equity require additional steps. Also, employment tax returns which are not treated as priority under the three-year lookback rule will require additional steps in order to correctly calculate the trust fund and non-trust fund taxes separately. The trust fund portion of the tax and any accrued interest will be classified as priority, while the remainder of the employment taxes will be classified as unsecured general. (See IRM 5.9.13.19.3, Unsecured Priority, and IRM 5.9.13.20(5), Alternative Manual Calculations.) The tax, penalty and interest is calculated the same for all claim classifications. The interest on the penalty will always be classified as a penalty. Therefore, it is necessary to separately calculate the amount of interest attributable to the tax and the amount of interest attributable to the penalty. The following table demonstrates how to calculate a basic claim.

STEP	ACTION	RESULTS
1	Using TXMOD, locate the appropriate tax assessment (ex: TC 150, 290, or 240 RC 618) and subtract pre-petition adjustments to tax.	Total assessed tax to be used in calculating claim. Caution: Unagreed deficiency assessments on pre-petition periods which are assessed post-petition are violations of IRC 6213(f) if the period to petition the Tax Court did not expire before the bankruptcy petition was filed. In these cases, the assessment must be reversed. The amount should be included on the proof of claim as an unassessed priority or unsecured general claim.
2	Total all unreversed pre-petition payments.	Amount of payment credits to be applied toward the tax liability.

STEP	ACTION	RESULTS
3	<p>Subtract the total payments from step 2 from the total tax from step 1.</p> <p>Note: If pre-petition payments satisfy tax liability and credits still exist, subtract the remaining step 2 payments from penalties until they are zeroed out, then subtract any remaining payments from interest.</p>	Tax due is computed. This is the amount that will be listed as tax on the claim.
4	Using INTSTB, add TAX & ASSESSED OTHER PENALTY amounts to TOTAL FTP.	Tax and all penalties are computed.
5	Subtract tax (step 3) from tax and all penalty (step 4).	Penalty only computed.
6	<p>Input CC COMPA from due date of return to petition date on amount of tax (from step 3). Refer to IRM 2.3.29, Command Codes INTST, ICOMP, and COMPA.</p> <p>Note: For TXMODs where payments have posted after the return due date, a <i>new</i> COMPA is required each time the balance of tax changes. The determination of interest on tax may require multiple COMPA calculations, starting from the return due date and ending on the petition date, with interim payment dates in the “from” and “to” fields.</p>	Interest on tax is computed. This amount will be listed as the interest amount on the claim.

STEP	ACTION	RESULTS
7	Subtract step 6 from TOTAL INT on INTST.	Interest on penalties is computed. This type of interest is always classified as an unsecured general claim.
8	Add interest on penalties (from Step 7) to the penalty amount (from Step 5).	This is the amount of penalties and interest on penalties. It will be listed as penalty on the claim.

Note: Verification of calculations can be obtained by adding Steps 3, 5, 6, and 7, which should equal the balance due on INTSTB.

- (5) **Alternative Manual Calculations.** There may be situations in which it would be appropriate to calculate tax, penalty, and interest manually (i.e. multiple unpaid tax assessments on the tax module, or modules with trust fund tax that is required to be listed as a priority claim).

- a. **Tax.** The following chart shows the basic steps to calculate tax.

STEP	ACTION
1	For balance due periods, secure INTSTB to the petition date.
2	Reviewing IMFOLT/BMFOLT/TXMODA, identify tax assessed, adjusted, credited, or paid, by noting TC 150, 29X, 30X, 610, 640, 650, 670, 768, 806, and any other TC indicating an adjustment to tax along with the corresponding amounts.
3	Arrive at a tax balance by starting at TC 150 and adding any tax assessment or debit amounts and subtracting any tax abatement or credit amounts. Note: The tax balance amount should equal the amount shown as tax on INTSTB .
4	When multiple assessments exist, each assessment is treated separately. Credits are applied to multiple unpaid assessments in the following order. Starting at TC 150, subtract any tax abatement or credit amounts until the balance is zero or until all credits are exhausted. Apply remaining credits to TC 290 or TC 300 assessments. If no credits are available, the additional tax is the amount of the TC 290 or TC 300.

- b. **Penalty.** The following chart shows the basic steps to calculate penalty.

STEP	ACTION
1	Using IMFOLT/BMFOLT/TXMODA, identify penalty assessed, adjusted, paid by noting the transaction codes and amounts. Some penalty TCs are 16X, 18X, 27X, 32X (fraud), 35X, however this list is not inclusive.
2	For each different penalty, arrive at the penalty balance independently of any other penalty by adding and subtracting assessments or debits and abatements or credits. Example: For failure to pay penalty (FTP), TC 276, related transaction codes are 270 manual assessment of FTP, 271 manual abatement of FTP, computer generated assessment of FTP - 276, computer abatement of FTP - 277. Each of these TCs in an account would be considered at arriving at the FTP balance.
3	Total the assessed penalty (as opposed to accrued penalty from INTSTB) less the FTP penalty.
4	Verify the penalty amounts with INTSTB comparing the assessed FTP from INTSTB to the amounts computed, and verifying the totals of the ASSESSED OTHER PENALTY from INTSTB to the amounts computed.
5	Add the ACCRUED FTP penalty from INTSTB to the total FTP computed from IMFOLT/BMFOLT/TXMODA.
6	Add the total ASSESSED OTHER PENALTY to the amounts in step 4. This is the total interest.

Note: A pre-petition non-pecuniary loss penalty will never be classified as priority. It will be classified as unsecured general if it is not secured.

c. **Interest.** The following chart shows the basic steps to calculate interest.

STEP	ACTION
1	From IMFOLT/BMFOLT/TXMODA, identify interest assessed, adjusted, or paid, by noting the transaction codes and amounts. Some interest TCs are 19X, 34X, 77X; however, this list is not all inclusive.
2	Arrive at the interest "assessed" balance by adding assessments or debits and subtracting abatements or credits. This is the assessed interest.
3	Verify the interest amounts with INTSTB comparing the interest computed in step 2 to the amounts of interest shown as assessed on INTSTB.
4	Add the accrued interest from INTSTB to the total interest computed from IMFOLT/BMFOLT/TXMODA. This is the amount of total interest.

Note: Pre-petition interest on penalty from a priority claim is classified as unsecured general, the same as the penalty.

The following table demonstrates the steps for separately computing interest on tax and interest on penalty.

STEP	ACTION
1	<p>Compute the interest on tax using CC COMPA. The interest on penalty is computed after the interest on tax is determined.</p> <p>Reminder: Where payments are received after the return due date, a new COMPA is required each time the balance of tax changes. The determination of interest on tax may require multiple COMPA calculations starting from the return due date and ending on the petition date with interim payment dates in the “From” and “To” fields. Refer to IRM 2.3.29, Command Codes INTST, ICOMP, and COMPA.</p>
2	Determine the total interest using INTSTB.
3	Subtract the amount of interest on tax from the total amount of interest on the INTSTB print.
4	The remaining amount is the interest on penalty.

- (6) **Manually Calculating the TFRP, Individual Shared Responsibility Payment (SRP) and Employer Shared Responsibility Payment (ESRP) Assessments.** Since these assessments are made as penalties on IDRS, but treated as tax amounts for the purposes of bankruptcy claim filings, standard claim calculation methods can not be used. Pull TXMOD & INTSTB on each applicable assessment and follow the instructions below:

Type of Assessment	Calculation
TFRP assessments	<p>1. Set Tax on claim = Assessed Other Penalty + Tax (from INTSTB)</p> <p>2. Set Penalty on the claim = 0</p> <p>3. Set Interest on the claim = Total INT (from INTSTB)</p> <p>Caution: If the calculated Tax amount from step 1 above is ≤ 0 then set Tax on claim = zero and set the Interest on the claim = Bal Due (from INTSTB).</p> <p>Note: If there is an unpaid TC 360 present on TXMOD, the caseworker will subtract the amount of the TC 360 from Tax and add to penalty for claim amounts.</p>

Type of Assessment	Calculation
SRP assessments	<ol style="list-style-type: none"> 1. Set Tax on the claim = Assessed Other Penalty + Tax (from INTSTB) 2. Set Penalty on the claim = 0 3. Set Interest on the claim = Total INT (from INTSTB) <p>Caution: If the calculated Tax amount from step 1 above is ≤ 0 then set Tax on the claim = zero and set the Interest on the claim = Bal Due (from INTSTB).</p> <p>Reminder: Under IRC 6601(e)(2), the IRS may not charge interest on an assessable penalty, additional amount or addition to tax (except for the failure-to-file penalty, failure to pay stamp tax, and accuracy-related and fraud penalties) if the taxpayer pays the penalty within 21 calendar days (10 business days if the amount of the penalty is \$100,000 or more) after the first notice and demand. If the taxpayer does not pay the penalty in full, interest will accrue from the notice date. Therefore, interest is applicable on any SRP where the Petition Date > the date of Notice and Demand for payment and the assessment has gone unpaid for more than 21 days. If interest is applicable, and the interest on INTSTB is zero, use command code COMPA to compute an interest amount.</p>
ESRP assessment	<ol style="list-style-type: none"> 1. Set Tax on the claim = Tax (from INTSTB) 2. Set Penalty on the claim = 0 3. Set Interest on the claim = Total INT (from INTSTB) <p>Caution: If the calculated Tax amount from step 1 above is ≤ 0 then set Tax on the claim = zero and set the Interest on the claim = Bal Due (from INTSTB).</p> <p>Note: If there is an unpaid TC 360 present on TXMOD, the caseworker will subtract the amount of the TC 360 from Tax and add to penalty for claim amounts.</p>

5.9.13.21
(09-02-2022)
AIS Claim Screen

- (1) **Loading Claim Information to AIS.** Proofs of Claim are generally processed through APOC. However, there may be times when a Regular, Administrative claim will need to be manually added. To add a proof of claim, follow the steps below:
 1. Search the case. Select the Proof of Claim button.
 2. Select the Insert button.
 3. Input the Form Type - Regular, Administrative, or Probate. A computation date is required when adding an Administrative claim.
 4. Select the Save button.
 5. Select the Index # of the claim that you just added.
 6. Select the Show Claim Period button.
 7. Select the Insert button.
 8. Enter the TIN using the TIN drop down list and add the additional claim detail fields.
 9. Select the Save button.
 10. Follow steps 6-8 to add each claim period detail record
- (2) **Identification of Right of Setoff.** Where SCI personnel have the right under 11 USC 362(b)(26) to complete setoffs, they will do so without annotating the proof of claim. However, an amended claim or a credit letter to the trustee may be required depending upon local procedure. When setoffs cannot be effected under 362(b)(26), SCI must identify claims secured by the right of setoff by the input of the dollar amount of the funds claimed for setoff in the "Offset" fill-in field on the Proof of Claim screen.
- (3) **Language for Insertion on Claim.** When the dollar amount of the setoff has been input to the Proof of Claim screen "Offset" field, the setoff amount is automatically filled in next to the "\$" sign and the following language will appear on the claim:

"The United States has the right of setoff or counterclaim(s), in the amount of \$_____. The identification of any sums subject to setoff is based on available data and is not intended to waive any other right to set off, against this claim, debts owed to this debtor by this or any other Federal agency that have not been identified. All rights of setoff are preserved and will be asserted to the extent lawful."

Reminder: The IRS should not hold a refund indefinitely. Within 30 calendar days of the IRS's becoming aware of a refund being retained, a decision must be made to make a referral, issue the refund, or, in cases filed on or after October 17, 2005, complete any setoff allowed per 11 USC 362(b)(26). If the IRS is allowed to exercise its right of setoff for any credits not of the type as listed in 362(b)(26) and as preserved for setoff on its claim, a credit letter must be sent to the trustee or the claim will be amended or withdrawn according to local procedures.

5.9.13.22
(09-02-2022)
Printing Claims

- (1) **Printing Proofs of Claim.** The Generate POC section of the Proof of Claim Tab on AIS provides several options for generating and printing a proof of claim.

- a. **Draft** generates a copy of the current claim, including a watermark. This option does not change the “Original Prepared” or “Amended Prepared” dates, or update the “Amendment” number. It does not update the “Proof Req’d” field.
- b. **Official Filing Copy** generates a claim for filing and updates either the “Original Prepared” or “Amended Prepared” date. It also updates the “Proof Req’d” field. It is *not* intended to produce copies of a claim because it updates the “Prepared” fields with a new date. **Use of this option should be limited to generating, printing and mailing the current claim to the court for filing.**

Reminder: Use of this option should be rare due to the widespread use of EPOC for filing claims.

- c. **Reference Copy** generates a copy of the current claim, without a watermark. It does not update the “Original Prepared” or “Amended Prepared” fields or update the “Proof Req’d” field. **If caseworkers need a copy of the current claim to send to Area Counsel, the trustee or other parties, they should use this option to produce a copy.**
- d. **Previously Filed Claims** allows you to access previous versions of the claim that were filed within the last 90 days. Claims can be viewed and/or printed. This option does not update any fields on AIS.

5.9.13.23
(09-02-2022)
Allowable Claims

- (1) **Establishing Claim Validity.** Upon filing a proof of claim, the government becomes a party in interest in the bankruptcy. A properly filed proof of claim is deemed allowed unless objected to by a party in interest (11 USC 502(a)). Officers and employees of the IRS may be required to appear as witnesses or to produce evidence in court to establish the validity of the IRS’s proof of claim.

Note: The caseworker does not need to obtain an express authorization from the Commissioner of Internal Revenue so long as the caseworker is appearing and producing evidence at the request of the attorney representing the IRS for the purpose of establishing the rights of the government.

- (2) **Providing Transcripts to Debtors and Trustees.** Bankruptcy Rule 3001 provides that if a claim includes pre-petition interest, fees or other expenses, an itemized statement of the amounts must be filed with the claim. The IRS’ form B410 attachment should satisfy this requirement. However, if the debtor, debtor’s representative or the trustee request such a statement for the liabilities shown on a proof of claim, caseworkers should provide a transcript of all outstanding pre-petition liabilities as soon as possible. When providing transcript to debtors and/or trustees, caseworkers should use the e-Services product Transcript Delivery System via the Employee User Portal (EUP). Document the AIS history with the date the request was made, the information given to the debtor, debtor’s representative or trustee, and the date the information was given.

Note: If the person requesting the information is not the debtor, information should only be provided to the person if disclosure is authorized. Consult IRM 5.9.19-1, Disclosure Chart, for guidance on disclosure to third parties.

5.9.13.24
(06-05-2018)
Signatory

- (1) **Authorization.** Bankruptcy Rule 3001(b) provides the proof of claim must be executed by the creditor or the creditor's authorized agent. This requirement is satisfied by obtaining signatory approval as authorized in Delegation Order No. 51. Bankruptcy proofs of claim are not required to be notarized or executed under oath. All type B410 and 6338-A claims are signed electronically via AIS.

IF...	THEN...
the assigned employee is Grade 9 or higher,	the employee will sign the claim.
the employee is Grade 7,	the claim will be signed by the employee's lead or manager.
the employee grade is null or blank,	as a default, the claim will be signed by the employee's manager. Managers should verify the employee grade information in the employee table.

5.9.13.25
(03-01-2007)
Sale of Claims

- (1) **Requests to Buy IRS Claims.** As a matter of policy, the IRS will not entertain offers from a third party to purchase the IRS's proofs of claim.

Exhibit 5.9.13-1 (09-10-2013)
Threshold for Claims

		#
		# # # # # # # #
		# # # # # # # #
		# # # # # # # #

