



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.9.17

JULY 25, 2022

EFFECTIVE DATE

(07-25-2022)

PURPOSE

- (1) This transmits a revised IRM 5.9.17, Bankruptcy and Other Insolvencies, Closing a Bankruptcy Case.

MATERIAL CHANGES

- (1) IRM 5.9.17.1(5) - Primary Stakeholders, updates Specialty Collection Insolvency to Specialty Collection Insolvency.
- (2) IRM 5.9.17.1.3(2) - Updates Specialty Collection - Insolvency to Specialty Collection Insolvency.
- (3) IRM 5.9.17.1.4(4) - adds the Quality Knowledge Base Home Page.
- (4) IRM 5.9.17.1.7(7) - Adds Document 11834, Insolvency Interface Program (IIP) User Guide to the list of related resources.
- (5) IRM 5.9.17.1.7(8) - Removes the MySBSE Insolvency/Bankruptcy page and replaces with the Knowledge Base Home Page.
- (6) IRM 5.9.17.1.7(9) - Adds Declaring Bankruptcy landing page on IRS.GOV.
- (7) IRM 5.9.17.1.7(10) - IPU 21U0861 issued 07-02-2021 - Adds Taxpayer Bill of Rights (TBOR) to the list of related resources.
- (8) IRM 5.9.17.2(5) - Adds CRIMREST to the case classification list that prevent systemic closure.
- (9) IRM 5.9.17.4(1) - IPU 21U0861 issued 07-02-2021 - Updates the closure method to match the Automated Insolvency System.
- (10) IRM 5.9.17.4(2) - IPU 21U0861 issued 07-02-2021 - Updates IRM to Exhibit.
- (11) IRM 5.9.17.5.1(4) - Updates Case Transferred from CIO to Field Insolvency information to an IF/THEN chart.
- (12) IRM 5.9.17.5.3(5) - Time Frames - IPU 21U0861 issued 07-02-2021- updates the IF/THEN chart from 45 calendar days to 60 calendar days - If the case is screened by the CIO and sent to FI for further investigation of collection potential from EAEP PRIOR to the discharge and FI reviews and researches collection potential internally then a determination to proceed with collection after the discharge or not to pursue further collection must be made no later than 60 calendar days after the case is transferred from CIO to FI.
- (13) IRM 5.9.17.5.3(6) - Changes the 45 to 90 day timeframe to 60 to 90 day timeframe for a definitive statement as to whether collection will proceed after the discharge or if the case can be closed without further collection action.
- (14) IRM 5.9.17.5.3(8) - Adds note that requests for CDP, withdrawals and non-filing of lien/levy can be accepted by fax if contact has been made with the taxpayer by phone or in-person. Adds that taxpayers have 30 days to respond to CDP. Adds to caution to use Form 4844 to add TC 971 to IDRS.

- (15) IRM 5.9.17.5.3(13) - Removes the MySBSE CSED Calculator tool link and replaced with the CSED Calculator (CCALC) Customer Information Page.
- (16) IRM 5.9.17.5.4.1 - Updates the procedures and mailing address to the Thrift Savings Plan for levies.
- (17) IRM 5.9.17.5.4(9) - Adds note to instruct FI caseworker on recommended acceptance or rejection.
- (18) IRM 5.9.17.5.4(10) - Adds note for a proposed, short-term payment plan and adds IRM reference to Collection Due Process and Equivalent Hearing procedures.
- (19) IRM 5.9.17.5.4(11) - Adds note that requests for CIS can be accepted by fax if contact has been made with the taxpayer by phone or in-person.
- (20) IRM 5.9.17.5.4(13) - Adds Form 668R for levying retirement plans.
- (21) IRM 5.9.17.5.4(14) - Replaces the title "Levy Package" to "History Documentation and Verification," removes caution and updates Note with TPC.
- (22) IRM 5.9.17.5.4(15) - Adds IF/THEN table for a levy package request for TSP or other pension/retirement plan account.
- (23) IRM 5.9.17.5.4(16) - Adds steps for completing Form 15000.
- (24) IRM 5.9.17.5.4.1(2) - Updates procedures for levy similar to levy procedures for Excluded Retirement Plans.
- (25) IRM 5.9.17.6.1(3) - Updates Closure Method from "Dismissed for FMT-D2" to "D2 Dismissed for FMT-D2."
- (26) IRM 5.9.17.6.5(2) - Emphasizes to check PACER for dismissal reason to enter correct closure method on AIS.
- (27) IRM 5.9.17.6.5(3) - Adds CRIMREST to the list of case classifications in Chapter 7 or Chapter 13 at dismissal.
- (28) IRM 5.9.17.6.6(7) - Updates IRM link from IRM 25.18 to IRM 25.18.1.
- (29) IRM 5.9.17.6.7(3) - Adds Collection Due Process IRM references when NFTL is filed after dismissal.
- (30) IRM 5.9.17.8(2) - Adds to the note that Failure to Pay Penalty should not be assessed during the pendency of the bankruptcy on all pre-petition taxes per Provisions of IRC 6658.
- (31) IRM 5.9.17.8(4)(e) - Updates to the CSED Calculator (CCalc) Customer information page.
- (32) IRM 5.9.17.8(10) - Adds that Failure to Pay do not accrue during the pendency of the bankruptcy per IRC 6658 and Rev. Rule 2005-9.
- (33) IRM 5.9.17.8(14) - Updates Presidentially Declared Disaster to Federally Declared Disaster and adds note that Combat Zone cases are not tolled in determining dischargeability.
- (34) IRM 5.9.17.8.1(1) - Clarifies some court's position for unfiled return exceptions to discharge.
- (35) IRM 5.9.17.8.3(1) - Corrects "DISCHARGE DENIED" to "DD DISCHARGE DENIED."
- (36) IRM 5.9.17.8.4(2) - Changes dates to the example.
- (37) IRM 5.9.17.8.5(2) - Changes dates to the example.
- (38) IRM 5.9.17.8.6(20) - Changes dates to the example.

- (39) IRM 5.9.17.8.8(1) - Adds address, e-mail, and eFax contact information to the Advisory Group for the restitution cases and changes dates to the example.
- (40) IRM 5.9.17.8.10 - Changes dates to the examples throughout.
- (41) IRM 5.9.17.8.10(1) - Adds the Tax Cuts and Jobs Act of 2017 (TCJA) update and updates Note to add Form 1040 SRP liability is reported on Schedule 4, Other Taxes.
- (42) IRM 5.9.17.8.10(2) - Updates IRM 25.19 to IRM 21.6.3.4.2.9, Health Coverage Tax Credit.
- (43) IRM 5.9.17.8.11(4) - Adds information on how to recognize Letter 226J on IDRS and determine the ESRP discharge.
- (44) IRM 5.9.17.8.11(6) - Adds information on how to recognize Letter 226J on IDRS and determine the ESRP discharge.
- (45) IRM 5.9.17.10 - Adds caution throughout that if there is a TC 520 cc 80 on IDRS, add "NONCLS" classification, reassign case to FI if not already assigned, and keep case open until further direction from Advisory or Counsel prior to discharge.
- (46) IRM 5.9.17.10(8) - Adds caution to the IF/THEN table for Actions Required at Discharge that Failure to Pay should not be assessed during the pendency of the bankruptcy per IRC 6658 and Rev Rule 2005-9.
- (47) IRM 5.9.17.11(2) - Adds note on when TC 550 may be necessary and "if possible, any levy sources should be deleted."
- (48) IRM 5.9.17.12(2) - Adds NFTL with potential sale of property to the list of cases to remain open, instructs CIO how to close the filing requirements on IDRS if out of business, and how to prepare Form 53.
- (49) IRM 5.9.17.12(3) - Adds open TFRP investigation instructions and updates "Other Closing Action" to "OT Other Closing Action" to the IF/THEN table.
- (50) IRM 5.9.17.12.1 - Corrects and adds cites to the Procedure and Administration Regulations.
- (51) IRM 5.9.17.13(1) - Adds a Note that if the business is a Partnership, not an LLC, to follow IRM 5.9.17.11 guidelines.
- (52) IRM 5.9.17.13.3(2) - Adds Note regarding the Tax Cuts and Jobs Act of 2017 (TCJA).
- (53) IRM 5.9.17.14(1) - Granting Discharge - IPU 21U0861 issued 07-02-2021 - adds reference to both individual and non-individual debtors.
- (54) IRM 5.9.17.14.2(1) - IPU 21U0861 issued 07-02-2021- Adds Note: The exceptions to discharge in 11 USC 523(a)(1) also apply to Chapter 12 Non-Individuals and another NOTE: Discharge obtained through fraud may be revoked under BC 1228(d), but if the discharge is revoked no debts are discharged.
- (55) IRM 5.9.17.17(1) - Adds caution to not input TC 521 until further guidance from advisory or DOJ and clarifies the note when reversing TC 520 cc 84.
- (56) IRM 5.9.17.18(6) - Adds if the Insolvency Specialist is not authorized for ALS access, the Specialist will forward Form 13794 through secure e-mail to the group manager for approval and processing.
- (57) IRM 5.9.17.18(7)(a) and (b) - Removes "Eureka" from generating reports.

- (58) IRM 5.9.17.18(7)(e) - Replaces approval and printing actions for NFTL to documenting actions taken and decisions made in the AIS case history.
- (59) IRM 5.9.17.18(7)(f) - Updates procedures on lien releases requested by Insolvency.
- (60) IRM 5.9.17.18(9) - Removes Eureka from Lien Release Reports.
- (61) IRM 5.9.17.19(2) - Removes MySBSE site and adds the CSED Calculator (CCalc) Customer Information Page.
- (62) IRM 5.9.17.20(3) - Adds note to notification to other impacted functions when there is a TC 520 cc 80.
- (63) IRM 5.9.17.21(1) - Updates maintenance information for AIS.
- (64) IRM 5.9.17.21(5) - Updates to add link to Technical Field Insolvency - Referrals - Bankruptcy Referral Form (irsnet.gov).
- (65) IRM 5.9.17.22.1(2) - Adds guidance and procedures for up-front mirroring.
- (66) IRM 5.9.17.22.2(1) - Error Reports, IPU 21U0861 issued 07-02-2021 - removes from the list of bullet conditions - Invalid Name Line on AIS and the example associated.
- (67) IRM 5.9.17.22.2(1) - Removes MySBSE site and replaces with the Exam Systems Knowledge Base home page.
- (68) IRM 5.9.17.22.2(7)3) - Updates to the correct AIMS website.
- (69) IRM 5.9.17.22.2(10) - Updates to Offer-in-Compromise (OIC) Centralized Service Center Locations.
- (70) IRM 5.9.17.22.3 - Updates, throughout, the CSED Calculator (CCalc) Customer Information page.
- (71) IRM 5.9.17.22.3(2) - Adds caution to not input TC 521 and assign to FI if a suit was referred to DOJ.
- (72) IRM 5.9.17.24.1(3) - Updates paragraph selections for Letter 2975-C.
- (73) Exhibit 5.9.17-1 - Updates step action from "Noticed" field to "Close Noticed" field, adds note to not use the IIP tab to request TC 521 on a balance due or delinquent return prior to running through IIP/ADS, adds to wait for systemic mirror processing to complete before requesting the TC 521 through the IIP tab to avoid unpostable, and adds caution when using the IIP Tab to input TC 521.
- (74) Exhibit 5.9.17-2 - Updates to remove cc 78 and adds cc 71 and 80 to the list of other TC 520 closing codes.
- (75) Exhibit 5.9.17-3 - Updates to remove cc 78 and adds cc 71 and 80 to the list of other TC 520 closing codes.
- (76) Exhibit 5.9.17-4 - Updates the link to command code IRPTR job aid and the Income Filing Requirements on table to current years.
- (77) Exhibit 5.9.17-8 - IPU 21U0861 issued 07-02-2021 - Adds Note: If there is a credit after adjustment, the RSED has not expired, and there is no longer a trustee turnover open, then the credit should offset or refund to the taxpayer and corrects link to the TC 520 Closing Codes in Step 2.
- (78) Exhibit 5.9.17-9 - IPU 21U0861 issued 07-02-2021 - Adds Note: If there is a credit after adjustment, the RSED has not expired, and there is no longer a trustee turnover open, then the credit should

offset or refund to the taxpayer, corrects link to the TC 520 Closing Codes in Step 2 and adds penalties may be dischargeable if the plan included this tax to be paid in the plan referring to question 7 in step 7.

- (79) Exhibit 5.9.17-10 - IPU 21U0861 issued 07-02-2021 - Adds Note: If there is a credit after adjustment, the RSED has not expired, and there is no longer a trustee turnover open, then the credit should offset or refund to the taxpayer.
- (80) Exhibit 5.9.17-10 - Adds scheduling a follow up on AIS to ensure timely actions.
- (81) Editorial changes were made throughout this section to add clarity and to update, add, or correct citations.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.9.17, dated October 10, 2019. This revision incorporates IPU 20U0466 dated March 25, 2020 that updates the paragraph selections in IRM 5.9.17.24.1(2) for use in Letter 2273-C , Installment Agreement Acceptance & Terms Explanation and IPU 21U0861 dated July 2, 2021 updates the collection determination prior to discharge in EAEP.

AUDIENCE

All operating divisions

Kareem Williams, Director,
Collection Policy
Small Business Self Employed

5.9.17

Closing a Bankruptcy Case

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Exhibits

- 5.9.17-1 Closing Dismissals
- 5.9.17-2 Regular Installment Agreement Reinstatements
- 5.9.17-3 Reinstating Direct Debit or Payroll Deduction Agreements as a Regular Installment Agreement
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- 5.9.17-10 Processing TC 604 Reversals and Determining Dischargeability Upon Completion of the Plan in an Individual Chapter 11 or Individual Chapter 12 Case
- 5.9.17-11 Determining Dischargeability of Non-Pecuniary Loss Penalties when the Underlying Tax is Non-Dischargeable (Except in the Chapter 13 Case with a Discharge Upon Completion of the Plan)
- 5.9.17-12 Adjusting Individual TFRP Accounts

5.9.17.1
(07-25-2022)
Program Scope and Objectives

- (1) **Purpose:** This IRM section contains guidance on case closing procedures for bankruptcy cases.
- (2) **Audience:** This IRM section is used primarily by caseworkers in Field Insolvency (FI) and caseworkers at the Centralized Insolvency Operation (CIO). It may be referred to by employees in SBSE and in other business organizations.
- (3) **Policy Owner:** The Director of Collection Policy is responsible for issuing policy for the Insolvency program.
- (4) **Program Owner:** The program owner is Collection Policy, Insolvency, an organization within the Small Business/Self Employed (SB/SE) division.
- (5) **Primary Stakeholders:** The primary stakeholders are Specialty Collection Insolvency (SCI), SB/SE Collection, and Counsel.
- (6) **Program Goals:** The goal of this IRM is to provide fundamental knowledge and procedural guidance for closing bankruptcy cases. Following the guidance in this IRM will ensure cases are worked in accordance with bankruptcy laws and regulations.

5.9.17.1.1
(10-10-2019)
Background

- (1) Internal Revenue Manual (IRM) 5.9, Bankruptcy and Other Insolvencies, contains the IRS position, procedures, information, instructions, guidance, and references concerning bankruptcy cases.

5.9.17.1.2
(07-25-2022)
Authority

- (1) IRM 5.9.3.1.2, Authority, contains Insolvency caseworker authority in the Insolvency program.
- (2) The Insolvency program operates within the guidelines of the US Bankruptcy Code (11 USC) and the Federal Rules of Bankruptcy Procedure.

5.9.17.1.3
(07-25-2022)
Responsibilities

- (1) IRM 5.9.1, Bankruptcy and Other Insolvencies - Overview of Bankruptcy, provides a list of titles and responsibilities with an explanation of their roles and authority within the Insolvency program.
- (2) The Director, Specialty Collection Insolvency is responsible for program oversight.

5.9.17.1.4
(07-25-2022)
Program Management and Review

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

5.9.17.1.5

(07-25-2022)

Program Controls

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

5.9.17.1.6

(07-25-2022)

**Terms/Definitions/
Acronyms**

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

Acronym	Definition
ADS	Automated Discharge System
AIS	Automated Insolvency System
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
CSED	Collection Statute Expiration Date
EAEP	Exempt Abandoned Excluded Property
ESRP	Employer Shared Responsibility Payment
FI	Field Insolvency
NDS	Non-Debtor Spouse
NFTL	Notice of Federal Tax Lien
SRP	Shared Responsibility Payment

5.9.17.1.7

(07-25-2022)

Related Resources

- (1) Procedural guidance on insolvencies can be found throughout IRM 5.9, Bankruptcy and Other Insolvencies.
- (2) The US Bankruptcy Code (11 USC)
- (3) Bankruptcy Rules (Federal Rules of Bankruptcy Procedure)
- (4) Local Bankruptcy Court Rules
- (5) Applicable Case Law

- (6) Document 13219, AIS User Guide
- (7) Document 11834, Insolvency Interface Program (IIP) User Guide
- (8) Insolvency Knowledge Base Home Page <https://portal.ds.irsnet.gov/sites/vl114/pages/default.aspx>
- (9) Declaring Bankruptcy on IRS.GOV: <https://www.irs.gov/businesses/small-businesses-self-employed/declaring-bankruptcy>
- (10) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

5.9.17.2
(07-25-2022)
Overview

- (1) **Closure of Accounts.** Periods with a bankruptcy freeze that remain unpaid at the close of a bankruptcy case must be adjusted, reactivated, or reported currently not collectible, as appropriate. Entities that may be reported as currently not collectible are Chapter 7 corporations, certain Limited Liability Companies (LLCs) that liquidate in Chapter 7, corporations that liquidate in Chapter 11, and certain LLCs that liquidate in Chapter 11. Outstanding liabilities on Form 1041, U.S. Income Tax Return for Estates and Trusts, may also be reported as currently not collectible. A discharge of debt in bankruptcy relieves the debtor of any personal liability for the debt. However, the debt may still be collected by either a distribution in the case, exercise of a right of setoff that existed prior to the filing of the bankruptcy petition, or from property encumbered by a pre-bankruptcy tax lien that remains enforceable after the case.
- (2) **Automated Discharge System (ADS).** Much of the Insolvency discharge process for Chapter 7 individual and Chapter 13 bankruptcy cases is automated through the Automated Discharge System (ADS). ADS and the Insolvency Interface Program (IIP) bridge the Automated Insolvency System (AIS) to the Integrated Data Retrieval System (IDRS). Bankruptcy discharges in other chapters must be processed manually. (See IRM 5.9.18, Automated Discharge System.)
- (3) **Chapter 7 and Chapter 13 Closures.** CIO caseworkers will initiate automatic closure on all Chapter 7 and Chapter 13 cases, regardless of case assignment, unless the CIO is systemically prohibited from inputting the method of closure on AIS. On cases where the method of closure cannot be entered and the case is assigned to a FI caseworker, the CIO caseworker will input the court closure date and update the AIS history with the manner of closure (dismissal, discharge, hardship discharge, or non-discharge). FI will transfer Chapter 7 and Chapter 13 discharged or dismissed cases assigned to FI to the CIO for closure unless there are issues that require the case to remain in FI. The CIO will resolve Discharge Determination Reports (DDR) on cases in CIO inventory, including those cases transferred from FI to the CIO.
- (4) **Chapter 7 Asset Closures.** FI will complete an initial case review and ensure that all proofs of claim are acknowledged in the Chapter 7 Asset case. If there are no issues present that require the case to remain in FI, the case will be transferred to the CIO unless the Chapter 7 Asset case was filed by a partnership entity. Some issues that require the case to remain in FI include, but are not limited to:

- The case was dismissed and IRS received notice of the dismissal while the case was assigned to FI.
- There is an NFTL on file and exempt property has been identified that may be used to satisfy the taxpayer's liability after the discharge is granted.
- Abandoned or excluded property has been identified that may be used to satisfy the taxpayer's liability after the discharge is granted due to the IRS statutory lien.

Note: The IRS can collect discharged tax, discharged penalty, and/or discharged interest from exempt, abandoned, or excluded property (EAEP) after discharge.

- Awaiting the trustee's final distribution in an individual Chapter 7 Asset case with dischargeable liabilities which are secured by an NFTL.
- Objections to proof of claim.
- Complaints to determine dischargeability or other litigation involving the IRS.
- Unassessed TFRP liabilities, when applicable.

Once all claims are acknowledged and there are no "field" issues, FI will add a "SUMMARY HISTORY" to AIS and transfer the Chapter 7 Asset case to the CIO. Upon receipt of the business case, the CIO will input a TC 530 closing code (cc) 07 on all unpaid modules on IDRS, reverse all TC 520(s), and close the case on AIS, when directed to do so in the AIS history. CIO will monitor the individual Chapter 7 Asset case assigned to the CIO for discharge or dismissal. At discharge or dismissal, the CIO will input the court closure date on AIS and populate the "closure method" field on AIS. The closure method for the dismissed case will be "D1 Regular Dismissal-D1" or "D2 Dismissed for FMT-D2" based on the reason for dismissal in the dismissal order. "RI CH7&HARDSHIPCH13 RI" will be placed in the closure method field for the discharged case. The CIO will address any DDRs generated by the Automated Discharge System (ADS) and release liens, when required, on cases assigned to the CIO.

A liability may be non-dischargeable because the IRS did not receive notice of the bankruptcy filing in sufficient time to file a timely proof of claim in the bankruptcy case. In these instances, the method of closure on AIS must be "No Notice". (See IRM 5.9.17.8.9 for additional information.)

- (5) **Preventing Premature Closures.** FI caseworkers can have legitimate reasons to keep cases currently assigned to them open even though the case has been discharged or dismissed by the court. To prevent systemic closure of the case by CIO, the FI caseworker must ensure the case is assigned to himself/herself on AIS and that a "Case Classification" is open on AIS that prevents systemic closure. The following case classifications prevent systemic closure of the case when the case classification is open on AIS:

- 11 USC1232
- ACA MFT=43
- ATAT
- CID FREEZE
- COURT CASE
- CRIMREST
- DmVacNoSta
- EXAM
- EXEMPT

- FULL PAID
- Iden Theft
- NONCLS
- NoNotice
- OIC PENDING
- PDSC ISSUE
- RE-ASSESS
- REFERRAL
- TFRP
- URP/IRP
- WAIT 4 FD
- WILLFUL

Note: See IRM 5.9.5.4.1, Case Classifications, for additional information about the case classifications used on AIS.

- (6) **Use of the Referral Screen.** The AIS referral screen must only be used to identify and track referrals to Counsel and for no other reason. Thus, if a referral is not pending, the referral screen should not be opened to prevent case closure on AIS.
- (7) **Observing the Automatic Stay.** Insolvency must adhere to the provisions of the Bankruptcy Code when closing bankruptcy cases by avoiding actions that may result in a violation of the Bankruptcy Code. (IRM 5.9.17.4, Time Frames for Required Actions.)
- (8) **Counsel.** Certain issues in a bankruptcy case may be referred to Associate Area Counsel or directly to the U.S. Attorney's Office (USAO). Within this IRM, the term "Counsel" refers to Associate Area Counsel or the USAO, whichever is appropriate. In certain situations, Insolvency must obtain an advisory opinion from Area Counsel or consult with Area Counsel, not the USAO. When this is the situation, the guidance within this IRM states "Area Counsel". For more information on referrals, see the following subsections in IRM 5.9.4, Common Bankruptcy Issues:
 - IRM 5.9.4.15, Referrals - Representing IRS in Bankruptcy Court
 - IRM 5.9.4.15.1, Direct Referrals
 - IRM 5.9.4.15.2, Referrals to Counsel (Non-Direct Referrals)
 - IRM 5.9.4.15.3, Significant Bankruptcy Case Referrals
 - IRM 5.9.4.15.4, Referral Tolerances

5.9.17.3
(07-25-2022)
**Lift of Stay and
Reversing the
Bankruptcy Freeze**

- (1) **Lift of Stay.** "Lift of stay" means the freeze on collection actions no longer applies. However, the stay is in effect against specific property of the estate and it continues until the property is no longer property of the estate. The stay otherwise continues until the *earliest* of the date:
 - a. The case is closed by the court;
 - b. The case is dismissed;
 - c. A discharge is granted or denied in the case of an *individual* Chapter 7 debtor; or,
 - d. A discharge is granted or denied when the bankruptcy case is filed under Chapters 9, 11, 12, or 13.
- (2) **Exceptions to the Stay.** For cases filed on or after October 17, 2005, the implementation date of the Bankruptcy Abuse Prevention and Consumer Pro-

tection Act (BAPCPA), certain Chapter 7, 11, 12, or 13 cases filed by individuals may have no stay imposed. The stay with respect to the debtor and the debtor's property that is not property of the bankruptcy estate may be terminated 30 days after the petition date in certain Chapter 7, 11, or 13 individual cases. IRM 5.9.5.7, Serial Filers, IRM 5.9.5.7.1, Systemic Identification in Serial Filer Cases, and Exhibit 5.9.5-4, Common Processing Steps in Serial Filer Cases, through Exhibit 5.9.5-6, Processing the Serial Filer Case When No Stay Goes into Effect, provide instructions on proper closing procedures for these stay variations.

- (3) **Releasing the Bankruptcy Freeze Code.** Generally, Insolvency caseworkers must manually reverse the bankruptcy freeze code or request systemic reversal of the bankruptcy freeze code at the earliest point possible when one of the above situations occur and the case meets all other closing requirements. Exceptions are allowed for pursuing collection from exempt, abandoned or excluded property (EAEP) or for awaiting receipt of the trustee's final distribution in the individual Chapter 7 Asset case with dischargeable liabilities secured by a tax lien.
- (4) **Non-Master File Accounts.** In certain situations, Insolvency may request the establishment of a Non-Master File (NMF) account for the taxpayer. Established accounts with "N" after the TIN may require transfer of a credit or payment to another module. The established NMF account may require input of bankruptcy freeze code transactions, input of transactions to reverse the bankruptcy freeze, or input of a TC 550 to extend the CSED on an account. Insolvency sends documents to establish or adjust NMF accounts to the Kansas City Submission Processing Campus (KCSPC). The following list provides information on submitting documents to KCSPC:
 - **Form 12810, Account Transfer Checklist.** Send Form 12810 to the KCSPC address below to request establishment of a NMF account. The Form 12810 *with an electronic signature* can be sent via EEFAX to KSSPC at (888) 981-6483. The Form 12810 can be mailed to KCSPC at:

Internal Revenue Service
 Kansas City Submission Processing Campus
 333 W Pershing Rd.
 NMF Team, Mailstop 6263 P-6
 Kansas City, MO 64108

- **Form 2424, Account Adjustment Voucher.** Mail Form 2424 to request a credit transfer on an established NMF account to KCSPC at the address shown above.
- **Form 3177, Notice of Action for Entry on Master File.** Send Form 3177 to request input of a TC 520, TC 521, TC 550, etc. on an established NMF account to KCSPC at the address shown above. For prompt processing, send the Form 3177 via EEFAX to (888) 981-6483 or via secure e-mail to *W&I KCSPC Non-Master File Team.

Note: A Form 3177 is required when the CSED must be extended on the Automated Non-Master File (ANMF) system.

The Automated Discharge System (ADS) does not process NMF accounts. For additional information, see IRM 5.9.18.5(2), Problem Conditions, Social Security Number with an N.

Note: Any TIN with an asterisk (*) must have the bankruptcy freeze reversed at the close of a bankruptcy case.

- (5) **Prior Installment Agreements.** When the taxpayer had an installment agreement (IA) at the time the bankruptcy petition was filed, the filing of the bankruptcy petition does not terminate the IA. The IRS treats the IA as suspended by the filing of the bankruptcy case. When the bankruptcy case is dismissed or discharged, and there are outstanding liabilities that survive the bankruptcy, the caseworker must address the prior IA during case closure. See IRM 5.9.17.24, Addressing Prior Installment Agreements When Closing a Case, and Exhibit 5.9.17-2 through Exhibit 5.9.17-5 for additional information.

5.9.17.4
(07-02-2021)
**Time Frames for
Required Actions**

- (1) **Closing Actions.** Generally, closing actions on a case must be initiated by Insolvency within 30 calendar days of notification or receipt of the discharge or dismissal order. When a case is closed through ADS, “initiating closing actions” means selecting the correct closure method (“RI CH7&HARDSHIPCH13 RI” or “SI 13 PLAN COMPLETED SI”) in the Closure Method field on the AIS Taxpayer Screen **and** beginning to resolve any DDRs generated by ADS for that case. Periods with Notices of Federal Tax Lien (NFTLs) may require manual intervention to release liens (IRM 5.9.17.18, Release of Federal Tax Liens).

Reminder: It is important to select the correct closure method. Select “RI CH7&HARDSHIPCH13 RI” for a Chapter 7 and Hardship Chapter 13 discharge or select “SI 13 PLAN COMPLETED SI” when the Chapter 13 plan is completed.

Reminder: When no further actions or refunds are needed, CIO will begin taking closing actions on trustee turnover cases.

- (2) **Delaying Adjustments.** Legitimate reasons for delaying final adjustments beyond 30 days after discharge may exist. Reasons for delay include, but are not limited to:

- Investigations into collection from exempt, abandoned, or excluded property (EAEP).
- Awaiting final distribution from the trustee in the individual Chapter 7 Asset case with dischargeable taxes when a secured claim was filed.

Note: IRM 5.9.15.3.5, Payments Received After AIS Discharge Closing, and Exhibit 5.9.15-5, Posting Payments on a Closed Case, address how to post payments received after a case has been closed on AIS.

- Awaiting distribution in a case with dischargeable liabilities that are collectible from abandoned or excluded assets due to the IRS statutory lien.
- Consideration of exceptions to discharge under 11 USC 523(a)(1)(C), such as fraudulent returns or willful attempts to evade or defeat taxes. Delay of adjustment action(s) based on fraudulent returns or willful evasion usually require the written concurrence of Area Counsel. (IRM 5.9.17.9, Discharge Injunction, and IRM 5.9.17.8.2, The Fraud or Willful Evasion Exception to Discharge).

Note: A denial of discharge for fraud or willful evasion does not meet direct referral criteria and must go to Area Counsel. See IRM 5.9.4.15.1(6)(i), Direct Referrals, Direct Referral Authorization, and IRM 5.9.4.15.2, Referrals to Counsel (Non-Direct Referrals), for additional information.

- (3) **Using Reports to Ensure Timely Closing Actions.** Caseworkers must generate and work the “Court Closure F/U” report to ensure closing actions are initiated within 30 days of the IRS being notified of the discharge or dismissal. The “Lien Research Report” must be generated and worked weekly by caseworkers to identify discharged cases for which a lien release has not been systemically generated (except cases where pursuit of EAEP is being considered) and a manual lien release is required. A lien release may be required because a lien was fully satisfied as defined in IRC 6325 and it appears that systemic lien release will be delayed due to resolution of a DDR, mirroring, etc. As an alternative, caseworkers may use the Discharge ADS Start Date report on AIS to identify discharged cases requiring closing actions. Caseworkers may substitute an approved Business Objects program for the “Lien Research Report” to identify cases which may require the release of an NFTL. See Exhibit 1.4.51-25, Guide for Lien Research Report (Field Insolvency and CIO), for additional information.

5.9.17.5
(07-25-2022)
**Exempt, Abandoned, or
Excluded Property
(EAEP)**

- (1) **Exempts Property.** A debtor may claim certain property as exempt from the bankruptcy estate under either state or federal law. Such property cannot be liquidated by the trustee. Exempt property is not liable for any debts of the debtor except alimony, security interests, non-dischargeable tax debts, and dischargeable liabilities secured by a Notice of Federal Tax Lien (NFTL) pursuant to 11 USC 522.
- (2) **Individuals and Exempt Property.** Only individuals may claim exempt property. Debtors must select either federal or state exemptions; selection from both is not permitted.
- Federal or State Exemptions** The election of either federal or state exemptions is permitted unless the state in which the debtor lives specifically prohibits election by state law. In those states, the debtor is allowed only those exemptions provided by state law.
 - Spouses** In the case of a husband and wife whose estates are jointly administered, the debtors are not permitted to elect different exemption options.
 - Federal Exemptions** 11 USC 522(d) lists the federal exemptions available to the debtor.
- (3) **Excluded Property.** Certain property interests are “excluded” from the bankruptcy estate. This means the property interest does not become property of the bankruptcy estate upon the petition date. ERISA-qualified pension plans are generally excluded from the bankruptcy estate (11 USC 541(c)(2)). For cases filed on or after October 17, 2005, certain educational IRAs subject to limitations may also be excluded under 11 USC 541(b)(5) and (6). If a retirement plan is not ERISA-qualified, it may be exempt from the estate under 11 USC 522.

Note: Collection from pension plans require special handling and is addressed below in IRM 5.9.17.5.4, Insolvency Levy Procedures for Excluded Retire-

ment Plans and IRM 5.9.17.5.4.1, Thrift Savings Plan (TSP).

- (4) **Abandoned Property.** “Abandonment” severs a bankruptcy estate’s interest in property. Under the Bankruptcy Code, the court may permit the trustee to abandon any property of the estate that is burdensome or of inconsequential value to the estate.
 - a. **Affirmative Abandonment.** A party in interest may request the abandonment of property. The trustee may actively abandon property. The trustee may abandon the property to the debtor or to a party with a possessory interest. A hearing before the court is required.
 - b. **Administrative Abandonment.** If the property is listed in the schedule of assets but is not administered by the trustee, it is abandoned to the debtor upon closing of the estate.
- (5) **Collection from EAEP not Limited to Specific Bankruptcy Chapters.** While the CIO and FI have developed internal procedures for addressing EAEP assets in Chapter 7 No Asset cases, the IRS can pursue EAEP to collect dischargeable liabilities in any bankruptcy chapter. The term “dischargeable liability” includes dischargeable tax, dischargeable interest, and/or dischargeable penalties. Dischargeable liabilities can be collected from exempt property secured by a pre-petition NFTL. Dischargeable liabilities can also be collected from excluded or abandoned property due to the IRS statutory lien.

5.9.17.5.1
(07-25-2022)
**Pre-discharge Review
for Exempt, Abandoned,
or Excluded Property
(EAEP) in Chapter 7 No
Asset Cases**

- (1) **Identification.** The CIO identifies Chapter 7 No Asset cases that may be considered for an exempt, abandoned, or excluded property (EAEP) investigation based on the Case Assignment Guide (CAG) balance on AIS. Generally, these cases are identified soon after IRS receives notification of the bankruptcy filing, prior to the USBC 341 Meeting of Creditors, and before the bankruptcy discharge. Caseworkers at the CIO “screen” the case to determine if there are dischargeable liabilities. The CIO also determines if there is any exempt, abandoned, or excluded property (EAEP) available for possible collection after the bankruptcy discharge. For more information about EAEP investigations, see IRM 5.9.6.10.3, Large Dollar 7N Case Assignments, and IRM 5.9.6.11.1, Initial Case Review of Large Dollar 7 No Asset (7N) Reassignments by FI.

Reminder: Dischargeable liability includes dischargeable tax, dischargeable interest, and/or dischargeable penalties.

- (2) **Dollar Criteria for Unpaid Balance of Assessment UBA.** The dollar criteria used to determine which exempt, abandoned, or excluded property (EAEP) cases will be selected for review is determined by the Director, Specialty Collection Insolvency (SCI). Additionally, the Director, SCI determines the dollar criteria for investigations of the fraud or willful evasion exceptions to discharge. The dollar amounts are calculated to establish an inventory that can be worked timely by available resources.
- (3) **Cases that Remain at the CIO.** If there are no dischargeable liabilities, the case remains at the CIO. Additionally, if there are dischargeable liabilities, no

CIO. There is no requirement to transfer the case to FI for a determination if the taxes are non-dischargeable due to the fraud or willful evasion exceptions to discharge. In both instances, the CIO takes closing actions upon dismissal or discharge. In the discharged case, closing actions include inputting “RI

#

CH7&HARDSHIPCH13 RI” in the closure method field on AIS and resolving any DDR’s generated by the Automated Discharge System (ADS).

- (4) **Cases Transferred from CIO to Field Insolvency (FI).** If there are dischargeable liabilities, the CIO identified EAEP during screening, and the case meets the dollar criteria in (2) above, the case is transferred from CIO to FI for a further investigation of EAEP. If the total aggregate UBA of all modules is

ties are non-dischargeable due to the fraud or the willful evasion exception to discharge. It does not matter if the CIO identified EAEP in their review when

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IF	THEN
the FI caseworker determines that there is no fraud or will evasion, and there is no collection potential from EAEP	the FI caseworker must secure managerial approval of no collection potential and/or WFTP pursuit, input a “SUMMARY HISTORY”, add case classifications “No EAEP”, “7N - NQRS”, and “No WFTP” classifications to AIS, and return the case to the CIO.
FI has determined that the liabilities are non-dischargeable due to willful evasion or fraud (IRM 5.9.17.8.2), all liabilities are subject to collection after the discharge.	there is no need for the case to remain in FI. Document the AIS “SUMMARY HISTORY” accordingly, then add a “WILLFUL” and “7N - NQRS” case classification to AIS. CIO will take closing action on the case at dismissal or discharge. There will be no need for the CIO to return the case to FI at discharge.
The FI caseworker determines that there is EAEP subject to collection after discharge the case must remain in FI until all collection activity has been completed from the EAEP.	FI caseworker must add an “EXEMPT” and “7N - NQRS” case classification to AIS. The “EXEMPT” case classification identifies that there is EAEP available for collection after discharge.

The IRS cannot take any action to collect from the EAEP until the automatic stay is lifted at discharge. Managerial approval must be documented in AIS prior to initiating enforced collection action. For additional information see:

- IRM 5.9.17.5.2 through IRM 5.9.17.5.4.1
- IRM 5.9.5.4(6), Automated Insolvency System (AIS) Documentation, Classifications and Summary Histories
- IRM 5.9.5.4.1, Case Classifications
- IRM 5.9.5.4.2, Summary Histories
- IRM 5.9.5.4.4, Chapter 7 Summary Histories
- IRM 5.9.6.10.3, Large Dollar 7N Case Assignments

5.9.17.5.2
(07-25-2022)

Collection from Exempt, Abandoned, or Excluded Property (EAEP)

- (1) **Collection Determination.** Upon discharge, non-dischargeable liabilities can be collected from all of the debtor’s property. Upon discharge, dischargeable liabilities can be collected from exempt property for which a Notice of Federal Tax Lien (NFTL) was filed prior to the petition date if *the lien remains valid against the specific property*. (IRM 5.9.5.9.2, Refiling Notices of Federal Tax Lien (NFTLs)). Dischargeable liabilities can also be collected from abandoned or excluded property due to the IRS statutory lien. An NFTL is not required to collect from excluded or abandoned property. A determination must be made if

collection action will or will not be pursued against such property. The determination must be documented in the AIS history.

- a. **Dischargeable Liabilities.** For *dischargeable* liabilities, if a valid pre-petition NFTL has been filed, the IRS should determine if collection will be pursued from exempt property. Collection can be taken against abandoned property based on the statutory tax lien, whether or not an NFTL was filed. Although excluded property also need not be secured by an NFTL, other considerations must be taken before pursuing collection. (IRM 5.9.17.5.4 and IRM 5.9.17.5.4.1) Collection is limited to the value of the exempt, abandoned, or excluded property on the petition date and any post-petition appreciation in the property.

Reminder: Dischargeable liability is not limited to dischargeable tax. Dischargeable liability includes dischargeable tax, dischargeable interest, and/or dischargeable penalties.

- b. **Non-Dischargeable Liabilities.** A determination may also be made to determine if the IRS can collect *non-dischargeable* liabilities from the exempt, excluded, abandoned, non-administered, or after-acquired property of an individual debtor.
- (2) **Counsel Guidance.** When collection concerns arise (for example, questioning if certain property is exempt or if collection action against the property is allowable under the Bankruptcy Code), Insolvency should seek guidance from Counsel.
 - (3) **Options for Investigation.** When investigating exempt and/or abandoned assets, Insolvency has the option of issuing an Other Investigation (OI) or handling the investigation internally. Insolvency will pursue collection on excluded assets using its own resources rather than depending upon Field Collection (FC).

Exception: Cases coded as ATAT must be assigned to the Collection ATAT coordinator.

- (4) **Collection Considerations.** Collection against exempt, abandoned, or excluded property (EAEP) requires following all the usual collection procedures set forth in the Code and the operational provisions of the IRM, such as IRM 5.10, Seizure and Sale, and IRM 5.11, Notice of Levy.

Reminder: After the bankruptcy discharge, the IRS must adhere to all Collection Due Process (CDP) requirements. See IRM 5.9.3.7, Collection Due Process (CDP) Cases, and IRM 5.1.9.3, Collection Due Process, and subsections. when pursuing the collection of liabilities from EAEP.

Although assets may have equity and collection may be readily accomplished (e.g., cash value of insurance, IRAs, etc.), Insolvency must consider various factors discussed in IRM 5.10, Seizure and Sale, prior to pursuing collection from EAEP. These factors include the following:

- a. Alternative means of collection prior to seizure (IRC 6331(j));
- b. Seeking the advice of Counsel before requesting the possible seizure of a personal residence; as a District Court judge or a magistrate must approve a levy on a principal residence of the taxpayer, the taxpayer's spouse, former spouse, and/or the taxpayer's minor children (IRC 6334(e)(1));

- c. The prohibition against seizure of real property used as the debtor's residence, or any non-rental real property of the debtor used by any other individual as a residence, if the liability is less than \$5,000 (IRC 6334(a)(13)(A));
- d. The requirement that the Area Director must approve all seizures of tangible personal property or real property used in the trade or business of the debtor (IRC 6334(e)(2) and 6334(a)(13)(B)(ii)(A));
- e. The sale of seized property at less than minimum bid is a violation of the law (IRC 6335(e));
- f. "No equity" seizures are prohibited. There is no equity when the seizure cost incurred by the IRS meets or exceeds the equity of the seized asset(s). (IRC 6331(f) and 6331(j) and IRM 5.10.1.3, List of Prohibited Seizures);
- g. The value of personal effects, books, and tools exempt from seizure is indexed for inflation (IRC 6334(g));
- h. Recent legal changes;
- i. FC workload priorities, staffing, and resources, if an OI is required;
- j. Insolvency staffing and resources;
- k. Reasonable expectations of potential net dollars to be applied towards the liability (for example, a valid lien exists for a large liability but the equity in the assets are minimal);
- l. The requirement that the Area Director must approve all seizures of any principal residence of someone other than the taxpayer, the taxpayer's spouse, former spouse, and/or minor children; and
- m. Complex circumstances; such as, other lien creditors, title concerns, and community property issues.

Reminder: After the bankruptcy discharge, the IRS must adhere to all CDP requirements. See IRM 5.9.3.7, Collection Due Process (CDP) Cases, and IRM 5.1.9.3, Collection Due Process, and subsections, when pursuing the collection of dischargeable liabilities from EAEP.

- (5) **Preventing Violations of the Discharge Injunction.** To prevent violations of the discharge injunction, dischargeable module(s) must be kept under TC 520 (freeze code) control until all collection actions have been completed or a determination has been made not to pursue collections and all dischargeable modules have been fully adjusted. (See IRM 5.9.17.9, Discharge Injunction.)
- (6) **When to Make Adjustments.** In most instances, when an investigation of exempt, abandoned, or excluded property (EAEP) is on-going, adjustments should not be made on the dischargeable liabilities, nor lien(s) released on dischargeable liabilities secured by a valid NFTL, *until a collection determination has been made and a discharge has been entered by the court.* Dischargeable liabilities should not be adjusted until all collection actions from the EAEP have been completed.

5.9.17.5.3
(07-25-2022)

Addressing Lien Issues

- (1) **Verifying NFTL Validity.** Caseworkers must verify an NFTL is valid before pursuing collection on dischargeable periods with a recorded NFTL from exempt real property. Contact with the lien recording authority may be required for verification if ALS does not provide adequate documentation. Caseworkers may also verify the validity of NFTLs by researching websites such as <http://www accurint.com/> and available on-line courthouse records.

- (2) **Lien Survival.** The IRS statutory lien survives the bankruptcy for property abandoned or excluded from the bankruptcy estate even when an NFTL has not been filed. If a valid NFTL has been filed pre-petition, the lien survives as to exempt, abandoned, or excluded property (EAEP). The lien attaches to the value of any assets to which the lien attached on the petition date up to the amount of the unpaid liability secured by the lien. Additionally, the lien attaches to any post-petition appreciation in the asset.
- (3) **Delaying Collection.** The IRS may forego immediate collection from EAEP. This will allow the lien to remain attached to the EAEP in the prospect of collecting dischargeable liabilities at some future date when the property is transferred by the taxpayer. The paragraphs below discuss criteria and procedures for retaining liens when future collection is possible.
- (4) **Real Property.** Generally, liens will only be released when the tax liabilities are discharged, final distribution is made, and the determination is made that no collection potential exists against EAEP. Liens need not be released when the lien attaches to exempt or abandoned real property and equity exists in that property even though no immediate collection activity is planned. To determine if equity exists, the value of the real property must be investigated using resources such as bankruptcy schedules and Accurint or by issuing an Other Investigation (OI) to Field Collection (FC).
- (5) **Time Frames.** The chart below explains the time frames FI must meet when making a determination about the IRS pursuing collection from EAEP.

IF...	THEN...
The case is screened by the CIO and sent to FI for a further investigation of collection potential from EAEP prior to the discharge and FI reviews and researches collection potential internally,	A determination to proceed with collection after the discharge or not to pursue further collection must be made <i>no later than 60 calendar days</i> after the case is transferred from the CIO to FI.
The case is reassigned to FI after the discharge and FI reviews and researches collection potential internally,	A determination to proceed with collection or close the case without further collection must be made <i>no later than 45 calendar days</i> after the discharged case is transferred from the CIO to FI.
The case is assigned to FI at the time of the discharge and the research is worked internally,	A determination to proceed with collection or close the case without further collection must be made <i>no later than 45 calendar days</i> after Insolvency receives notification of the discharge.
The case is assigned to FI and an OI is needed to request a further investigation by FC at discharge,	A determination to proceed with collection or close the case without further collection must be made <i>no later than 90 calendar days</i> after Insolvency receives notification of the discharge.

- (6) **History Documentation.** By the end of the 45, 60, or 90 day time frame outlined above, the AIS history must provide a definitive statement as to whether collection will proceed after the discharge or if the case can be closed without further collection action. Reasons must be provided to support either decision. At minimum, the FI caseworker must document how they arrived at the collection determination. The documentation should state resources researched to determine the value of assets and how equity was determined. Finally, the AIS history must include the total amount of any dischargeable liabilities owed to the IRS.
- (7) **Field Insolvency Duties.** Field Insolvency (FI) will be responsible for all aspects of reviewing, monitoring, and ultimate closing of cases where the lien has been retained for potential future collection from the transfer of real property. This responsibility does not preclude issuing an OI to FC.
- (8) **Contact with the Taxpayer.** After discharge, a “soft” letter must be sent to the taxpayer explaining the IRS’ intent to retain the lien. The letter must provide the debtor an opportunity to pay the lien interest. If an acceptable amount is offered by the taxpayer, the account must be adjusted to \$.00 after payment is received. If there is no response to the “soft” letter within 30 days of issuance, a notice of intent to levy should be sent. Letters sent depend on the type of property being pursued and if Collection Due Process (CDP) appeal rights are provided with the letter. IRC 6330 gives the taxpayer the right to a Collection Due Process (CDP) appeal before the proposed levy action. When Form 12153, Request for Collection Due Process or Equivalent Hearing, is issued with the letter, taxpayers must respond within 30 days of the date of the letter to request a hearing per IRC 6330. When a taxpayer has been given CDP rights on a module, a TC 971 AC 069 will be present on the module on IDRS. When the taxpayer has never been given CDP rights, the final notice must include CDP rights. CDP rights are only required once for the taxable period and any unpaid tax which is subject to the intent to levy on the period. A second notice is only required when there are additional taxes, an accuracy related filing penalty or a payment delinquency penalty, that were assessed on the period after the original CDP notice was issued. Additional CDP notices are not required for new assessments of interest and penalty accruals on the period. For additional information, see IRM 5.1.9.3, Collection Due Process, and subsections and IRM 5.9.3.7.1, Collection Due Process (CDP) and Equivalent Hearing.

Note: Taxpayer requests for Collection Due Process (CDP)) on Form 12153, letter or taxpayer’s request of withdrawal of CDP, letter to request non-filing of lien/levy, lien/levy release or withdrawal can be accepted by fax if contact has been made with the taxpayer by phone or in person. The taxpayer case history is documented with the date of contact and notation is made that the taxpayer wishes to send the document/form/letter by fax.

The following letters are used when the IRS intends to pursue exempt or abandoned property in Chapter 7 cases:

- Letter 4068, Post-discharge Letter Seeking Payment, or “soft” letter, and if no response;
- Letter 4066, Notice of Intent to Levy CDP Rights; or
- Letter 4067, Final Notice of Intent to Levy - No CDP.

The following letters are used when the IRS intends to pursue excluded property in Chapter 7 cases:

- Letter 4553, Excluded Property - Soft Notice, and if no response;
- Letter 4554, Excluded Property - Final Notice with CDP Rights; or
- Letter 4556, Excluded Property - Final Notice without CDP Rights.

Note: These letters may be adapted for use in other bankruptcy chapters when pursuing EAEP after discharge.

Caution: Caseworkers must follow noticing procedures in IRM 5.11.1.3, Collecting Process, Notice of Levy, Pre-Levy Actions, when issuing EAEP letters to the debtor. This includes inputting a TC 971 AC 069 when issuing the Letter 4066 or Letter 4554 giving final notice and CDP appeal rights to the debtor. Form 4844, Request for Terminal Action, can be used to input a TC 971 AC 069 on IDRS.

(9) **Settlement Considerations.** Each offer to satisfy a lien on EAEP must be judged on its own merits. Payment of less than the full amount of the Unpaid Balance of Assessment (UBA) of the dischargeable lien periods must be reviewed by a FI caseworker and approved by the group manager. The AIS history must reflect the reasons for deciding either to accept or reject the debtor's offer. Factors to consider are:

- Events precipitating the bankruptcy
- Financial circumstances of the debtor after bankruptcy
- Total UBA of dischargeable lien periods
- Percentage of UBA to be paid by settlement
- Current equity in the EAEP
- Local outlook for property appreciation
- NFTL self-release date

(10) **IDRS Actions.** When a decision is made to retain a lien against exempt or abandoned real property, or to pursue abandoned or excluded property based on the statutory lien, the FI caseworker must ensure the TC 520 cc 81 is on dischargeable periods. (IRM 5.9.17.5.4, Insolvency Levy Procedures for Excluded Retirement Plans) An IDRS control base must be established by the Insolvency caseworker on the dischargeable modules remaining open. An IDRS message must be input on the dischargeable modules stating, "BANKRUPTCY ACTION". (See IRM 2.3.12, Command Code ACTON, for instructions.) The open IDRS control base will ensure no actions are taken on the dischargeable tax modules inadvertently by an IRS employee outside of Insolvency. The open control base will also signal the module was not erroneously overlooked during the discharge process. Finally, caseworkers must input the following documentation on Account Management Services (AMS):

Example: Bankruptcy discharged on MM/DD/YYYY. IRS can take routine case actions, including entering into an IA, on all modules except 30-20XX (list all modules that will remain in ST 72) as the bankruptcy case is closed. Do not take any action on 30-20XX (list all modules that will remain in ST 72), including filing an NFTL, levy, or including the module in an IA. Business Units are free to take whatever action is appropriate on all remaining modules.

- (11) **AIS History for Not Releasing Lien.** The AIS history must show all actions taken to resolve the lien through collection; as well as, the taxpayer's response to those actions. Justification for not releasing the lien must be provided. The exact property address and property description of the real property (e.g., condominium, double-wide trailer and lot, single family residence, etc.) subject to the lien must be listed in the AIS history. If closing actions on any dischargeable periods not covered on an NFTL remain, the caseworker must complete those actions. The AIS case will remain open until all dischargeable modules have been fully adjusted and the bankruptcy freeze has been reversed on IDRS. There is no requirement for the case to remain open until lien releases have been generated. Generally, lien releases will generate systemically when all adjustments to the respective modules have posted to IDRS. In the event the caseworker identifies an error in, or delay to a systemic release of lien, a manual release of lien should be requested. See IRM 5.9.17.18(9), Lien Release Reports, for additional information.
- (12) **Notice of Federal Tax Lien (NFTL) Refiles.** NFTL refiles will be requested on a case by case basis. If the decision is made not to refile an NFTL, upon self-release of the lien, the FI caseworker must adjust the lien period balance to zero and reverse the bankruptcy freeze on IDRS. When an NFTL is not refilled by the "Last Day for Refiling" shown on the NFTL, the statutory lien is released for that module. Follow-ups must be input on AIS to review cases during the NFTL refile window. For additional information, see IRM 5.9.5.9.2, Refiling Notices of Federal Tax Lien (NFTLs).
- (13) **CSEDs and Refiles.** Insolvency will ensure that IDRS reflects the correct CSED date for modules held open after discharge to assert the IRS lien rights. IDRS does not systemically compute the new CSED for these dischargeable periods because the TC 520 is not reversed on IDRS. Insolvency must calculate the extended CSED and request input of the TC 550 to IDRS. Insolvency may manually input the TC 550 to IDRS or request input of the TC 550 by Collection Centralized Case Processing (CCCP). A Form 4844, Request for Terminal Action, or Form 3177, Notice of Action for Entry on Master File, can be sent by Insolvency to Collection Centralized Case Processing (CCCP) to request input of the TC 550 to IDRS. Finally, the caseworker must document the extended CSED in the AIS history and schedule a follow-up on AIS to ensure dischargeable modules are adjusted to \$0 before the expiration of the extended CSED. Abatement of the discharged module prior to expiration of the extended CSED will ensure that no collection actions are taken by any function on the module after the extended CSED has expired. (See IRM 5.9.4.3, ASER/CSED, for additional information.) Generally, a refilled NFTL is valid for 10 years. Since the TC 520 on dischargeable modules is not reversed on IDRS, Insolvency must ensure that ALS reflects the extended CSED date. Otherwise, ALS may indicate that the CSED is still suspended by the bankruptcy and may show a CSED date of "***/**/****" instead of the extended CSED.
- Note:** To compute the extended CSED caseworkers should use the CSED calculator found at the CSED Calculator (CCALC) Customer Information Page <https://program.ds.irsnet.gov/sites/SbseBrSSC/CCALC/SitePages/Home.aspx>.
- (14) **Self-Release of the Lien.** When a lien is released because the NFTL was not refilled timely, whether intentionally or by oversight, a revocation of the erroneous release may be requested (IRM 5.12.3.14, Revocation of Lien Release). However, Insolvency usually does not seek a revocation of the lien

release in these cases. When a revocation of the erroneous release is not requested, the FI caseworker must immediately complete closing actions so the dischargeable modules are adjusted to zero and the bankruptcy freeze is reversed.

- (15) **Partial Payment.** The IRS may determine to pursue dischargeable liabilities from only real property. Upon sale of the real property, secured creditors are paid their lien interest. The payment to the IRS may not satisfy the dischargeable liability. Upon receipt of the payment, the FI caseworker must adjust the dischargeable liability to zero by requesting a TC 971 Action Code (AC) 031. A lien release will generate systemically once all adjustments have posted to IDRS. (IRM 5.9.17.18, Release of Federal Tax Liens) Any unreversed TC 520 must be reversed manually by inputting a TC 521 with a posting delay cycle. (See Exhibit 5.9.18-1, Discharge Determination and IDRS Actions, for additional information.)
- (16) **Distributions and Liens.** Insolvency should not request a lien release or request adjustments when distribution is expected in the bankruptcy. Lien release after discharge but before a final distribution could impair the IRS secured status. However, it is the general position of the IRS that when we are a secured creditor on the bankruptcy petition date, we remain secured throughout the bankruptcy case. If a payment is received from the bankruptcy trustee after the discharged liability is adjusted, the payment should not be returned to the trustee. The payment should be applied to the IRS proof of claim. For additional information, see:
- IRM 5.9.13.19.2, Secured Claim
 - IRM 5.9.15.3.5, Payments Received After AIS Discharge Closure
 - Exhibit 5.9.15-5, Posting Payments on a Closed Case

If any significant issues arise concerning lien releases, consult Counsel.

- (17) **Adjustments and Federal Tax Liens (FTLs).** IRC 6325 provides for the release of a lien within 30 days of the date when the liabilities for any periods are fully satisfied or have become legally unenforceable. IRC 6325 does not require that the lien be released because of the bankruptcy discharge. To comply with IRC 6325, when accounts secured by a pre-petition lien are discharged, Insolvency *must* adjust the accounts to zero, if necessary, and initiate lien releases when:
- a. The liability has been full paid,
 - b. The liability has been abated for reasons other than the bankruptcy discharge, or
 - c. The true CSED has expired for cases with refiled NFTLs.

In these situations, it may be necessary to request a manual lien release when closing actions will delay systemic lien release beyond 30 days of Insolvency receiving the notice of discharge. Additionally, in the instance of an individual Chapter 11 case filed prior to BAPCPA, or a non-individual Chapter 11 case filed at any time, the IRS will request a manual lien release within 30 days of receipt of the final payment. Caseworkers will review the "Lien Research" report on AIS or the "Potential Manual Lien Release" Business Objects report weekly to identify cases that require a manual lien release because liens were satisfied as defined in IRC 6325. In all other situations in which the accounts secured by a pre-petition lien are discharged, the IRS will initiate the closing actions within 30 days of receipt of the notice of the discharge order.

Generally, once the closing actions are completed, including the posting of all abatements on IDRS, a lien release will generate systemically. In most instances, there is no need to request a manual lien release due to the bankruptcy discharge when the liability is not satisfied as defined in IRC 6325. A manual lien release is usually not required in the following situations:

- a. The IRS has received payment for an agreed settlement of the lien.
- b. Collection action against exempt, abandoned, or excluded property (EAEP) has been completed.
- c. A determination has been made that collection will not be pursued against EAEP.

In the event the caseworker identifies an error in, or delay to a systemic release of lien, a manual release of lien should be requested.

- (18) **Taxpayer Issues.** Lien retention on dischargeable periods may affect taxpayers who seek to purchase or sell property after the bankruptcy has closed. The following are two probable scenarios and how they should be handled. If other scenarios arise, Insolvency should consult Counsel for guidance.
 - a. **Taxpayer Purchasing Real Property.** If a taxpayer is attempting to purchase real property while a lien is being retained on dischargeable periods, and the lender will not close because an NFTL was recorded, the caseworker must explain that per Revenue Ruling 68-57, a purchase money mortgage has priority over a previously filed NFTL, if protected by local law. (See IRM 5.12.1.4.1, Lien and NFTL Priorities, and IRM 5.17.2, Federal Tax Liens.) The pre-petition lien on dischargeable liabilities does not attach to after-acquired property so it will not attach to the real property being purchased by the debtor. However, when contacted about the NFTL, the caseworker should try to negotiate payment of the lien interest in the pre-petition property to which the lien does attach.
 - b. **Taxpayer Selling Real Property.** The debtor may attempt to sell property acquired post-petition. The title company may be concerned because the IRS filed a pre-petition NFTL. The caseworker should explain that the pre-petition lien on dischargeable liabilities does not attach to after-acquired property. The lien on dischargeable liabilities only attaches to pre-petition property excluded from the bankruptcy estate, exempted from the bankruptcy estate, or to property abandoned by the bankruptcy estate. The title company may request a Certificate of Discharge to show clear title on the after-acquired property. For additional information, see IRM 5.12.10.3, Lien Related Certificates, Discharge of Property, and sub-sections.

5.9.17.5.4
(07-25-2022)
**Insolvency Levy
Procedures for Excluded
Retirement Plans**

- (1) **ERISA Considerations.** The Automated Discharge System (ADS) generates a Discharge Determination Report (DDR) to alert Insolvency of the presence of a retirement plan on IRPTRL when the dollar amount of the dischargeable secured liability reaches an established threshold. (The NFTL requirement for generating the excluded property DDR will be deleted from ADS at a future date.) The retirement plan may be an ERISA-qualified pension plan and excluded from the bankruptcy estate (11 USC 541(c)(2)). Additionally, the debtor may have a Thrift Savings Plan (TSP) that is excluded from the bankruptcy (IRM 5.9.17.5.4.1). If so, the IRS can collect dischargeable liabilities from the pension plan after discharge due to the IRS statutory lien. An NFTL is not required. If the retirement plan is not an ERISA-qualified pension plan, it

may be exempt from the bankruptcy estate under 11 USC 522. The IRS can collect dischargeable liabilities from the exempt retirement plan if there is a valid pre-petition NFTL filed for the dischargeable liabilities.

Note: In either situation, the lien attaches to the value of the retirement plan as of the petition date. The lien also attaches to any post-petition appreciation or depreciation of the pension plan. It does not attach to contributions made to the retirement plan after the petition date. (IRM 5.11.6.3, Funds in Pension or Retirement Plans)

When the CIO technical units receive these DDRs, they must first resolve any other DDRs, update the AIS history, and reassign the cases to the appropriate FI, when required. The FI caseworker will be systemically notified of reassignment via Outlook e-mail.

Reminder: There may not be a need to reassign the case to FI to resolve the DDR after the discharge if EAEP was investigated before the discharge.

- (2) **Large Dollar Chapter 7 No Asset Cases.** In many Chapter 7 No Asset cases, investigations concerning the pursuit of exempt, abandoned, or excluded property (EAEP) will have been completed by Insolvency prior to discharge. The AIS history will indicate that the investigation has been completed and whether or not dischargeable liabilities will be pursued after the discharge. If the AIS history states collection will not be pursued after the discharge, the case will not be transferred to FI when the case is discharged. The CIO will complete final closing actions. If assets were identified for the collection of dischargeable liabilities after the discharge, the case remains in FI until discharge. FI will take appropriate collection actions and close the case when collection has been concluded. (IRM 5.9.17.5.1 and IRM 5.9.6.10.3, Large Dollar 7N Case Assignments)
- (3) **Excluded Property DDRs in Other Cases.** CIO is now responsible for performing EAEP asset research on all Chapter 7 No Asset individual cases meeting the criteria established by the Director, SCI. When ADS generates an excluded property DDR and an EAEP investigation was not completed prior to discharge, CIO will follow the EAEP research procedures in IRM 5.9.17.5.1. If the case meets transfer criteria, the CIO will transfer the case to FI. If the case does not meet transfer criteria, the CIO will resolve the DDR and close the case.
- (4) **Considerations.** Prior to issuing a levy on excluded retirement plans, caseworkers must comply with all pre-levy guidelines in IRM 5.11.1, Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions. The same pre-levy considerations for levying on any asset apply to a levy on EAEP and are discussed in detail in IRM 5.11.1.3.1, Pre-Levy Considerations. Caseworkers must make the decisions discussed in IRM 5.11.6.3, Funds in Pension or Retirement Plans, which includes steps to follow in making the determination to levy and securing Director, SCI approval. Generally, attempts to collect from retirement plans should be made only when attempts to collect from non-retirement plan assets have not been productive. As a notice of levy issued on a retirement plan is issued to a third party, the taxpayer must be advised of potential third-party contacts. See IRM 5.11.1.3.1, Pre-Levy Considerations, IRM 5.11.1.3.2, Required Notices, IRM 5.1.1.12, Third Party Contacts, IRM

25.27, Third Party Contacts, and IRM 5.9.3.12.1, Third-party Contacts, for additional information. The following considerations must be weighed before proceeding with collection activities:

- a. The debtor's current overall financial situation,
- b. Other assets available for paying the liabilities,
- c. The debtor's current or soon-to-be dependence upon the retirement assets,
- d. The debtor's age and health,
- e. The debtor's employment history and prospects for accumulating additional assets for retirement, and
- f. Payment proposals submitted by the debtor.

Note: Caseworkers should review for the presence of an open -O disaster freeze. The IRS will suspend certain compliance activities through the disaster expiration date, absent exigent circumstances which require managerial approval. Postponed activity includes issuing levies. Refer to IRM 25.16.1, Disaster Assistance & Emergency Relief, Program Guidelines. All balance due modules of an entity that has a disaster freeze in any balance due module or in the entity, will be systemically reversed out of or excluded from the FPLP. IRM 5.11.7.2.2.2, Exclusions, and Exhibit 5.11.7-3, FPLP Exclusion Criteria.

- (5) **Flagrant Misconduct.** In addition to the considerations in (4), above, except where the debtor has requested levy, Insolvency must determine if the debtor has engaged in flagrant conduct before levying on a retirement account. Because assets set aside for retirement are provisions debtors have made for their well-being, and their family's well-being, the IRS position is that retirement accounts will only be levied when the debtor's conduct in failing to pay taxes has been "flagrant" as identified in IRM 5.11.6.3. *If the debtor has not engaged in flagrant conduct, Insolvency must not levy on retirement accounts.* Examples of flagrant conduct are provided in IRM 5.11.6.3(6).
- (6) **Debtor's Request for Levy.** A debtor may provide a signed written request asking the IRS to levy on his/her retirement account to avoid paying a ten percent tax on early retirement plan distributions even though the debtor may have the legal right to make a voluntary withdrawal. Insolvency must follow guidance in IRM 5.11.6.3(3) in making a determination whether to levy on a retirement account at the request of the debtor.
- (7) **Retention of Lien.** An NFTL is not required to pursue collection from property abandoned by, or excluded from, the bankruptcy estate. However, if an NFTL has been filed on the module(s) for which collection is being pursued, a lien release must not be issued until collection from the abandoned or excluded property has been completed or the decision is made not to pursue collection. *The lien release extinguishes the IRS statutory lien. If that occurs, the release may be revoked pursuant to IRC 6325, provided that the asset is still owned by the debtor, although the reinstated tax lien will be subordinate to any encumbrances that previously were junior to the tax lien as well as to any new encumbrances that may have attached in the meantime. No levy should be issued without first revoking the erroneous release of the lien.*
- (8) **Collection Not Pursued.** If the FI caseworker determines that collection from the retirement account will not be pursued, the FI caseworker must update the AIS history with the reason collection will not be pursued. The FI caseworker

will take necessary actions to resolve the DDR. Actions include adjusting dischargeable liabilities by requesting the TC 971 AC 031 and reversing all bankruptcy freezes (TC 520(s)). Generally, there is no need to request a lien release on the dischargeable liabilities as it should generate systemically once all adjustments have posted to IDRS.

Reminder: As stated in paragraph (2) above, if the investigation is concluded prior to the discharge, the CIO will take all closing actions on cases assigned to them.

- (9) **Debtor's Payment Proposal.** After all considerations have been weighed and the decision has been made to proceed with collection on an excluded retirement account, the FI caseworker must send a letter requesting payment from the debtor. Letter 4553, Excluded Property - Soft Notice, should be used for Chapter 7 cases. In chapters other than Chapter 7, Insolvency should consult with Counsel to adapt Letter 4553 for use in appropriate cases. The letter invites the debtor to contact Insolvency to establish payment arrangements. If the debtor makes contact to propose payment arrangements or to discuss less than full payment, the FI caseworker must consider the following:

- a. Information provided by the debtor showing the current valuation of the retirement account
- b. Information from the debtor that the retirement account assets are currently being applied toward necessary living expenses
- c. Requests for a short term payout agreement

Note: Generally, requests for payouts extending over six months should not be accepted.

Note: The FI caseworker must recommend acceptance or rejection of the debtor's proposal to the group manager. If the proposal is accepted, the group manager must document concurrence with satisfaction of the lien interest in the AIS history. If the payment plan will exceed six months, counsel and group manager should be consulted and the approval should be documented in the history.

- (10) **Advising the Debtor of the Proposal Status.** When a decision has been made to accept or reject a debtor's proposal, the Insolvency caseworker must advise the debtor of the decision in writing through an ad hoc letter.
- If the proposal for a short-term plan is accepted, the terms of the agreement must be clearly stated with specific due dates or payments and instructions of where and how to complete the check or money order, "Please make any check or money order payable to the United States Treasury" writing the debtor's social security or other taxpayer identification number on the payment, and the docket number of their bankruptcy. Payment should be sent to the Internal Revenue Service at the address of the Specialist/Advisor assigned the case.
 - If a short-term payment plan is requested, accepted and approved by management, the case should remain in the Specialist/Advisor's case inventory on AIS to monitor the payments.
 - If the debtor has not been cooperative, Insolvency must decide if the debtor's conduct meets any of the flagrant misconduct criteria. If so, a Notice of Intent to Levy should be sent.

Example: The Letter 4554, Excluded Property - Final Notice with CDP Rights, provides a notice of intent to levy and the debtor's right to a Collection Due Process (CDP) hearing. The Letter 4556, Excluded Property - Final Notice without CDP Rights, gives a notice of intent to levy when the debtor was previously afforded CDP rights. (See IRM 5.9.17.5.3(8), Contact with the Taxpayer, for additional information.)

Reminder: Caseworkers must request input of a TC 971 AC 069 when issuing final notice with CDP rights.

- (11) **Financial Analysis.** At any point in dealing with a debtor who is facing the levy of a retirement account, it may be appropriate to take a financial statement from the debtor. IRM 5.15, Financial Analysis, gives standards to be used in establishing necessary living expenses, including national standards (IRM 5.15.1.9, National Standards), local standards (IRM 5.15.1.10, Local Standards), and other expenses (IRM 5.15.1.11, Other Expenses). IRM 5.11.6.3(7) requires a determination to be made whether the debtor depends on the money in the retirement account (or will in the near future) for necessary living expenses. If the taxpayer is dependent on the funds in the retirement account (or will be in the near future), do not levy the retirement account. In determining whether the debtor depends on the money (or will in the near future), use the standards in IRM 5.15, Financial Analysis, to establish necessary living expenses. Use the life expectancy tables in Pub 590-B, Distributions from Individual Retirement Arrangements (IRAs), to determine how much can be withdrawn annually to deplete the retirement account in the debtor's remaining lifetime. Also, consider any special circumstances in the debtor's specific situation, such as extraordinary expenses or additional sources of income that will be able to pay expenses during retirement.

Note: Requests for Collection Information Statements (CIS), such as Form 433A or Form 433B, can be accepted by fax/facsimile if contact has been made with the taxpayer by phone or in-person, the taxpayer history file is documented with the date of contact, and notation is made that the taxpayer wishes to send the documents by fax.

- (12) **Collection Appeal Rights.** A taxpayer who has not previously received CDP rights has 30 days after the date of the Final Notice-Notice of Intent to Levy to request a CDP hearing. (See IRM 5.1.9, Collection Appeal Rights)
- (13) **Levy Form 668R.** Form 668R, Notice of Levy on Retirement Plans, is mandatory as it contains special instructions for levying retirement plans. The Insolvency caseworker must complete the self-explanatory form for signature by the delegated authority (Delegation Order 5-3). In this case, the Director, SCI is the delegated authority.
- (14) **History Documentation and Verification** The FI caseworker must document all actions leading up to the preparation of the levy in the AIS history. The history must include a summary entry noting all of the following:
- Debtor's name, address, TIN, age, health, financial condition, responsiveness, history of delinquency, current compliance, and example(s) of flagrant conduct.
 - Adherence to the debtor's rights outlined in IRM 5.11.6, Notice of Levy in Special Cases.
 - The fact that collection from other assets was considered.

- Verification that the balance due is correct and levy action is appropriate.
- The value of the asset on the petition date plus any appreciation (IRM 5.9.17.5.2(1)(a), Dischargeable Liabilities), and type of asset targeted for levy.
- Dates of assessment, Notice and Demand, Notice of Intent to Levy, Notice of a Right to Collection Due Process (CDP) Hearing, and Notice of Third-Party Contact (TPC) - including EAEP letters and the date of issuance of the Third-Party Notice. See IRM 5.11.1.3.2, Required Notices.

Note: Carefully review each module to determine if the taxpayer received advance TPC notification and that the date of TPC notification is less than one year old. If it has been more than one year since the taxpayer last received advance written notification of TPC, on one or more modules, a new notification is required. Calculate the one year period from the 46th day after the date of the notice, provided the 46th day is the first day of the contact period specified in the letter. Employees may not contact a third-party (levy) until the 46th day following the date of the TPC notice. See IRM 25.27.1 , Third-Party Contact Program.

- The extended CSED for all modules held open after discharge to assert the IRS lien rights. (IRM 5.9.17.5.3(13), CSEDs and Refiles)
- The mandated levels of review and approval.

(15) **Levy Package.** The levy package request for Thrift Savings Plan or other pension/retirement plan accounts:

IF	Then
the decision is to levy against the debtor's TSP/pension	Issue Letter 4068, Post Discharge Letter Seeking Payment, with Pub 594, The IRS Collection Process. Note: IRC 7602(c)(1) requires that the IRS provide advance written notification of intent to contact third parties for each module that will be referenced in the third party contact..
there is no contact from the Letter 4068	Ensure that the debtor has received: <ul style="list-style-type: none"> • Notice and Demand • Notice of Intent to Levy • Notice of a Right to a Collection Due Process (CDP) Hearing, and • Notice of Third-Party Contact
IDRS Transaction Code (TC) 971 cc 069 is present in the balance due period that a levy will be issued	The debtor has received their CDP rights. Consider issuing Letter 4067, Final Notice of Intent to Levy - No CDP, if appropriate. Note: CDP rights are only received once per tax period.

IF	Then
IDRS TC 971 cc 069 is not present	Issue Letter 4066, Notice of Intent to Levy and Notice of Your Right to a Hearing, along with a copy of the letter, Pub 594, The IRS Collection Process, Pub 1660, Collection Appeal Rights, and Form 12153, Request for a Collection Due Process or Equivalent Hearing. Mail the package certified and ensure that the TC 971 cc 069 is input on the tax periods included in the letter. Use Form 4844, Request for Terminal Action, to have the transaction code added.
Collection Due Process (CDP) or Equivalent Hearing is received	Refer to IRM 5.9.3.7.1, Collection Due Process (CDP) and Equivalent Hearing. Note: Taxpayer requests for CDP on Form 12153, letter can be accepted by fax if contact has been made with the taxpayer by phone or in-person, the taxpayer history is documented with the date of the contact, and notation is made that the taxpayer wishes to send the document/form/letter by fax.
There is no contact from the debtor or their representative within the required timeframe - 45 days for the appeal	Forward the levy package to the immediate group manager for approval: <ul style="list-style-type: none"> • Completed Form 15000, Request for Approval of Levy on Funds in TSP or Other Pension /Retirement Plan Accounts • Copy of the AIS case history • Copy of the Allowable Expense Calculator if the figures have not been copied into the Form 15000 • A copy of the bankruptcy schedules and SOFA • Completed Form 668-R for each IRA account being levied

(16) **Form 15000.** Form 15000, Request for Approval of Levy on Funds in Pension, Retirement Plans or TSP Account, is used when requesting Director approval to levy on retirement or 401(k) funds:

- Criteria for competing Form 15000 is outlined in IRM 5.9.17.5.4(15), Levy Package.
- Step One - Collection Alternatives - document the AIS history all potential collection alternatives that have been considered.
- Step Two - Flagrant Conduct - Refer to IRM 5.11.6.3(6), Funds in Pension and Retirement Plans, Examples of Flagrant Conduct.
- Step Three - Future Living Expenses: 1) Complete the allowable expense calculator to determine living expenses and 2) The Pub 590-B, Distributions from Individual Retirement Arrangements (IRA's), could be used to determine how long the retirement funds will last based on life expectancy. Tables can be found in the back of the publication. The Allowable Expense Calculator can also be found in the Knowledge Management

Base Allowable Living Expense (ALE) page: <https://portal.ds.irsnet.gov/sites/vl065/Lists/SecuringFinancialInformation/DispItemForm.aspx?ID=4>

- e. Step Four - Signature: Ensure that the signature and official title is input.
- f. Forward completed levy package to the immediate manager for approval as outlined in IRM 5.9.17.5.4(15), Levy Package.

- (17) **Post-Levy Actions.** After levy proceeds have been received and all collection actions have been exhausted, the caseworker must take the necessary actions to close the case. This includes adjusting all dischargeable liabilities and reversing all bankruptcy freezes. If the levy proceeds result in a full payment, it may be necessary to request a lien release. If not, there generally is no need to request a lien release as it should generate systemically once all adjustments have posted to IDRS.

5.9.17.5.4.1
(07-25-2022)
**Thrift Savings Plan
(TSP)**

- (1) **Excluded Property in the Bankruptcy Case.** Moneys due or payable from the Thrift Savings Plan (TSP) to an individual are excluded from the bankruptcy and subject to a levy under IRC 6331. As of December 7, 2015, caseworkers are no longer required to coordinate levies on an individual's TSP with Area Counsel.
- (2) **Procedures for Levy.** General procedures for levying a TSP can be found in IRM 5.11.6.3.1, Thrift Savings Plan. A levy on a TSP account should be treated in the same manner as a levy on a private pension or retirement plan or IRA. These procedures are detailed above in IRM 5.9.17.5.4. These procedures are used by the Internal Revenue Service when determining if the Internal Revenue Service will levy on the debtor's TSP account. It must be stressed that before levying a TSP the caseworker must:
 - Consider alternative means of collecting the liability,
 - Determine if the taxpayer's conduct has been flagrant, and
 - Consider whether the taxpayer depends on the money in the TSP now (or will in the near future) for necessary living expenses.

All levies on TSP accounts should be on Form 668R , Notice of Levy on Retirement Plans, and should be mailed to the following address:

- (3) **Levy Address.** Levies on a TSP should be sent to the TSP Legal Processing Unit at:

ThriftLine Participant Care Center
C/O Broadridge Processing
P.O. Box 1600
Newark, NJ 07101-1600

If immediate delivery of the levy is necessary, the fax number and the address for overnight delivery of IRS levies can be found at <http://www.tsp.gov> under Contact TSP page. The levy must be received by the TSP offices designated above no later than 30 days after the date on the levy form. See IRM 5.11.6.3.1(10) , Thrift Savings Plan.

- (4) **The Role of Associate Area Counsel.** On December 7, 2015, Chief Counsel Notice CC-2016-001 was issued superseding Chief Counsel Notice CC-2013-007 previously issued on February 4, 2013. Caseworkers are no longer required to coordinate the issuance of TSP levies with Area Counsel. Caseworkers are no longer required to refer a case to Area Counsel when the TSP

Legal Processing Unit fails to respond to a TSP levy or refuses to honor a TSP levy. If TSP does not respond to a TSP levy, contact TSP via fax find out why there was no response to the levy. The fax number for TSP is in (3), above.

5.9.17.6
(12-09-2016)
Dismissal

- (1) **The Effect of the Dismissal Order.** With the exception of certain confirmed Chapter 11 cases, a dismissal order under 11 USC 349 returns the debtor to their pre-petition status. This includes the accrual of applicable penalties and interest. Upon dismissal, property of the estate is *re-vested* in the debtor.
- (2) **CSSED.** The Collection Statute Expiration Date (CSED) on all cases is extended for the period of time during which the IRS was prohibited from collecting the tax due to the bankruptcy case and for six additional months. This is true *even in a case that is subsequently dismissed*. (See IRM 5.9.4.3, ASSED/CSED.)
- (3) **Effective Date.** A dismissal order is not effective when the judge orally enters the dismissal from the bench. The dismissal order is effective *only* when signed by the judge. Additionally, to be effective, the clerk has to enter the dismissal order on the court's docket. Insolvency uses the date the dismissal order is entered on the court's docket when inputting the TC 521 to remove the bankruptcy freeze on IDRS.

5.9.17.6.1
(07-25-2022)
Closure without Discharge

- (1) **Financial Course.** The court will not grant a discharge when an individual or joint debtor fails to complete an approved financial management course (11 USC 727(a)(11) and 1328(g)(1)). The court will close the case as either "Discharge Not Applicable" or "Closed without Discharge".
- (2) **Not Discharged Denied.** These cases are not to be considered the same as "Discharge Denied". They will not be counted as a dismissal for purposes of limiting the automatic stay in a new bankruptcy case. See IRM 5.9.5.7, *Serial Filers*, for additional information.
- (3) **Closure Method.** Insolvency will close these cases as "D2 Dismissed for FMT-D2". The date of the court's order closing the case as "Discharge Not Applicable" or "Closed without Discharge" is input in the "Dismissed" date field under the "Closing Info & Dates" block on the Taxpayer Screen on AIS.

5.9.17.6.2
(12-09-2016)
Dismissal Issues Specific to Chapter 7

- (1) **Notice and Hearing.** A Chapter 7 case may be dismissed "for cause" only after notice and a hearing (11 USC 707(a)).
- (2) **Causes for Dismissal.** Reasons ("causes") a debtor's bankruptcy may be dismissed include:
 - Unreasonable delay by the debtor that is prejudicial to creditors
 - Non-payment of any fees or charges
 - Failure of the debtor in a voluntary case to file schedules as required by 11 USC 521, but only on motion of the US Trustee
 - Failure to meet the means test (for cases filed on or after October 17, 2005)
 - Failure to file tax returns due after the commencement of a case subject to BAPCPA
- (3) **Abuse of Bankruptcy Process.** The court, on its own motion or on a motion by the United States Trustee, may dismiss the case on other grounds if

granting relief to the debtor would be a substantial abuse of the bankruptcy process. Grounds for dismissal could include:

- Bad faith in filing the petition
- Debts primarily consisting of consumer debts
- Serial filings for cases filed on or after October 17, 2005 (IRM 5.9.5.7, Serial Filers, subsections, and related exhibits)

Note: A motion to dismiss for serial filings can also be brought by a party in interest.

5.9.17.6.3
(12-09-2016)
Dismissal Issues
Specific to Chapter 12

- (1) **Grounds for Dismissal.** The court's authority to dismiss is found in 11 USC 1208(c), which provides such action may be taken upon the request of a party in interest "for cause", including ten specific grounds. The more important ones are:
 - a. Failure to begin making timely payments required by a confirmed plan;
 - b. Gross mismanagement by the debtor;
 - c. Material default by the debtor with respect to the terms of a confirmed plan;
 - d. Unreasonable delay by the debtor that is prejudicial to creditors; and
 - e. Continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.
- (2) **Cause.** Like any other party seeking dismissal, the IRS bears the burden of proof in arguing sufficient "cause" for dismissal. Courts have broad discretion in determining what constitutes "cause" but the most common reasons for dismissal cited by the IRS are:
 - a. The debtor's failure to pay federal taxes in accordance with the terms of a confirmed plan and
 - b. The debtor's failure to stay current on post-petition taxes.

Note: If an objection to confirmation is filed, upheld, and cannot be resolved, the case will generally be dismissed by the court.

5.9.17.6.4
(12-09-2016)
Dismissal Issues
Specific to Chapter 13

- (1) **Revert to Pre-Bankruptcy Status.** A number of Chapter 13 debtors fail to complete their plans. Upon dismissal, the stay of actions against property of the estate terminates and the tax accounts revert to their pre-bankruptcy status. (See IRM 5.9.17.6, *Dismissal*.)
- (2) **Dismissal Requests by Debtor.** The dismissal may be at the debtor's request. Should a debtor request a dismissal, the court will generally grant the dismissal *unless the case was converted from another chapter*. The IRS usually concurs with the request. However, in rare instances, the IRS may object to protect the government's interests.

Example: The debtor may seek to avoid the court's authority in resolution of a levy dispute by opting to be outside of the Bankruptcy Court's jurisdiction. However, if the IRS has a strong case, the IRS may prefer that the debtor remain in bankruptcy so the court will have the authority to make a ruling on disbursement of the levy funds.

- (3) **Dismissal Request by Trustee.** The Chapter 13 dismissal is often sought by the trustee because the debtor is delinquent with plan payments or has compliance issues; such as, unfiled tax returns.
- (4) **Dismissal Request by Creditor.** A creditor has the right to request dismissal of the case for cause. For the IRS, cause can include:
- Pyramiding of taxes;
 - Sporadic or chronically late payments; or,
 - No payments.

For cases filed on or after October 17, 2005, 11 USC 521(j) provides that if the debtor fails to file a tax return that becomes due after the date of the petition or fails to timely obtain an extension, the IRS may request dismissal of the case. The court will convert or dismiss the case if the debtor does not comply within 90 days of the request.

- (5) **Importance of Early Motion.** The IRS should make the motion for dismissal or conversion as early as possible in the Chapter 13 bankruptcy process when the pursuit of a dismissal or conversion is appropriate.

Note: 11 USC 1307 and 521(j) list some of the causes for requesting dismissals in Chapter 13 bankruptcy cases.

- (6) **Termination of Stay of Actions.** Upon dismissal:
- The stay of actions against property of the estate terminates.
 - The trustee usually returns all Chapter 13 payments not previously distributed to creditors to the debtor, minus trustee expenses.
 - If a controversy ensues over entitlement to property after dismissal, the court has jurisdiction to resolve the issue.
 - If the debtor in a dismissed case filed joint pre-petition returns with a non-debtor spouse, the joint tax accounts must be mirrored. (See IRM 5.9.17.22.1, MFT 31 or MFT 65 Mirror Modules.)

5.9.17.6.5
(07-25-2022)
**Closing Dismissed
Cases**

- (1) **The Role of CIO and FI.** Centralized Insolvency will input dismissals on the AIS "Taxpayer Screen" for all bankruptcy chapters when noticed by the Electronic Noticing System (ENS), the Bankruptcy Noticing Center (BNC), paper notice, or phone. The CIO's responsibility for this duty does not preclude the Field Insolvency (FI) caseworker from inputting closing data on AIS when the FI caseworker learns of a dismissal through the normal course of their casework. After processing paper dismissal notices, the CIO will forward the paper notices for cases assigned to FI to the appropriate FI caseworker. (See IRM 5.9.11.4.5, Inputting Dismissal Dates, and IRM 5.9.12.7, Electronic Noticing System, and subsections.) The CIO will take closing actions on all Chapter 7 and Chapter 13 cases assigned to the CIO. Field Insolvency will take closing actions on all dismissed cases assigned to FI, with the exception of those actions taken by the CIO for both insolvency functions. See IRM 5.9.17.22.1 and IRM 5.9.17.24(1), for additional information.
- (2) **AIS Method of Closure.** BAPCPA necessitates the standardization of dismissal "Closure Method" codes. Check PACER for dismissal reason to enter correct closure method on AIS. When a Chapter 7 case is dismissed for failing to meet the means test, the method of closure code is "D2 DISMISSED FOR FMT-D2". Dismissals for all other reasons regardless of chapter are closed with "D1 REGULAR DISMISSAL-D1". Using these two closure methods

automates systemic recognition of cases where the automatic stay may be impacted in subsequent bankruptcy filings of an individual debtor. In the case of a “serial filer”, the automatic stay may terminate after 30 days with respect to the debtor and the debtor’s property that is not property of the bankruptcy estate. In some “serial filer” cases, the stay may not arise at all. (For additional information, see IRM 5.9.5.7, Serial Filers, subsections, and related exhibits.)

- (3) **Case Classification in Chapter 7 or 13 Dismissals.** Before a Chapter 7 or Chapter 13 case is closed, the caseworker working the dismissal must check the “Classification Screen” on AIS. Certain classifications prevent systemic closure of the case when the case classification is open (IRM 5.9.17.2(6) and IRM 5.9.5.4.1, Case Classifications). Some classifications that alert caseworkers to actions that must be addressed during case closure in a dismissed Chapter 7 or 13 case include, but are not limited to:

- ADJUSTMENT
- ATAT
- CID FREEZE
- COURT CASE
- CRIMREST
- DmVacNoSta
- DismVacOth
- EXAM
- IA
- IA Issues
- Iden Theft
- LIEN ADDR
- LLC
- MAN MIRROR
- MIRRORING
- NDS
- NONCLS
- PDSC ISSUE
- OIC PENDING
- RE-ASSESS
- REFERRAL
- TFRP
- URP/IRP

Recent cases may have multiple case classifications. In older cases, the “PDSC ISSUE” case classification was used to alert caseworkers of multiple issues that must be addressed during closure. (IRM 5.9.5.4.1(1), Case Classifications that Alert Caseworkers to Actions Needed in a Case) Caseworkers must read the SUMMARY HISTORY before taking closing actions in these cases. See IRM 5.9.5.4.2, Summary Histories, through IRM 5.9.5.4.4, Chapter 7 Summary Histories, for additional information. If the case classification is listed in IRM 5.9.17.2(6) or IRM 5.9.5.4.1, the issue must be addressed *and* the case classification closed before the case is closed. Certain open case classifications prohibit manual closure of the case on AIS. These same open case classifications also prohibit systemic closure of the case through IIP Process J.

- (4) **PDSC, EXAM, RE-ASSESS, or URP/IRP Classifications for Reassessment.** When an unagreed deficiency is assessed on a pre-petition tax period for which the statutory response time to file a Tax Court Petition had not expired when the bankruptcy case was filed and the assessment date is post-petition,

the assessment of the unagreed deficiency violated IRC 6213. The assessment of the TC 290 or TC 300 must be reversed and reassessed after the automatic stay is lifted. (See IRM 5.9.4.4(8), Unagreed Deficiency Assessments). The Insolvency caseworker must notify the bankruptcy coordinator for Exam or the AUR function when the automatic stay is lifted, allowing the bankruptcy coordinator to assess the unagreed deficiency before the ASER expires. (See IRM 5.9.18.3, CIO Predischarge Review, and IRM 5.9.18.7, Hold Conditions, for additional information.) These cases may be identified by a "PDSC ISSUE", "EXAM", "RE-ASSESS", or "URP/IRP" classification on the AIS "Classification Screen".

- (5) **PDSC ISSUE, IA Issue, or IA Case Classification.** The IRS treats an installment agreement as suspended by the filing of a bankruptcy petition. As such, prior installment agreements must be addressed during case closure. (See IRM 5.9.4.20, Installment Agreements and Bankruptcy, IRM 5.9.17.24, Addressing Prior Installment Agreements When Closing a Case, and Exhibit 5.9.17-2 through Exhibit 5.9.17-5.) When a case has a prior installment agreement that must be addressed during case closure, the prior IA may be identified by the "PDSC ISSUE", "IA Issues", or "IA" case classification.
- (6) **Dismissal Actions.** When closing dismissed cases the required actions include the following:
 - a. Reinstating post-petition assessments that were reversed because of the bankruptcy case (see paragraph (4) above);
 - b. Addressing installment agreements that were suspended by the bankruptcy case (see paragraph (5) above);
 - c. Splitting or mirroring joint accounts into two MFT 31 and/or MFT 65 mirrored accounts when a non-debtor spouse issue exists;
 - d. Input of the TC 521 (either manually or through IIP Process J);
 - e. Documenting the AIS history screen with all closing actions as they occur;
 - f. Inputting the method of closure and the date the case was dismissed by the court (if not already present) on the AIS Taxpayer Screen;
 - g. Closing open case classifications;
 - h. Forwarding case information to the Collection ATAT coordinator when an ATAT code is present on the case; and,
 - i. Determining if an NFTL should be filed (IRM 5.9.17.6.7, NFTL Filing Determinations after Dismissal).

Note: See Exhibit 5.9.17-1, Closing Dismissals, for the steps used when inputting dismissal actions on AIS and IIP.

5.9.17.6.6
(07-25-2022)
**Orders Vacating
Dismissal
(Reinstatements)**

- (1) **Appeal Rights.** Bankruptcy Rule 8002 allows parties of interest to file an appeal of a judgment, order, or decree within 14 days of the date of entry of those actions. In the case of a dismissal, this means a debtor or debtor's attorney has 14 days from the date a dismissal is entered on the court's docket to appeal the dismissal order and request reinstatement of the case. An inadvertent violation of the automatic stay may occur when a dismissed bankruptcy case is reinstated.
- (2) **General Information.** Caseworkers must closely review orders vacating dismissal. In most instances, an order that vacates a dismissal does not operate to reinstate the bankruptcy stay. In other instances, the order may reinstate the bankruptcy stay on the day the order vacating the dismissal is

signed and entered on the court's docket. In very limited instances, the order may reinstate the bankruptcy stay to the original petition date.

- (3) **Case Classifications.** When processing an order vacating dismissal (reinstatement), caseworkers must add a "DmVacNoSta" or "DismVacOth" case classification to the Classification Screen on AIS based on the terms of the order vacating dismissal.
- The "DmVacNoSta" classification is added to the case when the order vacating dismissal does **not** reimpose the automatic stay. The "DmVacNoSta" classification helps caseworkers easily identify cases with prior orders vacating dismissal which require manual processing actions; such as, input of a TC 522 cc 81 (see below) at case closure to ensure correct calculation of the CSED. The classification also alerts caseworkers to follow the guidance in (6), below, to address offsets of post-petition refunds to pre-petition tax liabilities that may have occurred during the dismissal period. After the actions in (4) have been completed, close the case classification on AIS.
 - The "DismVacOth" case classification is added to the case when the order vacating dismissal reimposes the automatic stay. The classification alerts caseworkers to follow the guidance in (6), below, to address offsets of post-petition refunds to pre-petition liabilities that may have occurred during the dismissal period. Upon subsequent dismissal or discharge, close the case classification on AIS.
- (4) **Automatic Stay Not Reimposed.** Unless the order vacating the dismissal states that the automatic stay is reimposed, the automatic stay does not go back into place when the dismissal is vacated. The CSED is not further suspended or extended by the bankruptcy. There may be assets that are property of the bankruptcy estate. The IRS cannot take collection activity on these specific assets. Nor, can the IRS generally offset a post-petition income tax refund to a pre-petition income tax liability. In these cases, the Insolvency caseworker must input a TC 520 cc 81 and a TC 520 cc 84 to all pre-petition balance due modules and add the TC 520 to the "Freeze Screen" on AIS. The date input with the TC 520 should be the date the order vacating dismissal was entered on the court's docket. At case closure, Insolvency must input a TC 522 cc 81 and a TC 521 cc 84 using the dismissal or discharge date and close the "DmVacNoSta" case classification on AIS. The dismissal or discharge is then processed using routine closing actions.
- Caution:** The input of the TC 520 cc 81 will require Insolvency caseworkers to determine the disposition of income tax refunds. (See IRM 5.9.4.5, Credits, Refunds, and Offsets, IRM 5.9.4.5.1, Addressing Credits, Refunds, and Offsets, IRM 5.9.16.3, Manual Refunds, and IRM 5.9.16-1, Instructions for Preparing Form 5792, for additional information.)
- (5) **Automatic Stay Reimposed.** If the order vacating the dismissal states that the automatic stay is reimposed, *but does not state the stay is reimposed retroactively*, the automatic stay is reimposed to the day the order vacating dismissal was entered on the court's docket. The caseworker must input a TC 520 cc 6X with the date the order vacating dismissal was entered on the court's docket and enter the TC 520 on the "Freeze Screen" on AIS. Upon receipt of a subsequent dismissal or discharge, close the "DismVacOth" case classification on AIS. Process the dismissal or discharge using routine closing procedures. If the order vacating the dismissal states that the automatic stay is reimposed

retroactively, the stay is reimposed to the original petition date. The caseworker must input a TC 520 cc 6X using the original petition date and enter the TC 520 on the “Freeze Screen” on AIS. Upon receipt of a subsequent dismissal or discharge, close the “DismVacOth” case classification on AIS and process the dismissal or discharge using routine closing procedures.

Note: Caseworkers must consult Counsel when questions arise on specific cases and reimposition of the stay is unclear. For guidance on NFTLs filed after dismissal and orders vacating dismissal, see IRM 5.9.5.9.1(2), NFTLs Filed after Bankruptcy Filing, NFTLs After Dismissal and Before an Order Vacating Dismissal.

- (6) **Offsets and Orders Vacating Dismissal.** The offset of a post-petition refund to a pre-petition tax liability may occur between the date of dismissal and the entry of an order vacating dismissal. Actions taken by Insolvency regarding the offset depend upon the terms of the order vacating dismissal. Follow the chart below when addressing offsets in cases with orders vacating dismissal.

IF...	And...	Then...
The offset of a post-petition refund to a pre-petition tax liability occurred after dismissal and before entry of the order vacating dismissal	The order vacating dismissal <i>did not reimpose</i> the automatic stay	No action is required. There was no stay in place and no bankruptcy estate during this period. IRS exercised non-bankruptcy offset rights.
The offset of a post-petition refund to a pre-petition tax liability occurred after dismissal and before entry of the order vacating dismissal	The order vacating dismissal <i>reimposed the automatic stay</i> as of the day the order vacating dismissal was entered on the court’s docket	No action is required. There was no stay in place and no bankruptcy estate during this period. IRS exercised non-bankruptcy offset rights.
The offset of a post-petition refund to a pre-petition tax liability occurred after dismissal and before entry of the order vacating dismissal	The order vacating dismissal <i>reimposed the automatic stay</i> back to the original bankruptcy petition date	Refer the case to Area Counsel for advice on how to address an offset of a post-petition refund to a pre-petition liability that occurred while the case was dismissed.

- (7) **MFT31 or MFT65 Mirrored Accounts.** When a joint account has been mirrored into two MFT 31 or two MFT 65 accounts due to a non-debtor spouse, only the MFT 31 or MFT 65 account for the debtor should be frozen, if required. There are exceptions in some community property locations. Counsel should be consulted concerning community property issues or any other questions surrounding reinstatement. The IRS must protect the rights of the debtor; as well as, the interests of the government. For more information on community property see:

- IRM 5.9.3.5.1.1, Community Property
- IRM 5.9.18.6.8, Community Property
- IRM 25.18.1, Basic Principles of Community Property Law

5.9.17.6.7
(07-25-2022)
**NFTL Filing after
Dismissal**

- (1) **NFTL - Shared Responsibility Payment (SRP) and Employer Shared Responsibility (ESRP) Liabilities.** An individual Shared Responsibility Payment (SRP) liability assessed on IDRS under MFT 35 pursuant to the Affordable Care Act is not subject to penalties or the filing of an NFTL. Additionally, joint SRP liabilities that are mirrored as separate SRP liabilities on IDRS under MFT 65 are not subject to penalties or the filing of an NFTL. While the statutory lien under IRC 6321 arises on the SRP liability, these assessments are not subject to NFTL filing under IRC 6323. See IRC 5000A(g)(2)(B). An Employer Shared Responsibility Payment (ESRP) liability assessed on IDRS under MFT 43 pursuant to the Affordable Care Act is subject to the filing of an NFTL. For more information on the Affordable Care Act, SRP liabilities, and NFTL filing determinations see:

- IRM 5.9.4.19, Affordable Care Act
- IRM 5.9.4.19.1, Individual Shared Responsibility Payment
- IRM 5.9.4.19.2, Employer Shared Responsibility Payment
- IRM 5.12.2.3.1.1, Affordable Care Act's (ACA) Shared Responsibility Payment (SRP) Exception
- IRM 5.12.2.6.1, ACA Shared Responsibility Considerations When filing NFTL

- (2) **NFTL Filing Threshold.** Field Insolvency (FI) caseworkers should make a Notice of Federal Tax Lien (NFTL) filing determination when the aggregate unpaid balance of assessment (UBA) meets the threshold of \$10,000 for filing an NFTL and a bankruptcy case is dismissed. This is an Insolvency deviation from lien policy in IRM 5.12.2.3.2(1), Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations), Determination Requirements. Do **not** take the amount of SRP liabilities into consideration when determining if the aggregate UBA meets the threshold for filing an NFTL. (See IRM 5.12.2.6.1, ACA Shared Responsibility Considerations When filing NFTL, for additional information.)

Note: See IRM 5.9.17.24, Addressing Prior Installment Agreements When Closing a Case, subsections, and exhibits for guidance on the dismissed cases that will be returned to the prior installment agreement (IA) status at closure.

- (3) **NFTL Filing Determinations.** When taking any collection action, including filing an NFTL, caseworkers should remember that taxpayers have the right to expect a fair and just tax system. The facts and circumstances that might affect the taxpayer's underlying liabilities, ability to pay, or ability to provide information timely should always be considered before taking any collection action. FI should apply all the factors in the list below when making an NFTL filing determination after dismissal of a case. Per IRM 5.12.2.1(2), Notice of Lien Determinations, Purpose, an NFTL determination is the decision whether to file an NFTL, defer the filing of an NFTL, or not to file an NFTL. FI caseworkers should:

- Determine that the situation meets the determination and filing requirements for Notices of Federal Tax Lien (NFTLs) found in IRM 5.12.2, Notice of Lien Determinations. Ensure contact with the taxpayer meeting the criteria in IRM 5.12.2.2, Taxpayer Contact, has been completed.

Caseworkers may still wish to contact the debtor to request full payment and warn of the possible filing of an NFTL in an attempt to resolve the case without the need to file an NFTL. Apply the pre-filing considerations found in IRM 5.12.2.3, Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations, and subsections.

- Verify that the automatic stay is not in effect for the periods included on the NFTL.
- Determine whether or not a sound business reason exists to justify filing an NFTL.
- Document the AIS history explaining the decision to file or to refrain from filing an NFTL. The AIS history should include a description of all NFTL filing actions taken.
- If the decision is to file a Notice of Federal Tax Lien (NFTL), the notice should include Collection Due Process. Responses to Collection Due Process (CDP) should be handled timely and efficiently. See IRM 5.9.3.7, Collection Due Process (CDP) Cases, IRM 5.9.3.7.1, Collection Due Process (CDP) and Equivalent Hearing, and IRM 5.9.3.7.2, Requests for Adjustments from Appeals on Tax Court Cases, for more information.

Note: Caseworkers should review for the presence of an open -O disaster freeze. The IRS will suspend certain compliance activities through the disaster expiration date, absent exigent circumstances which require managerial approval. Postponed activity includes the filing of the NFTL. Refer to IRM 25.16.1, Disaster Assistance and Emergency Relief, Program Guidelines.

- (4) **Identifying Cases That Require a NFTL Filing Determination.** FI identifies dismissed cases within their inventory; as well as, dismissed cases assigned the CIO which require an NFTL filing determination after dismissal. FI can identify dismissed Chapter 13 cases requiring an NFTL filing determination by running the “Lien Determination” report on AIS. To identify dismissed Chapter 13 cases assigned to the CIO that require an NFTL filing determination, FI caseworkers run the “Lien Determination” report on AIS using the CIO Standard Employee Identifier (SEID) for the appropriate territory and appropriate date parameters. To identify dismissed Chapter 13 cases assigned to the specific FI caseworker which require an NFTL filing determination, the FI caseworker generates the “Lien Determination” report on AIS using the FI caseworker’s SEID and appropriate date parameters. By generating both reports, all dismissed Chapter 13 cases for which an NFTL filing determination is required are identified. FI can identify dismissed Chapter 7 cases assigned to the CIO which require an NFTL determination by performing wild card searches on AIS. FI may also use a Business Objects report to identify dismissed Chapter 7 cases assigned to the CIO. FI caseworkers can identify dismissed cases for all bankruptcy chapters within their assigned inventory by generating their Court Closure Report on AIS. When a determination is made to file an NFTL in a dismissed individual Chapter 11 case, or a dismissed Chapter 13 case, the FI caseworker should include any post-petition liabilities accrued by the taxpayer on the NFTL.

5.9.17.7
(12-09-2016)
**Joint Account and
Non-Debtor Spouse**

- (1) **Joint Tax Liability.** When appropriate, after the debtor has received (or will be receiving) a discharge from a *joint* tax liability, the IRS may consider pursuing collection from the non-debtor spouse. However, the IRS must consider applicable community property statutes addressed in IRM 5.9.3.5.1.1, Community Property, IRM 5.9.18.6.8, Community Property, and IRM 25.18, Community Property.
- a. **Mirrored Accounts.** MFT 31 and MFT 65 mirroring procedures are outlined in IRM 5.9.17.22, Adjustment Methods for Discharged Liabilities, and subsections. Accounts on jointly filed returns may be split upon discharge or dismissal when only one spouse files bankruptcy.
 - b. **NFTL Name Change.** When adjustments are made to the tax account on behalf of a spouse who has received a discharge from tax(es) and a valid lien exists that has been satisfied by, or is no longer enforceable against the debtor spouse, Insolvency should request a partial lien release for the debtor spouse to ensure the lien will reflect *only* the name of the non-debtor spouse. (See IRM 5.9.17.18, Release of Federal Tax Liens, and IRM 5.12.3.6, Partial Lien Release, and subsections.)
 - c. **Return to Regular Collection.** If the case was dismissed, both accounts will return to the collection stream after MFT 31 and MFT 65 mirroring is completed. If the bankruptcy case was discharged, the mirrored accounts of the debtor will be abated when they were fully discharged in the bankruptcy case, collection from EAEP has concluded, or a determination has been made not to pursue EAEP, if applicable. The MFT 31 and/or MFT 65 accounts of the non-debtor spouse will return to the collection stream. If the balance owed by the debtor spouse was not fully discharged, the balance owed by the debtor will return to the collection stream.

5.9.17.8
(07-25-2022)
**Discharge and
Exceptions to Discharge**

- (1) **Bankruptcy Discharges.** A discharge may be granted to the following:
- Individual or joint debtors in Chapters 7, 11, 12, or 13
 - Corporations, partnerships, and Limited Liability Companies (LLCs) that reorganize in Chapter 11 or Chapter 12

Note: Discharges are not granted in Chapter 7 corporate bankruptcies, Chapter 7 partnership bankruptcies, or in Chapter 7 bankruptcies filed by LLCs. Discharges are also not granted in liquidating Chapter 11 cases.

- (2) **Discharge Date.** A discharge is effective:
- a. *In an Individual or Joint Chapter 7* — When the discharge order is entered by the court;
 - b. *In Chapter 11 Cases Filed Prior to October 17, 2005* — Upon confirmation of the plan (11 USC 1141(d));
 - c. *In Chapter 11 Non-individual Cases Filed On or After October 17, 2005* — Upon confirmation of the plan;
 - d. *In Chapter 11 Individual or Joint Cases Filed On or After October 17, 2005* — Unless otherwise ordered, upon completion of all payments due/provided for under the plan and the entry of a discharge order;
 - e. *In Chapter 11 Hardship Cases* — At anytime after confirmation of the plan when modification of the plan is not practicable and the court enters a hardship discharge (11 USC 1141(5)(B));
 - f. *In Chapter 12 and Chapter 13 Cases with a Completed Plan* — Upon completion of all payments due/provided for under the plan and the entry of a discharge order; and,

- g. *In Chapter 12 and Chapter 13 Hardship Cases* — When the plan cannot be completed due to circumstances beyond the debtor's control (11 USC 1228(b) and 11 USC 1328(b)).

Note: The date of the TC 521 releasing the bankruptcy freeze on IDRS for Chapters 7, 11, 12, and 13 is the effective date of the discharge; however, a bankruptcy is considered to be pending until the court closes the case. Failure to Pay Penalty should not be assessed on all pre-petition taxes during the pendency of the bankruptcy. See IRM 5.9.4.14(1), Provisions of IRC 6658 and Rev. Rul. 2005.9, Bankruptcy Cases - Definition of **Pending**.

- (3) **Discharge, Joint Liabilities, and Non-Debtor Spouses.** There may be instances when spouses file a joint income tax return, incur a joint tax liability, and only one spouse files a bankruptcy petition. If the liabilities are non-dischargeable for the debtor spouse, they are non-dischargeable for the non-debtor spouse. If the liabilities are dischargeable for the debtor spouse, they are generally non-dischargeable for the non-debtor spouse unless the spouses are in locations subject to community property laws. If the spouses are subject to community property laws, the non-debtor spouse receives a "hypothetical discharge" of the liabilities that are discharged for the debtor spouse. For additional information see:

- IRM 5.9.3.5.1.1, Community Property;
- IRM 5.9.18.6.8, Community Property;
- IRM 25.15.5.5.2, Community Property States;
- IRM 25.18, Community Property; and specifically,
- IRM 25.18.4.18.4, Discharge Provisions.

- (4) **Complaints to Determine Dischargeability.** The IRS may receive a "Complaint to Determine Dischargeability" filed in an adversary proceeding within the bankruptcy case. The adversary may be received before the discharge or after the discharge. If the adversary is received prior to the discharge:

- a. Input a TC 520 cc 84 with the bankruptcy petition date on the pre-petition balance due modules.
- b. Refer the case to Counsel within the locally agreed upon time frame for referrals so a timely response can be filed with the court.
- c. Add the referral to the "Referral Screen" on AIS and add a "REFERRAL" case classification.
- d. If a discharge is entered in the case before the adversary is resolved, reverse all TC 520(s) on the modules *except* the TC 520 cc 84 using the bankruptcy discharge date.
- e. Calculate the Collection Statute Expiration Date (CSED) on each of the outstanding modules.

Note: Caseworkers should use the CSED calculator found at the CSED Calculator (CCALC) Customer Information Page at <https://program.ds.irsnet.gov/sites/SbseBrSSC/CCALC/SitePages/Home.aspx>

to compute the extended CSED.

- f. Notate the extended CSED in the AIS history.
- g. Advise Counsel of the earliest CSED date so appropriate actions can be taken to protect the CSED.
- h. After the adversary has been resolved, request adjustment of any discharged liabilities upon discharge, as required.

- i. Close the referral on the “Referral Screen” on AIS and close the “REFERRAL” case classification.
- j. Once all required adjustments have posted, or if no adjustments are needed, reverse the TC 520 cc 84 using the bankruptcy discharge date.

If the adversary is received after the discharge:

- a. Input a TC 520 cc 84 with the bankruptcy petition date on pre-petition modules to alert IRS employees to contact Insolvency before taking any collection action on the account.
- b. Refer the case to Counsel within the locally agreed upon time frame for referrals so a timely response can be filed with the court.
- c. Add the referral to the “Referral Screen” on AIS and add a “REFERRAL” case classification.
- d. Advise Counsel of the earliest CSED date so appropriate actions can be taken to protect the CSED.
- e. After the adversary has been resolved, request adjustment of any discharged liabilities, as required.
- f. Close the referral on the “Referral Screen” on AIS and close the “REFERRAL” case classification.
- g. Once all adjustments have posted, or if there are no adjustments required, reverse the TC 520 cc 84 using the bankruptcy discharge date.

Note: If any accounts were fully or partially adjusted by the Automated Discharge System (ADS) before the adversary was received, communicate this information to Counsel. Counsel may require further information on these modules.

In either of the above instances, the AIS history must be thoroughly documented with actions taken to resolve the litigation and with the final determination regarding dischargeability of the liability.

- (5) **Pre-BAPCPA Exceptions to Discharge.** 11 USC 523 enumerates exceptions to discharge. For cases filed prior to October 17, 2005, these exceptions apply *only to individual or joint* Chapter 7, 11, or 12 cases and to Chapter 13 individual or joint debtors issued a *hardship* discharge. These exceptions include:

- a. Taxes entitled to priority under 11 USC 507(a)(8), including the trust fund portion of employment taxes and TFRP assessments;

Note: This includes TFRP liabilities and unpaid trust fund taxes owed by the individual who has unpaid sole-proprietorship withholding liabilities, the individual who is personally responsible for unpaid withholding taxes in certain partnerships, or the individual who is the single member of a disregarded LLC with unpaid withholding taxes prior to January 1, 2009 or excise taxes prior to January 1, 2008.

- b. In an involuntary case, taxes that arise during the “gap period” between the dates of the filing of the bankruptcy petition and the order for relief under 11 USC 507(a)(2);
- c. Taxes with respect to which a tax return was not filed;
- d. Taxes due on returns filed late (at any time after the date that is two years before the petition date); and,

Caution: This exception to discharge is also applicable to late filed post-petition returns on an 11 USC 1305 claim when the Chapter 13 debtor receives a hardship discharge.

- e. Taxes for which the debtor filed a fraudulent return or otherwise willfully attempted to evade or defeat payment of the taxes.

Note: The taxes listed above continue to be an exception to discharge in the post-BAPCPA individual or joint Chapter 7, 11, or 12 case, as well as in the Chapter 13 case with a *hardship* discharge.

For additional information on priority taxes, see IRM 5.9.13.19.3, Unsecured Priority.

- (6) **BAPCPA Exceptions to Discharge.** Corporations and LLCs that reorganize in Chapter 11 are also excepted from discharge under 11 USC 1141(d)(6)(B) with respect to taxes for which the debtor made a fraudulent return or willfully attempted in any manner to evade or to defeat such tax. Also, an individual or joint debtor may not be eligible to receive a discharge in the current case if they received a discharge in a prior bankruptcy case. Eligibility is determined by the type of bankruptcies filed and the petition date of the prior bankruptcies. (See IRM 5.9.5-3, Allowable Elapsed Time Between Bankruptcy Filings and Discharges, and IRM 5.9.5.7.1(5), Serial Filing, Systemic Identification in Serial Filer Cases, Discharge Limitations, for additional information.) In addition, the following categories of tax liabilities will not be dischargeable in a BAPCPA Chapter 13 case with a discharge upon completion of the plan per 11 USC 1328(a):

- a. Trust fund taxes
- b. Taxes based on fraudulent returns or a willful attempt to evade or defeat the tax
- c. Taxes due on unfiled returns (See IRM 5.9.17.8.1 for additional information on SFRs.)
- d. Taxes due on returns filed late and after the date that is two years before the date of the bankruptcy petition

Note: This exception to discharge is also applicable for late filed returns for post-petition taxes on an 11 USC 1305 claim.

Example: *Late Filed Pre-Petition Return is Non-Dischargeable* — John Doe filed Chapter 13 on March 29, 2018. The date that is two years before the bankruptcy petition date is March 29, 2016. He filed his 201312 income tax return on March 29, 2017. The return was due on April 15, 2014. The return was filed late and after March 29, 2016. The tax and interest on the tax is non-dischargeable.

Example: *Late Filed Post-Petition Return on a 1305 Claim is Non-Dischargeable* — John Doe filed Chapter 13 on March 29, 2018. The date that is two years prior to the bankruptcy petition date is March 29, 2016. He filed his 201812 income tax return on December 1, 2019. The return was due on April 15, 2019. The IRS filed a 1305 claim. Since the 201812 income tax return was filed late, and after March 29, 2016, the tax and interest on the 201812 return is non-dischargeable.

The liabilities listed above would have been discharged in a pre-BAPCPA Chapter 13 case if the liability was provided for in the plan and the debtor received a discharge upon completion of the plan. For additional information, see IRM 5.9.17.15, Chapter 13 Discharge Pre-BAPCPA.ADS flags the cases in the above list as it does with other exceptions to discharge. As with other exceptions to discharge, the penalty and interest on the penalty may be dischargeable. The accrued interest on non-dischargeable taxes is non-dischargeable. The accrued interest on non-dischargeable interest is also non-dischargeable. (See Exhibit 5.9.17-9 for additional information.)

Reminder: The three-year and 240-day “lookback” provision in 11 USC 507(a)(8) are automatically tolled during a prior bankruptcy while the automatic stay is in effect. (See IRM 5.9.13.19.3(4), BAPCPA Tolling.) The two-year period with regard to late returns is also tolled during a prior bankruptcy.

- (7) **Processing Discharges when the IRS Received No Notice or Late Notice.** There may be instances when a debt is non-dischargeable because IRS did not receive notice of the bankruptcy case or notice was received late in the bankruptcy case. If IRS was not noticed in a Chapter 7 No Asset case, see IRM 5.9.17.10(4), Chapter 7 Discharge Actions, Lack of Notice in Chapter 7 No Asset Cases, for guidance. In Chapter 7 Asset, Chapter 11, Chapter 12, and Chapter 13 cases, caseworkers must follow guidance in IRM 5.9.17.8.9, Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case, to determine if a liability is dischargeable when IRS did not receive notice of the bankruptcy filing or when IRS received late notice of the bankruptcy filing.
- (8) **Non-Pecuniary Loss Penalties - Non-Dischargeable (Within Three Year Rule).** Pursuant to 11 USC 523(a)(7), *Exceptions to Discharge*, a non-pecuniary loss penalty (a punitive penalty) relating to a tax is non-dischargeable if:
- It relates to a tax that is non-dischargeable under 11 USC 523(a)(1) and
 - The transaction or event that gave rise to the penalty occurred within the three years prior to the bankruptcy petition date. See Exhibit 5.9.17-9 to determine when penalties are dischargeable in the Chapter 13 case with discharge upon completion of the plan. See Exhibit 5.9.17-11 to determine when penalties are dischargeable in all other cases.

Note: The “transaction or event” date may vary according to the date the event occurred and according to the type of penalty. For example, an extension for filing a return is not an extension for paying the tax. The “event date” for the failure to file penalty is changed by an approved extension for filing the return. The “event date” for the failure to pay penalty is not changed by an approved extension for filing the return.

Examples of non-pecuniary loss penalties are:

- Failure to pay penalty
- Failure to file penalty
- Failure to deposit penalty
- Failure to make estimated tax penalty
- Fraud penalty
- Negligence penalty

- Substantial underpayment of tax penalty

(9) **Non-Pecuniary Loss Penalties - Dischargeable (Over Three Year Rule).**

Courts have also held any non-pecuniary loss tax penalty *more than three years old from the bankruptcy petition filing date is dischargeable, even if the underlying tax is deemed to be non-dischargeable*. Therefore, any non-pecuniary loss tax penalty imposed with respect to a transaction or event that occurred more than three years before the date the debtor filed for bankruptcy is dischargeable.

- (10) **Interest and Post-Petition Penalties on Non-Dischargeable Taxes.** Pre-petition and post-petition interest on non-dischargeable taxes are non-dischargeable, as are any post-petition penalties on these taxes. This includes interest that accrues on non-dischargeable taxes during the bankruptcy plan. However, certain post-petition penalties, such as, Failure to Pay (FTP), do not accrue while a bankruptcy case is pending under IRC 6658 and Rev. Rul.2005-9, Bankruptcy Cases - Definition of **Pending**.

- (11) **Trust Fund Recovery Penalty (TFRP).** The Trust Fund Recovery Penalty (TFRP) is a withholding tax for bankruptcy purposes. The TFRP is assessed to reimburse and compensate the government for an actual loss of unpaid withholding taxes. The TFRP is *not* dischargeable even when the TFRP assessment date is more than three years prior to the bankruptcy petition date. For cases filed post-BAPCPA, the TFRP is non-dischargeable even if the TFRP has not been assessed. It does not matter if the TFRP has been claimed. For example, if a Chapter 13 debtor is determined to be responsible for pre-petition trust fund taxes, the TFRP can be assessed and collected after the discharge has been granted by the court even though the liability was not included on a proof of claim in the Chapter 13 case.

Note: The super discharge provisions in a Chapter 13 case apply for a TFRP assessment when the bankruptcy petition was filed prior to October 17, 2005. Trust fund taxes for cases filed on or after October 17, 2005, are not dischargeable even when the IRS filed an untimely claim or did not file a claim at all.

- (12) **Valid Pre-Petition Tax Liens.** 11 USC 524 bars creditors, including the IRS, from seeking to collect discharged debts personally from debtors. However, NFTLs that are still valid may be enforceable against exempt, abandoned, or excluded property (EAEP) owned by the debtor before bankruptcy filing even though the tax debt was discharged.

Reminder: Property abandoned or excluded from the bankruptcy estate may be pursued after discharge based on the statutory lien even when no NFTL was filed prior to the bankruptcy petition date.

- (13) **Adjustment of Tax Accounts/Collection Determination.** Generally, Insolvency should immediately begin the adjustment of tax accounts that are discharged. However, adjustments should be delayed in cases with possible collection potential from exempt, abandoned, or excluded property (EAEP). Or, when the IRS has a secured claim and a trustee's final distribution may be received after the discharge, adjustment of accounts may be delayed until the final payment has posted. If payments should come in after the closure of an account, a TC 972 can be input to reverse the abatement, the payment(s)

entered, and the case re-closed once the payments have posted to IDRS. The payments may be also be applied to the Unidentified Remittance File (URF). For additional information see:

- IRM 5.9.13.19.2, Secured Claim
- IRM 5.9.15.3.5, Payments Received After AIS Discharge Closure
- Exhibit 5.9.15-5, Posting Payments on a Closed Case

(14) **Disaster Area and Combat Zone Relief Considerations.** Rev. Rule. 2007-59 provides that the postponement of the time to file a return under 26 USC 7508 or USC 7508A of the Code does not change the date that the return is last due, including extensions, and therefore does not change the priority and dischargeability of the tax for bankruptcy purposes. 26 USC 7508 relief, which postpones the time in which an individual may timely file an income tax return, does not change the date on which the return is **last due, including extensions** under 11 USC 507(a)(8)(A)(i) of the Bankruptcy Code or **last due, under applicable law or under any extension** under 11 USC 523(a)(1)(B)(ii) of the Bankruptcy Code.

- a. Federally Declared Disaster- 26 USC 7508A(a)(1) provides for the disregard of a period of time of up to one year in determining the timeliness of filing of income tax returns by taxpayers who are determined by the IRS to be affected by a Federally-declared disaster, a significant fire, or a terroristic or military action. 26 USC 7508A relief does not change or extend the extended due date for filing an income tax return, which is fixed by 26 USC 6072 and 6081(a) of the Code. Instead, 26 USC 7508A of the Code disregards the period of postponement and makes timely the filing of the return at any time during this period. The IRS grants of relief under 26 USC 7508A of the Code, which postpones the time in which a taxpayer affected by a Federally-declared disaster may timely file an income tax return, does not change the date on which a return is **last due, including extensions** under 11 USC 507(a)(8)(A)(i) of the Bankruptcy Code.
- b. Combat Zone - 26 USC 7508(a)(1) provides for the disregard of a period of time in determining the timeliness of filing of income tax returns by individuals serving in the United States Armed Forces, or serving in support of the Armed Forces, in an area designated by the President as a combat zone pursuant to 26 USC 112 or serving with respect to a contingency operation (as defined in 10 USC 101(a)(3)). 26 USC 7508 relief does not change or extend the due date for filing an income tax return, which is fixed by 26 USC 6072. Instead, 26 USC 7508 of the Code disregards the period of postponement and makes timely the filing of the return at any time during this period.

Note: Combat Zone cases are not tolled in determining dischargeability. The 26 USC 7508 and USC 7508A postponement of time to file a return does not impact the calculation of the 3-year look-back period for determining priority status under Bankruptcy Code 507(a)(8)(A)(i) or the calculation of the 2-year period for determining applicability of the exception to discharge under Bankruptcy Code 523(a)(1)(B)(ii).

(15) **TABLE - Showing Basic Discharge Information.** The table below shows by bankruptcy chapter when/if a discharge is available and the timing and effect of discharge on taxpayer entities.

Bankrupt Entity	Chapter 7	Chapter 11	Chapter 12	Chapter 13
Individual	When a discharge order is entered.	<i>For cases filed prior to October 17, 2005:</i> When the plan is confirmed. <i>For cases filed on or after October 17, 2005:</i> When a discharge order is entered upon completion of all plan payments or when a hardship discharge is granted. Note: Depending on facts, debtors with liquidating individual plans may not receive a discharge. (11 USC 1141(d)(3))	When a plan is completed and a discharge order is entered or when a hardship discharge is granted.	When a discharge order is entered upon completion of all plan payments or when a hardship discharge is granted.
Corporation	Discharges are not granted in CH 7 for corporations, partnerships, or LLCs.	When the plan of reorganization is confirmed. There is no discharge in a Chapter 11 liquidation.	When a plan is completed and a discharge order is entered or when a hardship discharge is granted.	Corporations cannot file CH 13.

Bankrupt Entity	Chapter 7	Chapter 11	Chapter 12	Chapter 13
Partner-ship	Discharges are not granted in CH 7 for corporations, partnerships, or LLCs.	When the plan of reorganization is confirmed. There is no discharge in a Chapter 11 liquidation.	When a plan is completed and a discharge order is entered or when a hardship discharge is granted.	Partnerships cannot file CH 13.
Limited Liability Company (LLC)	Discharges are not granted in CH 7 for corporations, partnerships, or LLCs.	When the plan of reorganization is confirmed. There is no discharge in a Chapter 11 liquidation.	When a plan is completed and a discharge order is entered or when a hardship discharge is granted.	A Limited Liability Company (LLC) cannot file CH 13.

5.9.17.8.1
(07-25-2022)
**Determining
Dischargeability of Late
Filed Returns in Which a
SFR was Prepared**

- (1) **Unfiled Return Excepted from Discharge.** 11 USC 523(a)(1)(B)(i) provides an exception to discharge for a tax debt for which no return was filed. On September 2, 2010, the Office of Chief Counsel issued Chief Counsel Notice CC-2010-016, *Litigating Position Regarding the Dischargeability in Bankruptcy of Tax Liabilities Reported on Late Filed Returns and Returns Filed After Assessment*, to set forth the official position of the IRS when a delinquent Form 1040 has been received. The notice makes it clear that not every tax for which a return was filed late is non-dischargeable. Rather, it is the position of the IRS that when a debtor submits a Form 1040 after the SFR assessment, only the portion of the tax that was not previously assessed is subject to discharge because a debt assessed prior to the filing of a Form 1040, U.S. Individual Tax Return, is a debt for which a return was not “filed” within the meaning of 523(a)(1)(B)(i). It is the position of the IRS that when a debtor submits a Form 1040 after the assessment under IRC 6020(b), only the portion of the tax that was not previously assessed is subject to discharge. Although courts generally have not adopted the IRS position, most courts have ruled in favor of the IRS in these cases based on two other positions. Some courts consider whether the debtor was making an honest and reasonable attempt to comply with the tax laws. If not, the tax shown on the delinquent return will be excepted from discharge. Other courts take the position that taxes shown on the returns filed late, even one day late, are excepted from discharge. These positions are not supported by the 8th Circuit; which includes North Dakota, South Dakota, Nebraska, Iowa, Missouri, Minnesota, and Arkansas. See IRM 5.9.17.8.1(3) below for the position of the 8th Circuit. If the Form 1040 filed after the SFR assessment reported no additional tax or a tax decrease, no portion of the tax is dischargeable. Only additional tax reported on the Form 1040 is subject to discharge. Thus, a specific tax year may have a portion of the tax that is

subject to discharge and a portion that is excepted from discharge under 11 USC 523(a)(1)(B)(i).

- (2) **Procedures in All Jurisdictions Except the 8th Circuit.** When there has been a SFR made by Examination or the SFR Unit, the caseworker must determine if the outstanding liability is subject to discharge. To determine discharge upon completion of a Chapter 13 bankruptcy plan, follow the procedures in Exhibit 5.9.17-6, Determining Dischargeability upon Completion of the Chapter 13 Plan when a SFR Assessment is Present. Follow the procedures in Exhibit 5.9.17-7, Determining Dischargeability when a SFR Assessment is Present in the Chapter 11 or Chapter 7 Individual Case and in the Chapter 13 Case with a Hardship Discharge, in all other cases. In order to determine if the outstanding liability is subject to discharge, the caseworker must first determine if outstanding assessments are due to a SFR assessment or from a tax return received by the IRS. A transaction code (TC) 599 closing code (cc) 89 can indicate an “agreed SFR” or a “return secured”. To determine if the TC 599 cc 89 is an “agreed SFR” or a “return secured”, the caseworker must consider the following:

- Is there a TC 976, TC 977, or TC 610 present? Generally, when a return has been received, a TC 976, TC 977, or TC 610 will be present on the module on the Integrated Data Retrieval System (IDRS). The transaction date of the TC 976, TC 977, or TC 610 indicates the date the IRS received the return.
- If there is no TC 976, TC 977, or TC 610 present that clearly indicates that the IRS has received a Form 1040, additional research must be conducted: a) TXMOD must be reviewed for history items that indicate receipt of the tax return; b) Account Management Services (AMS) may contain entries that indicate that the return has been filed or received, or may clearly state that no return was received and that the assessment was due to the receipt of a signed waiver agreeing to the SFR; c) When the SFR was prepared by the Examination function, as indicated by the presence of a TC 300 on the TXMOD, there may be information present on IDRS through command code AMDISA that indicates if a return was received or if a waiver was secured agreeing to the SFR assessment.

When the TC 599 cc 89 is present and electronic research does not support that the debtor has submitted a tax return, the caseworker should treat the TC 599 cc 89 as an “agreed SFR” and the assessments will be non-dischargeable as no return has been filed. The caseworker should be aware that there are instances when the tax may be non-dischargeable but the penalties are dischargeable. Specifically, certain penalties may be dischargeable when the return due date was more than 3 years prior to the petition date. See Exhibit 5.9.17-9 to determine if penalties are dischargeable when the debtor received a discharge upon completion of a Chapter 13 plan. See Exhibit 5.9.17-11 to determine if penalties are dischargeable in all other cases. Caseworkers must follow IRM 5.9.17.8.1(4), below, when a complaint to determine dischargeability or other adversary is received in the case.

- (3) **Procedures in the 8th Circuit.** Courts in the 8th Circuit follow the position set forth in the case of *In re Colson*, 446 F. 3d 836 (8th Cir. 2006). The 8th Circuit consists of courts in North Dakota, South Dakota, Nebraska, Iowa, Missouri, Minnesota, and Arkansas. In these locations, the position of the court is that when the debtor files a document (e.g., a tax return form) that on its face evinces an honest and reasonable attempt to satisfy the tax laws, it qualifies as a tax return whether or not it was filed after a SFR assessment. As such, if

the return was filed by the debtor more than 2 years prior to the bankruptcy petition date, the entire liability (including the SFR assessment) is discharged. If the return was filed within 2 years of the petition date, the entire tax liability is non-dischargeable. It does not matter if the tax return filed by the debtor is a refund return, reports no additional tax, or reports additional tax.

- (4) **Adversary Complaints to Determine Dischargeability.** In all courts, case-workers must follow the steps below when a complaint to determine dischargeability or any other adversary is received. This includes following the procedures in IRM 5.9.17.8(4), Complaints to Determine Dischargeability. In these instances:
- a. If a complaint to determine dischargeability or other adversary is received, the case must be assigned to Field Insolvency (FI).
 - b. Complaints to determine dischargeability of a tax debt for which the debtor filed a return or document that purports to be a return after the due date or extended due date are referred to Area Counsel. They do not meet the criteria for a direct referral to the USAO. Additionally, cases involving a denial of discharge based on 11 USC 523(a)(1)(C) are referred to Area Counsel. (For additional information, see IRM 5.9.4.15.1(6)(i), Direct Referrals, Direct Referral Authorization.) Upon referral, a "Referral Screen" should be opened on AIS. A "REFERRAL" case classification should also be opened to prohibit closure of the case while the case is being litigated.
 - c. The caseworker must order the assessment package including attachments. Methods for ordering the package depend on local procedures. However, the package can be ordered using IDRS command code ESTAB. It is not necessary for the caseworker to wait for receipt of the assessment package before referring the case to Counsel. The assessment package can be forwarded upon receipt.
 - d. If the assessment package cannot be secured, the TC 599 cc 89 will be treated as a filed return and all applicable discharge rules will be applied.
 - e. Once the litigation has been completed, the caseworker must close the "Referral Screen" and close the "REFERRAL" case classification. If a discharge has been entered in the case, the caseworker must adjust any modules requiring adjustments. Once adjustments have posted, the caseworker must request reversal of any TC 520(s) bankruptcy freezes on the account.

Note: Contact Area Counsel with any questions regarding application of the discharge exception under 11 USC 523(a)(1)(B)(i) involving a Form 1040 filed after the assessment of a SFR return.

5.9.17.8.2
(10-10-2019)
**The Fraud or Willful
Evasion Exception to
Discharge**

- (1) **Exception to Discharge.** *Written* concurrence from Area Counsel must be obtained to withhold adjustment actions on an otherwise dischargeable tax liability based on the *fraud or willful evasion* exceptions to discharge under 11 USC 523(a)(1)(C). This includes withholding adjustments on Individual Shared Responsibility Payment (SRP) liabilities that would otherwise be dischargeable unless excepted from discharge due to fraud or willful evasion. For additional information on discharge and SRP liabilities see IRM 5.9.17.8.10, Discharge and Individual Shared Responsibility Payment (SFR) Liabilities. The Employer Shared Responsibility Payment (ESRP) MFT 43 liabilities may be excepted from discharge if the IRS can prove that the debtor willfully attempted to evade the assessment or collection of ESRP MFT 43 liabilities. For additional infor-

mation on discharge and ESRP liabilities see IRM 5.9.17.8.11, Discharge and Employer Shared Responsibility Payment (ESRP) Liabilities.

- (2) **IRM Guidelines.** Insolvency employees must follow IRM 5.9.4.15.4, Referral Tolerances, for guidelines in determining which cases to refer to Area Counsel under 11 USC 523(a)(1)(C) for the fraud or willful evasion exceptions to discharge. All referrals to Area Counsel must be prepared by Field Insolvency.
- (3) **BAPCPA Provision.** Taxes covered under Chapter 13 petitions filed on or after October 17, 2005, are excepted from discharge for fraud or willful evasion. They were not excepted from discharge in the pre-BAPCPA Chapter 13 case with a discharge upon completion of the plan. Liabilities in all other bankruptcy chapters are also excepted from discharge for fraud or willful evasion.
- (4) **Fraud Conditions.** The Automated Discharge System (ADS) flags modules for possible fraud when certain conditions exist:
 - a. The return due date is more than three years before the bankruptcy petition date;
 - b. A TC 350 (negligence penalty) is assessed on the TXMOD; and,
 - c. A TC 914 or TC 910 (case held or assigned to Criminal Investigation) is present on the module.

Note: For more information on fraud conditions and ADS, see IRM 5.9.18.5.3, Automated Discharge System (ADS) Flagged Conditions, Fraud Conditions.

When ADS flags an income tax module for possible fraud, and there is a SRP liability for the same tax year, ADS also flags the SRP liability for that tax year. This includes joint SRP liabilities assessed on IDRS under MFT 35 or separate SRP liabilities mirrored under MFT 65 for the tax year. If Area Counsel concurs that the income tax liability for that specific tax year is non-dischargeable due to the fraud exception to discharge, the SRP liability for that specific tax year is also non-dischargeable.

- (5) **Willful Failure to Pay.** ADS flags modules for an investigation of the willful failure to pay exception to discharge when certain conditions exist:
 - a. The due date of the return is more than three years before the bankruptcy petition date;
 - b. The prior year's adjusted gross income (AGI) is greater than the amount set by management; and
 - c. The aggregate balance due is greater than the ADS parameter established based on Counsel's referral criteria in IRM 5.9.4.15.4, Referral Tolerances.

Note: For more information on ADS and the willful failure to pay flag, see IRM 5.9.18.6.6, Automated Discharge System (ADS), Flagged Conditions, Willful Failure to Pay.

When ADS flags an income tax module for a possible willful failure to pay exception to discharge, ADS also flags the related SRP liability for the same tax year. This includes joint SRP liabilities assessed on IDRS under MFT 35 or separate SRP liabilities mirrored under MFT 65 for the tax year. If Area Counsel concurs that the income tax liability for that specific tax year is non-dischargeable due to the willful failure to pay exception to discharge, the SRP liability for that specific tax year is also non-dischargeable.

- (6) **Fraud or Willful Failure to Pay with Joint Liabilities and Non-Debtor Spouses.** Spouses may file joint income tax returns and have joint income tax liabilities; as well as, joint SRP liabilities. Joint income tax liabilities may be mirrored or split into separate income tax modules for each spouse under MFT 31. Joint SRP liabilities assessed under MFT 35 may be mirrored into separate SRP liabilities for each spouse under MFT 65. If an income tax or SRP liability is non-dischargeable due to fraud or willful failure to pay for the debtor spouse, it is generally non-dischargeable for the non-debtor spouse. If it **is** discharged for the debtor spouse, it **is not** generally discharged for the non-debtor spouse unless the spouses are in locations subject to community property laws. For additional information, see:

- IRM 5.9.3.5.1.1, Community Property;
- IRM 5.9.17.8(3), Discharge, Joint Liabilities, and Non-Debtor Spouses;
- IRM 5.9.18.6.8, Community Property;
- IRM 25.18, Community Property; and specifically,
- IRM 25.18.4.18.4, Discharge Provisions.

5.9.17.8.3
(07-25-2022)
Discharge Denied

- (1) **Like a Dismissal.** If a discharge is denied, debts are not forgiven. A denial of discharge is treated the same as a dismissal. The closure method on the AIS Taxpayer Screen should be "DISCHARGE DENIED". The date the order denying discharge was entered on the court's docket should be placed in the "Dismissed" date field on AIS. IIP systemically reverses the TC 520(s). In the case of a joint balance due account when only one spouse has filed bankruptcy, using "DD DISCHARGE DENIED" allows for systemic creation of two MFT 31 and/or two MFT 65 mirrored accounts, when required. (See IRM 5.9.17.22.1, MFT 31 or MFT 65 Mirror Modules.)

- (2) **Counsel Referral.** If a caseworker identifies circumstances under which the debtor may have committed an act justifying a denial of discharge, the case should be referred to Counsel to consider an objection to discharge.

Note: 11 USC 727 enumerates conditions that may result in a denial of discharge in a Chapter 7 case.

- (3) **Automatic Stay.** When an order denying discharge is issued by the court, the automatic stay in effect for the debtor is lifted (11 USC 362(c)(2)(C)). The automatic stay remains in effect against property of the estate until the property is no longer property of the estate (11 USC 362(c)(1)). If the debtor is a serial filer, the stay against the debtor may terminate prior to the order denying discharge or may have never gone into place against the debtor. (See IRM 5.9.5.7, Serial Filers, subsections, and related exhibits.)

5.9.17.8.4
(07-25-2022)
Chapter 7 Revocation of Discharge

- (1) **Revocation Criteria.** A Chapter 7 discharge may be revoked by the court upon the request of the trustee, a creditor, or the United States Trustee when:
- a. The discharge was obtained through fraud and:
 - The requesting party did not know about the fraud until after the discharge was granted and
 - The request for a revocation of discharge was made *within one year* after the discharge was granted.
 - b. The debtor:
 - Acquired property of the estate;
 - Knowingly and fraudulently failed to report the acquisition of property of the estate or entitlement to property of the estate; or,
 - Failed to surrender the property of the estate to the trustee.

- c. The debtor:• Refused to obey a lawful order of the court;• Refused to respond to a material question approved by the court; or,• Refused to testify (other than on the ground of privilege against self-incrimination).

- (2) **Time Frame for Request.** When requesting a revocation of discharge for the reasons in b) or c) above, the request must be made before the later of one year after the granting of the discharge or the date the case is closed under certain conditions (11 USC 727(e)(1), USC 727(e)(2)(A), and USC 727(e)(2)(B)).

Example: The court entered the discharge order on December 15, 2019 and closed the case on January 26, 2020. The request to revoke discharge must be submitted by December 15, 2020.

5.9.17.8.5
(07-25-2022)
**Chapter 11 Revocation
of
Confirmation/Discharge**

- (1) **Revocation Criteria.** When a confirmation order or discharge in a Chapter 11 case was obtained through fraud, **only**, the court may revoke the Chapter 11 confirmation order or discharge of the debtor:
- Upon the request of a party in interest and
 - After notice and hearing.
- (2) **Time Frame for Request.** The revocation request must be submitted within the 180 days following the date of entry of the confirmation order (11 USC 1144).

Example: The court entered an order confirming the Chapter 11 plan on January 8, 2020. A request to revoke the confirmation order must be submitted by July 6, 2020.

5.9.17.8.6
(07-25-2022)
**Chapter 12 and Chapter
13 Revocations of
Discharge**

- (1) **Revocation Criteria.** A Chapter 12 or Chapter 13 discharge may be revoked by the court after notice and hearing when the discharge was obtained by the debtor through fraud and the requesting party in interest did not know about the fraud until after the discharge was granted (11 USC 1228(d) and 11 USC 1328(e)).
- (2) **Time Frame for Request.** The request must be submitted by a party in interest before one year after entry of the discharge order.

Example: The court entered the discharge order on December 15, 2019. The request to revoke discharge must be submitted by December 14, 2020.

5.9.17.8.7
(12-09-2016)
Following Revocation

- (1) **Required Actions Following Revocation.** A notice of discharge revocation acts in the same manner as a notice of dismissal. If adjustments have been made to a tax module based on a successfully completed bankruptcy prior to the receipt of the notice of revocation, those adjustments must be reversed. If a discharge adjustment resulted in a lien release, the lien release must be revoked regardless of dollar amount. The lien release revocation re-establishes the statutory lien. However, a new NFTL must be filed to protect the government's interest in the taxpayer's property. See the following IRM sections for information regarding revocations of a lien release:
- IRM 5.12.3.14, Revocation of Lien Release;

- IRM 5.12.3.15, Reinstating the Statutory Lien;
- IRM 5.12.3.16, Re-establishing NFTL Priority;
- IRM 5.12.3.16.1, Release After Revocation When There Was No New NFTL; and,
- IRM 5.17.2.8.8, Revocation of Release of Lien and Nonattachment of Lien.

5.9.17.8.8
(07-25-2022)

**Discharge and
Restitution Assessments**

- (1) **Background.** Following the conviction of a defendant for a criminal tax violation or tax-related offense, the court may order the defendant to pay restitution. The requirement that the defendant pay restitution is contained in a document signed by the judge called a Judgment and Commitment (J & C) Order. In 2010, Congress amended IRC 6201 to provide that the IRS shall assess and collect tax-related restitution in the same manner as if such amount were tax. This change in Section 6201 applies to restitution in all J & C Orders entered after August 16, 2010. Restitution assessments against individuals are made on Master File Transaction (MFT) 31 and are identified by Transaction Code (TC) 971 with Action Code (AC) 102. Restitution orders in the case of an individual are assessed with one of the following:

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

Restitution assessed against a Business Entity (BMF) is assessed on MFT 02, 06, 05, etc. Restitution assessments on a BMF account are rare. TC 971 AC 180 through 189 reflect the type of tax and tax periods for which the restitution was ordered. Most restitution assessments are made against individual taxpayers even when the restitution assessment relates to a BMF source.

Example: Taxpayer A was convicted of criminal failure to collect or pay over tax under IRC 7202 and was ordered to pay restitution in the amount of \$30,000. This amount was calculated based on the tax loss resulting from the taxpayer's failure to pay employment taxes in the amount of \$10,000 for each of the last three quarters of 2018. The assessment was made against Taxpayer A, under his social security number (SSN), even though the assessment relates to the liability of a business.

Restitution-based assessments are a mirror assessment of (although not necessarily identical to) the tax liability assessed pursuant to a civil exam, creating two separate assessments. Although the restitution-based assessment and civil tax liability assessment are distinct, generally, the IRS may not collect both assessments in full for the same period because it would constitute impermissible double collection. In these cases, any payments made to satisfy the restitution-based assessment must also be applied by the IRS to satisfy the civil tax liability for the same tax periods. However, there are certain circumstances where the restitution is not related to the taxpayer's own civil tax liability for the same period. In such cases, collection in full of both the restitution-based assessment and the criminal defendant's personal tax liability is permissible.

Example: Taxpayer B is an officer of Corporation B. Taxpayer B was convicted under IRC 7202 of criminal failure to collect or pay over corporate income tax for 2018 and ordered to pay restitution. The calculation of the restitution assessment was based on the tax loss that resulted from the taxpayer's failure to collect, account for, and pay over Corporation B's

2018 income tax. In addition to this restitution order that covers corporate income tax liabilities, Taxpayer B is also personally liable for the same tax period (2018) for non-payment of his personal income tax liability. In this situation, full collection of both assessments is permissible as the IRS is separately collecting Taxpayer B's restitution-based assessment; as well as, the assessment of his personal income tax liability for the same year without cross referencing the two accounts.

In FY 2015, the Dallas Advisory group started serving as liaisons for restitution cases. The Dallas Advisory group can provide information regarding the terms for payment of the restitution order and are responsible for monitoring the taxpayer's compliance with the J & C Order. The Dallas Advisory group is an important resource for Insolvency caseworkers when handling cases with restitution assessments. The Dallas Advisory group on a restitution based liability is located at:

Internal Revenue Service
Advisory Probation/Restitution Program
1100 Commerce Street, Mail Code 5028 DAL
Dallas, TX 75242

The Dallas Advisory Group on a restitution based liability can also be contacted by e-mail *SBSE EEF Dallas Restitution or by eFax at (855)843-3038.

- (2) **Classifying a Case as Restitution.** When a Revenue Officer (RO) or an advisor learns that a taxpayer has filed bankruptcy and a restitution assessment has been made against the taxpayer, the RO or advisor will contact the CIO and inform them that the bankruptcy involves a restitution assessment. The RO or advisor calls the CIO to provide this information even when the IRS previously received notice of the bankruptcy case and the case is open on AIS. When contacted, the CIO caseworker should open a "CRIMREST" classification on the case classification screen on AIS and note the information provided by the RO or advisor in the history.
- (3) **Case Assignment.** Field Insolvency will work all cases with Criminal Restitution assessments. These cases will not be assigned to CIO. Criminal Restitution is considered to be a complex issue. (See IRM 5.9.1.4(5), The Role of Insolvency, Complex Issues, for additional information.)
- (4) **General Discharge Procedures.** Pursuant to 11 USC 523(a)(13) and 1328(a)(3), restitution amounts ordered in the J & C Order are not subject to discharge in an individual debtor's case filed under any chapter of the Bankruptcy Code. If restitution is ordered against an entity; i.e., a non-individual who later files a Chapter 11 case, the restitution assessment will not be discharged to the extent the Chapter 11 plan provides for payment of the liability 11 USC 1141(d)(1)(A)). Further, the tax loss ordered to be paid as restitution would probably qualify as a tax for which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat the tax 11 USC 1141(d)(6)(B)).

Note: Consult Area Counsel if questions arise regarding the willful evasion or fraud exception to discharge in cases with restitution assessment.

For purposes of the discharge, interest will be treated in the same manner as the tax to which it relates. Accordingly, interest will not be discharged if the restitution assessment is not discharged. The only penalty which may accrue on a restitution assessment is the failure to pay penalty. The failure to pay penalty on restitution assessments should be treated like any other penalties in bankruptcy that relate to non-dischargeable taxes, except in Chapter 13 cases, and will not be subject to discharge if the failure to pay occurred within three years of the bankruptcy case. The dischargeability of any additional assessments on the module which are not for restitution will be determined based on the guidelines contained in IRM 5.9.17.8, Discharge and Exceptions to Discharge, and IRM 5.9.2.10.1, Bankruptcy Discharge and Collection. Caseworkers should pay particular attention to whether the taxes are non-dischargeable because the debtor filed a fraudulent return or made a willful attempt to evade or defeat the tax and should follow the procedures contained in IRM 5.9.17.8.2, The Fraud or Willful Evasion Exception.

- (5) **Discharge on IMF Accounts.** Criminal restitution assessments are identified by a “CRIMREST” Discharge Determination Report (DDR) which is generated by ADS on Individual Master File (IMF) restitution assessments. The restitution assessment and the interest should not be discharged on an IMF module. If the module contains only the restitution assessment and interest, the DDR should be worked by taking the following actions:
- Input a TC 521 with the appropriate closing code (cc) to reverse the open TC 520.
 - On the ADS screen on AIS, enter **M** (manually processed) in the “DECISION” field next to the corresponding DDR.
 - Click “Save” in the top right corner of the ADS screen.
 - Document the AIS history screen with all actions taken.

If the penalty and interest on the penalty are dischargeable, caseworkers should work the “CRIMREST” DDR in these cases by taking the following actions:

- Input TC 971 AC 033 on all partially dischargeable modules using IDRS command code REQ77.
- Input appropriate abatement transactions on IDRS for the penalties using IDRS command code REQ54.
- At the same time the penalty abatements are input to IDRS using command code REQ77, input TC 521 with appropriate closing codes(s) with a three cycle posting delay.
- On the ADS screen on AIS, enter **M** (manually processed) in the “DECISION” field next to the corresponding DDR.
- Click “Save” in the top corner of the ADS screen.
- Document the AIS history with all actions taken.

If the penalty and interest on the penalty are not dischargeable, caseworkers should work the “CRIMREST” DDR in these cases by taking the following actions:

- Input TC 521 with the appropriate cc to reverse the open TC 520.
- On the ADS screen on AIS, enter **M** (manually processed) in the “DECISION” field next to the corresponding DDR.
- Click “Save” in the top right corner of the ADS screen.
- Document the AIS history with all actions taken.

- (6) **Discharge on BMF Accounts.** If the restitution assessment was established on a BMF module and the taxpayer:
- Filed a Chapter 7 case or a liquidating Chapter 11 case, caseworkers should close the case using the procedures in IRM 5.9.17.12 and IRM 5.9.17.13, as no discharge is granted.
 - Filed a regular, non-liquidating Chapter 11 case, the restitution assessment will be discharged except to the extent the plan or plan confirmation order provides otherwise, or to the extent that 1141(d)(6) applies (mentioned above). Caseworkers should follow the instructions contained in IRM 5.9.17.13.1 when closing these cases. In the event that any portion of the restitution assessment or related interest may have been discharged, caseworkers should contact the Dallas Advisory group and Area Counsel about the discharge.
 - Document the AIS history to reflect the actions taken. .

5.9.17.8.9
(12-09-2016)
**Procedures for
Processing Bankruptcy
Discharges when the
IRS Received No Notice
or Late Notice in the
Asset Case**

- (1) **Background.** Bankruptcy Code 523(a)(3) provides 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. This provision applies to 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. For information about late notice and Chapter 7 No Asset cases, see IRM 5.9.17.10(4), Chapter 7 Discharge Actions, Lack of Notice in Chapter 7 No Asset Cases. The Bankruptcy Code does not give a minimum time period that a debtor must give notice of the bankruptcy filing to a creditor in order for the notice to be timely. The cases in which the courts have addressed this issue have used varying time periods. Some court decisions state that 30 days is enough time for a creditor to file a proof of claim but that 12 days is not

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- (2) **Procedural Changes.** Before following the procedures below, FI caseworkers must check PACER to determine if the IRS was listed as a creditor prior to receipt of the current "late" notice. Field Insolvency should check the following on PACER:
- The creditor mailing matrix;
 - 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.

Note: When the creditor mailing matrix is amended to add additional creditors, the creditors are added to the matrix. There may be no indication showing when the additional creditors were added. However, any amendments made to the creditor mailing matrix will be shown on the PACER docket report. The method of reflecting amendments varies from court to court. If the IRS is shown on the creditor mailing matrix but the IRS did not receive notice, it will

be necessary to review the PACER docket report for any docketed entries that show amendments to Schedules D, E, or F, or that show amendments that were made to the creditor mailing matrix.

If research shows that the IRS was previously given notice at the correct

notice should be treated as timely even when the IRS did not receive the notice. In this situation, caseworkers should note the details of the prior notice in the AIS history. Then, process the case without following the procedures in this subsection.

- (3) **Determining if a Timely Proof of Claim Can be Filed.** When notice of a bankruptcy case is received in a Chapter 7 Asset, Chapter 11, Chapter 12, or Chapter 13 case filed by an individual after the bar date has expired or is imminent, caseworkers must determine if a proof of claim can still be filed which will either be timely or will still allow the IRS to receive payment in the bankruptcy case. Procedures in this subsection should be followed for all

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. 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.

Caution: The bar date field on AIS is generally computed as 70 days from the first date set for the first meeting of creditors. Caseworkers should not rely on this as being the bar date. Caseworkers should determine if the governmental bar date has expired by adding 180 days to the date the bankruptcy petition was filed. Additionally, if the bar date has not expired because of some other procedure; such as, when a new bar date is set after a case is converted from one bankruptcy chapter to another, the bar date should be considered as open even when AIS shows it as expired.

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

Example: The IRS 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 the trustee commences final distribution of the estate.

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

Bankruptcy Code or local procedures, no proof of claim is required when the caseworker determines that the claim cannot be timely filed. Managerial

approval is required for any decision not to file a proof of claim. In these instances, the caseworker should document the following in the AIS case history:

- When the notice was received;
- How the notice was received;
- Why it was not possible to file a timely proof of claim; and,
- Managerial concurrence to refrain from filing the proof of claim.

The case should then be processed as non-dischargeable as follows. If the

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consulting Area Counsel to ask if the courts in the jurisdiction where the case is pending have established a firm date that notices will be considered as untimely. The caseworker may also want to consult Area Counsel if notice was received during this time period and exceptional circumstances; such as, a system outage or government shutdown, prevented the caseworker from filing

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caseworker has determined that a proof of claim could not be timely filed, the caseworker should consider whether the case should be referred to Area Counsel for a suit to determine dischargeability. A case should be referred to Area Counsel before treating the liability as non-dischargeable when there are questions if the notice was timely or untimely. Absent exceptional circumstances, caseworkers should apply the tolerance amounts for referrals in IRM 5.9.4.15.4, Referral Tolerances.

- (4) **Adding a NoNotice Classification to the AIS Case Classification Screen.** A case classification, “NoNotice”, was created on AIS for use in cases in which the debtor did not give timely notice of the bankruptcy case. This classification is only used when:

- An individual filed a Chapter 7 Asset, Chapter 11, Chapter 12, or Chapter 13 bankruptcy case;
- It was determined by Area Counsel or through litigation that the notice was untimely; and,
- No proof of claim was filed.

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The “NoNotice” classification prevents case closure on AIS while the classification is open. Caseworkers should add the “NoNotice” classification to the AIS classification screen at the time a determination is made that a timely proof of claim cannot be filed. See IRM 5.9.5.4.1, Case Classifications, for more information. Caseworkers should follow the procedures in IRM 5.9.5.4, AIS Documentation, and IRM 5.9.5.4.2, Summary Histories, through IRM 5.9.5.4.4, Chapter 7 Summary Histories, for AIS history documentation requirements. At minimum, the AIS history documentation should include:

- Date notice was received;
- When the bar date expired;
- If notice was received prior to the expiration of the bar date;
- Concurrence by the manager that a proof of claim will not be filed when the notice was received prior to the expiration of the bar date;
- Every opinion received from Area Counsel; and,

- A statement that the liabilities are non-dischargeable for lack of timely notice.
- (5) **Closing Cases When Notice was not Given Timely.** When the “NoNotice” case classification is present and open on AIS, the case should be closed using the “No Notice” case closure methods below. The procedures for closing Chapter 7 No Asset cases outlined in IRM 5.9.17.10(4) did not change when the debtor did not give timely notice.
- (6) **Field Insolvency No Notice Procedures.** When the discharge is entered in a Chapter 11 or Chapter 12 case with a “NoNotice” case classification, FI caseworkers input the discharge date on AIS. The FI caseworker takes any necessary closing actions in the case and treats it as if the case were dismissed.

Reminder: The FI caseworker may need to arrange for MFT 31 and/or MFT 65 mirroring pursuant to IRM 5.9.17.22. The FI caseworker must comply with procedures for addressing prior installment agreements per IRM 5.9.17.24, Addressing Prior Installment Agreements When Closing a Case, subsections, and related exhibits.

FI caseworkers take the following actions when closing these cases:

- Input the date the discharge was entered by the court;
 - Input the date notice of the discharge was received by the IRS;
 - Close the “NoNotice” classification on the classification screen;
 - Select the “No Notice” case closure method;
 - Request the TC 521 through IIP (Process J);
 - When required, arrange for MFT 31 and/or MFT 65 mirroring by CIO; and,
 - Address prior installment agreements per IRM 5.9.17.24, subsections, and related exhibits. This may involve having CIO reinstate an installment agreement (IA) when the criteria for IA reinstatement is met. It may require having CIO issue an intent to terminate the IA when the case does not meet the criteria for reinstating an IA.
- (7) **CIO No Notice Procedures.** When Chapter 7 Asset and Chapter 13 cases are received for discharge processing and there is a “NoNotice” case classification, the CIO caseworker should review the AIS history to verify that timely notice was not received by the IRS and that a determination was made that the taxes are non-dischargeable. Caseworkers should then follow the instructions in IRM 5.9.18.3 and IRM 5.9.17.6.5(6), Dismissal Actions, and treat the case as if it were dismissed. The actions taken by the CIO are the same as those listed above for FI. However, CIO completes the MFT 31 and/or MFT 65 mirroring when required in a case.

5.9.17.8.10
(07-25-2022)
**Discharge and Individual
Shared Responsibility
Payment (SRP)
Liabilities**

- (1) **General Background Information.** Under the Affordable Care Act (ACA), the Federal government, state governments, insurers, employers, and individuals are given shared responsibility to reform and improve the availability, quality, and affordability of health coverage in the United States. Beginning in 2014, IRC 5000A required all individuals to have qualifying health care coverage (called minimum essential coverage (MEC)) in each month of the year, qualify for an exemption, or make an individual shared responsibility payment (SRP) when they file their tax return for the respective year. The Tax Cuts and Jobs Act of 2017 (TCJA) reduced the shared responsibility payment of individuals to

zero for tax year 2019 and later. From January 1 2019, taxpayers are still required to have minimum essential coverage or qualify for a coverage exemption. However, under TCJA, individuals no longer need to make a shared responsibility payment or file Form 8965 with their tax return if the taxpayer does not have the minimum essential coverage for part or all of 2019 and later years. The SRP liability is derived from the individual's Federal Income Tax Return from which it arose. For 2017, the SRP liability derives from:

- Line 61, Health Care: individual responsibility, of the Form 1040, U.S. Individual Income Tax Return
- Line 38, Health Care: individual responsibility, of the Form 1040A, U.S. Individual Income Tax Return
- Line 11, Health Care: individual responsibility, of the Form 1040EZ, Income Tax Return for Single and Joint Filers with No Dependents

Note: The line reporting the SRP liability may differ on tax years other than 2017. The SRP liability is reported on Form 1040, Schedule 4, Other Taxes.

The SRP liability follows the income tax return from which it arose for the taxable period. If the income tax for the taxable period is pre-petition, the SRP liability for that taxable period is also pre-petition. If the income tax liability for the taxable period is post-petition, the SRP liability for that taxable period is also post-petition. Additional information about the Affordable Care Act (ACA) and Individual Shared Responsibility Payment (SRP) liabilities can be found in:

- IRM 5.9.4.19, Affordable Care Act
- IRM 5.9.4.19.1, Individual Shared Responsibility
- IRM 5.9.8.15(6), Discharge Upon Completion of the Chapter 11 Plan
- IRM 5.9.10.13, Chapter 13 and Individual Shared Responsibility Payment (SRP) Liability, and subsections
- IRM 5.9.13.18.6, Manual Proofs of Claim and Common Claim Issues, Claim Periods, Affordable Care Act Provisions

(2) **SRP Mirror Assessments.** The SRP liability is assessed on the Individual Master File (IMF) under Master File Tax (MFT) Account Code 35. In January of 2016, the IRS began mirroring certain joint MFT 35 SRP liabilities into separate MFT 65 SRP liabilities.

- **Mirroring Prior to Bankruptcy Filing** — A joint SRP (MFT 35) liability may be mirrored as separate SRP (MFT 65) liabilities prior to the filing of a bankruptcy petition because mirroring was appropriate. For example, a joint SRP (MFT 35) liability may have been mirrored by the Offer In Compromise (OIC) Unit when a taxpayer has a joint SRP liability and only one spouse submitted an OIC on a joint SRP (MFT 35) liability.
- **Mirroring During Bankruptcy** — Exam, Automated Under Reporter (AUR), or other functions within the IRS may request that CIO mirror joint SRP (MFT 35) liabilities into separate SRP (MFT 65) liabilities “up-front” and prior to dismissal or discharge so the liability of the non-debtor spouse (NDS) can be pursued by the IRS, the NDS can exercise appeal rights, or Exam/AUR can assess agreed deficiencies against the NDS when the debtor spouse does not agree with the deficiency and cannot petition Tax Court while the automatic stay is in effect. See IRM 5.9.4.4, Examination and Insolvency, and subsections, for additional information on “up-front” mirroring.

- Mirroring During Closure of a Bankruptcy Case — Joint SRP (MFT 35) liabilities are mirrored into separate MFT 65 liabilities when a bankruptcy case is dismissed or discharged and only one spouse on the joint SRP (MFT 35) liability filed bankruptcy (IRM 5.9.17.22.1). Joint MFT 35 modules may not be mirrored into separate MFT 65 liabilities in community property locations. In community property locations, the non-debtor spouse (NDS) is treated in the same manner as the debtor spouse. For additional information on community property statutes, see IRM 5.9.3.5.1.1, Community Property, IRM 5.9.18.6.8, Community Property, and, IRM 21.6.3.4.2.9, Health Coverage Tax Credit (HCTC).

When determining dischargeability, the SRP MFT 65 liability of the debtor spouse is treated in the same manner as the SRP MFT 35 liability of the debtor spouse. Similarly, the SRP MFT 65 liability of the NDS is treated in the same manner as the SRP MFT 35 liability of the NDS.

Reminder: In community property locations, the NDS is treated in the same manner as the debtor spouse.

- (3) **SRP Liabilities Treated as an Excise Tax.** The SRP liability assessed under MFT 35 or MFT 65 is treated as an excise tax in bankruptcy under 11 USC 507(a)(8)(E). Since the liability for the SRP is taken from the appropriate line on the debtor's income tax return, certain information from the debtor's income tax return is used in determining dischargeability of the SRP liability. Determining dischargeability of the SRP liability depends upon:
 - a. The debtor being eligible for discharge in the current bankruptcy case;
 - b. The type of bankruptcy petition filed by the debtor;
 - c. If IRS was timely and properly noticed of the bankruptcy filing (IRM 5.9.17.8.9 and IRM 5.9.17.10(4)); and,
 - d. Whether the debtor received a discharge *upon completion of the bankruptcy plan* or a *hardship discharge* when the bankruptcy petition was filed under Chapter 13.
- (4) **Eligibility for Discharge.** An individual or joint debtor may not be eligible to receive a discharge in their current bankruptcy case when they received a discharge in a prior bankruptcy case. Eligibility for discharge is determined by the type of prior bankruptcy petition(s) filed, the petition date of the prior bankruptcies, and the petition date of the current bankruptcy case. For additional information see:
 - IRM 5.9.5.7.1(5), Systemic Identification in Serial Filer Cases, Discharge Limitations
 - Exhibit 5.9.5-3, Allowable Elapsed Time Between Bankruptcy Filings and Discharges
 - IRM 5.9.8.15(5), Discharge Eligibility.
 - IRM 5.9.10.3.2(7), Processing Chapter 13 Bankruptcy Cases, Initial Case Review for Chapter 13 Bankruptcy, Aspects of the Initial Case Review, Discharge Limitations
 - IRM 5.9.10.13.3(2)(a), Closing Chapter 13 Cases with SRP Liabilities, Discharge and SRP Liabilities, Eligibility for Discharge
- (5) **Chapter 13 Plan Completion Discharge.** When a debtor receives a discharge upon completion of a Chapter 13 plan under 11 USC 1328(a), the remaining balance of debts "provided for" by the bankruptcy plan are generally discharged unless the debts are an exception to discharge. The dischargeable

liability may be a pre-petition debt or a post-petition debt included on an 11 USC 1305 claim that was “provided for” by the Chapter 13 plan. The following statements provide guidance regarding the applicability of exceptions to discharge of SRP liabilities upon completion of the Chapter 13 plan:

- The SRP liability may be non-dischargeable if the tax on the income tax return is non-dischargeable due to fraud or the willful evasion exception to discharge (IRM 5.9.17.8.2). However, IRS must be able to show that the debtor willfully evaded the SRP liability. When the SRP liability may be non-dischargeable due to fraud or willful evasion, refer the case to Area Counsel for guidance.
- The SRP liability is non-dischargeable if the tax on the income tax return is non-dischargeable because the tax on the return was assessed before the return was filed. For more information, see IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared, and related exhibits.
- The SRP liability is non-dischargeable if the income tax return from which the SRP liability was derived was filed late and after the date that is two years before the date of the bankruptcy petition. This includes post-petition SRP liabilities included on an 11 USC 1305 claim and the related income tax return was not timely filed.

Note: The two-year period with regard to late filed returns is tolled during a prior bankruptcy. See IRM 5.9.13.19.3(4), BAPCPA Tolling, for additional information.

- (6) **Exceptions to Discharge in All Other Individual or Joint Bankruptcy Cases Except the Chapter 13 Case with a Discharge Upon Completion of the Chapter 13 Plan.** In addition to the exceptions to discharge in (5) above, all cases except the Chapter 13 case with a discharge upon completion of the plan have an additional exception to discharge. In all other cases, the SRP liability is excepted from discharge when the income tax return was due, with extensions, within the three-years prior to the bankruptcy petition date.

Note: The three-year “look back” provision in 11 USC 507(a)(8) and two-year period with regard to late filed returns are automatically tolled during a prior bankruptcy while the automatic stay is in effect. See IRM 5.9.13.19.3(4), BAPCPA Tolling, for additional information.

- (7) **Determining Dischargeability of the SRP Liability.** All rules for determining the dischargeability of income tax are used when determining dischargeability of the SRP liability except the “240-day rule” and the “unassessed but assessable rule” set forth in 11 USC 507(a)(8)(A)(ii) and (iii). Other than these rules, when the tax on the Form 1040 is dischargeable, the tax on the SRP MFT 35 or MFT 65 module is generally dischargeable for the debtor. If the tax on the Form 1040 is non-dischargeable, the tax on the SRP liability assessed under MFT 35 or MFT 65 against the debtor is generally non-dischargeable. The interest on the SRP is always non-dischargeable when the tax on the SRP is non-dischargeable. No penalty is assessed or accrues on the SRP liability.

Reminder: In community property locations, the non-debtor spouse is generally treated in the same manner as the debtor spouse.

The following examples are provided as assistance in determining if a SRP liability is dischargeable:

Example: Taxpayer timely filed his 2018 income tax return on 04/15/2019. There is no tax due on the Form 1040. Taxpayer listed \$350 as the SRP amount due on his Form 1040. IRS assessed a SRP MFT 35 liability in the amount of \$350. On 02/15/2022, IRS assesses an Examination deficiency (TC 300) for \$1500 on the 30-201812 income tax (MFT 30) module. Taxpayer files Chapter 7 on 05/15/2022.

The tax and interest due on the Form 1040 is non-dischargeable. The TC 300 was assessed 89 days prior to the bankruptcy petition date. The TC 300 is a priority debt under 11 USC 507(a)(8)(A)(ii). It is excepted from discharge under 11 USC 523(a)(1)(A). The tax and interest on the SRP MFT 35 module is dischargeable. The 30-201812 module was due on 04/15/2019. The return due date was more than three-years prior to the bankruptcy petition date. There is nothing in 11 USC 507(a)(8)(E) that makes assessments within 240 days prior to the petition date a priority debt for excise tax. The tax and interest on the excise tax assessed on the SRP MFT 35 module is not excepted from discharge under 11 USC 523(a).

Example: Taxpayer filed Form 1040 for 2018 late and on 05/01/2020. Taxpayer had no approved extension (TC 460) for filing the 2018 income tax return. Taxpayer has no tax due on the Form 1040. Taxpayer listed \$350 as the SRP liability on the income tax return. IRS assesses a SRP MFT 35 liability for 201812 in the amount of \$350. On 02/15/2022, IRS assesses an Examination deficiency (TC 300) for \$1500 on the 2018 income tax module. Taxpayer files Chapter 7 on 05/15/2022.

The tax and interest due on the Form 1040 is non-dischargeable because the TC 300 was assessed 89 days prior to the bankruptcy petition date. It does not matter that the return due date was more than three-years prior to the petition date. It does not matter that the return was filed late and more than two-years prior to the petition date. The determining factor is that the TC 300 is a priority tax under 11 USC 507(a)(8)(A)(ii). The tax and interest on the SRP MFT 35 module is dischargeable. The 30-201812 module was due more than three-years prior to the bankruptcy petition date. The 30-201812 return was filed more than two-years prior to the bankruptcy petition date. There is nothing in 11 USC 507(a)(8)(E) that makes assessments within the 240 days prior to the petition date a priority debt for excise tax. The tax and interest on the excise tax on the SRP MFT 35 module is not excepted from discharge under 11 USC 523(a).

These examples apply to the SRP liability of the debtor assessed on IDRS as MFT 35 or SRP liability of the debtor mirrored as MFT 65.

5.9.17.8.11
(07-25-2022)
**Discharge and Employer
Shared Responsibility
Payment (ESRP)
Liabilities**

- (1) **General Background Information.** Individual debtors may be liable for ESRP MFT 43 liabilities when they are an applicable large employer (ALE) sole proprietorship that is assessed Employer Shared Responsibility Payment (ESRP) MFT 43 liabilities. Individual debtors that are partners may be liable under state law for the debts of the partnership, which would include ESRP liabilities incurred by the partnership. Non-individual debtors may be liable for ESRP MFT 43 liabilities when they are an ALE assessed ESRP MFT 43 liabilities.
- (2) **ESRP Liabilities Treated as an Excise Tax.** ESRP MFT 43 liabilities are treated as excise taxes under 11 USC 507(a)(8)(E)(ii). A return is not required or filed for ESRP MFT 43 liabilities. ESRP MFT 43 liabilities arise when the

Internal Revenue Service issues Letter 226J to an applicable large employer (ALE). When Letter 226J is issued to a debtor during the three years immediately preceding the date of the filing of their bankruptcy petition, the ESRP MFT 43 liability is a priority excise tax debt. On IDRS, Letter 226J is indicated with TC 971 AC 782 with the date issued to determine the ESRP discharge.

- (3) **Determining Dischargeability of ESRP Liabilities.** As there is no return associated with ESRP MFT 43 liabilities, there is no exception to discharge for non-filing or late filing of tax returns. Additionally, there is no exception to discharge due to fraud, as it would be difficult to prove fraud with no filed tax return. However, if the IRS can prove that the debtor willfully attempted to evade the assessment or collection of ESRP MFT 43 liabilities, with the written concurrence of Area Counsel, the ESRP MFT 43 liabilities may be excepted from discharge. For more information on the willful evasion exception to discharge, see IRM 5.9.17.8.2, The Fraud or Willful Evasion to Discharge. Per 11 USC 523, priority ESRP MFT 43 liabilities owed by individual debtors are non-dischargeable when the debtor receives a discharge under:

- 11 USC 727 - Chapter 7.
- 11 USC 1141(d)(5)(A) - Chapter 11 plan completion discharge.
- 11 USC 1141(d)(5)(B) - Chapter 11 hardship discharge.
- 11 USC 1228(a) - Chapter 12 plan completion discharge.
- 11 USC 1228(b) - Chapter 12 hardship discharge.
- 11 USC 1328(b) - Chapter 13 hardship discharge.

The following sections address determining dischargeability of ESRP MFT 43 liabilities by bankruptcy chapter and debtor type. Dischargeability can depend upon:

- If the debtor is an individual or a non-individual
- If the bankruptcy was filed under Chapter 7, 11, 12, or 13
- If the debtor received a discharge upon completion of the bankruptcy plan
- If the debtor received a hardship discharge

- (4) **Chapter 7 Bankruptcies.** Only individual debtors receive discharges in Chapter 7 bankruptcy cases. Discharges are not granted to non-individual debtors in Chapter 7. When individual debtors are liable for pre-petition ESRP MFT 43 liabilities, the ESRP MFT 43 liabilities are non-dischargeable when the Letter 226J was issued within the 3 years prior to the bankruptcy petition date. If the Letter 226J was issued more than 3 years prior to the bankruptcy petition date, the ESRP MFT 43 liabilities are dischargeable unless Area Counsel agrees that they are non-dischargeable due to the willful evasion exception to discharge. Liabilities may also be non-dischargeable if the IRS was not notified timely of the bankruptcy case. There is no discharge of post-petition ESRP MFT 43 liabilities in Chapter 7 individual cases.

Note: When an ESRP MFT 43 liability is dischargeable, the IRS may collect the ESRP MFT 43 liability after the discharge from exempt property secured by a pre-petition NFTL. The IRS may also collect the ESRP MFT 43 liability from abandoned or excluded property due to the IRS statutory lien. A NFTL is not required to collect from abandoned or excluded property. For additional information, see IRM 5.9.17.5, Exempt, Abandoned, or Excluded Property (EAEP), and subsections.

- (5) **Chapter 11 Bankruptcies.** Debtors in Chapter 11 bankruptcy cases may receive a discharge. In Chapter 11, all pre-confirmation debts are discharged except to the extent that the plan provides otherwise for their payment (and in individual cases, the exceptions in 11 USC 523(a) also apply). Individual Chapter 11 debtors typically receive a discharge when they complete their Chapter 11 plan of reorganization, but the court for cause, may allow a discharge upon confirmation. Individual debtors may also receive hardship discharges in Chapter 11 cases. There is typically no discharge when non-individual debtors liquidate in Chapter 11. Insolvency caseworkers must review Chapter 11 bankruptcy plans closely. Plans should provide for full payment of priority tax claims with interest within the period that ends no later than 5 years after the bankruptcy petition date. That includes priority ESRP MFT 43 liabilities. Plans should also provide for full payment of any post-petition/pre-confirmation liabilities owed by the debtor on or before the effective date of the plan unless the IRS agrees otherwise. That includes any post-petition/pre-confirmation ESRP MFT 43 liabilities owed by the debtor. The plan should not establish a bar date for filing administrative expense tax claims for post-petition/pre-confirmation tax liabilities nor should it contain language discharging liabilities not included on Form 6338-A. In Chapter 11 cases, post-confirmation ESRP MFT 43 liabilities are not claimable and they are not dischargeable. For additional information, see:
- IRM 5.9.8.13, Post-Petition/Pre-Confirmation BMF Monitoring
 - IRM 5.9.8.8.17.1(4), Plan Provisions
 - IRM 5.9.8.19.4, Accrual of Post-Confirmation Tax Liabilities
 - IRM 5.9.8.19.4.1, Post-Confirmation Tax Liabilities of the Non-Individual Debtor or Individual Debtor (Pre-BAPCPA)
 - IRM 5.9.17.13.1, Closing Chapter 11 Non-Individual Entities that Reorganize in Chapter 11
- a. Individual Debtors. A Chapter 11 discharge for an individual debtor is similar to the discharge granted to an individual in a Chapter 7 case under 11 USC 727. Pre-petition priority taxes in individual Chapter 11 cases are excepted from discharge pursuant to 11 USC 523(a)(1)(A) *unless the confirmed plan provides otherwise*. For additional information, see IRM 5.9.17.13.3, Closing Chapter 11 Cases Filed by Individuals. When determining if ESRP MFT 43 liabilities are dischargeable in individual Chapter 11 cases, follow the guidance in IRM 5.9.17.8.11(4), Chapter 7 Bankruptcies. Any portion of the post-petition ESRP (whether incurred by the estate or the debtor) that should have been paid under the plan will be non-dischargeable. The plan could also provide that post-petition debts of the debtor are non-dischargeable, or that the ESRP is non-dischargeable.
- b. Non-Individual Debtors. Non-individual debtors typically do not receive a discharge when they liquidate in Chapter 11 bankruptcy cases. ESRP MFT 43 liabilities owed by non-individual debtors who liquidate in Chapter 11 are treated in the same manner as any other debt owed by non-individual debtors liquidating in Chapter 11. Liquidating non-individual Chapter 11 cases are closed following the guidance in IRM 5.9.17.11, Closing Chapter 7 or Liquidating Chapter 11 Partnerships, and IRM 5.9.17.13, Closing Liquidating Chapter 11 Corporations and Liquidating Chapter 11 LLCs. Post-petition/pre-confirmation ESRP MFT 43 liabilities owed by non-individual debtors are claimable as administrative expenses on Form 6338-A, Request for Payment of Internal Revenue Taxes. While the IRS is no longer required to file Form 6338-A for post-petition/pre-

confirmation tax liabilities in accordance with 11 USC 503(b)(1)(D), it is the position of the IRS that Form 6338-A will be filed. In reorganizing Chapter 11 cases of non-individual debtors, debtors generally receive a **super discharge** of pre-confirmation tax debts when the Chapter 11 plan is confirmed except to the extent that the plan or confirmation order provides otherwise (11 USC 1141(d)(1)(A)). However, if a non-individual debtor willfully evaded the assessment or collection of pre-confirmation ESRP MFT 43 liabilities and Area Counsel agrees, the pre-confirmation ESRP MFT liabilities are non-dischargeable.

Example: Determining if pre-petition tax debts were discharged in non-individual Chapter 11 reorganizations is relatively simple. When the debtor has paid the amount due in the Chapter 11 plan, any balance remaining on pre-petition liabilities is discharged. That includes any unpaid balances on pre-petition ESRP MFT 43 liabilities.

Example: Determining dischargeability of post-petition/pre-confirmation liabilities can be more complicated as more factors must be considered:

- If the bankruptcy plan did not establish a bar date for filing administrative expense claims and did not contain language discharging unclaimed post-petition/pre-confirmation liabilities, those liabilities are non-dischargeable. That includes post-petition/pre-confirmation ESRP MFT 43 liabilities.
- If the bankruptcy plan contained language discharging unclaimed post-petition/pre-confirmation liabilities and established a bar date for filing administrative expense claims, any unclaimed post-petition/pre-confirmation liabilities were discharged. That includes any post-petition/pre-confirmation ESRP MFT 43 liabilities.
- If the bankruptcy plan set a bar date for filing administrative claims for post-petition/pre-confirmation liabilities and contained language discharging any amount not provided for in the plan, any amount owed on the post-petition/pre-confirmation liabilities exceeding the amount provided for in the plan was discharged. That includes amounts due on post-petition/pre-confirmation ESRP MFT 43 liabilities greater than the amount provided for in the plan.

- (6) **Chapter 12 Bankruptcies.** Individual or non-individual debtors may file Chapter 12 bankruptcy cases. Both may receive a discharge upon completion of their bankruptcy plan. When circumstances beyond their control keep them from completing their plan, they may be granted a hardship discharge. In either case, pre-petition ESRP MFT 43 liabilities are non-dischargeable when the Letter 226J was issued within the 3 years prior to the filing of the bankruptcy petition as the ESRP MFT 43 liabilities are priority tax debts. If pre-petition ESRP MFT 43 liabilities are non-priority tax debts because the Letter 226J was issued more than 3 years prior to the filing of the bankruptcy petition, the ESRP MFT 43 liabilities are generally dischargeable. On IDRS, Letter 226J is indicated with TC 971 AC 782 with the date issued to determine the ESRP discharge. However, if the IRS can prove that the debtor willfully evaded the assessment or payment of ESRP MFT 43 liabilities and Area Counsel agrees, the non-priority ESRP MFT 43 liabilities are non-dischargeable. As previously mentioned, liabilities may be non-dischargeable if the IRS was not notified timely of the bankruptcy case. Post-petition ESRP MFT 43 liabilities are not claimable and are non-dischargeable in individual Chapter 12 bankruptcy

cases. Post-petition/pre-confirmation ESRP MFT 43 liabilities owed by non-individual debtors may be claimed as administrative expenses on Form 6338-A. There are no provisions for claiming post-confirmation ESRP MFT 43 liabilities in Chapter 12 cases of non-individual debtors. If the plan in the non-individual Chapter 12 case provided for the post-petition/pre-confirmation ESRP MFT 43 liability, the ESRP liability is dischargeable. If the plan in the non-individual Chapter 12 case did not provide for the post-petition/pre-confirmation ESRP MFT 43 liability, the ESRP liability is non-dischargeable. It is very important that caseworkers review Chapter 12 plans thoroughly. Objections should be filed when plans do not provide adequately for the claims of the IRS. In general, plans should provide for full payment of the IRS secured, priority, or administrative expense claims with post-confirmation interest when allowable. Unsecured general claims should receive an amount not less than the IRS would receive in a Chapter 7 liquidation. For additional information, see:

- IRM 5.9.9.5, Chapter 12 Plans, and subsections
- IRM 5.9.9.6, Reasons to Object to the Plan
- IRM 5.9.9.7, Chapter 12 “Pay-out” Arrangements
- IRM 5.9.9.10.3, Post-Petition Liabilities in Chapter 12- Individual Cases
- IRM 5.9.9.10.4, Post-Petition Liabilities in Chapter 12- Non-Individual Cases
- IRM 5.9.17.14, Chapter 12 Discharge, and subsections

- (7) **Chapter 13 Bankruptcies.** Only individuals can file Chapter 13 bankruptcy petitions. Individuals may receive a discharge upon completion of the Chapter 13 plan. They may also receive a hardship discharge when they cannot complete the Chapter 13 plan.
- a. **Hardship Discharges.** Chapter 13 debtors may receive a hardship discharge under 11 USC 1328(b). The exceptions to discharge in the Chapter 13 hardship case are the same as the exceptions to discharge in an individual Chapter 7 case under 11 USC 727 pursuant to 11 USC 523(a)(1)(A). With the concurrence of Area Counsel, pre-petition ESRP MFT 43 liabilities may also be excepted from discharge due to willful evasion under 11 USC 523(a)(1)(C) if the debtor willfully evaded the assessment or collection of ESRP MFT 43 liabilities. For more information on determining dischargeability of ESRP MFT 43 liabilities in Chapter 13 hardship cases, see the guidance for Chapter 7 cases in IRM 5.9.17.8.11(4), Chapter 7 Bankruptcies.
 - b. **Chapter 13 Plan Completion Discharges.** When a debtor receives a discharge upon completion of a Chapter 13 plan under 11 USC 1328(a), the remaining balance of debts “provided for” by the bankruptcy plan are discharged unless there is an applicable exception to discharge. The dischargeable liability may be a pre-petition debt or a post-petition debt included on an 11 USC 1305 claim that was “provided for” by the debtor’s plan.

Pre-petition ESRP MFT 43 Liabilities	Generally dischargeable when the debtor received a discharge upon completion of the Chapter 13 plan.
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Post-petition ESRP MFT 43 Liabilities	Generally dischargeable when the debtor received a discharge upon completion of the Chapter 13 plan, the post-petition ESRP MFT 43 liability was included on a 11 USC 1305 claim, and the plan “provided for” the post-petition ESRP MFT 43 liability.
Post-petition ESRP Mft 43 Liabilities	Generally non-dischargeable when the Chapter 13 plan was not amended to “provide for” post-petition ESRP MFT 43 liabilities whether or not the liabilities were included on an 11 USC 1305 claim.

As there is no return filed for ESRP MFT 43 liabilities, there is generally no exception to discharge for fraud. However, if the debtor willfully evaded the assessment or collection of ESRP MFT 43 liabilities, with the agreement on Area Counsel, the ESRP MFT 43 liabilities may be excepted from discharge due to willful evasion. As mentioned previously, Chapter 13 debts may be non-dischargeable if IRS was not notified timely of the bankruptcy case. For additional information, see:

- IRM 5.9.10.9, Post-Petition Tax Liabilities, and subsections
- IRM 5.9.17.8, Discharge and Exceptions to Discharge
- IRM 5.9.17.8.2, The Fraud or Willful Evasion Exception to Discharge
- IRM 5.9.17.15, Chapter 13 Discharge Pre-BAPCPA, and subsections

5.9.17.9
(12-09-2016)

Discharge Injunction

- (1) **Preventing Violations of the Discharge Injunction.** Under 11 USC 524, a discharge operates as an injunction against the continuation or commencement of any act to collect the discharged debt against the debtor personally. General collection actions must not be taken, including sending balance due notices, serving wage levies, or making offsets of post-petition refunds to discharged liabilities. Collection against pre-petition exempt property of the estate which is subject to a lien may be taken without violating the discharge injunction. Collection may also be taken against pre-petition property abandoned or excluded from the estate due to the statutory lien, even if a pre-petition NFTL was not filed.
- (2) **IRS Prohibition.** The IRS can be liable for damages if the discharge injunction is violated (IRC 7433(e)). Therefore, IRS is prohibited from taking actions to collect, recover, or offset post-petition refunds on any discharged debt.
- (3) **Adjusting Accounts.** To prevent violations of the discharge injunction under 11 USC 524, Insolvency should take timely and precautionary measures when adjusting accounts that have discharged liabilities. Dischargeable modules must be kept under TC 520 (freeze code) control until all dischargeable modules have been fully adjusted.

5.9.17.10
(07-25-2022)

Chapter 7 Discharge Actions

- (1) **Partnerships, Corporations, and Limited Liability Companies (LLCs).** Discharges are not granted in Chapter 7 cases filed by partnerships, corporations, or Limited Liability Companies (LLCs). (See IRM 5.9.17.11 and IRM 5.9.17.12, below.)
- (2) **Ineligibility to Receive a Discharge Due to a Discharge in a Prior Case.** An individual may not be eligible to receive a discharge in the current Chapter 7 case if they received a discharge in a prior bankruptcy case. Eligibility is based

on the petition date of the prior bankruptcy, the prior bankruptcy chapter, and the petition date of the current Chapter 7 case. It is also based on whether the discharge in the prior bankruptcy was in a case filed pre-BAPCPA or a case filed post-BAPCPA. For additional information see:

- 11 USC 727(a)(7);
- 11 USC 727(a)(8);
- IRM 5.9.5.7.1(5), Serial Filers, Systemic Identification in Serial Filer Cases, Discharge Limitations; and,
- IRM 5.9.5-3, Allowable Elapsed Time Between Bankruptcy Filings and Discharges.

- (3) **No Asset Discharge for Individual Debtors.** When an individual debtor receives a discharge in Chapter 7 No Asset case, the CIO runs the case through the Automatic Discharge System (ADS) for systemic adjustments unless the account is tagged for manual processing. Unless a discharge determination report (DDR) is generated by ADS, all closing actions including lien releases are completed without caseworker intervention. Many Chapter 7 No Asset cases are investigated prior to the discharge for collection potential from EAEP and for the fraud or willful evasion exceptions to discharge, when required. The investigations are usually early in the case. In these instances, there should be documentation in the AIS history to assist caseworkers in the resolution of any DDRs issued for EAEP or for any DDR generated for willful evasion. If there is no collection potential from EAEP, there should be a “No EAEP” case classification on AIS. If there is no indication of fraud or willful failure to pay, there should be a “No WFTP” case classification for the case on AIS. See IRM 5.9.17.5, Exempt, Abandoned, or Excluded Property (EAEP), and subsections for additional information. Because the bankruptcy laws regarding the scope of a Chapter 7 discharge are complex, it may be necessary to consult Area Counsel for legal guidance when manual processing of a Chapter 7 case is required and issues are not clarified within this IRM.

Reminder: If a trustee refund turnover request remains valid on a discharged case, the CIO must identify and monitor that case for posting of the refund post-discharge.

Caution: If there is a TC 520 cc 80 present on IDRS, add “NONCLS” classification, reassign to FI if not already assigned, and keep the case open until further direction from Advisory or Counsel. This action is to avoid inadvertent posting of a pre-mature TC 604 to abate a liability when a TC 520 cc 80 may reflect non-dischargeability or lien-survival litigation.

- (4) **Lack of Notice in Chapter 7 No Asset Cases.** When Insolvency is advised of a discharge in a Chapter 7 No Asset bankruptcy case which is not present on AIS and dischargeable pre-petition liability exists, the Insolvency caseworker will take the following actions regardless of the reason the case is not present on AIS:

1. Research the docket number on the court's electronic records.
2. Load the account onto AIS.
3. Take immediate action to correct any violations of the stay or discharge injunction.
4. Document the AIS history with circumstances of the late notification and IRS actions taken.
5. Input the discharge date on the AIS Taxpayer Screen.

The case will appear on the next Court Closure Follow-up Report where the discharge will be processed normally through ADS.

Caution: If there is a TC 520 cc 80 present on IDRS, add “NONCLS” classification, reassign to FI if not already assigned, and keep the case open until further direction from Advisory or Counsel. This action is to avoid inadvertent posting of a pre-mature TC 604 to abate a liability when a TC 520 cc 80 may reflect non-dischargeability or lien-survival litigation.

- (5) **Asset Discharge for Individual Debtor.** Final distribution of funds in a Chapter 7 Asset case filed by an individual may come months or years after the court has entered a discharge or denial of discharge in the case. If there is no NFTL on file, or if there is no collection potential from EAEP after the bankruptcy discharge, there is no reason to keep the case open for a distribution in the case once a discharge has been entered by the court. The case can be closed upon discharge or denial of discharge. When there is an NFTL on file, the case should remain open until the earlier of a distribution in the case or entry of an order closing the case without distribution. When there is collection potential from EAEP after the bankruptcy discharge, the case should remain open until all collection activities on the EAEP are completed or a determination is made not to pursue collections.

Caution: If there is a TC 520 cc 80 present on IDRS, add “NONCLS” classification, reassign to FI if not already assigned, and keep the case open until further direction from Advisory or Counsel. This action is to avoid inadvertent posting of a pre-mature TC 604 to abate a liability when a TC 520 cc 80 may reflect non-dischargeability or lien-survival litigation.

- (6) **Transfer of the Individual or Joint Chapter 7A Case to the CIO Prior to Dismissal or Discharge.** Once the Field Insolvency (FI) caseworker has completed the initial case review and there are no issues that require a case to remain in FI, most individual or joint cases can be transferred from FI to the Centralized Insolvency Operation (CIO). The CIO will monitor the case for dismissal or discharge. At dismissal or discharge, the CIO will take any necessary closing actions. This includes updating the method of closure on the Taxpayer Screen on AIS. It also includes resolving any Discharge Determination Reports (DDRs) issued by ADS.

Note: If a case is dismissed while assigned to FI, the case cannot be reassigned to CIO for closure. FI will take closing actions.

Caution: If there is a TC 520 cc 80 present on IDRS, add “NONCLS” classification, reassign to FI if not already assigned, and keep the case open until further direction from Advisory or Counsel. This action is to avoid inadvertent posting of a pre-mature TC 604 to abate a liability when a TC 520 cc 80 may reflect non-dischargeability or lien-survival litigation.

If the case is not dismissed or discharged, the FI caseworker should transfer the individual or joint Chapter 7 Asset case to the CIO when:

- The FI caseworker has completed the initial case review.
- All proofs of claim of the IRS have been filed and acknowledged by the court.

- There is no unresolved litigation; such as, an objection to claim or complaint to determine dischargeability which requires the case to remain in FI.
- An investigation of exempt, abandoned, or excluded property (EAEP) is required, the investigation has been concluded, and there is no collection potential from EAEP after the discharge. The FI caseworker must notate the AIS history and add a “No EAEP” and “7N - NQRS” case classification to AIS in these cases.
- Investigations of the willful failure to pay exception to discharge have been concluded, when required. The FI caseworker must update the AIS history with the results of the investigation. If it was determined that there was no evidence to support the willful failure to pay exception to discharge, the FI caseworker must add a “No WFTP” case classification to AIS.
- If there is a TC 520 cc 80 on IDRS and a **NONCLS** classification present, the case will remain open in FI until further direction is given by Advisory or Counsel to continue with discharge and close the **NONCLS** classification with case history documentation. TC 520 cc 80 is an ongoing litigation and DOJ's authority to discharge (IRC 7122, Compromises and IRM 25.3.6.1.2(3), Settlement Authority).

Note: These procedures do not change existing procedures in individual Chapter 7 Asset “no liability” cases which are only open due to trustee turnover requests. These cases should be reassigned to the CIO after the initial case analysis when the FI caseworker has determined that the case is truly a “no liability” case. The case will remain open during the turnover period.

Prior to transfer from FI to CIO, the FI caseworker must add a “SUMMARY HISTORY” on AIS. The history must state, “SUMMARY HISTORY - NO ISSUES EXIST, CIO TAKE ACTION WHEN DISMISSAL/DISCHARGE RECEIVED” when there are no issues. If there are issues, they must be addressed in the “SUMMARY History”. For more information, see IRM 5.9.5.4.2, Summary Histories, and IRM 5.9.5.4.4, Chapter 7 Summary Histories. If there are issues that require the case to remain in FI, the case can be transferred from FI to the CIO *once those issues are resolved*.

- (7) **Transfer of the Individual or Joint Chapter 7A Case to the CIO After Discharge.** If a discharge is received on an individual or joint Chapter 7A case while the case is assigned to FI, the FI caseworker must determine if there are any issues that require the case to remain open. If there are no issues that require the case to remain open, the case can be transferred from FI to the CIO. However, the FI caseworker must:

- Ensure that all proofs of claim of the IRS have been filed and acknowledged.
- Input RI in the Method of Closure Field on the AIS Taxpayer Screen.
- Add a “SUMMARY HISTORY” on AIS stating, “SUMMARY HISTORY - DISCHARGE RECEIVED AND RI INPUT, REASSIGN TO CIO”. If there are any unique closing actions that the CIO needs to be aware of, include those actions in the SUMMARY HISTORY.
- Reassign the case to CIO.

If issues exist that require the case to remain open, the case must remain assigned to FI *until those issues are resolved*. The FI caseworker must

document the AIS history with actions taken. Once all “field” issues have been resolved, the case can be transferred from FI to the CIO for closure.

- (8) **Actions Required at Discharge.** Caseworkers should follow the chart below when a discharge is entered in a case:

IF...	THEN...
The court entered a discharge to the debtor and the trustee filed a final “Report of No Distribution” with the court, and the court entered a final decree and closed the case,	<p>The case should be run through ADS and processed through prescribed actions including any EAEP considerations, if not previously considered.</p> <p>Caution: The bankruptcy case is still pending until the bankruptcy is closed with the court. There should be no failure to pay (FTP) assessed during the pendency of the bankruptcy per IRC 6658 and Rev. Rule. 2005-9, Bankruptcy Cases - Definition of “Pending”.</p>

IF...	THEN...
<p>The court entered a discharge to the debtor, the case is still open at the court, and the IRS:</p> <ul style="list-style-type: none"> • Has a secured claim on dischargeable periods secured by an NFTL or • There are abandoned or excluded assets that are available for collection of dischargeable taxes due to the IRS statutory lien, 	<p>The case should be held open.</p> <ol style="list-style-type: none"> Non-dischargeable periods should be manually released from the bankruptcy freeze and returned to the collection stream. Dischargeable periods with a secured claim must be held open awaiting distribution or until the case is closed by the Court without distribution. Dischargeable periods secured by the IRS statutory lien on abandoned or excluded assets must be held open awaiting distribution or until the case is closed by the Court without distribution. Dischargeable periods for liabilities not claimed as secured on the proof of claim or secured by the statutory lien on abandoned or excluded property should be abated. <p>Note: Lien releases should not be issued until the distribution is received. A NFTL refile determination should be made when appropriate. (IRM 5.9.5.9.2, Refiling Notices of Federal Tax Lien (NFTLs))</p> <p>Reminder: Do not adjust dischargeable liabilities when there is collection potential from EAEP after the discharge until all collection activities are completed or a decision is made not to pursue collection.</p>

IF...	THEN...
No valid pre-petition NFTL has been filed for dischargeable periods or there is no potential to collect dischargeable periods from abandoned or excluded property due to the IRS statutory lien,	<p>The case should be run through ADS and processed through prescribed actions. Payments received after the case has been closed must be posted through AIS and applied as follows:</p> <p>1) Amounts covering dischargeable periods should be processed through AIS to the Unidentified Remittance File (URF) or the abatement may be reversed and the payment applied to the balance due module.</p> <p>2) Amounts in excess of those needed to full pay the dischargeable periods should be applied through AIS to the earliest assessed non-dischargeable period(s). See IRM 5.9.15.3.5, Payments Received After AIS Discharge Closure, and IRM 5.9.15-5, Posting Payments on a Closed Case, for guidance on posting a payment on a discharged liability that has been adjusted before receipt of the bankruptcy payment.</p>

- (9) **CSEDs and Distributions.** A follow-up should be placed on accounts awaiting distribution when CSED expiration dates are imminent. A phone call should be made to the trustee to determine if distribution will be received prior to the collection expiration date. Depending on the trustee's response, the caseworker along with the group or team manager must decide on the best course of action to take. Procedures found in IRM 5.1.19.5.3, Documenting Imminent CSEDs, and IRM 5.1.19.5.4, Expiration Of A Collection Statute, should be followed in documenting and working bankruptcy cases with imminent CSEDs. Insolvency managers may want to consult IRM 1.4.51.15.2, Controls, CSED Accounts, and Exhibit 1.4.51-26, Guide for CSED Follow-Up Report (Field Insolvency and CIO).
- (10) **Liens and Exempt, Abandoned, or Excluded Property (EAEP).** A valid NFTL filed prior to the bankruptcy petition date helps protect the government's interest in EAEP with collection potential. The IRS statutory lien continues to attach abandoned or excluded property with collection potential after discharge, *even if a pre-petition NFTL was not filed.* (See IRM 5.9.17.5, Exempt, Abandoned, or Excluded Property (EAEP), and subsections.) When a case is kept open after the discharge due to collection potential from EAEP, the lien must be protected. This includes the timely refiling of NFTLs to prevent the lien from "self-releasing" while the IRS is awaiting distribution in the case or taking

enforcement action against EAEP. See IRM 5.9.5.9.2, Refiling Notices of Federal Tax Lien (NFTLs), for additional information.

- (11) **Rapid Discharge in Chapter 7s.** In most instances, unless a complaint to object to the discharge has been filed, the discharge will be granted to an individual or joint Chapter 7 debtor rather quickly compared to the time discharges are granted in other bankruptcy chapters. The discharge in Chapter 7 cases is generally granted within six to nine months after the petition date.

Note: Caseworkers must follow the guidance in IRM 5.9.17.8.8, Discharge and Restitution Assessments, when the debtor has an outstanding restitution-based assessment.

5.9.17.11
(07-25-2022)
**Closing Chapter 7 or
Liquidating Chapter 11
Partnerships**

- (1) **No Discharge.** Discharges are not granted in Chapter 7 partnership cases or in liquidating Chapter 11 cases filed by partnerships. (For more information on partnerships and the types of partnerships, see IRM 5.9.5.3.1, Chapter 7 and Chapter 11 Liquidating Partnerships, and IRM 5.15.1.14, Business Entity Types.)
- (2) **Returning the Liabilities to the Collection Stream.** Partnership tax liabilities typically arise from employment taxes, heavy vehicle taxes, excise taxes, and miscellaneous penalties; such as, the penalty for failure to timely file the Form 1065, U.S. Return of Partnership Income. When a Chapter 7 partnership or liquidating Chapter 11 partnership bankruptcy case has been closed by the court, Insolvency must reverse the bankruptcy freeze, input the TC 550 to extend the CSED (if necessary), make an NFTL refile determination, and allow the modules to return to the collection stream without adjusting the balances due (i.e., penalties are not abated). If possible, any potential levy sources should be deleted from IDRS if verified that they are no longer valid.

Note: If the decision was made to pursue collection from general partners during the pendency of a partnership's Chapter 7 or liquidating Chapter 11 bankruptcy case, the TC 520 closing code should have been changed to 84. When the bankruptcy case is closed by dismissal, discharge, or non-discharge, a TC 550 must be input on the account to extend the CSED manually. See IRM 5.9.5.3.1, Chapter 7 and Chapter 11 Liquidating Partnerships.

- (3) **Closing Responsibilities.** FI takes closing actions on Chapter 7 Asset and Chapter 11 partnership cases. CIO takes closing actions on the Chapter 7 No Asset partnership cases assigned to the CIO. In either instance, caseworkers must document all actions taken in the AIS history.
- (4) **Discharge Injunction Issues.** When the partnership accounts return to the collection stream, systemic letters will be generated asking for payment of the balances due. Because no discharges are granted in partnership Chapter 7 and liquidating partnership Chapter 11 bankruptcies, these letters do not violate the discharge injunction.
- (5) **Post-Bankruptcy Inquiries from Partners.** Systemic letters or attempts to collect from the assets of the general partners may generate contact from partners stating the bankruptcy resolved the tax liabilities of the partnership. The IRS employee receiving these inquiries must explain that the federal tax

liabilities survived the bankruptcy and are collectable from the general partners. The IRS employee should then proceed with the actions appropriate to his or her function.

5.9.17.12
(07-25-2022)

**Closing Corporate
Chapter 7 Bankruptcies
and Chapter 7
Bankruptcies Filed by
Limited Liability
Companies (LLCs)**

- (1) **Non-Discharges.** Discharges are not granted to corporations and to Limited Liability Companies (LLCs) that have filed Chapter 7. Closing actions in these cases depend on whether the debtor is a corporation, a single member disregarded entity LLC, or an LLC that reports income on Form 1065 or Form 1120. If the debtor in the case is an LLC, caseworkers must add an "LLC" case classification to AIS so Limited Liability Companies can be easily identified as there is no LLC debtor type on AIS. The paragraphs and subsections below discuss closing actions for each entity type.
- (2) **Chapter 7 Asset Corporations and Certain LLCs.** There is no need for the case of the Chapter 7 Asset corporation or the *LLC that reports income on Form 1065 or Form 1120* to remain open until distribution *when there are no issues present that require the case to remain open*. FI can transfer the case to the CIO for closure. However, prior to transfer of the case from FI to CIO, FI must complete the initial case review, ensure that all proofs of claim have been filed and acknowledged, ensure that no issues are present that require the case to remain open, and verify that the chances of a stay violation are slim. If the case is that of an LLC, the FI caseworker must add an "LLC" case classification to AIS prior to case transfer. Examples of issues that require the case to remain open include, but are not limited to:
 - Unresolved automatic stay violations.
 - Objections to claim or other referrals to Counsel.
 - The outstanding trust fund liability exceeds the tolerance in IRM 5.9.3.10, Trust Fund Recovery Penalty, and a TFRP investigation has not been completed.
 - Unagreed Examination deficiencies are present and the deficiency cannot be assessed until the automatic stay is lifted.
 - Continuation of a Tax Court proceeding that was suspended when the bankruptcy case was filed.
 - A Collection Due Process (CDP) hearing was in process when the bankruptcy case was filed and the hearing cannot be continued until the stay is lifted.
 - Notice of Federal Tax Lien (NFTL) on file and potential sale of property or sale of property is pending, keep the case open until resolved for potential funds that may be applied. If the case was closed prematurely there is a potential loss of funds.

Note: Once all issues that require the case to remain open have been resolved, the case can be transferred from FI to the CIO for closure.

To request closure of the Chapter 7 Asset case by the CIO, the FI caseworker will add a "SUMMARY HISTORY" in all capitals in the AIS case history that includes the following:

- Verification that there are no issues remaining which would require the case to remain open.
- A request to close the entity's filing requirements.
- A request to input the TC 530 cc 07, including all periods that require the TC 530.

- Instructions to input the TC 521 with a two-cycle posting delay, listing all periods requiring the TC 521.
- Any other actions the CIO should take when closing the case; such as, transfer of funds to Excess Collections or the URF.

Example: SUMMARY HISTORY - NO ISSUES EXIST, INSTRUCTIONS TO CIO: INPUT TC 521 CC XX ON XX-XXXXXX (LIST ALL PERIODS REQUIRING TC 521), INPUT TC 530 CC 07 ON XX-XXXXXX (LIST ALL PERIODS REQUIRING TC 530), AND CLOSE FILING REQUIREMENTS. USE "OTHER CLOSING ACTION" AS THE METHOD OF CLOSURE ON AIS.

The FI manager must document the AIS history agreeing that the case is ready for closure and approving the TC 530 request. No paper Form 53 is necessary to request TC 530 input when the approval is shown in the AIS history. The case can then be transferred to the CIO for closing actions. CIO caseworkers will:

- Request closure of the filing requirements with TC 591 cc 050 and the business closing date on IDRS. See IRM 5.19.22.5.3.1.1.3 , Taxpayer Response - Out of Business, and Document 6209 , IRS Processing Codes and Information.
- Input the TC 530 cc 07.
- Input a TC 521 with a two-cycle delay to allow time for the TC 530 to post.
- Document actions in the AIS history.
- Close the case on AIS by utilizing the "Other Closing Action" method of closure.

If FI prepares and submits the paper Form 53, Currently Not Collectible, to CCP, then **Yes** is checked in Box 10 to have all BMF filing requirements closed.

- (3) **Chapter 7 No Asset TFRP Issues.** As stated in the paragraph above, all issues must be resolved before closing a liquidating corporate or LLC bankruptcy case, including possible TFRP assessments. A TC 520 cc 84 freeze code is systemically placed on accounts of all corporations that file Chapter 7 bankruptcies. This closing code keeps the case in its current IDRS status without the account going into IDRS Status (ST) 72. However, if the case was initially in Chapter 11 and then converted to Chapter 7, the account will most likely be in ST 72. Ideally, the account will have been assigned to Field Collection prior to the bankruptcy filing so the assigned Revenue Officer (RO) can pursue a TFRP investigation without the issuance of an Other Investigation (OI). If a TFRP investigation is necessary, then the case may be transferred from the CIO to FI.

Note: With the exception of single member disregarded entity LLCs, the case of an LLC is treated similar to the case of a corporate entity. CIO caseworkers must refer to IRM 5.9.17.12.1, below, when working the case of a single member disregarded entity LLC.

To protect the TFRP process in Chapter 7 No Asset bankruptcies, caseworkers must determine the current status of the corporate or LLC account on IDRS and follow the chart below.

IF...	THEN...
The IDRS status is any status except ST 26 or ST 72, unpaid trust fund taxes are below the tolerance for a TFRP investigation in IRM 5.9.3.10, Trust Fund Recovery Penalty, or a review of IDRS command code UNLCER shows that the TFRP has already been assessed,	Input a TC 530 cc 07 and a TC 521 on-line with a two-cycle delay for the TC 521. Close the case on AIS using "OT Other Closing Action" as the method of closure.
The IDRS status is any status except ST 26 or ST 72, unpaid trust fund taxes are above the tolerance for a TFRP investigation in IRM 5.9.3.10, and a review of IDRS command code UNLCER shows that the TFRP has not already been assessed,	Create an OI on ICS asking the RO to conduct a TFRP investigation and to close the account using a TC 530 cc 07 once the TFRP investigation has been completed. Once the TFRP investigation has been completed and the TC 530 cc 07 has posted to IDRS, input TC 521(s) on the modules and close the case on AIS using "OT Other Closing Action" as the method of closure.
The IDRS status is ST 26, the unpaid trust fund balance is below the tolerance in IRM 5.9.3.10 for a TFRP investigation, or a review of IDRS command code UNLCER shows that the TFRP has already been assessed,	Enter an ICS history stating that the debtor has filed bankruptcy. Instruct the RO to request a TC 530 cc 07. Once the TC 530 cc 07 posts to IDRS, input TC 521(s) on the modules and close the case on AIS using "OT Other Closing Action" as the method of closure.
The IDRS status is ST 26, the unpaid trust fund balance is above the tolerance in IRM 5.9.3.10 for a TFRP investigation, and a review of IDRS command code UNLCER shows that the TFRP has not already been assessed,	Enter an ICS history stating the debtor has filed bankruptcy and that the RO should make appropriate TFRP determinations after which (s)he should close the account with a TC 530 cc 07. Once the RO has completed the TFRP investigation and the TC 530 cc 07 has posted to IDRS, input TC 521(s) on the modules and close the case on AIS using "OT Other Closing Action" as the method of closure.
The IDRS status is ST 72 and the AIS history indicates a TFRP investigation has been completed,	Input a TC 530 cc 07 and a TC 521 on-line with a two-cycle delay for the TC 521. Close the case on AIS using "OT Other Closing Action" as the method of closure.

IF...	THEN...
The IDRS status is ST 72, the AIS history does not indicate a TFRP investigation has been completed, and the dollar amount of the unpaid trust fund portion is below the tolerance for a TFRP investigation in IRM 5.9.3.10,	Input a TC 530 cc 07 and a TC 521 on-line with a two-cycle delay for the TC 521. Close the case on AIS using "OT Other Closing Action" as the method of closure.
The IDRS status is ST 72, the AIS history does not indicate a TFRP investigation has been completed, the dollar amount of the unpaid trust fund portion meets the tolerance for a TFRP investigation in IRM 5.9.3.10, and IDRS command code UNLCER indicates an assessment has already been made for the unpaid trust fund taxes,	Input a TC 530 cc 07 and a TC 521 on-line with a two-cycle delay for the TC 521. Close the case on AIS using "OT Other Closing Action" as the method of closure.
The IDRS status is ST 72. the AIS history does not indicate a TFRP investigation has been completed, the dollar amount of the unpaid trust fund portion meets the tolerance for a TFRP investigation in IRM 5.9.3.10, and IDRS command code UNLCER indicates an assessment has NOT been made for the unpaid trust fund taxes,	Create an OI on ICS for a TFRP investigation. Instruct the RO to close any open trust fund modules with TC 530 cc 07 upon completion of the TFRP investigation. Input TC 521(s) to IDRS <i>once the TFRP investigation has been completed and the TC 530 cc 07 has posted to all modules on IDRS</i> . Close the account on AIS. Use "OT Other Closing Action" as the method of closure on AIS.
There is an open TFRP investigation (even if below tolerance)	Keep case open - DO NOT CLOSE nor input TC 530 cc 07.

- (4) **Closing the Liability of the Bankruptcy Estate.** Any unpaid liability owed by the bankruptcy estate on Form 1041, U.S. Income Tax Return for Estates and Trusts, after the Chapter 7 filing is non-dischargeable unless the trustee requests a determination of the tax liability as described in USBC 505(b). While the unpaid liability owed by the bankruptcy estate in the Chapter 7 case is non-dischargeable, it is generally uncollectible outside the bankruptcy after all assets of the estate have been administered and the bankruptcy case has been closed at the court. Any unpaid Form 1041 liability should be closed by inputting a TC 530 cc 10, *defunct, insolvent corporation*, to the outstanding 1041 liability.
- (5) **IRM CNC (53) Procedures.** IRM 5.16.1.2.3, Bankruptcy Corporations, Exempt Organizations and Limited Liability Companies, outlines the procedures that must be followed before closing the debt of the bankrupt debtor as currently not collectible (CNC). IRM 5.16.1.2.6, Defunct Corporations, Exempt Organizations, Limited Liability Partnerships, and Limited Liability Companies, discusses

procedures for closing the outstanding liability owed by the bankruptcy estate on Form 1041 . FI must prepare Form 53, Report of Currently Not Collectible Taxes, to close accounts of liquidating Chapter 11 businesses as CNC, when appropriate. The FI caseworker must request closure of the BMF filing requirements by checking "Yes" in Block 10 of the Form 53. The CIO requests input of the TC 530 to report a Chapter 7 business entity as CNC directly to IDRS.

- (6) **Payments Received after CNC Closure.** When payments are received on a corporate or LLC Chapter 7 case after the account has been closed as CNC, the AIS case should be reopened and the payment posted through the "Post Non Plan Payments" option on the AIS Payment Monitoring menu. The case can be closed again once the payment is posted. However, if payments in the bankruptcy case result in a reduction of the outstanding trust fund balances, any assessed TFRP must be adjusted. (IRM 5.9.17.16, Trust Fund Recovery Penalty Adjustments, and Exhibit 5.9.17-12, Adjusting Individual TFRP Accounts.) If the case is no longer on AIS, the payment should be posted using Form 3244, Payment Posting Voucher, with the Designated Payment Code (DPC) 03 unless the payment or portion of the payment was designated to trust fund taxes. If payment is designated to trust fund taxes, use DPC 11. See IRM 5.9.15.3.7, Designated Payment Code, for more information.

5.9.17.12.1
(07-25-2022)

**Chapter 7 Single
Member Disregarded
Entity LLCs**

- (1) **Introduction.** When a Limited Liability Company (LLC) that is not treated as an association has a single member that is an individual, the income of the LLC is reported on the Form 1040, U.S. Individual Income Tax Return, of the member. The LLC is a "single member disregarded entity" LLC. Responsibility for the liability is based on the type of tax owed and when the respective tax period began:
- Except for unpaid excise taxes on indoor tanning services, the LLC is liable for unpaid excise taxes for periods beginning on or after January 1, 2008. The LLC is liable for unpaid excise taxes on indoor tanning services for periods beginning on or after July 1, 2012. (See Section 301.7701-2(c)(2)(v) of the Procedure and Administration Regulations, for additional information.)
 - The single member, not the LLC, is liable for excise taxes on indoor tanning services for periods beginning prior to July 1, 2012, and for all other excise taxes for periods beginning prior to January 1, 2008. (See Section 301.7701-2(e)(6) of the Procedure and Administration Regulations, for additional information.)
 - The LLC is liable for any employment tax periods beginning on or after January 1, 2009. Separate rules apply for backup withholding and for tax on self-employment income. For additional information, see Section 301.7701-2(c)(2)(iv) and 301.7701-2(e)(5) of the Procedure and Administration Regulations.
 - Other than backup withholding and tax on self-employment income, the single member, not the LLC, is responsible for employment taxes on periods beginning prior to January 1, 2009.

Caseworkers must determine who is responsible for any liability, the single member or the LLC. Once it is determined who is liable, follow paragraphs (2) through (4) below for procedures on working the individual single member disregarded entity LLC case. See IRM 5.9.13.14, Limited Liability Companies (LLC), and subsections, for determining responsibility. Additional information on LLCs can be found in IRM 5.1.21, Collecting from Limited Liability Companies (LLCs).

- (2) **Individual Single Member Only Liable.** There is no discharge of the debtor in the Chapter 7 case filed by an LLC. When there are no excise taxes due for periods beginning on or after January 1, 2008; or no withholding taxes for periods beginning on or after January 1, 2009; the single member, not the LLC, is liable for the debt. There is no need for a TFRP investigation. The single member is liable for the entire amount due, not just the trust fund tax. The liability is not claimed on the proof of claim filed in the bankruptcy case of the LLC. *The liability of the single member is included on a proof of claim in the bankruptcy case of the individual, if that single member files a bankruptcy case.* Per IRM 5.9.13.14.1(3), Collection Against SMO, a TC 520 cc 84 must be input to IDRS for the modules owed by the individual single member to alert IRS employees to contact Insolvency before taking any collection action. Insolvency will advise the employee that collection must be limited to assets of the single member individual. Collecting from assets of the LLC is a violation of the bankruptcy stay. Once an initial case analysis has been completed and it has been determined that the debt is owed only by the single member, the case can be transferred from FI to the CIO. The FI caseworker must take the following actions:

- Open an “LLC” case classification on AIS.
- Document that the LLC is a single member disregarded entity in the AIS history.
- Document that all liability is for excise tax periods beginning prior to January 1, 2008, or withholding taxes owed for tax periods beginning prior to January 1, 2009, in the AIS history.
- Document that the debt is owed only by the single member, not the LLC, in the AIS history.
- Notate the name and SSN of the single member responsible for the debt in the AIS history.
- Document that all pre-petition returns have been filed and there is no danger of the LLC incurring any debt in the AIS history.
- Request input of the TC 520 cc 84, if needed. The TC 520 cc 84 may have been input by IIP during initial case processing.
- Add a SUMMARY HISTORY on AIS in all capital letters stating, “SUMMARY HISTORY - NO ISSUES EXIST, INSTRUCTIONS TO CIO; INPUT TC 521 CC XX ON XX-XXXXXX (LIST ALL PERIODS REQUIRING TC 521 FOR THE SINGLE MEMBER) UPON CLOSURE BY THE COURT. **DO NOT CLOSE CASE UNTIL CASE IS CLOSED BY THE COURT.** IN THE RARE INSTANCE THAT THE CASE IS DISMISSED, INPUT TC 521S USING THE DISMISSAL DATE AS THE TC 521 DATE. THERE IS NO NEED TO KEEP THE DISMISSED CASE OPEN UNTIL THE CASE IS CLOSED BY THE COURT AS THE STAY IS LIFTED UPON DISMISSAL.”
- The LLC has no liability. Add “No Liability” as the method of closure on AIS but *do not close the case on AIS.*
- Reassign the case to the CIO.

Reminder: When the single member, not the LLC, is liable for the debt the liability must not be claimed on a proof of claim in the Chapter 7 case of the LLC.

- (3) **LLC Only Liable.** When there are no excise taxes outstanding for periods beginning prior to January 1, 2008; or no withholding taxes for periods beginning prior to January 1, 2009; the outstanding liability is that of the LLC. The liability is claimed on the proof of claim filed in the bankruptcy case of the

LLC. The case is treated in the same manner as the liability of the Chapter 7 Asset corporation or the liability of the LLC that is taxed as an association. A TFRP investigation is required if outstanding trust fund taxes meet the tolerances in IRM 5.9.3.10, Trust Fund Recovery Penalty. The "LLC" case classification must be added to AIS so the Limited Liability Company case be easily identified. There is no LLC debtor type on AIS. Caseworkers must follow the procedures in IRM 5.9.17.12(2) when working these cases. Once all proofs of claim have been acknowledged, any applicable TFRP assessments proposed, and it has been verified that there are no issues that require the case to remain open, the FI caseworker should transfer the case to the CIO for case closure. There is no need for the case to remain open for distribution or closure by the court. *The FI manager must document concurrence with the input of the TC 530 cc 07 and closure of the case in the AIS case history.* Prior to case transfer from FI to the CIO, the FI caseworker must add a "SUMMARY HISTORY" in all capital letters that includes the following:

- Documentation that all liability is that of the LLC,
- Documentation that all proofs of claim have been acknowledged, applicable TFRPs assessed, there is no danger of violating the automatic stay, etc.,
- Instructions for the CIO to close all open filing requirements,
- Instructions for any other actions the CIO should take when closing the case; such as, transfer of funds to Excess Collections or the URF,
- Instructions for the CIO to input the TC 530 cc 07 to all balance due modules, including the specific modules requiring the input of the TC 530,
- Instructions for the CIO to request reversal of all TC 520(s) with a two-cycle posting delay, including the periods requiring TC 520 reversal, and
- Instructions for the CIO to close the case using "Other Closing Action" as the closure method on AIS.

Example: SUMMARY HISTORY - NO ISSUES EXIST. INSTRUCTIONS TO CIO: INPUT TC 530 CC 07 ON XX-XXXXXX (LIST ALL PERIODS REQUIRING TC 530), INPUT TC 521 CC XX ON XX-XXXXXX (LIST ALL PERIODS REQUIRING TC 521), AND CLOSE FILING REQUIREMENTS. USE "OTHER CLOSING ACTION" AS THE METHOD OF CLOSURE ON AIS.

If issues exist requiring the case to remain open, the case must remain assigned to FI until those issues are resolved. Once all issues are resolved, the case can be reassigned from FI to the CIO for closure.

- (4) **LLC and Individual Single Member Disregarded Entity Liable.** When there are excise taxes owed for periods beginning before and after January 1, 2008, or employment taxes owed for periods beginning before and after January 1, 2009, responsibility for the liability is split. The individual single member is liable for excise tax periods beginning prior to January 1, 2008, and for withholding tax periods beginning prior to January 1, 2009, including FUTA tax. The LLC is liable for excise tax periods beginning on or after January 1, 2008, and for withholding tax periods beginning on after January 1, 2009, including FUTA tax. During the initial case review, the FI caseworker must add the "LLC" case classification to AIS. The FI caseworker must determine which liabilities are those of the LLC and which liabilities are those of the individual single member. The determination must be documented in the AIS history. A proof of claim must be filed *only* for the liability of the LLC. If the aggregate unpaid trust

fund tax on the modules owed by the LLC meets the tolerance for a TFRP investigation in IRM 5.9.3.10, a TFRP investigation must be initiated. A TFRP investigation is not required for the periods owed by the individual single member as the single member is liable for the entire module, not just the trust fund. A TC 520 cc 84 must be input to IDRS for all modules owed by the individual single member, if not previously input during IIP processing. Generally, a TC 520 cc 6X will be input systemically by IIP after a proof of claim is filed for liabilities of the LLC.

Reminder: The liability of the individual single member must not be included on the proof of claim for the LLC. The LLC is not liable for these debts. If the individual single member files bankruptcy, the proof of claim in the individual case must include withholding taxes for periods beginning prior to January 1, 2009, excise taxes for periods beginning prior to January 1, 2008, and any TFRP that is due because of unpaid withholding taxes owed by an LLC. FUTA taxes incurred by the LLC prior to January 1, 2009, are also included on the proof of claim for the single member when the single member files a bankruptcy petition.

Once all proofs of claim for liabilities of the LLC have been acknowledged, applicable TFRPs assessed, and no issues are present that require the case to remain in FI (IRM 5.9.17.12(2) above), the case can be transferred from FI to CIO. The CIO will monitor the case for closure by the court and take necessary closing actions upon court closure. Prior to transfer, the FI must update AIS with a "SUMMARY HISTORY". The history must identify who is responsible for the respective liabilities and state closing actions required in the case upon closure of the case by the court. *The FI manager must document approval of case closure and input of the TC 530 cc 07 in the AIS history.* The "SUMMARY HISTORY" must:

- List by MFT and period the debts owed by the single member and the debts owed by the LLC. For example, "Single member is responsible for 01-200812 and 10-200812. LLC is responsible for 01-201012 & 10-201012."
- List modules owed by the single member which have a TC 520 cc 84 that must be reversed at closure.
- Provide instructions that the TC 530 cc 07 *must not be input* to the modules owed by the individual single member.
- Provide instructions to close all open filing requirements.
- Provide instructions to input the TC 530 cc 07 on the modules owed by the LLC upon closure by the court. *List each module* requiring the TC 530 cc 07.
- Provide instructions for the CIO to manually reverse all TC 520(s) with a two-cycle posting delay when the case is closed by the court. List each period requiring TC 520 reversal and closing code.
- Provide instructions for any other action required by the CIO at closure; such as, transfer of funds to Excess Collections or the URF.
- Provide instructions for CIO to close the case using "Other Closing Action" as the closure method on AIS upon closure by the court.

Example: SUMMARY HISTORY - NO ISSUES EXIST. INSTRUCTIONS TO CIO: INPUT TC 530 CC 07 ON XX-XXXXXX (LIST ALL PERIODS FOR LLC ONLY), TC 521 CC XX ON XX-XXXXXX (LIST ALL PERIODS REQUIRING TC 521 FOR SINGLE MEMBER AND ALL PERIODS REQUIRING TC 521 FOR LLC LIABILITIES OWED), AND CLOSE THE

FILING REQUIREMENTS OF THE LLC UPON CLOSURE OF THE CASE BY THE COURT. THESE ACTIONS SHOULD BE TAKEN ONLY WHEN THE CASE IS CLOSED BY THE COURT.

If issues exist in the case that require the case to remain in FI, the case must not be transferred to the CIO until the issues are resolved. Upon resolution, the case can be transferred from FI to the CIO.

5.9.17.13
(07-25-2022)
**Closing Liquidating
Chapter 11 Corporations
and Liquidating Chapter
11 LLCs**

- (1) **CNC – 53s.** Corporations and LLCs that liquidate in Chapter 11 do not receive a discharge in the Chapter 11 case. These cases are closed like a Chapter 7 corporation or a Chapter 7 LLC (IRM 5.9.17.12 and IRM 5.9.17.12.1) except all actions are taken by FI. When appropriate, FI prepares Form 53, Report of Currently Not Collectible Taxes, for liquidating Chapter 11 corporations and for liquidating Chapter 11 LLCs. Upon approval of the FI manager, the Form 53 is forwarded from FI to Collection Centralized Case Processing (CCCP) for input to IDRS. The closing code (cc) on the Form 53 is always cc 07 (Bankrupt) when the case of a corporation or LLC that liquidates in Chapter 7 is closed..

Caution: At no time should Insolvency use the TC 530 cc 10 (Defunct, insolvent corporation) when closing the case of a bankrupt corporation or bankrupt LLC.

Note: If the business is a Partnership, not an LLC, follow IRM 5.9.17.11, Closing Chapter 7 or Liquidating Chapter 11 Partnerships, for guidelines.

Generally, the Chapter 11 case of a corporation or LLC can be closed after the initial case review *when the caseworker has determined that the business is no longer operating and is liquidating in Chapter 11*. The criteria for closure of the case of a corporation or LLC liquidating in Chapter 11 includes:

- All proofs of claim must be filed and acknowledged.
- The TFRP must be assessed, when required.
- There must be no danger of violating the bankruptcy stay.
- There must be no issues that require the case to remain open; such as, open litigation. (See IRM 5.9.17.12(2) for additional information.)
- If the case is an LLC, an “LLC” case classification must be added to AIS. The case classification identifies an LLC as there is no LLC debtor type on AIS.

If the case has been closed on AIS, caseworkers must follow IRM 5.9.17.12(6) when posting payments received after case closure.

- (2) **Chapter 11 No Liability.** IRM 5.9.8.12, Closing Chapter 11 No Liability Cases, provides information on closing cases in Chapter 11 when no federal tax liabilities are due.

5.9.17.13.1
(07-25-2022)
**Closing Chapter 11
Non-Individual Entities
that Reorganize in
Chapter 11**

- (1) **Chapter 11 Corporations/Partnerships/LLCs.** In a Chapter 11 bankruptcy case with a plan of reorganization, non-individual debtors (i.e., corporations, partnerships, and limited liability companies) generally receive a “super discharge” of all pre-confirmation debts (including tax debts) *except* to the extent that the plan or the plan confirmation order provides otherwise (11 USC 1141(d)(1)(A)). This discharge is limited to corporations, partnerships, and LLCs that reorganize in Chapter 11 and does not apply to business entities that liquidate in Chapter 11. To accommodate the spirit of the Bankruptcy Code

Compliance Program (BCCP), closure of these Chapter 11 cases must be initiated no later than 30 calendar days after the IRS receives the final payment due to the IRS under the plan, should the debtor complete the payments required in the confirmed plan. While the discharge in the non-individual case occurs at confirmation of the plan, discharged liabilities are usually not adjusted at confirmation. In most instances, the IRS can administratively collect the full amount of the liabilities provided for in a Chapter 11 plan if the debtor “substantially” defaults in payments under the plan. Some plans even contain language which states that upon default, the debtor returns to the “pre-bankruptcy status” and all pre-confirmation debts remain outstanding. Caseworkers must review language in the plan in a non-individual case for the effects of confirmation. Caseworkers must also review the default provisions in the plan. There is a high default rate in Chapter 11 bankruptcy cases. If the debtor defaults in the Chapter 11 plan and does not respond to a notice of default sent by the IRS, the IRS may collect the remaining liability “provided for” in the confirmed plan through administrative collection actions to the extent permitted by the plan. This includes the filing of an NFTL, issuance of levies, or the IRS taking any collection action available to the IRS outside the bankruptcy. If the bankruptcy plan returns the debtor to the “pre-bankruptcy status”, all TC 520(s) can be reversed and the modules returned to the collection stream. If the plan does not return the debtor to the pre-bankruptcy status and discharges all debts not provided for by the plan, accounts must be adjusted down to the amount provided for by the plan. Any unpaid liability is returned to the collection stream by reversal of all TC 520 bankruptcy freezes after the adjustments have posted to IDRS. (See IRM 5.9.8.18, The Chapter 11 Discharge and the Effects of Confirmation, and IRM 5.9.8.19.3, Plan Default, for additional information.)

Note: Caseworkers must follow IRM 5.9.17.8.8, Discharge and Restitution Assessments, when closing a case and restitution-based assessments are present.

If collection of the TFRP from responsible parties was suspended while the business entity paid under a confirmed plan, the TFRP modules must be returned to collection status when the Chapter 11 debtor defaults in plan payments. Caseworkers must reverse the TC 470 cc 93 by inputting a TC 472 with no closing code. Reversing the TC 470 cc 93 allows the TFRP accounts to enter back into the collection stream. (See IRM 5.9.8.11, Trust Fund Considerations in Chapter 11, for additional information.) If payments made by the debtor in the bankruptcy case result in a reduction of the outstanding trust fund balances, any TFRP assessed against responsible parties may need to be adjusted. (See IRM 5.9.17.16, Trust Fund Recovery Penalty Adjustments, and Exhibit 5.9.17-12, Adjusting Individual TFRP Accounts, for additional information.)

5.9.17.13.2
(07-25-2022)
Consolidated Chapter 11 Filings

- (1) **Taxpayers Filing as a Consolidated Group.** Under the consolidated return regulations, each and every member of the consolidated group is liable for the entire group’s tax liability. Those regulations allow the IRS to make an assessment for the entire consolidated group’s income tax liability against the parent. When the parent of the group files for bankruptcy, the IRS will generally file a proof of claim showing the full amount of the income tax liability owed by the consolidated group. Members of a consolidated group that have not received a discharge of the liability in a bankruptcy case (e.g., non-debtor members) remain liable for the corporate income tax.

- (2) **When the Parent Receives a Discharge.** When the assessment in the name of the parent is abated, even though the other members of the group remain liable for the group liability, the IRS no longer has an assessment for the group liability. To minimize this unnecessary loss of revenue:
- Case histories must include information regarding the presence of large corporate indicators on the bankruptcy parent and specify the need to maintain the bankruptcy freeze;
 - No abatement of the group liability after the parent receives a discharge can occur until the subsidiaries' collection potential has been investigated through an OI to a RO group;
 - Courtesy investigations on these cases should be worked promptly with Insolvency being notified of the results and anticipated actions against subsidiaries' assets; and,
 - ROs working these cases should be reminded that the parent or any subsidiary receiving a discharge should not be listed on Notices of Federal Tax Lien (NFTLs) or levies.

Note: Regardless of whether a bankruptcy case has been filed, the IRS can collect group liabilities from non-debtor subsidiaries of the group parent when the parent does not pay. The responsibility for the collection of these taxes lies with FC. (Subsidiaries remain individually liable for employment and most excise taxes.) When necessary, consult with Area Counsel for guidance.

5.9.17.13.3
(07-25-2022)
**Closing Chapter 11
Cases Filed by
Individuals**

- (1) **Chapter 11 Individuals.** A Chapter 11 discharge for an individual debtor is similar to the discharge granted an individual in a Chapter 7 case under 11 USC Section 727. Tax debts excepted from discharge are not discharged *unless the confirmed plan specifies otherwise*. It does not matter if the IRS filed a claim, or did not file a claim, for the liability in the bankruptcy case. As in a Chapter 13 case, the individual debtor who files a Chapter 11 case may be granted a "hardship discharge". See Exhibit 5.9.17-8 when determining if the liability in a post-BAPCPA is discharged and the debtor received a "hardship discharge." Caseworkers must follow the guidance in IRM 5.9.17.8.8, Discharge and Restitution Assessments, when closing an individual Chapter 11 case and the debtor has a liability for a restitution-based assessment.
- (2) **Discharge in the Individual Case.** In the pre-BAPCPA case, the discharge took place at confirmation of the bankruptcy plan. In the post-BAPCPA case filed on or after October 17, 2005, the individual debtor does not receive a discharge until completion of all payments provided for in the plan. However, the individual debtor in the post-BAPCPA case can receive a "hardship discharge" at any time after the plan is confirmed. See IRM 5.9.8.18, The Chapter 11 Discharge and the Effects of Confirmation, for additional information.

Note: If the post-BAPCPA debtor has met the criteria for discharge and has completed all plan payments, but has not requested a discharge from the court, it may be necessary to contact Area Counsel for assistance.

Since the confirmed plan provides for the payment of pre-confirmation liabilities, it is the position of the IRS that dischargeable liabilities are not adjusted until payments provided for in the plan have been completed. Should the debtor "substantially" default in plan payments after confirmation of the plan in the pre-BAPCPA case, the IRS may pursue the liability using administrative

collection remedies outside the plan. If the debtor defaults in plan payments in the post-BAPCPA case, the IRS must generally request that the court dismiss the Chapter 11 case. (See IRM 5.9.8.19.3, Plan Default, for additional information.) In either instance, actions taken on a defaulted plan will depend upon default language in the plan.

- (3) **Discharge and Individual Shared Responsibility Payment (SRP) Liabilities.** Beginning in 2014, pursuant to the Affordable Care Act (ACA), IRC 5000A required all individuals to have qualifying health care coverage called minimum essential coverage (MEC). The individual must have MEC, qualify for an exemption, or make an individual shared responsibility payment (SRP) when they file their income tax return for the respective year. Liability for the SRP is assessed on IDRS under MFT 35. In January of 2016, IRS began mirroring certain joint SRP liabilities into separate SRP liabilities for each spouse. The separate SRP liabilities are assessed under MFT 65 on IDRS. For determining dischargeability of the SRP liability, the separate MFT 65 SRP liability of the debtor spouse is treated in the same manner as the joint MFT 35 SRP liability of the debtor spouse. For additional information on discharge and the SRP liability, see IRM 5.9.17.8.10, Discharge and Individual Shared Responsibility Payment (SRP) Liabilities. Post-petition pre-discharge SRP liabilities are discussed in IRM 5.9.8.14.1, Post-Petition Debts -Chapter 11 Individuals.

Note: The Tax Cuts and Jobs Act of 2017 (TCJA) reduced the shared responsibility payment of individuals to zero for tax year 2019 and later. From January 1, 2019, taxpayers are still required to have minimum essential coverage or qualify for a coverage exemption. However, under TCJA, individuals no longer need to make a shared responsibility payment or file Form 8965 with their tax return if the taxpayer does not have the minimum essential coverage for part or all of 2019 and later years.

- (4) **Discharge and Employer Shared Responsibility Payment (ESRP) Liabilities.** Individual debtors may be liable for ESRP MFT 43 liabilities when they are an ALE sole proprietorship that is assessed ESRP MFT 43 liabilities. Individual debtors that are partners may be liable under state law for the debts of the partnership, which would include ESRP liabilities incurred by the partnership. When individual debtors are liable for pre-petition ESRP MFT 43 liabilities, the ESRP MFT 43 liabilities are non-dischargeable when the Letter 226J , ESRP Preliminary Contact, was issued within the 3 years prior to the bankruptcy petition date. If the Letter 226J , ESRP Preliminary Contact was issued more than 3 years prior to the bankruptcy petition date, the ESRP MFT 43 liabilities are dischargeable unless Area Counsel agrees that they are non-dischargeable due to the willful evasion exception to discharge. Any portion of the post-petition ESRP (whether incurred by the estate or the debtor) that should have been paid under the plan will be non-dischargeable. The plan could also provide that post-petition debts of the debtor are non-dischargeable, or that the ESRP is non-dischargeable.
- (5) **Discharge Eligibility.** For an individual or joint debtor to have a debt discharged, that debtor must first be eligible to receive a discharge in the bankruptcy case. The individual or joint debtor would not be eligible to receive a discharge in a *liquidating* Chapter 11 case when they have:
- Committed fraud.
 - Not been open and truthful during the bankruptcy.

- Received a discharge in a prior Chapter 7 or Chapter 11 case and the petition date of that bankruptcy was *within eight years* of the current petition date.
- Received a discharge in a prior Chapter 12 or Chapter 13 case and the petition date of the prior case was *within six years* of the current petition date (with certain exceptions found in 11 USC 727(a)(9)).

11 USC 1141(d)(5) discusses discharge for the individual Chapter 11 debtor. See the following for additional information about eligibility for discharge in the current Chapter 11 liquidating case of an individual when the individual received a discharge in a prior bankruptcy case:

- IRM 5.9.5.7.1(5), Systemic Identification in Serial Filer Cases, Discharge Limitations
- IRM 5.9.5-3, Allowable Elapsed Time Between Bankruptcy Filings and Discharges
- IRM 5.9.8.18(6), The Chapter 11 Discharge and the Effects of Confirmation, Non Discharge
- IRM 5.9.8.15, Individual Shared Responsibility Payment (SRP)

(6) **Exceptions to Discharge.** Exceptions to discharge are discussed in detail in:

- 11 USC 523(a)(1)
- IRM 5.9.17.8, Discharge and Exceptions to Discharge, and subsections
- Exhibit 5.9.17-8, Processing TC 604 Reversals and Determining Dischargeability in Chapter 7 and Chapter 11 Individual, Chapter 12 Individual, and Chapter 13 Cases with a Hardship Discharge
- Exhibit 5.9.17-10, Processing TC 605 Reversals and Determining Dischargeability Upon Completion of the Plan in an Individual Chapter 11 or Individual Chapter 12 Case
- Exhibit 5.9.17-11, Determining Dischargeability of Non-Pecuniary Loss Penalties when the Underlying Tax is Non-dischargeable (Except in the Chapter 13 Case with a Discharge Upon Completion of the Plan).

The exceptions to discharge for the individual Chapter 11 debtor in a reorganizing or liquidating Chapter 11 case include:

- Priority taxes under 11 USC 507(a)(8)
- Certain restitution based assessments (IRM 5.9.17.8.8)
- Taxes on unfiled returns
- Taxes on returns that were filed late and at any time after the date that is two years before the petition date
- Taxes on fraudulent returns
- Any tax that the debtor willfully attempted to evade or defeat

Note: See IRM 5.9.17.8.1 and Exhibit 5.9.17-7 when determining dischargeability and SFRs are present in the case.

The debt owed to the IRS may also be excepted from discharge when IRS did not receive notice of the bankruptcy filing. The debt may also be excepted from discharge if IRS received notice and there was not sufficient time for the IRS to file a proof of claim before the bar date in the case. See IRM 5.9.17.8.9, Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case, for additional information.

- (7) **Initiation of Closing Actions in the Individual Case.** As the time when discharge occurs in a Chapter 11 case differs according to when the bankruptcy petition was filed:
- Closure of Chapter 11 individual bankruptcies filed *prior to October 17, 2005*, must be initiated no later than 30 calendar days after the IRS receives the final payment due under the plan.
 - Closure of Chapter 11 individual bankruptcies *filed on or after October 17, 2005*, must be initiated no later than 30 calendar days after the court discharges the debtor upon completion of the plan.
 - Closing actions for individual debtors with a “hardship discharge” must be initiated no later than 30 days after IRS receives notice of the discharge.
- (8) **Debt of the Bankruptcy Estate in the Individual Chapter 11 Case.** In the Chapter 11 case of an individual debtor, two separate taxable entities are created when the bankruptcy petition is filed. Post-petition liability incurred by the individual debtor on Form 1040 is not claimable in the bankruptcy case and is not discharged in the bankruptcy. A post-petition SRP liability is treated in the same manner as the post-petition Form 1040. It is not claimable in the Chapter 11 bankruptcy case and is non-dischargeable. For additional information, see IRM 5.9.8.14.1, Post-Petition Debts - Chapter 11 Individuals. Post-petition personal service income earned by the debtor is reported on Form 1041, U.S. Income Tax Return for Estates and Trusts, and is a debt of the bankruptcy estate. Any liability on the Form 1041 is an administrative expense that must be paid in the bankruptcy. The liability is claimable as an administrative expense in the Chapter 11 case on Form 6338-A, Request for Payment of Internal Revenue Taxes. If the liability is not paid through the bankruptcy, the Form 1041 liability will generally be discharged *if a discharge is entered in the case*. Any remaining Form 1041 liability must be abated in full after the debtor receives a discharge upon completion of payments provided for in the plan. If the debtor does not complete the bankruptcy plan and does not receive a discharge, the unpaid liability may not be collectible outside the bankruptcy once the case is closed and the bankruptcy estate no longer exists. Any unpaid Form 1041 liability may have to be closed as uncollectible using a TC 530 cc 10. See the following for additional information:
- IRM 5.9.8.14.1, Post-petition Debts - Chapter 11 Individuals
 - IRM 5.9.8.14, Internal Revenue Code 1398 Issues
 - IRM 5.9.17.12(4), Closing the Liability of the Bankruptcy Estate

Note: Consult Area Counsel should complex issues arise regarding the debt of the individual debtor and the debt of the bankruptcy estate.

5.9.17.14
(07-02-2021)
Chapter 12 Discharge

- (1) **Granting Discharge.** The court will grant the individual and non-individual debtor (corporation, partnership, and LLC) that reorganize in a Chapter 12, a discharge when the debtor’s plan is completed. See also IRM 5.9.17.8 , Discharge and Exceptions to Discharge and IRM 5.9.17.8(15) , Table Showing Basic Discharge Information. BAPCPA has created two exceptions to Chapter 12 discharge for cases filed on or after July 1, 2005. In addition to completing plan payments, 11 USC 1228(a) requires that the debtor certify to the court that all payments due on “domestic support obligations” have been paid, except to the extent the plan does not require the payment of pre-petition domestic support obligations. Additionally, 11 USC 1228(f) precludes the

granting of a discharge unless the court finds that after notice and a hearing held not more than ten days before the entry of the order granting the discharge, no reasonable cause exists to suspect the debtor of abusing the bankruptcy system or of being guilty of certain securities-related felonies or other misconduct described in 11 USC 522(q)(1) including:

- Conviction of a felony that would demonstrate that the filing of the current Chapter 12 case was an abuse of the bankruptcy system
- The debtor owes a debt arising from a violation of securities law
- Fiduciary fraud
- Racketeering
- Crimes or intentional torts that caused serious bodily injury or death in the preceding five years

In certain situations, the individual or non-individual (corporation, partnership, or LLC) debtor may be granted a hardship discharge even though the debtor has not completed all plan payments (see below). A creditor cannot move for conversion of a Chapter 12 to Chapter 7 unless the debtor has committed fraud. See IRM 5.9.9.11 , Conversions.

5.9.17.14.1
(07-25-2022)
Chapter 12 Hardship Discharge

- (1) **Granting the Hardship Discharge.** If the court determines circumstances beyond the debtor's control have created a true hardship; such as, a crop failure or an illness, the court may grant a hardship discharge prior to completion of the plan (11 USC 1228(b)(1)).
- (2) **Minimum Distribution.** The court may not grant the hardship discharge unless holders of unsecured claims have received at least as much as they would have received in a Chapter 7 liquidation.
- (3) **Modification.** The court may not grant a discharge if modification of the plan is practicable.

5.9.17.14.2
(07-02-2021)
Exceptions to Discharge in the Individual Chapter 12 Case

- (1) **Certain Tax Debts are Non-Dischargeable.** 11 USC 523(a)(1) lists tax debts that are non-dischargeable for the individual debtor in the Chapter 12 case except as provided in 11 USC 1232(c). The exceptions apply to the Chapter 12 case with a discharge upon completion of the bankruptcy plan and in the individual case where the debtor received a hardship discharge. These exceptions include:
 - Taxes entitled to priority under 11 USC 507(a)(8), including the trust fund portion of employment taxes and TFRP assessments
 - Certain restitution based assessments (IRM 5.9.17.8.8)
 - Taxes on a fraudulent return filed by the debtor
 - Any tax that the debtor willfully attempted to evade or defeat payment
 - Taxes on unfiled returns
 - Taxes due on returns filed late and at any time after the date that is two years before the petition date

Note: See IRM 5.9.17.8.1 for a discussion of SFRs and discharge.

There may be instances when taxes are excepted from discharge because the IRS did not receive notice of the bankruptcy case. There may also be instances when the taxes are excepted from discharge because the IRS did not receive the case in sufficient time to file a proof of claim. (See IRM 5.9.17.8.9 for addressing this exception to discharge.)

Note: Several exhibits within this IRM discuss determining dischargeability in individual Chapter 12 cases. The discharge determination in these exhibits is not exclusive to cases that require a manual discharge determination due to a TC 604 reversal request from AUR. Use these exhibits when manually determining dischargeability in all Chapter 12 individual cases. (See Exhibit 5.9.17-8, Exhibit 5.9.17-10, and Exhibit 5.9.17-11 for additional information.)

Note: The exceptions to discharge in 11 USC 523(a)(1) also apply to Chapter 12 Non-Individuals. The discharge provision in 11 USC 1228(a)(2) does not make a distinction between individual and non-individual debtors. The section provides that after “the debtor” completes all plan payments the court shall grant the debtor a discharge of all debts provided for by the plan, except for the kind of debts specified in section 523(a). A discharge obtained through fraud may be revoked under BC 1228(d), but if the discharge is revoked no debts are discharged.

- (2) **11 USC 1232.** 11 USC 1232, as added effective October 26, 2017, provides that any unsecured claim of a governmental unit against the debtor or the estate that arises before the filing of the petition, or that arises after the filing of the petition and before the debtor’s discharge under 11 USC 1228, as a result of the sale, transfer, exchange, or other disposition of any property used in the debtor’s farming operation: will be treated as an unsecured claim arising before the date on which the petition is filed; *will not be entitled to priority under 11 USC 507*; will be provided for under a plan; and *will be discharged in accordance with 11 USC 1228*. The debtor must serve notice of the claim to the IRS in the manner designated in 11 USC 505(b)(1). Notice shall state that the debtor has filed a petition under this chapter, state the name and location of the court in which the case under this chapter is pending, state the amount of the claim, and include a copy of the filed tax return and documentation supporting the calculation of the claim. See IRM 5.9.9.10.3(1), 11 USC 1232, for more information.

5.9.17.15
(07-25-2022)
Chapter 13 Discharge
Pre-BAPCPA

- (1) **Pre-BAPCPA Discharges.** For cases commencing prior to October 17, 2005, 11 USC 1328 provides that a discharge may be granted in one of two ways to a Chapter 13 debtor:
1. Super Discharge. When all plan payments are completed the debtor receives a “super discharge” of all pre-petition liabilities.
 2. Hardship Discharge. Exigent circumstances may force the debtor to request a “hardship discharge” when the plan cannot be completed. IRM 5.9.17.15.2, Chapter 13 Hardship Discharge, provides a detailed discussion.
- (2) **Tax Debts Discharged.** Generally, when a super discharge is granted on cases filed prior to October 17, 2005, all tax debts “provided for” in the plan are discharged, as well as any disallowed tax claims (for example, untimely filed claims). The super discharge in the pre-BAPCPA case also discharged any unpaid balances on 11 USC 1305 claims when the debtor modified the plan to include the post-petition liability and a discharge was entered upon completion of the plan.
- a. Even when IRS will not receive full payment under the plan, the IRS is bound by the terms of the plan.

- b. Whenever possible, the best corrective action is to object to confirmation of the proposed plan.
- c. Plans should be reviewed *prior* to confirmation so a timely objection may be filed when the plan does not provide for all tax claims as required by the Bankruptcy Code.

5.9.17.15.1
(07-25-2022)

**Chapter 13 Discharge
Changes under BAPCPA**

- (1) **BAPCPA Discharges.** Hardship discharges may still be granted to Chapter 13 debtors who file Chapter 13 bankruptcy petitions on or after October 17, 2005. However, the concept of a “super discharge” upon completion of the plan is diminished for cases commencing on or after October 17, 2005. BAPCPA excepted the tax debts listed below from Chapter 13 discharge. (For in-depth information on the exceptions to discharge, see IRM 5.9.17.8, Discharge and Exceptions to Discharge, and subsections.)

- Even when the IRS filed an untimely claim or did not file a claim, trust fund taxes are excepted from discharge.
- Taxes due on a fraudulent return filed by the debtor.
- Taxes the debtor willfully attempted to evade or defeat.
- Taxes due on unfiled returns.
- Taxes on returns that were late filed and after the date that is two years before the date of the bankruptcy petition. Liabilities on an 11 USC 1305 claim are non-dischargeable when the post-petition return was filed late.

Reminder: See IRM 5.9.17.8.1 for a discussion of SFRs and discharge.

See Exhibit 5.9.17-8 for additional information on determining discharge when the Chapter 13 debtor receives a hardship discharge. See Exhibit 5.9.17-9 for additional information on determining discharge when a debtor receives a discharge upon completion of the Chapter 13 plan. While these exhibits discuss determining discharge when AUR requests reversal of the TC 604, the dischargeability rules apply in all cases. See Exhibit 5.9.17-11 for determining discharge of non-pecuniary loss penalties in the Chapter 13 case with a hardship discharge. Use Exhibit 5.9.17-10 to determine dischargeability of penalties in Chapter 13 cases when the debtor receives a discharge upon completion of the plan.

- (2) **Method of Closure on AIS.** When the debtor completes the Chapter 13 plan and the Bankruptcy Court grants a discharge under 11 USC 1328(a), the caseworker must enter “13 PLAN COMPLETED SI” as the method of closure on the AIS Taxpayer Screen *unless IRS did not receive notice of the bankruptcy filing or if notice was not received in sufficient time to file a proof of claim*. In the case with late or no notice, “No Notice” is entered as the method of closure. (See IRM 5.9.17.8.9 for additional information.) The date of the discharge must be entered in the discharge date field. Entry of the “13 PLAN COMPLETED SI” and discharge date will initiate systemic discharge actions by the Automated Discharge System (ADS). When the debtor receives a “hardship discharge” as provided by 11 USC 1328(b), the caseworker must enter “RI CH7&HARDSHIPCH13 RI” as the method of closure on AIS. If discharge was denied in the case, “DD Discharge Denied” must be entered as the method of closure for the case on AIS (IRM 5.9.17.8.3). The case will be treated like a dismissal.
- (3) **Accrued Interest in the Chapter 13 Case.** When the tax is non-dischargeable in a Chapter 13 case, the interest on that tax is also non-dischargeable. This includes the interest that accrues on the tax post-petition and during the

Chapter 13 plan period. If the plan only provides for the pre-petition tax and pre-petition interest, there will be an interest balance due when the plan is completed. This accrued interest is non-dischargeable and it *should not* be abated.

- (4) **Discharge and SFR(s).** In most instances, liabilities on a substitute for return (SFR) are non-dischargeable. Caseworkers must follow guidance in IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Return in Which a SFR was Prepared, to determine if a SFR assessment or the tax on a return filed after a SFR assessment is dischargeable. The determination is based on where the bankruptcy case was filed. Procedures for determining dischargeability in the 8th Circuit differ from the procedures other jurisdictions. Exhibit 5.9.17-6 includes steps for determining if a SFR assessment or the tax on a return filed after the SFR assessment is dischargeable when the debtor receives a discharge upon completion of the plan in all jurisdictions except the 8th Circuit. Exhibit 5.9.17-7 includes steps for determining if a SFR assessment or the tax on a return filed after the SFR is dischargeable when the debtor receives a hardship discharge in all jurisdictions except the 8th Circuit. For determining dischargeability in the 8th Circuit, see IRM 5.9.17.8.1(3), Procedures in the 8th Circuit.
- (5) **BAPCPA Discharge Denial Provisions.** Discharge can be denied for the reasons listed below in Chapter 13 cases filed on or after October 17, 2005:
- A previous discharge was granted to the debtor in a prior bankruptcy case with a petition date within a specified time frame (IRM 5.9.5-3).
 - The debtor did not pay post-petition court ordered domestic support obligations.
 - The debtor did not complete an instructional personal finance course with certain exceptions applying (11 USC 111).
 - The court finds reasonable cause to suspect abuse of the bankruptcy system.
- (6) **Provided for but No Payments.** Situations arise when the court considers a liability as “provided for” in the plan but payments were not received because a claim was not filed. A claim may not have been filed due to IRS delay or for other reasons.

Example: IRS was given timely notice of the bankruptcy petition but the plan provided for only minimal payments on the IRS claim. At discharge, the bulk of the tax debt remains unpaid. The IRS is bound by the terms of the confirmed plan because the IRS did not file an objection to confirmation. Unless the taxes fall into one of the exceptions listed above, these taxes are discharged.

- (7) **Lack of Notice to the IRS.** Under 11 USC 523(a)(3), if the IRS is not provided proper notice of bankruptcy filing as required in the Bankruptcy Code, the pre-petition taxes are generally non-dischargeable. Electronic research of the court’s files on PACER will usually show if the IRS was listed on the creditor matrix. If the IRS is not listed, the assumption is the IRS was not provided proper notice. For cases commenced on or after October 17, 2005, the IRS pre-petition claims will be excepted from discharge under Chapter 13 if the IRS did not receive proper notice under 11 USC 523(a)(3). Also, see 11 USC 1328(a)(2). The liability may also be excepted from discharge when the IRS received notice of the bankruptcy case but the notice was not in sufficient time

for the IRS to file a proof of claim before the bar date. (See IRM 5.9.17.8.9 for additional guidance for processing the case and IRS did not receive notice of the bankruptcy filing or if IRS was noticed late of the bankruptcy filing.)

Note: The creditor matrix may list the IRS as the “IRS”, “The United States Treasury Department”, “The US Treasury”, “Internal Revenue Service”, or variations thereof.

- (8) **Adjustment Actions.** Once a discharge has been granted under 11 USC 1328(a) and taxes are deemed to be dischargeable, appropriate adjustments must be made to the remaining balance due accounts “provided for” in the plan. (IRM 5.9.17.22)
- (9) **Counsel Consultation.** If a CIO unit receives a question about a complex discharge issue after a debtor has received an order of discharge, the caseworker should refer the call or correspondence to the assigned FI caseworker. If necessary, the FI caseworker should consult Area Counsel.
- (10) **Vacating an Order of Discharge.** Creditors may petition the court to vacate a discharge order. However, it is rare that IRS exercises this option which is only available to creditors. Caseworkers should be aware that the IRS **can** petition the court to vacate an order of discharge when the IRS was not paid as required in the plan *and the discharge order was based on the mistaken assumption that the IRS was paid.* (Cisnero v. United States, 994 F.2d 1462 (9th Cir. 1993))
- (11) **Limited Collection Options from Exempt Assets in a Chapter 13 Case.** A discharge of debt in bankruptcy relieves the debtor of *personal liability* for the debt. However, the debt may still be collected from property encumbered by a pre-bankruptcy tax lien. An NFTL filed pre-petition which is *still valid*, preserves the government’s right to proceed against exempt property even when the underlying liability is discharged (11 USC 522(c)(2)(B)). Additionally, a statutory lien against abandoned or excluded property is enforceable after discharge even when an NFTL was not filed pre-petition. See IRM 5.9.17.5, Exempt, Abandoned, or Excluded Property (EAEP), and subsections for additional guidance.

Note: Insolvency must ask Area Counsel for advice before pursuing excluded property when it is unclear if a retirement account is excluded or exempt property. Insolvency may need to consult with Area Counsel when other issues arise in pursuing EAEP and the issues are not clarified in this IRM.

5.9.17.15.2
(07-25-2022)
**Chapter 13 Hardship
Discharge**

- (1) **Hardship Discharge.** The debtor may request a *hardship discharge* under 11 USC 1328(b). When circumstances beyond the debtor’s control prevent them from completing the Chapter 13 plan, the debtor may apply for a hardship discharge instead of seeking a dismissal of the bankruptcy case.
- (2) **Criteria.** Generally, the debtor must prove three things to the court when seeking a hardship discharge:
 - a. Circumstances leading up to the request for a hardship discharge were beyond the debtor’s control (for example, loss of a job);
 - b. The value of property actually distributed in the case is at least what would have been distributed in a Chapter 7 case; and,
 - c. Modification of the plan is not feasible.

- (3) **Notice and Hearing.** The debtor's request for a hardship discharge requires notice and a hearing. In rare cases, the IRS may choose to object to the discharge if one of the conditions for discharge is not met. When the notice is received by the CIO, the caseworkers will forward the notice to FI per the guidelines in IRM 5.9.11.4.2, Time Sensitive Mail.
- (4) **Chapter 7 Equivalency.** A hardship discharge is equivalent to the discharge granted in a Chapter 7 case. All of the exceptions to discharge under 11 USC 523 apply to a Chapter 13 debtor who receives a hardship discharge (11 USC 1328(c)). For more information, see IRM 5.9.17.8, Discharge and Exceptions to Discharge, and subsections.)
- (5) **Method of Closure.** To initiate closing actions by ADS when IRS was adequately noticed in the case, caseworkers must add "CH7&HARDSHIPCH13 RI" as the method of closure on the AIS Taxpayer Screen *when the Chapter 13 debtor received a hardship discharge*. The discharge date must be entered in the discharge date field. ADS will systemically determine dischargeability and adjust accounts applying the discharge rules in 11 USC 523. If IRS was not adequately noticed in the case, "No Notice" should be added as the method of closure on the AIS Taxpayer Screen (IRM 5.9.17.8.9).

Caution: Caseworkers must exercise caution and **never** input "RI CH7&HARDSHIPCH13 RI" as the method of closure when the Chapter 13 debtor receives a discharge upon completion of the Chapter 13 plan. If this should occur, liabilities may not be abated that were discharged when the Chapter 13 plan was completed.

5.9.17.16
(07-25-2022)
**Trust Fund Recovery
Penalty (TFRP)
Adjustments**

- (1) **Required TFRP Adjustments.** When the trust fund tax owed by a business entity has been paid in full or reduced by bankruptcy payments, Insolvency must adjust the TFRP of the responsible parties. This may require Insolvency to adjust accounts when payments are applied to trust fund taxes in the Chapter 7, 11, or 12 case filed by corporations or certain Limited Liability Companies (LLCs). (See IRM 5.9.8.4.2(18), Aspects of the Initial Case Review in the Chapter 11 Case, TFRP Issues, for a list of entities that may have TFRP assertions.) Follow the chart below in adjusting these cases:

IF...	Then...
The TFRP was assessed after the bankruptcy confirmation date of the business entity and the interest was paid through the bankruptcy plan,	Full adjustment of the TFRP is required.
The TFRP was assessed prior to the confirmation date of the bankruptcy plan of the business entity,	Interest may be due on the TFRP. Form 3870 should be prepared to make this adjustment according to local procedures/requirements.
If the trust fund tax of the business entity was paid in full in the Chapter 7 bankruptcy case of the business entity,	Adjust the tax (TC 240) of the TFRP in full.

IF...	Then...
<p>If interest on the trust fund tax of the business entity was paid in the Chapter 7 bankruptcy case of the business,</p> <p>Note: In most cases, if there is a payment of interest, it is limited to the payment of interest owed as of the bankruptcy petition date. The party assessed the TFRP will still owe accrued interest.</p>	<p>Adjust the interest assessed on the TFRP by the amount of interest paid on the trust fund tax of the business entity.</p>

- (2) **Adjusting TFRP Accounts in Individual or Joint Cases.** There may be instances when payments applied in an individual or joint bankruptcy case requires an adjustment to TFRP accounts. This may occur when the TFRP is assessed against multiple parties and one individual files bankruptcy. The TFRP may need to be adjusted when both spouses are assessed a TFRP and one or both file bankruptcy. While this is more common in the Chapter 13 case, an adjustment may be needed in an individual or joint Chapter 7, 11, or 12 case. The caseworker may become aware of the need to adjust the account when contacted by the Brookhaven TFRP Unit or the Ogden TFRP Unit. When there is a credit on an assessed TFRP module, **do not** wait until case closure to address the credit. Credit transfer and/or amended proofs of claim may be needed. See Exhibit 5.9.17-12, Adjusting Individual TFRP Accounts, for additional guidance.

5.9.17.17
(07-25-2022)
**Reversal of Freeze
Codes (TC 521)**

- (1) **Closing Code Reversal Determination.** Before input of a TC 521 to reverse the bankruptcy freeze code (TC 520), a determination should be made if a TC 520 with a particular closing code is to be reversed or if all of the TC 520 closing codes will be reversed.
- Reversing a Single TC 520. A TC 521 with the same closing code as the TC 520 to be reversed (for example, TC 520 cc 65 and TC 521 cc 65) must be used to prevent an unpostable transaction. This will reverse both the bankruptcy freeze and the statistical indicator for that specific closing code.
 - Reversing Multiple TC 520(s). A TC 521 with a 999 statistical indicator reverses all open TC 520(s) in a module.

Note: The TC 520 cc 84 does not require a closing code or date, however, in Exhibit 5.9.5-5, Processing the Serial Filer When the Stay Terminates After 30 Days, when the plan is confirmed: on IDRS the TC 520 cc 84 should be reversed with TC 521 (without the cc 84) using the confirmation date with a 1-cycle delay followed by a TC 520 cc 6X (based on the closing code used in your location) using the confirmation date.

Caution: If there is a TC 520 cc 80 on IDRS, do not reverse the bankruptcy TC 520 until further guidance from Advisory or DOJ. Refer these cases to Field Insolvency.

- (2) **Table - Information on TC 521 Input.** When a discharge or dismissal date is in question, the first action taken by a caseworker is checking PACER or other electronic court records for a closure date. The following table explains actions taken based on the findings in the electronic court records research.

IF...	THEN...
The discharge, dismissal, or discharge denied notice has been received or entered on PACER,	The date the discharge, dismissal, or discharge denied was recorded is used for the TC 521 transaction date.
No discharge or dismissal information is provided for entry (as in the 7 No Asset corporate case closed with no distribution by the court),	The date of the court closure is used.
<p>No court closure date is provided for entry (closure may be delayed or deferred due to a pending distribution) <i>and</i> the IRS will not be affected,</p> <p>Example: No distribution is expected and there is no likelihood that a violation of the stay will occur (as in the Chapter 7 Asset business case closed once all claims have been acknowledged and there are no issues; such as, the TFRP that requires the case to remain open).</p>	The AIS closure date is used.

IF...	THEN...
The transaction date of the TC 521 is input with a date earlier than the date of the TC 520 transaction date,	<p>The TC 521 will go unpostable. The TC 521 transaction date must be <i>later</i> than the date of the TC 520.</p> <p>Caution: All prior TC 520(s) must be addressed or the case will not close properly.</p> <p>Note: The Nullified Distribution list, containing weekly unpostable transactions, is sent to Insolvency for resolution. Insolvency must resolve the unpostable condition relating to the TC 521, correct the unpostable condition, and re-input the TC 521. For additional information, see IRM 5.9.16.5, Unpostable Reports, and subsections.</p>

5.9.17.18
(07-25-2022)
Release of Federal Tax Liens

- (1) **Pre-Adjustment/Lien Release Determinations.** Prior to requesting adjustment of a dischargeable liability and releasing a tax lien, a determination must be made that:
 - No exempt, abandoned, or excluded property (EAEP) exists or that the EAEP is not worth pursuing;
 - Collection from EAEP has concluded;
 - Future collection potential does not warrant keeping the account in the IRS inventory;
 - No litigation is pending;
 - Further monitoring is not required (except for appropriate closing actions); and,
 - No other case actions are pending (for example, further distributions in the bankruptcy case are not anticipated).
- (2) **Release Responsibilities.** When a lien release is required in Chapter 9, 11, and Chapter 12 bankruptcy cases, FI is charged with ensuring the liens are released timely. When a lien release is required in a Chapter 7 or Chapter 13 case assigned to FI, the FI caseworker is responsible for ensuring the liens are released timely. When a lien release is required on a discharged Chapter 7 or Chapter 13 case in CIO inventory, the CIO is required to take all appropriate actions to timely release the liens. See the following paragraphs for additional information.
- (3) **Lien Release Time Frame.** The IRS has 30 calendar days from the event that satisfies a lien to release liens where all periods have been fully satisfied via full payment, acceptance of a bond that is conditioned on the payment of an

amount assessed, abatement for reasons other than a bankruptcy discharge, or liabilities are legally unenforceable because the CSED has expired. To conform to this time limit, some liens require manual lien release. (See paragraph (6) below.) In situations where the accounts securing the lien have been discharged, there is no required time frame to release the lien. However, the IRS will generally initiate a lien release when all accounts secured by the lien have been discharged and no further collection action will be taken against EAEP. Caseworkers will initiate closing actions within 30 days of notification of the discharge or within 30 days of a determination that no collection action will be pursued from EAEP. Generally, the lien release systemically generates once all adjustments have posted to IDRS (IRM 5.9.17.5.3, Addressing Lien Issues).

- (4) **Lien Releases and Manual Discharges.** If an NFTL includes a tax period that is not discharged or satisfied as defined by IRC 6325, a Certificate of Release of Federal Tax Lien is not issued. For manually processed discharges, such as individual Chapter 11 cases, input a TC 971 AC 031 on IDRS for the discharged modules. When all the modules included on the NFTL are satisfied on IDRS, a systemic release will be issued on ALS. If a lien release within 30 days is mandatory and circumstances of the discharge will delay the lien release past 30 days, a manual lien release is required. (See paragraph (6) below.) IRM 5.12.3.4.1(3), Requesting a Certificate of Release on ALS, provides information regarding the possible necessity to contact the Centralized Lien Operation (CLO) to request a manual lien release. A manual lien release may also be required to release a lien against the non-debtor spouse when the CSED for the non-debtor spouse's liability has expired and the lien has not self released. The CSED of the non-debtor spouse is not extended by the debtor's bankruptcy.
- (5) **ADS Lien Releases.** Chapter 13 and Chapter 7 discharges trigger a systemic lien release notice on ALS when all NFTL periods are satisfied on IDRS or are deemed no longer legally enforceable. However, if DDRs flag cases for additional processing and the modules have been fully satisfied as defined in IRC 6325, manual lien releases must be requested.

Example: ADS may flag a case that requires a credit transfer or MFT 31 and/or MFT 65 mirroring. The module was satisfied as defined in IRC 6325 because it was full paid. A manual lien release must be requested.

(See IRM 5.9.17.5.3(17), Adjustments and Federal Tax Liens (FTLs), for additional information.)

- (6) **Manual Lien Releases - Field Insolvency (FI).** If a case includes a lien which *must* be released within 30 days and preliminary closing actions will delay closure of the case, the FI caseworker must request a manual lien release. The caseworker should request the lien release within five workdays of completion of a Chapter 11 plan filed by a business entity. The caseworker should request the lien release within five workdays of receipt of the discharge notice when the liability was fully satisfied as defined by IRC 6325. This applies to the fully satisfied:

- Individual Chapter 7 case assigned to FI
- Individual Chapter 11 case
- Chapter 12 case
- Chapter 13 case assigned to FI

A manual lien release is not required when the lien is not fully satisfied as defined in IRC 6325 (IRM 5.9.17.5.3).

Example: Actions which may delay closing include; but are not limited to, credit transfers or MFT 31 mirroring.

Even though the CIO will complete MFT 31 and/or MFT 65 mirroring for both FI and the CIO, FI must release any applicable liens before transferring their cases to the CIO for MFT 31 and/or MFT 65 processing. CIO will input their lien release requests directly on the Automated Lien System (ALS). FI will input their lien release requests directly on ALS or will submit Form 13794, Request for Release or Partial Release of Notice of Federal Tax Lien, to the Centralized Lien Office (CLO) to request the lien release, whichever is the local practice. Lien releases must be approved by a grade 9 or above Insolvency Specialist before the lien release is input to ALS (Delegation Order 5-4). These procedures also apply to partial lien releases when only one spouse filed bankruptcy. If the Insolvency Specialist is not authorized for ALS access, the Specialist will forward Form 13794 through secure e-mail to the group manager for approval and processing.

(7) **Manual Lien Releases - CIO.** The majority of discharges are granted to cases assigned to the CIO which puts the onus of processing most of the manual lien releases on the centralized site. The following steps are in place for releasing liens which are full paid, the liability on the NFTL has been satisfied for reasons other than the bankruptcy discharge, or the true CSER has expired for cases with a refiled NFTL.

- a. A Business Objects report will be generated and worked weekly to identify cases with a date in the AIS discharge field and periods where an NFTL has been filed.
- b. If a dischargeable NFTL period appears on the Business Objects report, the case must be reviewed to determine if all periods on the NFTL are satisfied or unenforceable (as defined by IRC 6325) and if a manual lien release must be requested.
- c. When a lien release is required, the caseworker will print an NFTL facsimile from AIS and attach it to a routing slip requesting the lien release and hand deliver it to the designated grade 9 Insolvency Specialist who will review the request for accuracy.

Note: If the lead rejects the lien release request, it will be returned to the initiator with a brief explanation for the denial.

- d. If the team lead approves the request, the lead will sign off on the routing slip and input the lien release request on the "Satisfied" (SAT) lien screen on ALS.
- e. All actions taken and decisions made by Insolvency caseworkers, leads, and managers regarding the lien release must be documented in the AIS history.
- f. At least once a day, the designated manager or an employee delegated to act for the manager at the CLO site in Cincinnati, will access the NFTL on ALS and approve the lien releases requested by Insolvency employees.

(8) **Delayed Closure.** If immediate case closure is inappropriate (e.g., the court has discharged a bankruptcy case but the trustee has not sent the final payment on the IRS claim, a period has an NFTL and IRS will pursue collec-

tion from exempt property, or there abandoned or excluded assets secured by the statutory lien), the bankruptcy caseworker should postpone AIS closure until all necessary conditions are met. While a bankruptcy discharge prevents the IRS from taking collection action against the debtor(s) personally, the lien remains enforceable against the property to which it attaches. Accordingly, the lien should not be released until the IRS receives final payment from the trustee and a determination is made that no EAEP exists against which the lien may be enforced. (IRM 5.9.17.5.2, Collection from Exempt, Abandoned, or Excluded Property (EAEP))

- (9) **Lien Release Reports.** The Business Objects “Lien Release Report” must be generated and worked weekly by caseworkers to identify discharged cases where a lien release has not been systemically generated (excepting cases where pursuit of EAEP is being considered). This report identifies cases that may require a manual lien release because the lien was fully satisfied as defined in IRC 6325 and it appears that systemic lien release will be delayed beyond 30 days of satisfaction. Systemic lien releases may be delayed due to the resolution of DDRs, mirroring, dead cycles, etc. These reports may also identify liens not released systemically on discharged liabilities. In the event the caseworker identifies a case with an error or delay in a systemic release of lien, a manual release of lien should be requested. (See Exhibit 1.4.51-25, Guide for Lien Research Report (Field Insolvency and CIO), for additional information.)
- (10) **Lien Release Revocation and Refile.** When taxes are non-dischargeable, generally, NFTLs should be timely refiled to protect the IRS secured status in the bankruptcy case and the government’s ability to collect from the debtor’s property after the bankruptcy. (See IRM 5.9.5.9.2, Refiling Notices of Federal Tax Lien (NFTLs), for additional information.). When a lien has self-released because the NFTL was not refiled timely, the IRS may file Form 12474, Revocation of Certificate of Release of Federal Tax Lien, and refile the NFTL. The IRS may revoke a certificate of release and refile the NFTL **only** after the automatic stay is lifted and there are non-dischargeable taxes and assets or potential collection sources available to satisfy the liabilities.

5.9.17.19
(07-25-2022)
**ASED/CSED
Considerations**

- (1) **MF Computes ASED/CSED.** The master file automatically computes extensions of the Assessment Statute Expiration Date (ASED) when applicable (see below) and automatically computes the Collection Statute Expiration Date (CSED) when the TC 521 is input.
- (2) **Exceptions.** Exceptions to the above are listed in table below. When a manual computation of the CSED is needed, caseworkers should use the CSED calculator. The link for the CSED calculator is the CSED Calculator (CCALC) Customer Information Page at <https://program.ds.irsnet.gov/sites/SbseBrSSC/CCALC/SitePages/Home.aspx>

IF...	THEN...
The TC 520 transaction date is after 10/22/94,	In general, the restriction to assess was removed by the passage of BRA 94; a systemic computation of the ASED no longer applies (IRM 5.9.4.3, ASED/CSED).

IF...	THEN...
The TC 520 has posted to a NMF account,	A manual computation of the CSED is required and a TC 550 is needed to extend the CSED.
The TC 520 module has an expired CSED or the CSED is within six months of expiration,	A manual computation of the CSED and input of a TC 550 is required. The action date entered must be after the TC 520 and before the existing CSED. Also, if the existing CSED has expired, the TC 550 must be input one cycle before the input of TC 521. <i>Insolvency employees must advise management accordingly when a CSED has expired or is imminent.</i>
The bankruptcy has been discharged, dischargeable modules have been left open, and bankruptcy freezes (TC 520(s)) have been left open due to collection potential from EAEP,	IDRS will not systemically compute the extended CSED because the TC 521 has not been reversed. Caseworkers must manually compute the TC 550 and submit either Form 4844, Request for Terminal Action, or Form 3177, Notice of Action for Entry on Master File, to CCCP to request input of the TC 550 or manually input the TC 550 to IDRS. The caseworker must ensure the dischargeable module is adjusted to \$.00 before the CSED expires.

- (3) **Management/Counsel.** Should ASED and/or CSED concerns arise at any time during the pendency of a bankruptcy case while it is assigned to either FI or the CIO, management must be informed of the issues. This includes imminent or missed ASEDs/CSEDs. Insolvency should consult Area Counsel on statute issues, as needed.

5.9.17.20
(07-25-2022)
Closing the Case

- (1) **Discharge Determination.** Actions to close a bankruptcy case can be taken only *after* a discharge determination has been made and the account meets adjustment criteria.
- (2) **Disposition of Cases.** When no further case action is necessary, most accounts not paid at the close of the bankruptcy should be adjusted and/or released to collection. When appropriate, some accounts may be reported as currently not collectible (CNC) after a trust fund determination has been made; e.g., certain Chapter 7 Limited Liability Companies (LLCs), Chapter 7 corporations, and Chapter 11 liquidating business accounts.
- (3) **Closing Cases through AIS.** Closure of a case, conversion from one chapter to another, or a change from a no asset case to an asset case, are counted as

a case disposition for inventory control purposes. A case closing checklist is available through the AIS Taxpayer Screen for the following:

- Reversal of the TC 136
- Notification to other impacted functions; such as, Examination function and Counsel (should outstanding legal issues remain).

Note: If there is a TC 520 cc 80, check the Integrated Collection System (ICS) and Counsel for open suits for consultation and determination during the bankruptcy. CIO will input the “NONCLS” classification, reassign to FI for monitoring and resolution, and summary history should state details before discharge and closing the “NONCLS” classification. If the case is already assigned to FI, the case will remain open until further instructions from DOJ or Advisory. See DOJ’s authority to discharge under IRC 7122, Compromises, and IRM 25.3.6.1.2(3), Settlement Authority.

- Resolution of any unpostables
- Closure of the CPM screen on AIS
- Closure of the AIS referral screen, if applicable
- “Other Investigations” receipt and closure, if applicable
- Preparation of adjustment documents per local guidelines (e.g., Form 3870, Form 53, TC 971, etc.); updating the CSED, if necessary; assessment of accrued interest and penalty for MFT 31 and NMF transfers or assessment of accrued interest for MFT 65 transfers; preparation of requests for lien releases; input of TC 521(s); and other closing actions, as appropriate
- Updates of AIS closing information

(4) **CIO Closures.** CIO closes all Chapter 13 and all Chapter 7 No Asset cases with the exception of cases FI has identified as needing further action by opening a “Case Classification” on AIS that prevents systemic closure of the case by IIP or ADS. (See IRM 5.9.17.2(6), Preventing Premature Closures, and IRM 5.9.5.4.1, Case Classifications, for additional information.) The CIO will close individual Chapter 7 Asset cases that have been transferred to its inventory prior to the running of ADS and Chapter 7 Asset business cases transferred from FI to CIO for case closure.

(5) **Field Closures.** FI closes all individual Chapter 7 cases assigned to FI inventories for collection from EAEP after the bankruptcy discharge. FI closes all Chapter 11 cases, all Chapter 9 cases, and all Chapter 12 cases. FI is also responsible for closing any other cases in FI inventories that have an open “Case Classification” that prevents premature closure through CIO bulk processing of discharges and dismissals.

Note: FI caseworkers must resolve any DDRs generated by ADS for cases assigned to FI inventories.

5.9.17.21 (07-25-2022) Maintenance of Information

(1) **AIS.** The Automated Insolvency System (AIS) is an electronic information and storage system. Cases are retained on AIS for eight years after the AIS closure date and the purge protocol runs once a week. The last systemic purging of cases occurred at the national level under the auspices of Collection Policy prior to AIS conversion to the Java system. Cases should not be purged at the local or centralized level.

- (2) **Claim Retention Periods.** IRM 5.9.13.6, Proof of Claim Retention, provides information on retaining claims for all chapters except Chapter 11.
- (3) **Chapter 11 Case Files.** FI caseworkers should build and maintain case files for cases in their Chapter 11 inventory; including, copies of proofs of claim and amendments, administrative claims, letters, and related documents. Files may be in electronic or hard copy format. These case files must be retained in the FI office assigned the case for one year after the case is closed on AIS.
- (4) **Electronic File Storage.** Any portion of a file retained in electronic format must be loaded onto an encrypted removable medium; such as, a CD, thumb drive, or floppy disk, and stored in a centralized location established within each office. The information should not be stored on a computer's hard drive.
- (5) **Litigation Cases.** Copies of documents forwarded with referrals to Counsel must be retained as outlined above for specific chapters. The AIS history must annotate the types of documents included with the referrals to Counsel. The AIS "Referral Screen" and "REFERRAL" case classification must be opened and remain open until the litigation is resolved. At minimum, referrals must include the following:
 - Copy of the referral memo
 - Copy of the legal action document; such as, a Summons & Complaint or Objection to Claim
 - Copy of correspondence pertaining to the issue(s)
 - Notice of Federal Tax Lien facsimiles, if applicable
 - Copy of the proof of claim currently on AIS
 - Other material, as necessary

Note: The "Referral Screen" and "REFERRAL" case classification must be closed by the FI caseworker when the issue is resolved. Documents must be retained as outlined in the paragraphs above.

To standardize referrals, Collection Policy, SBSE Division Counsel, and SCI have worked to produce pattern referral forms. These pattern referral forms should be used by FI to refer cases to Area Counsel or the U.S. Attorney's Office (USAO). The following form(s) have been consolidated to one form and can be accessed below under Related Forms and Documents on this page: *Technical Resources Field Insolvency - Referrals – Bankruptcy Referral Form (irsnet.gov)*. When the referral involves one of the following issues, the pattern referral form should be used:

- Cash Collateral/Adequate Protection
- Motion to Determine Dischargeability
- Motion to Dismiss or Convert
- Objection to Claim
- Objection to Confirmation
- Equity Analysis (worksheet that explains secured status calculations on proofs of claim)

For additional information on referrals to Counsel, caseworkers should follow the guidance in IRM 5.9.4.15, Referrals - Representing IRS in Bankruptcy Court, and subsections.

- (6) **Third-Party Contact Records.** See IRM 5.9.3.12.1, Third Party Contacts, and IRM 25.27.1, Third Party Contact Program, for additional information.

- (7) **Ad Hoc Letters to Taxpayers.** Non-standardized correspondence (letters written by Insolvency personnel) for Chapter 11 cases must be retained in the Chapter 11 case file. Ad hoc letters for all other chapters must be retained in a centralized location established in each office for the shorter of one year or when no longer needed for administrative, legal, audit, or other operation purposes.
- (8) **Form Letters.** Standardized IRS form letters with number designations need not be retained. However, information regarding a form letter that has been sent must be recorded in the AIS history including all pertinent data input to the letter's fill-in-the-blank fields; such as, tax period, recipient, and the date the letter was mailed.

5.9.17.22
(07-25-2022)

Adjustment Methods for Discharged Liabilities

- (1) **Adjusting a Discharged Account.** At the close of a bankruptcy case, Insolvency takes actions to adjust discharged tax accounts. When adjusting the accounts, various transaction codes and forms are used to make the required adjustments. Many Chapter 7 and Chapter 13 cases with dischargeable liabilities are completely adjusted systemically by ADS, described in IRM 5.9.18, Automated Discharge System (ADS). However, some Chapter 7 or Chapter 13 cases require manual adjustments by Insolvency even though the case is processed through ADS. Managerial approval is required when a transaction is input manually or when an adjustment is requested by submitting an adjustment document to the appropriate function. Chapter 11 and Chapter 12 bankruptcy discharges are not processed through ADS and must be processed manually.

Note: CIO caseworkers input their own adjustments to IDRS after managerial approval, when approval is required. CIO forwards source documents to the appropriate Campuses for those adjustments requiring source documents. FI forwards most adjustment requests to their assigned Collection Centralized Case Processing (CCCP) function. See IRM 5.9.5.10, Adjusting Bankruptcy Accounts, for additional information.

- (2) **Forms and Actions.** The following list recaps forms used when fully or partially adjusting discharged liabilities when manual adjustment actions are proper and necessary. The list also includes some transactions used to adjust accounts.
- Form 3177, Notice of Action for Entry on Master File; Form 4844, Request for Terminal Action; or, an AIS or locally-devised form is used to request input of a TC 971.
 - TC 971 AC 031 is input to adjust the discharged taxes systemically to zero on MF. Managerial approval is required when the transaction is input manually.
 - TC 971 AC 033 identifies a partial abatement as a result of bankruptcy discharge. The TC 971 AC 033 does not systemically adjust liabilities. A Form 3870, Request for Adjustment, is required to request input of transactions to adjust discharged amounts; such as, discharged assessed penalties.
 - TC 971 AC 100 identifies the bankruptcy split or mirror of a joint MFT 30 module into separate MFT 31 modules. It is input on modules for both the debtor and non-debtor spouse. The TC 971 AC 100 also identifies

the bankruptcy mirror of a joint MFT 35 SRP liability into separate MFT 65 SRP liabilities. It is input on modules for both the debtor and non-debtor spouse.

- Form 12810, Account Transfer Checklist, is used to move a MF account to NMF. NMF transfers require Form 12810, which is available on-line. Both FI and the CIO forward the Form 12810 to establish NMF accounts as well as the forms to adjust established NMF accounts to KCSPC at the address shown in IRM 5.9.17.3(4), Non-Master File Accounts.

- (3) **Full Adjustment to Zero.** The input of TC 971 AC 031 systemically initiates a full adjustment to a zero balance due. The TC 521 may be input with a two-cycle posting delay to allow time for the TC 971 to post first. Or, the TC 521 may be input to IDRS after the TC 971 AC 031 has posted, which requires monitoring. For most Chapter 7 and Chapter 13 cases, these actions have been automated through ADS.
- (4) **Partial Adjustment.** Partial adjustment requests are used *only* when:
 - a. A portion of the tax is discharged (for example, the non-trust fund portion of the liability is discharged but the trust fund portion of the tax is not discharged);
 - b. TC 971 unposts;
 - c. A penalty meets discharge criteria and the tax and applicable interest are not discharged (IRM 5.9.17.8); or
 - d. An account is established on NMF.
- (5) **Form 3870.** The Form 3870, Request for Adjustment, is prepared to adjust discharged liabilities on a module. The Form 3870 includes a statement with the reason for the adjustment to the module. The CCCP function processes the Form 3870 for FI. The CIO works most of its adjustments directly on-line without preparing Form 3870. CIO management is responsible for ensuring required IDRS security measures for on-line IDRS adjustments are met.
- (6) **MFT 31 or MFT 65 Mirroring.** Procedures for mirroring a joint MFT 30 module or joint MFT 35 module into two separate MFT 31 or two separate MFT 65 modules are required when closing a bankruptcy case and only one spouse filed the bankruptcy petition. The procedures for creating mirror modules are discussed below.

5.9.17.22.1
(07-25-2022)

MFT 31 or MFT 65 Mirror Modules

- (1) **MFT 31 and MFT 65 Procedures.** The CIO creates all MFT 31 and MFT 65 modules resulting from a bankruptcy proceeding regardless of the chapter. The “mirroring” of a joint income Master File tax module (MFT 30) or joint SRP MFT 35 module is normally required when the non-debtor spouse remains liable for the balance due. The MFT 30 or MFT 35 module is mirrored once disposition (discharged, partially discharged, discharge denied, closed without discharge, or dismissed) of the debtor spouse is known and prior to completing closing actions. When the mirror modules have been created, appropriate closing actions can be taken on each spouse whether completed systemically by the Insolvency Interface Program (IIP), the Automated Discharge System (ADS), or manually by a caseworker.
- (2) **“Up-front” or Non-Insolvency Mirrors.** Initial mirroring may be done by another function; such as, Examination, Automated Under Reporter (AUR), or Appeals, while the bankruptcy case is pending. Insolvency may also mirror an

account “up-front” when these functions or another function requests the “up-front” mirroring and the mirroring is warranted. (See IRM 5.9.4.4, Examination and Insolvency, and subsections for additional information.) Early mirroring may be warranted while the bankruptcy is pending to:

- Allow the non-debtor spouse to petition the Tax Court;
- Allow the non-debtor spouse to exercise appeal rights;
- Allow Exam or AUR to assess a deficiency owed by the non-debtor spouse; or,
- Pursue collection against the non-debtor spouse. See IRM 5.9.4.3(6), CSED Protection - MFT 31 for Non-Petitioning Spouse.

For tax periods that meet up-front mirroring criteria:

- Send a secure e-mail requesting up-front mirroring to the manager. After the manager approves the request, then forward e-mail to *CIO Issues mailbox. The e-mail **must** contain: the debtor’s name, docket number, court jurisdiction, and the specific periods to be mirrored.
- Input the “Man Mirror” classification on the AIS Classification tab.
- As part of case follow up, monitor for the completion of the mirroring.
- Upon completion, update the CPM to change the MFT(s) from 30 to 31.
- Document the AIS history with all actions taken.
- CIO must follow the steps in IRM 5.9.17.22.4, Mirroring Process, to input the request for MFT 31.

When an account is mirrored **up-front** and prior to dismissal or discharge, an amended proof of claim may be required to correctly reflect the MFT 31 and/or MFT 65 module(s). The mirrored account(s) may require the caseworker to update the CPM Screen so any bankruptcy payments can be properly applied to the correct TIN and balance due module(s). If the Chapter 7 Asset or Chapter 13 case is assigned to the CIO, it must be transferred to FI so the proof of claim can be amended and the CPM Screen updated.

- (3) **AIS Case Classification Field.** When ADS or IIP inputs a TC 971 AC 100 on MFT 30 income tax liabilities and/or MFT 35 SRP liabilities, a “MIRRORING” case classification systemically generates in the “classification” field on the AIS classification screen. This indicates mirroring is taking place and no manual IDRS adjustments should be made on the modules being mirrored until the mirroring is complete. The “MIRRORING” case classification remains even after all IDRS mirror actions are completed. A manual review of the modules on IDRS is required before manual adjustments can be started.
- (4) **Discharges.** ADS has been programmed to complete the Insolvency mirroring process systemically for Chapter 7 and 13 cases that have been discharged. However, when the automated process is not available or ADS processing errors arise that cannot be resolved before ADS is ran again, CIO caseworkers must manually complete the mirroring process. ADS does not process Chapter 11 or 12 discharges. Manual mirroring is required when Chapter 11 and Chapter 12 discharges are processed.
- (5) **Dismissals.** IIP has been programmed to mirror joint MFT 30 and/or joint MFT 35 modules into two MFT 31 and/or MFT 65 modules upon dismissal in all bankruptcy cases regardless of the chapter when the spouse on a joint return did not participate in the bankruptcy case with the debtor spouse. IIP also mirrors an account when the spouse on a joint tax return did not participate in the bankruptcy case and the debtor spouse is denied discharge. When only

one spouse on a joint tax return participates in a bankruptcy case, the spouse that did not participate in the bankruptcy case is called the “non-debtor spouse” or NDS. (See **Joint Return/Single Debtor (Debtor and Non-Debtor Spouse)**, in Exhibit 5.9.1-1, Glossary of Common Insolvency Terms, and Exhibit 5.9.1-2, Acronyms and Abbreviations, for additional information.) The basic processing steps in these dismissed cases are:

1. Input “D1 REGULAR DISMISSAL-D1”, “D2 DISMISSED FOR FMT-D2”, or “DISCHARGE DENIED” in the AIS closure method field. Enter the dismissal or discharge denied date in the “Dismissed” field.
2. IIP will access the AIS “IIP Indicators” and systemically check the box to “Request TC 521”.
3. When IIP is ran and a non-debtor spouse is identified, the system will complete the mirroring process when there are no conditions identified that bar the mirroring process. After the mirroring is complete, IIP will input a TC 521 on the debtor’s account and a TC 522 on the account of the non-debtor spouse.
4. An error report will be generated when conditions barring the mirroring process are identified. The error report can generate at the start of the mirroring process or during the mirroring process.
5. IIP will resume the mirroring process when all mirroring errors are corrected by the caseworker. Ultimately, a TC 521 will be input on the account of the debtor spouse and a TC 522 will be input on the account of the non-debtor spouse.

Note: If errors cannot be corrected, see IRM 5.9.17.22.2(3) below.

- (6) **Initial Actions.** Prior to creating MFT 31 and/or MFT 65 mirror modules, a list of preliminary actions must be completed. If the account is mirrored manually, reviewing the MFT 30 and/or MFT 35 modules ensure the modules can be mirrored and avoid unpostable conditions. These actions have not changed from the split procedures previously required for creating a MFT 31 module or the transfer procedures for creating a MFT 31 and/or MFT 65 module. There are instances where mirroring cannot be done. These occasions are discussed in the table below.

Note: IIP and ADS produce error reports when circumstances exist that must be resolved before the mirroring process is completed systemically. ADS will generate a DDR when an issue exists that requires the caseworker to determine if mirroring should be completed. For example, a DDR will generate when there are joint liabilities and only one spouse filed the bankruptcy petition. The caseworker has to determine if the debtor lives in a community property location, if the account requires mirroring, or if the NDS will be treated in the same manner as the debtor spouse (IRM 5.9.18.6.8, Community Property).

IF...	THEN...
The liability drops below the tolerance level for manually establishing MFT 31 and/or MFT 65 modules (See IRM 5.9.17.23 #),	Leave the liability on the MFT 30 and/or MFT 35 modules and proceed with discharge actions. Note: There is no tolerance for systemic mirroring by IIP or ADS.
A joint MFT 30 module and/or MFT 35 module was mirrored prior to the current bankruptcy case and an additional tax assessment has re-opened the MFT 30 and/or MFT 35 module,	The MFT 30 and/or MFT 35 module can't be mirrored again. The MFT 31 split or transfer procedures are used to establish the additional liability on the MFT 31 module(s). The MFT 65 transfer procedures are used to transfer the additional liability to the appropriate MFT 65 module(s). (IRM 5.9.17.22.6, MFT 31 Splits, discusses the process of splitting MFT 31 modules.)

5.9.17.22.2
(07-25-2022)
**MFT 31 and MFT 65
Errors**

- (1) **Error Reports.** In most instances, the conditions that prohibit systemic mirroring of joint MFT 30 modules into separate MFT 31 modules also prohibit systemic mirroring of joint MFT 35 modules into separate MFT 65 modules. Conditions that bar dismissals from systemic mirroring are the same conditions that prevent discharges from mirroring systemically. These conditions are:

- Invalid SSN.
- -L freeze.
- L- freeze.
- -Y freeze.
- Z freeze.
- Individual Taxpayer Identification Number (ITIN) as the primary spouse.
- MFT 30 income tax accounts where the secondary taxpayer is deceased cannot be mirrored for the year of death. Joint MFT 35 SRP liabilities are systemically mirrored into separate MFT 65 SRP liabilities for the year of death of the secondary spouse. (See IRM 5.9.17.22.3, below, for additional information.)
- A credit is on the module.
- International entities.
- Modules with an imminent CSED.

If no errors are identified during the systemic mirroring process via IIP or ADS, all necessary actions will be completed systemically by IIP or ADS. This includes input of the TC 521 on the debtor's MFT 30 and MFT 31 accounts; as well as, the debtor's MFT 35 and MFT 65 accounts. IIP or ADS will input the TC 522 on the non-debtor spouse's MFT 31 and/or MFT 65 accounts. The following paragraphs outline errors and how they can be resolved.

- (2) **Invalid Secondary SSN.** Master file will not create the MFT 31 and/or MFT 65 account if the SSN for the secondary spouse is invalid. When an invalid SSN

is identified, either manually or systemically by IIP, the CIO caseworker must send a request for SSN validation on Form 3210, Document Transmittal, to the assigned Entity Control Unit (ECU). Information on the Form 3210 must include the primary and secondary SSNs, taxpayer names, the tax periods involved, and the fax number where the ECU faxes their response back to the CIO. The ECUs will attempt to correct the invalid SSNs within ten business days and fax the Form 3210 back to the CIO with one of the following annotations:

- The SSN has been corrected.
- The secondary SSN is already valid.
- The secondary SSN will be validated after the DM-1 quarterly merge.
- The secondary SSN cannot be corrected.

(3) **Procedures for Invalid Secondary SSNs.** Insolvency will not create NMF file accounts for a joint filing period when the secondary taxpayer's SSN is invalid and cannot be validated. This pertains to joint MFT 30 and/or MFT 35 periods where:

- a. The bankruptcy case has been dismissed;
- b. Priority periods have been excepted from discharge; or
- c. The tax is not dischargeable on MFT 30 income tax liabilities but penalties and interest on the penalties must be adjusted for the debtor spouse. There are no penalties to adjust on SRP MFT 35 or SRP MFT 65 modules as no penalties are assessed on SRP liabilities.

Note: MF will recompute the CSED on a joint MFT 30 and/or MFT 35 module using the TC 520 and TC 521 dates when both debtors have filed bankruptcy and the "B" CSED Indicator Code is present. MF will recompute the CSED on a joint MFT 30 and/or MFT 35 module for the *debtor only* when one spouse filed bankruptcy. The TC 520 must be present with a CSED Indicator Code of "P" or "S" to indicate which spouse filed bankruptcy. NMF will not systemically recompute the CSED. The CSED must be calculated manually and a TC 550 manually added to NMF. (See IRM 5.9.4.3, ASSED/CSED, for additional information).

The chart below gives actions needed when the secondary SSN cannot be validated.

IF...	THEN
The debtor's case has been discharged, <i>all liabilities will be fully abated</i> , and IRM 5.9.17.23 # have been met,	Prepare Form 12810 to transfer the non-debtor spouse's liability to NMF attaching the ECU statement that the SSN cannot be verified. Forward the package to the KCSPC 333 W. Pershing Road, NMF Team, Mail Stop 6263 P-6, Kansas City, MO 64108, same address shown in IRM 5.9.17.3(4), Non-Master File Accounts.

IF...	THEN
The debtor's case has been discharged and <i>no liabilities will be abated</i> ,	Reverse the TC 520 on MFT 30 and/or MFT 35 modules with a TC 521 reflecting the discharge date and allow the case to return to the collection stream as MFT 30 and/or MFT 35.
The debtor's case has been discharged and <i>modules will be partially abated</i> ,	<p>Process the abatement on the MFT 30 and/or MFT 35 modules, reverse the TC 520 on MFT 30 and/or MFT 35 with TC 521 reflecting the discharge date, and allow the case to return to the collection stream as MFT 30 and/or MFT 35. There may be partial adjustments to MFT 35 SRP liabilities when Examination or AUR deficiencies are assessed.</p> <p>Reminder: There are no penalties on MFT 35 modules so there are no penalties that require a partial abatement.</p>
The debtor's case has been discharged; <i>some modules will be fully abated, IRM 5.9.17.23 # criteria has been met, and other modules will be partially abated</i> ,	<ul style="list-style-type: none"> • Prepare Form 12810 to transfer the non-debtor spouse's liability to NMF for the modules that will be fully abated for the debtor spouse. Attach the ECU statement that the SSN cannot be verified. Forward the package to the KCSPC at the address in IRM 5.9.17.3(4), Non-Master File Accounts. • When modules will be partially abated, process the partial abatement on the MFT 30 and/or MFT 35 modules, reverse the TC 520 on MFT 30 and/or MFT 35 with TC 521 reflecting the discharge date, and allow the case to return to the collection stream as MFT 30 and/or MFT 35.

IF...	THEN
The debtor's case has been discharged; <i>some modules will be fully abated, IRM 5.9.17.23 # criteria has been met, and other modules will not be abated,</i>	<ul style="list-style-type: none"> • Prepare Form 12810 to transfer the non-debtor spouse's liability to NMF for the modules that will be fully abated for the debtor spouse. Attach the ECU statement that the SSN cannot be verified. Forward the package to KCSPC at the address in IRM 5.9.17.3(4), Non-Master File Accounts. • For the modules that will not be abated, reverse the TC 520 on MFT 30 and/or MFT 35 with a TC 521 reflecting the discharge date. Allow the case to return to the collection stream as MFT 30 and/or MFT 35.
The debtor's case has been dismissed,	Reverse the TC 520 on MFT 30 and/or MFT 35 modules with a TC 521 reflecting the dismissal date. Allow the case to return to the collection stream as MFT 30 and/or MFT 35.

- (4) **Community Property Locations.** IIP/ADS will issue an error report and will not automatically mirror the module for debtors who file bankruptcy in a community property location. ADS will generate a DDR when there is a joint return and only one spouse filed the bankruptcy case. The caseworker must follow the procedures above for resolving the error reports. For additional information and references to guidance that discusses community property locations and statutes, see IRM 5.9.17.8(3), Discharge, Joint Liabilities, and Non-Debtor Spouses. For guidance on processing the DDR generated by ADS, see IRM 5.9.18.6.8, Community Property.
- (5) **Credit Balances and Unpostable Conditions.** MFT 30 and/or MFT 35 periods must have a debit balance or they cannot be mirrored. Credit transfers to other modules and unpostable conditions require resolution before initiating a mirror assessment.

IF...	THEN...
The module shows a credit balance,	Determine if a true credit balance exists and if it should be fully or partially refunded or transferred to another module. (See IRM 5.9.4.5, Credits, Refunds, and Offsets.)

IF...	THEN...
The credit requires a refund,	Do not mirror the module. Follow procedures appropriate to the specific case regarding issuance of a refund.
An unpostable condition exists,	Resolve the unpostable condition and close any open controls. (See IRM 5.9.16.5, Unpostable Reports.)

- (6) **Actions and Freeze Codes.** The bankruptcy freeze codes –V or –W are not reversed when mirroring. The TC 521 will not be input until all mirroring actions have been completed and the case can be closed. This guards against a stay violation occurring while the mirroring takes place. The following paragraphs discuss the actions needed to deal with specific freezes.
- (7) **-L Freeze.** This Examination or Appeal freeze (created by TC 420/424) must be reversed prior to mirroring because it prevents the TC 971 AC 100 from posting on master file. ADS error reports identify this freeze condition for resolution. Once the freeze transaction code is reversed, ADS will resume the mirroring process. To reverse the freeze code, the Insolvency caseworker must take the following actions:

1. Identify the correct Campus by reviewing the bottom right-hand corner of the IDRS command code AMDISA screen;
2. Use the Audit Information Management System (AIMS) contacts from the Exam Systems Knowledge Base Home Page: <https://portal.ds.irsnet.gov/sites/vl091/lists/aims/contacts.aspx> to identify the AIMS Coordinator for the Campus or search the Exam Contact List on SERP Who/Where; and,
3. Contact the assigned Campus AIMS Coordinator by secure e-mail to request input of a TC 421.

The Exam Coordinator will monitor the account for eight weeks for the TC 402 to post to the MFT 30 and/or module before re-inputting the TC 420/424 (-L freeze) on the MFT 30 and/or MFT 35 module. If the TC 402 has not posted by the end of the eight week period, the AIMS Coordinator will contact the requesting examiner via secure e-mail to provide an update.

Note: If an additional assessment is appropriate, Exam will input the TC 300 on the MFT 30 and/or MFT 35 (if joint) or the MFT 31 and/or MFT 65.

- (8) **Z- or -Z Freeze.** These freezes denote Criminal Investigation (CI) involvement and must be reversed prior to mirroring because they prevent the TC 971 AC 100 from posting on MF. The ADS error report identifies these freeze conditions. The Insolvency caseworker must contact CI to determine the appropriate actions. Counsel involvement may be required. (See IRM 5.9.4.13, Criminal Investigation (CI) Controls on Tax Accounts.)
- (9) **L- Freeze.** The L- freeze indicates that an innocent spouse (IS) claim is pending. ADS generates a DDR when the L- freeze is present on a module. Insolvency coordinates actions with the Cincinnati Centralized Innocent Spouse Operation (CCISO) to resolve the DDR. Once the DDR is resolved, ADS proceeds with the systemic process to mirror the module.

- (10) **-Y Freeze.** The -Y freeze indicates that there is a pending Offer-in-Compromise(OIC) and there is an unreversed TC 480 or TC 780. For mirroring and successful posting of bankruptcy adjustments, a TC 290 with a blocking series 80 must be input to modules with an unreversed TC 480 or TC 780. ADS generates a DDR requiring the Insolvency caseworker to coordinate mirroring actions with the appropriate OIC function. Once the DDR is resolved, ADS proceeds with the systemic process to mirror the module. The contact for OIC depends upon whether the transaction is a TC 480 or TC 780.
- For an unreversed TC 480, contact the Offer-in-Compromise (OIC) Centralized Service Center Locations listed under the Who/Where tab on SERP.
 - For an unreversed TC 780, contact the Offer-in-Compromise (OIC) Compliance Campus Locations for DATL for the Monitoring of Accepted Offers listed under the Who/Where tab on SERP.
- (11) **TC 971 Action Codes.** The TC 971 Action code (AC) 100 is used for bankruptcy mirroring. The other TC 971s listed in the mirroring step chart in IRM 5.9.17.22.4 complete the adjustments required for accounting purposes. They eliminate the need to submit a Form 12180 for these adjustments.

5.9.17.22.3
(07-25-2022)
**Decedent Secondary
Spouse**

- (1) **No Mirroring.** When the primary spouse is deceased, joint MFT 30 modules can be successfully mirrored on IDRS as two separate MFT 31 modules by following the routine mirroring procedures in IRM 5.9.17.22.4, Mirroring Process. Following the same procedures, joint MFT 30 modules can be successfully mirrored as two separate MFT 31 modules when the secondary spouse is deceased, *except for the year of death*. When a joint MFT 30 income tax liability cannot be mirrored for the year of death for the secondary spouse, a NMF account must be established for the secondary spouse for the respective year. A NMF account is established by completing Form 12810, Account Transfer Request Checklist, and sending the form to KCSPC for processing at the address in IRM 5.9.17.3(4), Non-Master File Accounts. The chart in (2) below addresses different scenarios that caseworkers may encounter when the secondary taxpayer on a joint return is deceased and there is a joint liability for the year of death.

Reminder: Unlike joint MFT 30 income tax modules, joint MFT 35 SRP modules are successfully mirrored for the year of death when the secondary spouse is deceased.

- (2) **General Guidelines.** If the taxpayers on joint return(s) lived in a community property location, do not use Form 12810, Account Transfer Request Checklist, to establish NMF splits or modules. Do not mirror the joint returns on MFT 30 modules as separate MFT 31 modules. The deceased secondary taxpayer will be included in the discharge actions for the debtor. Non-dischargeable liabilities will return to the collection stream as joint liabilities. Use the chart below when the secondary spouse is deceased and a joint module cannot be mirrored as two MFT 31 accounts for the year of death in non-community property locations. See IRM 5.9.17.8(3), Discharge, Joint Liabilities, and Non-Debtor Spouses, for additional information and references to guidance that discusses community property locations and community property statutes.

Caution: If a suit was referred to DOJ (referenced with a TC 520 cc 80 on IDRS) against a third party (fiduciary, heirs, or transferees of decedent's

property) and they have the authority to determine dischargeability, do not input TC 521 and assign to Field Insolvency.

Example...	If...	Then...
1	The bankruptcy was dismissed <i>regardless of the aggregate unpaid balance of assessments (UBA)</i> ,	<ul style="list-style-type: none"> • Input TC 521(s) to the MFT 30 module(s) using the dismissal date allowing all modules, including the year of death, to return to the collection stream as joint MFT 30 module(s). • Document all actions in the AIS case history. • Close the case on AIS.
2	The debtor's bankruptcy was discharged and: <ul style="list-style-type: none"> • There are no partially dischargeable module(s) for the primary taxpayer, • All joint module(s) are fully dischargeable or fully non-dischargeable, <i>including the year of death of the secondary spouse</i>, and 	<ul style="list-style-type: none"> • Include the deceased secondary taxpayer in the discharge actions taken on the dischargeable module(s). Input a TC 971 AC 031 and TC 521(s) with the bankruptcy discharge date and a two-cycle posting delay. • Input TC 521(s) to the non-dischargeable module(s), allowing the module(s) to return to the collection stream as joint MFT 30 module(s). • Document all actions in the AIS case history. • Close the case on AIS.

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Example...	If...	Then...
3	<p>The debtor's bankruptcy was discharged and:</p> <ul style="list-style-type: none"> • There are no partially dischargeable module(s) for the primary taxpayer, • All joint module(s) are fully dischargeable or fully non-dischargeable, • There is at least one year left on the CSED on each module for each spouse, and • There is no liability for the year of death of the secondary spouse, <p>Note: If there is not at least one (1) year left on the CSED, do not mirror the module. Treat the case as one where the UBA is for mirroring.</p>	<ul style="list-style-type: none"> • Calculate the CSED for each spouse using the CSED calculator available on the CSED Calculator (CCalc) Customer Information page: https://program.ds.irsnet.gov/sites/SbseBrSSC/CCALC/SitePages/Home.aspx. • Manually mirror the joint module(s) as MFT 31 module(s) following the procedures in IRM 5.9.17.22.4, Mirroring Process. • Input TC 971 AC 031 and TC 521(s) with the bankruptcy discharge date and a two-cycle posting delay to the fully dischargeable MFT 31 module(s) of the debtor spouse. • Input TC 521(s) to the fully non-dischargeable MFT 31 module(s) of the debtor spouse. • Input TC 522(s) to all MFT 31 module(s) of the non-debtor spouse. • Document all actions in the AIS case history. • Close the case on AIS.

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Example...	If...	Then...
4	<p>The debtor's bankruptcy was discharged and:</p> <ul style="list-style-type: none"> There are no partially dischargeable module(s) for the primary taxpayer, All joint module(s) are fully dischargeable or fully non-dischargeable, There is at least one year left on the CSED on each module for each spouse, and There is liability for the year of death of the secondary spouse, <p>Note: If there is not at least one (1) year left on the CSED, do not mirror the module or establish a NMF for that module. Treat the case as one where the</p> <p>tolerance for mirroring.</p>	<p>Fully Dischargeable for the Primary Taxpayer:</p> <ul style="list-style-type: none"> Follow the procedures in Example 3, above, for all module(s) <i>except the joint module for the year of death for the secondary spouse.</i> Calculate the CSED for the deceased secondary taxpayer for the year of death using the CSED calculator on the CSED Calculator (CCalc) Customer Information page: https://program.ds.irsnet.gov/sites/SbseBrSSC/CCALC/SitePages/Home.aspx. Input a TC 470 cc 90 with a two-cycle posting delay on the MFT 30 module that will be established on NMF. Accruals must be posted to master file before a module can be transferred to NMF. The caseworker must input a TC 290 for \$00, priority code 5; hold code 4; using IDRS command code REQ54 for the accrued penalty and interest to assess on the module. Input TC 521(s) to reverse any TC 520(s) on the module that is being established on NMF. Prepare Form 12810, Account Transfer Request Checklist, to establish the NMF module for the deceased secondary taxpayer. Do not request establishment of the fully dischargeable module on the NMF for the debtor spouse. Include a statement on the Form 12810, Account Transfer Request Checklist, that the SSN cannot be mirrored because the secondary taxpayer is deceased and this liability is for the year of death.

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Example...	If...	Then...
		<ul style="list-style-type: none"> • Forward the Form 12810, Account Transfer Request Checklist, to KCSPC at the address in IRM 5.9.17.3(4), Non-Master File Accounts. • Set a 45-day follow-up for the establishment of the NMF module. • Prepare Form 3177, Notice of Action for Entry on Master File, to request input of the TC 550 to the NMF module. • Send the Form 3177, Notice of Action for Entry on Master File, to the KCSPC at the address in IRM 5.9.17.3(4), Non-Master File Accounts. • Document all actions in the AIS case history. • Close the case on AIS. <p>Fully Non-Dischargeable for the Primary Spouse:</p> <ul style="list-style-type: none"> • Follow the procedures in Example 3, above, for mirroring all module(s) <i>except the joint module for the year of death for the secondary spouse</i>. • For the year of death, reverse the TC 520 using the discharge date and allow the module to enter the collection stream as a joint MFT 30 module. • Document all actions in the AIS case history. • Close the case on AIS.

Example...	If...	Then...
5	<p>The debtor's bankruptcy was discharged and:</p> <ul style="list-style-type: none"> • There are partially dischargeable module(s) for the primary taxpayer, • The aggregate UBA for all years, including the year of 	<ul style="list-style-type: none"> • Include the deceased secondary taxpayer in the discharge actions taken on the partially dischargeable module(s). • Input a TC 971 AC 033 on the joint MFT 30 partially dischargeable module(s). • Input applicable adjustments to the dischargeable portions of the MFT 30 module(s). See IRM 5.9.18.5(2), Social Security Number with an N, for adjusting partially dischargeable module(s). • Input TC 521(s) with a two-cycle posting delay using the discharge date on all module(s), allowing the balance due on the module(s) to return to the collection stream as joint MFT 30 module(s). • Document all actions in the AIS case history. • Close the case on AIS.

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Example...	If...	Then...
6	<p>The debtor's bankruptcy was discharged and:</p> <ul style="list-style-type: none"> There are partially dischargeable modules for the primary taxpayer, There is at least one year left on the CSED on each module for each spouse, and There is no liability for the year of death of the secondary spouse, <p>Note: If there is not at least one (1) year left on the CSED, do not mirror the module. Treat the case as one where the UBA is for mirroring.</p>	<ul style="list-style-type: none"> Calculate the CSED for the deceased secondary taxpayer for the year of death using the CSED calculator on the CSED Calculator (CCalc) Customer Information page: https://program.ds.irsnet.gov/sites/SbseBrSSC/CCALC/SitePages/Home.aspx. Manually mirror the joint module(s) as MFT 31 module(s) following the procedures in IRM 5.9.17.22.4, Mirroring Process. Input TC 971 AC 033 on all partially dischargeable MFT 31 module(s) for the debtor. Input applicable adjustments to the dischargeable portions of the MFT 31 module(s). See IRM 5.9.18.5(2), Social Security with an N, for adjusting partially dischargeable modules. Input TC 521(s) with the bankruptcy discharge date and a two-cycle posting delay to the partially dischargeable MFT 31 module(s) of the debtor spouse. Input TC 522(s) to all MFT 31 module(s) of the non-debtor spouse. Document all actions in the AIS case history. Close the case on AIS.

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Example...	If...	Then...
7	<p>The debtor's bankruptcy was discharged and:</p> <ul style="list-style-type: none"> There are partially dischargeable modules for the primary taxpayer, There is at least one year left on the CSED on each module for each spouse, and There is liability for the year of death of the secondary spouse, <p>Note: If there is not at least one (1) year left on the CSED, do not mirror the module or establish NMF module(s). Treat the case</p> <p>mirroring.</p>	<ul style="list-style-type: none"> Follow the procedures in Example 3, above, for mirroring all module(s) except the joint module for the year of death for the secondary spouse. For the year of death, input TC 971 AC 033 to the joint MFT 30 module, abate any dischargeable amount(s), and input TC 521 using the discharge date allowing the joint MFT 30 account to enter the collection stream. Document all actions in the AIS case history. Close the case on AIS.

#5.9.17.22.4
(07-25-2022)**Mirroring Process**

- (1) **Mirroring Steps.** If a case requires a manual determination, or in the event IIP/ADS mirroring is unavailable for a substantial length of time, CIO caseworkers will be responsible for manually processing the MFT 31 and/or MFT 65 mirrors. The process for manually mirroring joint MFT 35 SRP liabilities into separate MFT 65 SRP liabilities is the same as processing joint MFT 30 income tax liabilities into separate MFT 31 income tax liabilities.

- The -V or -W should not be reversed. Mirroring actions take place with open bankruptcy freeze codes.
- The current (today's) date is used as the transaction date for all TC 971 inputs listed below.
- When reversing any of these TC 971s, the TC 972 transaction date should be the same as the transaction date of the TC 971s being reversed; this includes any reversals for cross referenced TINs that might be required for the input.

Caution: Cycle delays must not be used during dead cycles because they will cause problems in posting during master file's first production cycle.

STEP	ACTION
1	<p>Input a TC 971 AC 100 <i>on the MFT 30 and/or MFT 35 module(s) only</i> for each spouse's SSN.</p> <p>Examples:</p> <ul style="list-style-type: none"> • TC 971 AC 100, MFT 30 x-ref Primary SSN or MFT 35 x-ref Primary SSN • TC 971 AC 100, MFT 30 x-ref Secondary SSN or MFT 35 x-ref Secondary SSN <p>Note: The MFT 31 and/or MFT 65 mirrors should post approximately two weeks after input of the TC 971s.</p> <p>Caution: If only one TC 971 AC 100 is input, the MFT 31 and/or MFT 65 will not be created.</p>
2	<p>Input TC 971 AC 145 on the MFT 30 and/or MFT 35 <i>with a one cycle posting delay</i>, otherwise it will go unpostable (Unpostable Code (UPC) 168).</p> <p>Note: When TC 971 AC 145 posts to master file:</p> <ul style="list-style-type: none"> • A TC 400 is generated and information is transmitted to create both MFT 31s and/or MFT 65s. TC 400 credits each module and generates an M- freeze on all three modules. All are in zero balance. The MFT 31s and/or MFT 65s will post in the subsequent cycle. • A TC 370 is generated to both MFT 31 and/or mirror modules and creates a document locator number (DLN) distinguishing it from other types of MFT 31 and/or MFT 65 modules. A MFT 31 and/or MFT 65 with TC 370 DLN of NN25199995000Y identifies the primary SSN. A MFT 31 TC 370 DLN of NN25199900000Y denotes the secondary SSN is a copy of the primary.
3	<p>Input TC 972 AC 145 to the MFT 30 and/or MFT 35 module and both MFT 31 and/or MFT 65 modules with a two cycle posting delay.</p> <p>Note: When the TC 972 AC 145 inputs post, MF will systemically generate the following transaction codes:</p> <ul style="list-style-type: none"> • TC 402s to the MFT 30 and/or MFT 35 modules and both MFT 31 and/or MFT 65 modules to reopen the module balances and release the M- freezes • TC 971 AC 132 to the MFT 30 and/or MFT 35 module which generates a TC 604 to zero out the balance due leaving the balance on the identically mirrored MFT 31 and/or MFT 65 modules • TC 971 AC 110 on both MFT 31 and/or MFT 65 modules with a fictitious Julian date of 999 that indicates duplication for reporting purposes and systemic cross-referencing so payments made to one MFT 31 and/or MFT 65 mirror module will systemically credit the other MFT 31 and/or MFT 65 mirror module
4	<p>Monitor for the posting of the transaction codes to MFT 30 and/or MFT 35 and both MFT 31s and/or MFT 65s.</p>
5	<p>Input TC 521 to MFT 30 and/or MFT 35 after the TC 604 posts to prevent stay violations.</p>

Note: TC 972 AC 110 is manually input after mirroring to the MFT 31 and/or MFT 65 modules when payments are no longer cross referenced (e.g., one MFT 31 or MFT 65 is abated and the other spouse remains liable).

- (2) **Closing MFT 31 and/or MFT 65 Mirror Modules.** Once the MFT 31 and/or MFT 65 mirror modules have been established, additional actions must be taken on the MFT 31 and/or MFT 65 mirror modules of each spouse to complete the appropriate case processing. Both the MFT 31 and/or MFT 65 modules will have unreversed TC 520 closing codes (cc) xx. To close each module through IIP/ADS, the bankruptcy caseworker must follow the directions given in the table below. To determine if a MFT 35 or MFT 65 SRP liability is dischargeable, see IRM 5.9.17.8.10, Discharge and Individual Shared Responsibility Payment (SRP) Liabilities.

IF the debtor spouse is ...	THEN on the debtor spouse's MFT 31 and/or MFT 65...	And THEN on the non-debtor spouse's MFT 31 and/or MFT 65...
Dismissed	The caseworker must input the TC 521 and update the AIS history.	The caseworker must input the TC 522 and update the AIS history.
Discharged	The caseworker must: <ul style="list-style-type: none"> • Input TC 971 AC 031, • Input TC 972 AC 110 (prevents payments from continued cross referencing), • Input TC 521 with a two-cycle posting delay, and • Update the AIS history. 	The caseworker must: <ul style="list-style-type: none"> • Input TC 972 AC 110, • Input TC 522, and • Update the AIS history.
Partially discharged of: <ul style="list-style-type: none"> • A non-pecuniary penalty, or • The original TC 150 assessment but remains liable for additional assessment (i.e., TC 300 or TC 290) 	The caseworker must: <ul style="list-style-type: none"> • Input TC 971 AC 033 to identify a bankruptcy partial abatement input adjustments on line, • Monitor for the adjustments to post, • Input the TC 521 after the abatements post, and • Update the AIS history. 	Manually input TC 522 and update the AIS history

IF the debtor spouse is ...	THEN on the debtor spouse's MFT 31 and/or MFT 65...	And THEN on the non-debtor spouse's MFT 31 and/or MFT 65...
Not discharged	IIP/ADS will systemically input TC 521. The caseworker must update the AIS history.	IIP/ADS will systemically input TC 522. The bankruptcy caseworker must update the AIS history.

5.9.17.22.5
(07-25-2022)
Liens and Mirror Modules

- (1) **NFTL Filing and MFT 31 Mirror Modules.** The same procedures apply for filing new NFTLs on MFT 31 mirror modules as apply for MFT 30 modules. Only the spouse under whose SSN the module was established should be listed. The requirements for taxpayer notification of Collection Due Process (CDP) rights when filing an NFTL must be observed. (See IRM 5.12.2, Notice of Lien Determinations, and IRM 5.9.17.6.7, NFTL Filing Determinations after Dismissal, for additional information.)

Reminder: NFTLs are not filed on joint SRP liabilities assessed under MFT 35 or on SRP liabilities mirrored into separate liabilities under MFT 65 per IRM 5.9.17.6.7(1), NFTL - Shared Responsibility Payment (SRP) and Employer Shared Responsibility (ESRP) Liabilities.

- (2) **Automated Lien System (ALS) and MFT 31 Mirror Modules.** The Automated Lien System (ALS) recognizes these mirror modules as a joint liability. However, they will be released separately when the balance on the MFT 31 modules is satisfied.
- (3) **Partial Lien Releases.** In situations where the NFTL was filed against the joint liability before the account is mirrored, a partial lien release will be necessary when one of the MFT 31 modules is satisfied. Partial lien releases on joint NFTLs must be prepared manually to meet the time frame for release when a manual lien release is required. (IRM 5.9.17.18)

5.9.17.22.6
(12-09-2016)
MFT 31 Splits

- (1) **Previous Mirror Modules.** If a joint tax module has already been mirrored, it cannot be mirrored again. The assessment must be split from the MFT 30 module and transferred to the MFT 31 module(s). When circumstances arise that require moving a joint MFT 30 assessment to one or both MF 31 mirror modules, the transfer of transactions must be done by submitting Form 12810, Account Transfer Request Checklist.

Caution: Transfer of transaction codes for MFT 31 splits cannot be input on-line by Insolvency personnel.

- (2) **Reviewing the TXMOD.** As with manual mirroring, the MFT 30 module must be reviewed to determine if at least one year remains on the CSED before requesting the split of a joint assessment. If more than one year remains on the CSED, the caseworker must review the MFT 30 TXMOD to ensure there is no -L, L-, -Y, and /or -Z freeze present on the module. If there is a -Z freeze, it must be resolved before the transfer. If there is a -L, L-, and/or -Y freeze on the module, the caseworker must coordinate with the responsible function(s).

Note: Systemic MFT 31 mirroring does not factor in CSEDs.

- (3) **Appropriate TC Actions.** The following table explains what actions should be taken with corresponding transaction codes.

Transaction Code	Action
470 - Taxpayer Claim Pending	An unreversed TC 470 cannot be transferred because it will freeze the module.
150 - Return posted and 290/300 - Additional Assessments	MFT 31 can handle multiple assessments on one tax module. If the TC 150 and/or TC 290 or TC 300 remain collectible on the liable spouse, then it is not necessary to do separate assessments (as for NMF). The Return Received Date must be used in the block on Form 12810 – the processable date should not be entered. Note: For a Substitute for Return (SFR), the TC 290 or TC 300 SFR assessment date acts as the <i>Return Received Date</i> .
806 - Credit for Withheld Taxes and Excess FICA Note: Document 6209, IRS Processing Codes and Information, shows TC 807 as the reversal but because this is a transfer, Credit and Account Transfer function converts it to a TC 802.	On the MFT 30 side of the transfer form, TC 170 is listed for – 0 –. Remarks must state: Credit and Account Transfer function Input TC 170 – 0 – on MFT 30 (which prevents a TC 176 from generating when TC 806 is reversed). Note: If this is not done, MF erroneously assesses a TC 176 estimated tax penalty on MFT 30.

Transaction Code	Action
460 - Extension of Time for Filing	The transfer must show the same extension date as the MFT 30 so the penalty calculations will be computed correctly. If the return is filed late, the <i>Return Received Date</i> is placed in the Remarks area of Form 12810 so the delinquency penalty will be generated for the MFT 31. The <i>Return Received Date</i> , not the processable date, must always be entered in the block on Form 12810.
530 – Currently not Collectible Account	If the account was in IDRS ST 53, Currently Not Collectible (CNC) before bankruptcy, the TC 530 is transferred to MFT 31 with the same date and closing code as shown on the MFT 30.
582 – Lien Indicator	The TC 582 must be transferred to MFT 31. A partial manual lien release is required if all lien periods for a debtor spouse are fully discharged.
Factors Affecting CSED Computation on the MFT 31	<p>CSED indicators P (primary taxpayer), S (secondary taxpayer), or B (both taxpayers), if present on previous TC 520/521(s), will determine if the transaction code should be transferred to extend the CSED on the MFT 31.</p> <p>If so, once the MFT 31 is module created, the TC 520/521 information must be transferred to the MFT 31 account using the same transaction dates and closing codes.</p>
48X/78X or TC 550	<p>If required to extend the CSED due to a prior OIC (TC 48X/78X), the Insolvency employee must list or highlight those transaction codes using the original transaction date(s) on Form 12810.</p> <p>If a prior TC 550 extension (due to an installment agreement, military deferment, or taxpayer living outside of the U.S.A., etc.), the same actions as those for OIC, above, are required.</p>

- (4) **Penalty and Interest.** The TXMOD must be reviewed to identify restricted and unrestricted penalty and interest to determine how they must be listed for the transfer.

IF the MFT 30 module...	Then...
<p>Has only assessments for unrestricted penalty and interest, the Insolvency caseworker must check MFT 30 for IDRS ST 22/58 and input TC 971 AC 35 with the date of the fourth notice (ST 58) to the MFT 31 module in order to maintain the 1% start date,</p> <p>Note: The TC 276 and TC 196 are not listed for transfer. Transfer of TC 670 payments may result in a net credit on the MFT 31 module when the sum on the MFT 31 column is computed. <i>Credit transfers of those payments must be requested to MFT 31 when created.</i> Those payments cannot be listed on a Form 12810.</p>	<p>Insolvency must not list for transfer as it will restrict the MFT 31 module unnecessarily. MF will systemically compute unrestricted penalties and interest up to the date on MFT 31.</p> <p>Note: TC 170/176 and TC 160/166 must be listed for transfer because they will not systemically generate.</p>
Has only restricted penalty and interest,	They are listed for transfer. The MFT 31 module will remain restricted and Notice Review will update the accruals.
Has a mix of unrestricted and restricted penalty and interest,	The unrestricted and restricted transaction codes are listed for transfer. The MFT 31 module will become restricted and Notice Review will update the accruals.

- (5) **Monitoring and Preparation of Form 12810.** Insolvency must monitor to ensure the transaction codes have posted to the MFT 30 module. Then, the transfer form can be prepared and forwarded to the appropriate Campus. Form 12180 is completed as follows:

Form Section	Information Required
Top Portion of the Form	The person responsible for preparation of the form will enter the specific information and check the items required for the transfer request.
“TO” Account Column	The name and SSN of the non-discharged spouse, MFT 31 and tax period of the MFT 30 module are entered. Up to ten transaction codes may be included on the form. Alternatively, a printout of the TXMOD may be attached with the transactions highlighted that are to be transferred. Annotate the reversal transaction codes beside the transactions being transferred. Write <i>“SEE ATTACHED TXMOD PRINT”</i> on the form.
“FROM” Account Column (MFT 30)	<p>The name of the primary spouse, the primary SSN, MFT 30 and TXPD of the MFT 30 being transferred are entered.</p> <p>Note: This information is always “Primary” name and SSN.</p> <p>For all cases, the return received date is used, not the processable date. The TC 402 amount, which is the MFT 30 balance <i>even when the penalty and interest are not listed for transfer</i>, is entered. A TC 400 credit will systemically generate on MFT 30 for the account balance. No date should be entered for the TC 400 credit (the transfer function will input). Up to ten transaction codes may be included on the form. Alternatively, a printout of the TXMOD may be attached with the transactions highlighted that are to be transferred. Annotate the reversal transaction codes beside the transactions being transferred. Write “SEE ATTACHED TXMOD PRINT” on the form.</p>
“Remarks” Section	<p>This section is only used when the MFT 30 was not moved completely to MFT 31:</p> <p>— Input of an unrestricted TC 340 to MFT 31 should be requested. The accruals must be entered listing the transaction date, transaction code, transaction amount, and the amount used to figure the accruals.</p> <p>Note: Information for the discharged spouse must include: name, SSN, date liability was discharged, docket number of the bankruptcy case, and the location of the Bankruptcy Court where the bankruptcy took place.</p>
Signature	Managerial approval is required.

Form Section	Information Required
Attachments	<p><i>Supporting Documentation.</i> Attachments must include current TXMOD printouts of the MFT 30 and MFT 31 modules and a current printout of ENMOD/INOLE for the MFT 30. The ENMOD/INOLES is used to verify that the SSN is valid. The appropriate transmittal should be prepared and forwarded with the supporting documentation to the Credit and Accounts Transfer Function at the Campus.</p> <p><i>Note:</i> The original return is not required.</p>

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5.9.17.24
(07-25-2022)
**Addressing Prior
Installment Agreements
When Closing a Case**

- (1) **Addressing Prior Installment Agreements.** When a taxpayer has an installment agreement (IA) and files bankruptcy, the IRS treats the IA as suspended during the bankruptcy. The bankruptcy does not terminate the IA. However, the suspended IA may drop off IDRS. When this occurs, the IA reinstatement must be input as a new IA, waiving the user fee. When the bankruptcy case is dismissed or discharged, and there are outstanding liabilities that survive the bankruptcy, the caseworker must address the prior IA during case closure.

Note: Within this IRM subsection and related exhibits, “prior IA” includes only the modules that were in the installment agreement in effect when the bankruptcy petition was filed for the case currently being closed.

Cases with a prior IA may be identified by an open “IA”, “PDSC”, or “IA Issues” case classification on AIS. When there is an open “PDSC” case classification, caseworkers must read the AIS “SUMMARY HISTORY” and determine if there is a prior IA that must be addressed during case closure. See the following IRM sections for additional information:

- IRM 5.9.5.4(6), Classifications and Summary Histories
- IRM 5.9.5.4.1, Case Classifications
- IRM 5.9.5.4.2, Summary Histories
- IRM 5.9.5.4.3, Chapter 13 Summary Histories
- IRM 5.9.5.4.4, Chapter 7 Summary Histories

FI caseworkers must address cases with a prior installment agreement when working the Court Closure Report. When FI identifies cases that require action prior to reinstatement of the IA or issuance of a letter to the taxpayer, FI must ensure that an “IA Issues” case classification is added to AIS prior to transfer of the case to the CIO. The CIO sends all IA letters and reinstates all IAs for both functions, FI and CIO. The “IA Issues” case classification is required when:

- A TDI must be closed before the IA can be reinstated and FI needs for the CIO to input the TDI closing transactions to IDRS.
- A PPIA or DDIA is being reinstated as a regular IA.
- The IA is being terminated because additional liabilities were incurred which were not included in the original IA. When the debtor incurred any additional liabilities *except SRP MFT 35 or MFT 65 liabilities*, and those liabilities were not included in the original IA, the IA cannot be reinstated. The IA must be terminated. This includes post-petition liabilities incurred by the debtor during the pendency of the bankruptcy case *even when the IRS granted the debtor a post-petition IA for the liabilities while they were in bankruptcy*.

Note: When reinstating an IA, SRP MFT 35 or MFT 65 liabilities not included in the original IA **are not** considered as additional liabilities. The IA cannot be terminated when all liabilities except the SRP MFT 35 or MFT 65 liability were included in the prior IA. However, additional ESRP MFT 43 liabilities not included on the original IA **will** prevent the reinstatement of the IA.

FI must add an “IA” case classification to the case on AIS prior to transfer to the CIO when the IA was a “regular” IA and the IA meets criteria for reinstatement as a “regular” installment agreement. The IA classification alerts the CIO

that reinstatement action is needed. In either instance, FI must ensure that the following items have been addressed prior to transferring the case from FI to the CIO:

- All Discharge Determination Reports (DDRs) have been resolved.
- All other case actions except IA reinstatement or termination actions have been completed.
- The case is ready for IA reinstatement/termination and case closure.
- The AIS history has been fully documented.
- All TC 520(s) have been reversed, except in the Chapter 7 case where a TC 520 is needed to re-direct refunds to the trustee (Exhibit 5.9.17-2 and Exhibit 5.9.17-3).

CIO uses a Business Objects report to identify cases that have an open case classification that identifies an IA that must be addressed during case closure and a dismissal or discharge has been received. The CIO caseworker addresses each case listed on the Business Objects report and determines whether the account meets the criteria for reinstatement of the IA. If the IA can be reinstated, CIO takes IDRS actions in accordance with established procedures. All other actions for reinstatement are performed per the instructions in Exhibit 5.9.17-2, Regular Installment Agreement Reinstatements, or Exhibit 5.9.17-3, Reinstating Direct Debit or Payroll Deduction Installment Agreement Reinstatements. Caseworkers follow Exhibit 5.9.17-4, Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret), when there is an open TDI that must be addressed before the IA can be reinstated. If the IA cannot be reinstated, caseworkers must follow the instructions in Exhibit 5.9.17-5, Installment Agreement Cannot be Reinstated. (See IRM 5.14.11.3, Reasons for Proposing Termination (Defaulting) of Installment Agreements, for additional information.) If not previously added, CIO must ensure that an "IA Issues" case classification is present on the case when:

- There is an open TDI (Del Ret) that must be addressed before the IA can be reinstated,
- The Letter 2273-C must be issued because a DDIA or PDIA is being reinstated as a regular IA, or
- The Letter 2975-C must be issued because the IA is not being reinstated.

Note: CIO will reinstate installment agreements, input TC 590/595/971 transactions and/or issue letters as deemed necessary for all bankruptcy cases that are in their inventory. This includes cases reassigned from FI for the completion of such actions.

(2) **Prior IA Satisfied.** The prior IA has been satisfied and no action is required to address the prior IA at case closure when:

- All modules included in the prior IA are full paid;
- All modules included in the prior IA are fully discharged and the remaining balance was abated in full; or,
- All modules included in the prior IA were satisfied by a combination of full payment or full discharge.

If all modules included in the prior IA were satisfied, the prior IA is considered satisfied if an additional liability remains that was not included in the prior IA. The caseworker will:

- a. Ensure that the TC 521 is input on all modules after all necessary abatements have posted;
 - b. Close any open "IA" or "IA Issues" case classifications that are present on AIS;
 - c. If there is a "PDSC" case classification on AIS, and the IA is the only reason for the case classification, close the "PDSC" case classification;
 - d. Document any actions taken in the AIS case history; and,
 - e. Input the closure date on AIS.
- (3) **New Bankruptcy Case Filed.** When closing a dismissed bankruptcy case, the caseworker may find that the debtor has filed a new bankruptcy case. The prior IA cannot be reinstated. A letter cannot be issued proposing termination of the prior IA. When this occurs, specific actions are required on the dismissed case and in the new case. On the dismissed case, the caseworker will:
- a. Request reversal of all TC 520s through the IIP indicators menu;
 - b. Close any open "IA" or "IA Issues" case classifications on the AIS Case Classification Screen;
 - c. If there is an open "PDSC" case classification on AIS, and the IA is the only reason for the case classification, close the "PDSC" case classification on AIS;
 - d. Cross-reference the new case number in the AIS case history; and,
 - e. Document the AIS case history with all actions taken to close the dismissed case.
- In the new case, the caseworker will:
- a. Add an "IA" case classification on the AIS Case Classification Screen;
 - b. Manually input TC 520s to each balance due module on IDRS with the applicable closing code and a 2-cycle posting delay;
 - c. Add each TC 520 and closing code (cc) input to IDRS on the AIS Freeze Screen;
 - d. Write an AIS history in the new case that includes the case number of the dismissed case and the terms of the prior IA (payment amount, due date, and locator number); and,
 - e. Document any other actions taken in the new case in the AIS case history.
- (4) **Installment Agreement (IA) Reinstatement.** If the primary taxpayer has not incurred any additional liability and owes only the liability that was included in the IA, the IA must be reinstated. When the debtor has incurred a SRP MFT 35 or MFT 65 liability that was not included in the prior IA, the debt is not considered an additional liability for IA reinstatement purposes. The IA must be reinstated when SRP MFT 35 or MFT 65 liabilities are the only modules not included in the prior IA.

Example: John Doe had an IA for 30-201412 income taxes when his bankruptcy was filed on 05/15/2015. John's IA was suspended by the bankruptcy. During the pendency of the bankruptcy case, he incurred a SRP MFT 35 liability for 201512 but no additional income tax liability. His bankruptcy case was dismissed on 06/01/2016. The IRS reinstated the installment agreement because there was no additional liability for IA reinstatement purposes.

To reinstate a regular installment agreement in which the taxpayer made payments directly to IRS, follow the procedures in Exhibit 5.9.17-2, Regular Installment Agreement Reinstatements. See IRM 5.9.17.24.2, Reinstating the IA When All Modules Except a SRP Liability Were Included in the Prior IA, for steps in reinstating a prior IA and all modules except SRP liabilities were included in the prior IA. When the prior IA was a Direct Debit or Payroll Deduction Installment Agreement (IA), the installment agreement must be reinstated as a Regular IA and Letter 2273-C, Installment Agreement Acceptance & Terms Explanation, sent to the taxpayer. You must change the IA locator number to 0136 (Campus Initiated & Streamlined) or 0109 (Campus & Other). However, if you are inputting the IA with a cross reference TIN, use locator number 0163 (Campus and Cross Reference TIN). Follow the procedures in Exhibit 5.9.17-3, Reinstating Direct Debit or Payroll Deduction Installment Agreements as a Regular Installment Agreement.

- (5) **IA Reinstatements when a TDI (Del Ret) is Present.** IDRS will not allow the input of an IA when there is an open TDI (Del Ret) for an unfiled return. However, this is not a reason for the IRS to terminate the IA. Caseworkers must close the TDI (Del Ret) and input the installment agreement. See Exhibit 5.9.17-4 for the procedures to be used in these instances. Reinstatement on BMF Cases with an Open TDI (Del Ret) - If the prior IA was on a BMF account, CIO will transfer the case to FI to address the open TDI. FI will follow guidance in IRM 5.1.11, Delinquent Return Investigations, for closing the TDI. Once FI determines how to close the TDI, follow the steps in Exhibit 5.9.17-4.
- (6) **IA Reinstatements in Chapter 7 Cases with a Trustee Turnover Order.** When an installment agreement is reinstated, any TC 520 must be reversed on period(s) to be included in the IA. If there is a refund turnover order in the case and a TC 520 cc 81 is present on a module included in the installment agreement, the TC 520 cc 81 must be reversed. Then, a TC 520 cc 81 must be input on the current year; i.e. 2013, to freeze the refund. See Exhibit 5.9.17-2 and Exhibit 5.9.17-3 for additional information.
- (7) **Installment Agreement Cannot be Reinstated.** When a bankruptcy case is closed and the primary taxpayer has incurred an additional liability that was not included in the original IA, the IA cannot be reinstated. This includes any post-petition liabilities incurred by the debtor and included in a post-petition IA. It does not include a SRP liability incurred by the debtor and not included in the prior IA unless the debtor has also incurred a liability in addition to the SRP module(s).

Example: Taxpayer had an IA for 30-201612 and 30-201712 when he filed Chapter 13 on 03/14/2018. Taxpayer's IA was suspended by the bankruptcy filing. During the pendency of the bankruptcy case, Taxpayer accrued a post-petition liability for 30-201812. IRS granted Taxpayer a post-petition IA for the 30-201812 liability. Taxpayer's bankruptcy case was dismissed on 05/01/2018. Since the 30-201812 liability was not included in the prior IA that was suspended by the bankruptcy filing, IRS could not reinstate the IA because Taxpayer incurred a liability not included in the prior IA.

Example: Taxpayer had an IA for 30-201412 taxes when his Chapter 13 bankruptcy case was filed on 05/15/2015. Taxpayer's IA was suspended by the bankruptcy filing. During the pendency of the bankruptcy, Taxpayer accrued a liability for 30-201512 income taxes. He also incurred a SRP MFT 35 liability for 201512. On 06/01/2016, Taxpayer's bankruptcy case

was dismissed. The IRS did not reinstate Taxpayer's prior IA. The additional income tax liability on 30-201512, *not the SRP liability*, was the reason the prior IA could not be reinstated. If Taxpayer had only incurred the SRP liability, Insolvency could have reinstated the prior IA on the 30-201412 taxes.

When the IA is not reinstated, the IRS is terminating the IA. The taxpayer must be notified of the termination of the IA and be given appeal rights. In this instance, send Letter 2975-C, Intent to Terminate IA, to the taxpayer. Follow the instructions in Exhibit 5.9.17-5, Installment Agreement Cannot be Reinstated. Instructions for issuing the Letter 2975-C are in the following subsection.

5.9.17.24.1
(07-25-2022)
**Installment Agreement
Letters Used During
Case Closure**

- (1) **Introduction.** As mentioned above, caseworkers must issue letters to the taxpayer when the installment agreement (IA) is not being reinstated or when a Direct Debit or Payroll Deduction IA is reinstated as a regular IA. These letters are issued through the **Letters** tool on IAT. Instructions for issuing the letters follow.
- (2) **Letter 2273-C.** The Letter 2273-C, Installment Agreement Acceptance & Terms Explanation, must be issued when reinstating a Direct Debit or Payroll Deduction Agreement as a regular IA, waiving the user fee. Do **not** select Paragraph U when issuing the letter since the user fee is not charged. Select the following paragraphs when issuing Letter 2273-C:
 - A (SSN or EIN).
 - B (Form Number(s)).
 - C (Tax Period(s)).
 - K (Add "reinstated", payment amount, due date, and first payment date).
 - V
 - W
 - X
 - 1 (Only include when the debtor owes a SRP liability and the SRP liability was included in the prior IA).
 - 6
 - 9
 - a
 - c (Phone number) - Insert the appropriate telephone contact number from below.
 - h(Payment submission information). Access SERP to determine the address code to use, as follows: Who/WhereCollection Payments/Addresses/IssuesCollection PaymentsInput BOD & StateRA Input Code appears along with the address information. Use the first two digits of the code; i.e., SI -17 Cincinnati, so you would input "SI" as the letter code.
 - i (Return address for any forms included with the letter; such as, Form 2159, Payroll Deduction Agreement. To locate the return address: Access SERP at <http://serp.enterprise.irs.gov/homepage.html>, Select the "Who/Where" tab, Select "Where to File - Forms and Payments," Select "Where to File Addresses by Form," Select "Alpha or Numeric" and select the form or letter by the number, Select **Collection Campus** for the mailing address. The campus is determined by the debtor's state of residence.

When prompted, add the TIN, tax form, tax period, first payment date and payment amount.

Note: For additional information, see Letter 2273-C in the Numeric Index on SERP at <http://serp.enterprise.irs.gov/databases/forms-ltrs-pubs.dr/crxmltrs.dr/c.dr/2273c.htm>. Additional information can also be found in IRM 2.4.6, IDRS Terminal Input, Command Codes LETER, LPAGE, LPAGD, LETUP, LETED, LLIST, and LREVV.

- (3) **Letter 2975-C.** Letter 2975-C, Intent to Terminate Installment Agreement, is sent to the taxpayer when the IA is not being reinstated because the taxpayer has incurred an additional liability that was not included in the prior IA. Include any additional tax liabilities not included in the original IA in Paragraph G.

Reminder: When the bankruptcy case is closed and the only additional amount due not included in the prior IA is the SRP liability, the debtor's IA is not terminated. The IA must be reinstated.

If the debtor has additional tax liabilities and also incurred a liability for a SRP MFT 35 or SRP MFT 65 module, check Paragraph E on the Letter 2975-C. Paragraph E states:

You owe a shared responsibility payment (SRP) because one or more members of your tax household didn't have minimum essential health coverage or qualify for an exemption from coverage per IRC 5000A. The SRP amount that you owe is not subject to a Notice of Federal Tax Lien filing, a levy on your property, or the Failure to Pay penalty. However, we charge interest on unpaid SRP balances. We may also apply your federal tax refunds to the SRP balance until it is paid in full. If you need health coverage, visit www.healthcare.gov to learn about health insurance options that are available for you and your family, how to purchase health insurance, and how you might qualify to get financial assistance with the cost of insurance.

Select Paragraph G when sending letters to each spouse on a joint return. Insert the appropriate phone number from below. Use the following information when preparing the Letter 2975-C:

- In item **02** (Payoff amount per INTST), add 30 days to the day the letter is being created.
- G (Form #, tax period, and balance due) - include each period that has a balance due.
- H (Select H when there are more balance due periods than can be included in Paragraph G).

Note: For additional information, see Letter 2975-C in the Numeric Index on SERP at <http://serp.enterprise.irs.gov/databases/forms-ltrs-pubs.dr/crxmltrs.dr/c.dr/2975c.htm>. Additional information can also be found in IRM 2.4.6, IDRS Terminal Input, Command Codes LETER, LPAGE, LPAGD, LETUP, LETED, LLIST, and LREVV.

- (4) **Contact Numbers on Letter 2273-C and Letter 2975-C.** Letters 2273-C and 2975-C are both printed and mailed weekly. The L2273-C is processed at the National Processing Site. The L2975-C is processed at the Philadelphia Campus. Taxpayers should be directed to contact Automated Collection System (ACS) to respond to both letters. The contact number included on

these letters is based on the type of entity, Individual Master File (IMF) or Business Master File (BMF). Contact numbers are as follows:

- 1-800-829-3903 BMF
- 1-800-829-7650 IMF

5.9.17.24.2
(12-09-2016)
**Reinstating the IA when
All Modules Except a
SRP Liability were
Included in the Prior IA**

- (1) **SERP Liabilities and Prior IAs.** Joint SRP MFT 35 liabilities and mirrored SRP MFT 65 liabilities can be included in an IA reinstatement when the SRP liability was included in the prior IA. The CIO takes routine actions to reinstate the IA when there are no additional liabilities and the prior IA included a SRP liability. If the SRP liability was not included in the original IA, it cannot be included in the reinstatement. However, the IA cannot be terminated when the only liability not included in the prior IA is a SRP liability. The CIO is required to follow specific guidance to reinstate the IA when the only additional amount due is a SRP liability.
- (2) **Steps to Reinstate the Prior IA When the Only Debt Not Included in the Prior IA is a SRP Liability.** CIO will take the following steps to reinstate an IA at case closure when the only debt not included in the prior IA is a SRP liability:
 - a. Add an "IA Issues" case classification to the Case Classification Screen on AIS, if not already present.
 - b. Input a TC 520 cc 64 to any MFT 35 and/or MFT 65 module(s) not included in the original IA using the bankruptcy petition date. This will put the SRP modules into IDRS ST 72.
 - c. Input a TC 971 AC 063 to all modules included in the IA reinstatement.

Caution: Do *not* input a TC 971 AC 063 to the SRP modules unless they were included in the original IA.

 - d. Reverse the TC 520 cc 6X on the pre-petition modules using the dismissal or discharge date. Do *not* reverse the TC 520 cc 64 on the SRP modules unless they were included in the original IA being reinstated.
 - e. Input the IA to IDRS for only the modules included in the original IA. *Do not include the SRP module(s) in the IA reinstatement unless included in the original IA.* Follow the guidance in Exhibit 5.9.17-2 through Exhibit 5.9.17-4, as appropriate.
 - f. Once the pre-petition modules are in ST 60 on IDRS, reverse the TC 520 cc 64 on the SRP modules that were not included in the prior IA using a TC 522. The TC 522 will take the MFT 35 and/or MFT 65 module(s) out of ST 72.
 - g. Input a TC 530 cc 35 on the SRP modules(s) with a 2-cycle posting delay if the SRP module(s) do not systemically return to ST 53.
 - h. Add all TC 520/TC 521/TC 522 and TC 971 transactions to the Freeze Screen for the case on AIS.
 - i. Document all actions taken on the case in the AIS history.
 - j. Close the case on AIS using the date actions are completed on AIS.

5.9.17.25
(07-25-2022)
**Processing TC 604
Reversal Requests**

- (1) **Background.** The IRS cannot assess a tax deficiency until after the taxpayer is given an appropriate opportunity to file a petition with the Tax Court for re-determination of the deficiency, pursuant to IRC 6213(a). The running of the 90-day period for filing a Tax Court petition, pursuant to IRC 6213(f)(1), is suspended while the taxpayer is prohibited by reason of the bankruptcy case

from filing a petition, plus for 60 days thereafter. Under Bankruptcy Code 362(a)(8), the automatic stay prohibits the commencement or continuation of a Tax Court case of an individual for a taxable period ending before the date of the bankruptcy order for relief. While individual taxpayers are in bankruptcy, the automatic stay prevents them from petitioning the Tax Court on pre-petition tax periods and indirectly tolls the period during which a petition with the Tax Court can be filed. A pre-petition tax period is a period that begins and ends prior to the bankruptcy petition date. The 90-day period begins or resumes 60 days after the automatic stay terminates. IRM 5.9.17.6.5(4) addresses actions to reinstate the TC 290 due to an unagreed AUR deficiency reversed post-petition in a dismissed case. It also addresses actions to reinstate the TC 300 due to an unagreed Examination deficiency reversed post-petition in the dismissed case. IRM 5.9.18.3(2), Automated Discharge System (ADS), CIO Predischarge Review, Technician Actions, discusses actions required at discharge when a TC 290 or TC 291 requires action prior to closing the case. IRM 5.9.18.7(2), Automated Discharge System (ADS), Hold Conditions, Initial Credit Balance and Unresolved Credit Balance, addresses credit balance modules in which a TC 922 is present. Frequently, these credits are bankruptcy payments on a proof of claim filed by the IRS for the unassessed AUR deficiency. Following IRM 5.9.18, Automated Discharge System (ADS), prior to closure of the discharged case generally results in assessment of the AUR deficiency prior to ADS closure. Occasionally, AUR needs to assess a deficiency on a module abated by Insolvency due to the bankruptcy discharge. These modules are identified by IDRS Status 12, a TC 971 AC 031, and a subsequent TC 604.

- (2) **Procedures.** In these instances, AUR will contact Insolvency to request re-establishment of the balance due to allow assessment of the new TC 290 on IDRS. ADS will not make a second discharge determination. The caseworker must reopen the case on AIS. After the AUR assessment has posted on IDRS, the caseworker will make a manual discharge determination and take appropriate closing actions. Case actions depend on the bankruptcy chapter and type of discharge.

Note: Caseworkers may also need to follow these procedures if Examination requests reversal of a TC 604 on a module due to a bankruptcy discharge and a subsequent TC 300 is assessed.

See the following exhibits for additional information on processing AUR requests for TC 604 reversals and for determining dischargeability of the liability:

- Exhibit 5.9.17-8, Processing TC 604 Reversals and Determining Dischargeability in Chapter 7 and Chapter 11 Individual, Chapter 12 Individual, and Chapter 13 Cases with a Hardship Discharge
- Exhibit 5.9.17-9, Processing TC 604 Reversals and Determining Dischargeability when an Individual Received a Discharge Upon Completion of the Plan in a Chapter 13 Case
- Exhibit 5.9.17-10, Processing TC 604 Reversals and Determining Dischargeability Upon Completion of the Plan in an Individual Chapter 11 or Individual Chapter 12 Case
- Exhibit 5.9.17-11, Determining Dischargeability of Non-Pecuniary Loss Penalties when the Underlying Tax is Non-Dischargeable (Except in the Chapter 13 Case with a Discharge Upon Completion of the Plan)

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Exhibit 5.9.17-1 (07-25-2022)
Closing Dismissals

Entering Dismissal Date. The following actions must be completed to enter a dismissal date on AIS.

STEP	ACTION
1	Log onto AIS. (See IRM 5.9.11-1, Accessing a Case on AIS, Steps 1 through 3.)
2	Query AIS for the correct case for the debtor on the dismissal notice. (See IRM 5.9.11-1, Steps 4 - 10.)
3	Verify the case selected on AIS matches the case in question.
4	Move the cursor to the "Dismissed" field under "Closing Info & Dates" on the "Taxpayer Screen".
5	Type the dismissal date in MM/DD/YYYY format.
6	Move the cursor to the "Close Noticed" field. Type the date the IRS was noticed of the dismissal in MM/DD/YYYY format.
7	Select the "Closure Method" from the drop down menu. Select: <ul style="list-style-type: none"> • "DD DISCHARGE DENIED" for cases where the debtor was denied a discharge, • "D2 DISMISSED FOR FMT-D2" for cases dismissed for failure to pass the means test, or • "D1 REGULAR DISMISSAL-D1" for all other dismissals.
8	Select "SAVE" from the tabs at the top of the "Taxpayer Screen" to save the dismissal information entered.

Actions to Request Input of TC 521. In most dismissed cases, there is no need to request input of the TC 521 using the IIP tab. IIP will systemically input the TC 521 when the AIS Taxpayer Screen is updated with the dismissal method and date. The only time that the TC 521 must be requested through the IIP tab is when re-requesting the TC 521 more than once in a case. Follow the steps below to request input of the TC 521 through the IIP Indicators:

STEP	ACTION
1	Access the case on AIS using Steps 1 through 3 in the chart above.
2	Select the "IIP" tab.
3	If the case has not been selected for automatic IIP processing, an IIP indicator form stating "No matching records for this case" will appear. Select "OK".
4	The IIP indicators mode will appear. Select "Request TC 521" to request input of the TC 521.
5	IIP will save the record and write a systemic history on AIS to indicate the TC 521 has been requested. The history will state, "User CHECKED the Request TC 521 check box on the IIP indicators form. The case will be run through Process J and, if needed, TC 521(s) will be input."

Note: If the TC 521 is requested and it has been less than 10 days since the systemic process started, an AIS warning message will appear to alert the caseworker that the TC 521 processing has already started. The caseworker must wait 10 days or wait until the systemic mirroring process is complete to request the

Exhibit 5.9.17-1 (Cont. 1) (07-25-2022)**Closing Dismissals**

TC 521 through the IIP tab to avoid unpostable TC 521(s). An error message will also appear if IIP processing has already been requested and it has been less than 45 days since systemic mirroring started.

Caution: Do not use the IIP tab to “Request TC 521” if there is a balance due or delinquent return for any tax period on a case prior to running through IIP/ADS with no closure method and dismissal/discharge date. This request for TC 521 will input the current date when it is run through IIP/ADS.

Exhibit 5.9.17-2 (07-25-2022)**Regular Installment Agreement Reinstatements**

Regular IA Reinstatements. Caseworkers must follow the chart below when reinstating a regular installment agreement at the close of a case. Additionally:

- Ensure all DDRs have been resolved and TC 520(s) are reversed before proceeding with the actions in the chart below. An exception are those cases that need a TC 520 to re-direct a refund to the trustee in a Chapter 7 case due to a trustee turnover order. See below for the procedures in the turnover order case.
- There may be situations in which all TC 520(s) with a bankruptcy closing code have been reversed on all modules (TC 521/TC 522 has posted) and there are no other TC 520(s) on the module(s); i.e. TC 520 cc 70, 71, 73, 74, 76, 77, or 80, but the module(s) are still in Status 72. When this condition exists and it has been at least 3 weeks since the TC 521 posted or 5 weeks since the TC 522 posted, input a TC 470 followed by a TC 472 with a one-cycle posting delay.
- When reinstating an IA, the prior IA information may no longer be available on IDRS. When this has occurred, the IDRS command code IAORG may appear in lieu of IAREV.
- If the module is already in IDRS Status 60, document the AIS history to state, "Account in Status 60" and document the Business Objects report. Close any open installment agreement case classifications. Close the case on AIS. No other action is needed.
- If you are inputting the IA with a cross reference TIN, use locator number 0163.
- If there are any modules in ST 22 at the time the IA is reinstated, input a history on ACS to let ACS know that the modules are included in the IA reinstatement.
- If there are any modules in ST 26 at the time the IA is reinstated, contact the assigned RO to advise the RO that the IA meets reinstatement criteria and the modules are being included in the IA reinstatement.

Type of Liability	Case Assigned to CIO	Case Assigned to FI
No liability (including accruals) exists	<ul style="list-style-type: none"> • Close any installment agreement case classifications. • Document the AIS history to reflect actions taken. • Input the closure date on the AIS Taxpayer Screen. • Note action(s) taken on the Business Objects report. 	<ul style="list-style-type: none"> • Close any installment agreement case classifications. • Document the AIS history to reflect actions taken. • Input the closure date on the AIS Taxpayer Screen.

Exhibit 5.9.17-2 (Cont. 1) (07-25-2022)

Regular Installment Agreement Reinstatements

Type of Liability	Case Assigned to CIO	Case Assigned to FI
Liability exists and a Refund Turnover Order is in effect	<ul style="list-style-type: none"> TC 520(s) must be reversed on any period(s) included in the IA. If the refund turnover order covers a period that was included in a prior IA, you should input a TC 521 on the module then input a TC 520 cc 81 on the current year; i.e., 2015 to freeze the refund. Reinstate the IA on IDRS, waiving the user fee, based on the "Type of Liability" column in this table. Close any installment agreement case classification(s). Document the AIS history to reflect actions taken. Note any action(s) taken on the Business Objects report. <p>Caution: Do not close the TTEE RFND case classification or close the case on AIS.</p>	<ul style="list-style-type: none"> Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - ADDRESS REFUND TURNOVER AND REINSTATE IA". Add "IA" case classification to AIS, if there is no classification present that identifies action needed due to a prior IA. Reassign the case to the CIO. <p>Caution: Do not close the TTEE RFND or IA case classification(s), reverse the TC 520 cc 81, or close the case on AIS.</p>
IMFOL balance is below the original IA payment amount	<ul style="list-style-type: none"> Reinstate the IA on IDRS using the IMFOL balance as the IA payment amount and waive the user fee. Close any installment agreement case classification(s). Document the AIS history with any actions taken. Input the closure date in the "On AIS" date field on the AIS Taxpayer Screen. Note any action(s) taken on the Business Objects report. 	<ul style="list-style-type: none"> Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - REINSTATE IA" Add an "IA" case classification to AIS, if there is no classification present to identify the prior IA that must be addressed. Reassign the case to the CIO. <p>Caution: Do not close any IA case classification(s) or close the case on AIS.</p>

Exhibit 5.9.17-2 (Cont. 2) (07-25-2022)

Regular Installment Agreement Reinstatements

Type of Liability	Case Assigned to CIO	Case Assigned to FI
Liability exists on individual or jointly filed returns (FS 1, 2, 3, or 4) and/or individual SRP MFT 65 liabilities or joint SRP MFT 35 liabilities <i>that were included in the prior IA</i>	<ul style="list-style-type: none"> Reinstate IA on IDRS waiving the user fee. Close any installment agreement case classification(s). Document the AIS history with actions taken. Input the closure date in the "On AIS" field on the AIS Taxpayer Screen. Note any action(s) taken on the Business Objects report. 	<ul style="list-style-type: none"> Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - REINSTATE IA." Add an "IA" case classification to AIS, if there is no classification present that identifies the prior IA that must be addressed during closure. Reassign the case to the CIO. <p>Caution: Do not close any IA case classification(s) or close the case on AIS.</p>
Liability exists on MFT 31 modules for both the debtor and non-debtor spouse and/or liability exists on SRP MFT 35 modules for both the debtor and non-debtor spouse and the SRP was included in the prior IA	<ul style="list-style-type: none"> Reinstate the IA on IDRS for the MFT 31 and/or MFT 65 module(s) under the TIN for the individual that was the primary TP on the MFT 30 and/or MFT 35 account, waiving the user fee. Include X-Ref TIN on IAORG of the secondary taxpayer on the MFT 30 and/or MFT 35 account(s) to put the MFT 31 and/or MFT 65 module(s) of the secondary taxpayer in Status 63 using locator code 0163. Close any installment agreement case classification(s). Document the AIS history with actions taken. Input the closure date in the "On AIS" field on the AIS Taxpayer Screen. Note any action(s) taken on the Business Objects Report. 	<ul style="list-style-type: none"> Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO, REINSTATE IA ON TIN XXX-XX-XXXX AND X-REF TIN XXX-XX-XXXX." Add an "IA" case classification, if there is no classification present to identify the prior IA that must be addressed during closure. Reassign the case to the CIO. <p>Caution: Do not close any IA case classification(s) or close the case on AIS.</p>

Exhibit 5.9.17-2 (Cont. 3) (07-25-2022)**Regular Installment Agreement Reinstatements**

Type of Liability	Case Assigned to CIO	Case Assigned to FI
Liability exists on the MFT 31 module for only the non-debtor spouse and/or MFT 65 module for only the non-debtor spouse and the SRP was included in the prior IA	<ul style="list-style-type: none"> Reinstate the IA on IDRS on the MFT 31 and/or MFT 65 module(s), waiving the user fee. Close any installment agreement case classification(s). Document the AIS history with actions taken. Input the closure date in the "On AIS" field on the AIS Taxpayer Screen. Note any action(s) taken on the Business Objects report. 	<ul style="list-style-type: none"> Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - REINSTATE IA ON NDS MFT 31 and/or MFT 65 TIN XXX-XX-XXXX." Add an "IA" case classification to AIS, if there is no classification present to identify the prior IA that must be addressed during case closure. Reassign the case to the CIO. <p>Caution: Do not close any IA case classification(s) or close the case on AIS.</p>

Exhibit 5.9.17-3 (07-25-2022)**Reinstating Direct Debit or Payroll Deduction Agreements as a Regular Installment Agreement**

Reinstating the DDIA and PDIA as a Regular IA. Caseworkers must follow the chart below when reinstating a Direct Debit or Payroll Deduction agreement as a regular installment agreement (IA) at the close of a case. Additionally:

- Ensure all DDRs have been resolved and TC 520(s) are reversed before proceeding with actions in the chart below. An exception are those cases that need a TC 520 to re-direct a refund to the trustee in a Chapter 7 case due to a trustee turnover order. See below for the procedures in the turnover order case.
- There may be situations in which all TC 520(s) with a bankruptcy closing code have been reversed on all modules (TC 521/TC 522 has posted) and there are no other TC 520(s) on the module(s); i.e. TC 520 cc 70, 71, 73, 74, 76, 77 or 80, but the module is still in Status 72. When this condition exists and it has been at least 3 weeks since the TC 521 posted or 5 weeks since the TC 522 posted, input a TC 470 followed by a TC 472 with a one-cycle posting delay.
- When reinstating an IA, the prior IA information may no longer be available on IDRS. When this has occurred, the command code IAORG may appear in lieu of IAREV.
- If the module is already in Status 60, document the AIS history to state, "Account in Status 60" and document the Business Objects report. Close any IA case classifications.
- When the previous IA was a DDIA or PDIA, and it can be reinstated, you must change the locator number to 0136 (Campus Initiated & Streamlined) or 0109 (Campus & Other). The prior DDIA or PDIA must be reinstated as a regular IA.
- If the IA is being input with a cross reference TIN, use locator number 0163.
- If there are any modules in ST 22 at the time the IA is reinstated, input a history on ACS to let ACS know that the modules are included in the IA reinstatement.
- If there are any modules in ST 26 at the time the IA is reinstated, contact the assigned RO to advise the RO that the IA meets reinstatement criteria and the modules are being included in the IA reinstatement.
- Close the case on AIS. No other action is needed.

Type of Liability	Assigned to CIO	Assigned to FI
No liability (including accruals) exists	<ul style="list-style-type: none"> • Close any installment agreement case classifications. • Document the AIS history to reflect actions taken. • Input closure date on the AIS Taxpayer Screen. • Note action(s) taken on the Business Objects report. 	<ul style="list-style-type: none"> • Close any installment agreement case classifications. • Document the AIS history to reflect actions taken. • Input closure date on the AIS Taxpayer Screen.

Exhibit 5.9.17-3 (Cont. 1) (07-25-2022)**Reinstating Direct Debit or Payroll Deduction Agreements as a Regular Installment Agreement**

Type of Liability	Assigned to CIO	Assigned to FI
Liability exists and a Refund Turnover Order is in effect	<ul style="list-style-type: none"> • TC 520(s) must be reversed on any period(s) included in the IA. If the refund turnover order covers a period that was included in a prior IA, you should input a TC 521 on the module then input a TC 520 cc 81 on the current year; i.e., 2015 to freeze the refund. • Reinstate the IA on IDRS, waiving the user fee, based on the "Type of Liability" column in this table. • Issue L 2273-C (see IRM 5.9.17.24.1). • Close any installment agreement case classification(s). • Document the AIS history to reflect actions taken. • Note any action(s) taken on the Business Objects report. <p>Caution: Do not close the TTEE RFND case classification or close the case on AIS.</p>	<ul style="list-style-type: none"> • Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - ADDRESS REFUND TURNOVER AND REINSTATE DDIA/PDIA AS A REGULAR IA." • Add "IA Issues" case classification to AIS, if an installment agreement classification is not already present. • Reassign the case to the CIO. <p>Caution: Do not close the TTEE RFND or IA case classification(s), reverse the TC 520 cc 81, or close the case on AIS.</p>

Exhibit 5.9.17-3 (Cont. 2) (07-25-2022)

Reinstating Direct Debit or Payroll Deduction Agreements as a Regular Installment Agreement

Type of Liability	Assigned to CIO	Assigned to FI
IMFOL balance is below the original IA payment amount	<ul style="list-style-type: none"> Reinstate the IA on IDRS using the IMFOL balance as the IA payment amount and waive the user fee. Use locator code 0136 or 0109. Issue L 2273-C (see IRM 5.9.17.24.1). Close any installment agreement case classification(s). Document the AIS history with any actions taken. Input the closure date in the "On AIS" date field on the AIS Taxpayer Screen. Note any action(s) taken on the Business Objects report. 	<ul style="list-style-type: none"> Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - REINSTATE DDIA/PDIA AS REGULAR IA." Add "IA Issues" case classification to AIS, if an installment agreement classification is not already present. Reassign the case to the CIO. <p>Caution: Do not close any IA case classification(s) or close the case on AIS.</p>
Liability exists on individual or jointly filed returns (FS 1, 2, 3, or 4) and/or individual SRP MFT 65 or joint SRP MFT 35 modules that were included in the prior IA	<ul style="list-style-type: none"> Reinstate the IA on IDRS as a regular IA, waiving the user fee. Use locator code 0136 or 0109. Issue L 2273-C (see IRM 5.9.17.24.1). Close any installment agreement case classification(s). Document the AIS history with any actions taken. Input the closure date in the "On AIS" date field on the AIS Taxpayer Screen. Note any action(s) taken on the Business Objects report. 	<ul style="list-style-type: none"> Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - REINSTATE DDIA/PDIA AS REGULAR IA." Add "IA Issues" case classification to AIS, if an installment agreement classification is not already present. Reassign the case to the CIO. <p>Caution: Do not close any IA case classification(s) or close the case on AIS.</p>

Exhibit 5.9.17-3 (Cont. 3) (07-25-2022)**Reinstating Direct Debit or Payroll Deduction Agreements as a Regular Installment Agreement**

Type of Liability	Assigned to CIO	Assigned to FI
Liability exists on MFT 31 module(s) for both the debtor and non-debtor spouse and/or individual SRP MFT 65 or joint SRP MFT 35 modules that were included in the prior IA	<ul style="list-style-type: none"> Reinstate the IA on IDRS as a regular IA under TIN for the individual that was the primary TP on the MFT 30 and/or MFT 35 account, waiving the user fee. Include X-Ref TIN on IAORG of the secondary taxpayer on the MFT 30 and/or MFT 35 account to put the MFT 31 and/or MFT 65 module(s) of the secondary TIN in Status 63 using locator code 0163. Issue L 2273-C (see IRM 5.9.17.24.1). Close any installment agreement case classification(s). Document the AIS history with any actions taken. Input the closure date in the "On AIS" date field on the AIS Taxpayer Screen. Note any action(s) taken on the Business Objects report. 	<ul style="list-style-type: none"> Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - REINSTATE DDIA/PDIA AS REGULAR IA on TIN XXX-XX-XXXX & X-REF TIN XXX-XX-XXXX." Add "IA Issues" case classification to AIS if an installment agreement classification is not already present. Reassign the case to the CIO. <p>Caution: Do not close any IA case classification(s) or close the case on AIS.</p>
Liability exists on MFT 31 module(s) for only the non-debtor spouse and/or SRP MFT 65 module(s) for only the non-debtor spouse and the SRP was included in the prior IA	<ul style="list-style-type: none"> Reinstate the IA on IDRS, waiving the user fee and updating the locator code to 0136 or 0109. Issue L 2273-C (see IRM 5.9.17.24.1). Close any installment agreement case classification(s). Document the AIS history with any actions taken. Input the closure date in the "On AIS" date field on the AIS Taxpayer Screen. Note any action(s) taken on the Business Objects report. 	<ul style="list-style-type: none"> Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - REINSTATE DDIA/PDIA AS REGULAR IA on NDS MFT 31 TIN XXX-XX-XXXX." Add "IA Issues" case classification to AIS, if an installment agreement classification is not already present. Reassign the case to the CIO. <p>Caution: Do not close any IA case classification(s) or close the case on AIS.</p>

Exhibit 5.9.17-4 (07-25-2022)**Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)**

Secure Information From IDRS. When addressing TDI (Del Ret) periods, the caseworker must determine if the taxpayer's income was above the filing requirement for the respective periods:

- a. Determine the taxpayer's year of birth using IDRS command code INOLES.
- b. Access the taxpayer's income for the TDI (Del Ret) period(s) using IDRS command code IRPTRL.
- c. Based on the birth year and the income for the respective period(s), determine if the income was above the filing requirement using the *Filing Requirements* table below.
- d. If the income for any TDI (Del Ret) periods was above the filing requirement, determine if there would be a refund or balance due on that period.

Determine Potential Tax. Caseworkers can determine the tax or refund potential for TDI (Del Ret) periods using IAT Compliance Suite Tools or IDRS command code IRPTR. Additional guidance can be found on the use of these command codes in IRM 2.3.35, Command Code IRPTR, and at <http://serp.enterprise.irs.gov/job-aids/command-code/irptr-input.html>

- IRPTRL lists the available income information and withholding credits for the specific TDI (Del Ret) period.
- IRPTRJ totals the income and calculates the projected tax or refund due.
- IRPTRO displays the projected tax or refund due calculated by IRPTRJ.

Caution: The Summary screens should not be sent to the taxpayer. The subsequent IRPTR docs are identical to the ones the IRS sends out when we access IRPTRW (assuming disclosure is met).

Required Actions for Resolution. Based on the tax potential and case assignment, proceed as follows in the chart below.

Reminder: When IA reinstatement is needed on a BMF account, and there is an open TDI (Del Ret), the case must be transferred from CIO to FI to resolve the open TDI. FI will resolve the TDI (Del Ret) using guidance in IRM 5.1.11, Delinquent Return Investigations.

If there are modules assigned to a RO or ACS when reinstating a prior IA and there is an open TDI, notate actions taken on the account in the ACS history. Contact the assigned RO to advise the RO if there are modules assigned to a RO.

Exhibit 5.9.17-4 (Cont. 1) (07-25-2022)**Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)**

Actions to Resolve TDI (Del Ret)	Assigned to CIO	Assigned to Field Insolvency (FI)
Income below filing requirements (see Filing Requirements table below)	<ul style="list-style-type: none"> Review the IRPTR income for the TDI (Del Ret) period(s) and the filing requirements, below. If the income was below the filing requirements, document the findings in the AIS history. For example, "IRPTRL income of \$XXXX was below the filing requirement for 2011." Input a TC 590 cc 051 to each module with income below filing requirements. Managerial approval is not required. Reinstate the IA using routine procedures. Close any open installment agreement case classification(s). Input closure date on AIS. Notate any actions taken on the Business Objects report. 	<ul style="list-style-type: none"> Review the IRPTR income for the TDI (Del Ret) period(s) and the filing requirements, below. If the income was below the filing requirements, document the findings in the AIS history. For example, "IRPTRL income of \$XXXX was below the filing requirement for 2011." In ALL CAPITALS write, "INSTRUCTIONS TO CIO - INPUT TC 590 cc 051 to periods(s) XX-XXXXXX AND REINSTATE IA." Specify the periods where the income was below the filing requirement. Add "IA Issues" case classification. Reassign the case to the CIO. <p>Note: All actions (except input of the TC 590 cc 051, IA reinstatement, and closure of the case) should be taken prior to transferring the case to the CIO.</p>

Exhibit 5.9.17-4 (Cont. 2) (07-25-2022)

Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)

Actions to Resolve TDI (Del Ret)	Assigned to CIO	Assigned to Field Insolvency (FI)
Refund(s) Due	<ul style="list-style-type: none"> Document the AIS history with refund amount(s) from IDRS command code IRPTRO for the TDI (Del Ret) periods. Input a TC 590 cc 053 to each module with a refund due. Managerial approval is not required. If a TC 590 cc 053 has been input to all periods on the TDI, reinstate the installment agreement using routine procedures. Close any installment agreement case classification(s). Input closure date on AIS. Note any actions taken on the Business Objects report. 	<ul style="list-style-type: none"> Document the AIS history with refund amount(s) from IDRS command code IRPTRO for the TDI (Del Ret) periods. In ALL CAPITALS write, "INSTRUCTIONS TO CIO - INPUT TC 590 cc 053 AND REINSTATE INSTALLMENT AGREEMENT. Specify the period(s) with refund(s) due." Add "IA Issues" case classification. Reassign case to CIO. <p>Note: Before transferring the case to CIO, all actions should be taken (except input of the TC 590 cc 053, IA reinstatement, and closure of the case).</p>

Exhibit 5.9.17-4 (Cont. 3) (07-25-2022)

Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)

Actions to Resolve TDI (Del Ret)	Assigned to CIO	Assigned to Field Insolvency (FI)
Estimated balance reflects	<ul style="list-style-type: none"> Document the AIS history with balance due from IDRS command code IRPTRO for the TDI (Del Ret) periods. Balance on all open TDI period(s) is below tolerance, input TC 590 cc 052 (little or no tax due) <i>after securing managerial approval</i>. If a combination of TC 590 cc 051, cc 052 and/or 053 has been input to close all open TDI periods, reinstate the installment agreement using routine installment agreement procedures. Close any installment agreement case classification(s). Input closure date on AIS. Note any actions taken on the Business Objects report. <p>Note: Managerial approval must be documented in the AIS history. If approval is documented by a FI manager, it is not necessary for CIO to secure additional approval from a CIO manager.</p>	<ul style="list-style-type: none"> Document the AIS history with balance due from IDRS command code IRPTRO for the TDI (Del Ret) periods. Balance on all open TDI period(s) is below tolerance, TC 590 cc 052 (little or no tax due) can be used to close the module(s) <i>after securing managerial approval</i>. In ALL CAPITALS in the AIS history state, "INSTRUCTION TO CIO - INPUT TC 590 cc 52 TO XX-XXXXXX (SPECIFY MFT & PERIODS) AND REINSTATE INSTALLMENT AGREEMENT." Add "IA Issues" case classification. Request managerial approval. After managerial approval is documented by the manager in the AIS history, reassign the case to the CIO. <p>Caution: Before transferring to CIO, managerial approval must be documented in the AIS history.</p> <p>Note: All actions (except input of the TC 590 cc 052, IA reinstatement, and closure of case) should be taken prior to transferring the case to the CIO.</p>

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Exhibit 5.9.17-4 (Cont. 4) (07-25-2022)

Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)

Actions to Resolve TDI (Del Ret)	Assigned to CIO	Assigned to Field Insolvency (FI)
Referral to Exam required when the aggregate potential	<ul style="list-style-type: none"> Document the income secured from IDRS research (birth year, filing status, income information, etc.) in the AIS history. Document the AIS history with balance due from IDRS command code IRPTRO for the TDI (Del Ret) periods. State in the AIS history that a referral to Exam is needed and after the referral has been completed, FI needs to reassign to the CIO. Input case classification "IA Issues". Input STAUP 2206. Reassign the case to FI. <p>If the case was reassigned from FI with a request to input the TC 595 cc 057, see below.</p>	<p>Within 5 workdays of receipt of the electronic notification from AIS via Microsoft Outlook E-mail of the assignment of the case, the FI caseworker must take the actions below. If the TDI was reviewed by the CIO and the case was transferred to FI for preparation of the Exam referral, the FI caseworker can skip to the 3rd bullet below. If the case was not transferred from the CIO to FI, the caseworker must address all of the bullets below:</p> <ul style="list-style-type: none"> Document income secured from IDRS research (birth year, filing status, income information, etc.) in the AIS history. Document the AIS history with balance due from IDRS command code IRPTRO for the TDI (Del Ret) periods. Prepare Form 3449, Referral Report, and refer the TDI period(s) to Exam. See IRM 5.1.11.7.3, Enforcement Referrals - Individual Master File (IMF) Del Ret, for additional information. Notate all actions taken in the AIS case history. In ALL CAPITALS, state in the AIS case history, "INSTRUCTIONS TO CIO - INPUT TC 595 cc 057 AND REINSTATE INSTALLMENT AGREEMENT." Input case classification "IA Issues" if not already present. Reassign case to CIO. <p>Note: All actions (except input of the TC 595 cc 057, IA reinstatement, and closure of the case) should be taken prior to transferring the case from FI to the CIO.</p>

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Exhibit 5.9.17-4 (Cont. 5) (07-25-2022)**Procedures for Reinstating an Installment Agreement (IA) with an Open TDI (Del Ret)**

Actions to Resolve TDI (Del Ret)	Assigned to CIO	Assigned to Field Insolvency (FI)
Case Reassigned from FI to CIO	<p>If guidance for resolution of the TDI has been noted in the AIS history, CIO will take action(s) to close the TDI and reinstate the IA per above procedures.</p> <p>Note: If guidance for resolution of the TDI has not been noted in the AIS history, CIO will reassign the case to FI.</p>	N/A

Filing Requirements. Use the table below to determine if the taxpayer's income was below the filing requirement for the specific year. For subsequent tax years, see Pub 17, Your Federal Income Tax (For Individuals).

Tax Year	Under 65 Years of Age	65 Years and Older
2021	\$12,550	\$14,250
2020	\$12,400	\$14,050
2019	\$12,200	\$13,850
2018	\$12,000	\$13,600
2017	\$10,400	\$11,950
2016	\$10,350	\$11,900
2015	\$10,300	\$11,850
2014	\$10,150	\$10,700
2013	\$10,000	\$11,500

Exhibit 5.9.17-5 (07-25-2022)**Installment Agreement Cannot Be Reinstated**

IA Cannot Be Reinstated. When the primary taxpayer has incurred an additional liability that was not included in the original installment agreement, the installment agreement cannot be reinstated. Follow the procedures in the chart below in these instances.

Reminder: When the only liability not included in the prior IA is a SRP liability, the IA must be reinstated. For IA reinstatement purposes, the SRP is not considered an additional liability. See IRM 5.9.17.24.2, Reinstating the IA when All Modules Except a SRP Liability were Included in the Prior IA, to reinstate an IA with only additional SRP module(s).

Field Insolvency Actions. When the case is assigned to Field Insolvency (FI) and the caseworker determines that the IA cannot be reinstated, the FI caseworker will take the following actions:

- Document the AIS history in ALL CAPITALS, "INSTRUCTIONS TO CIO - IA CANNOT BE REIN- STATED DUE TO BALANCE DUE ON XX-XXXXXX. ISSUE LETTER 2975-C."
- Add an "IA Issues" case classification to AIS, if not already present.
- Reassign the case to CIO.

CIO Actions. CIO will take the actions in the table below. If there are modules assigned to a RO, the CIO will contact the assigned RO and advise them of the actions taken and that the IA is not being reinstated. If there are modules assigned to ACS, the CIO will notate actions taken on the account in the ACS history. The Letter 2975-C, Intent to Terminate Installment Agreement, does not include Collection Due Process Notice. **Do not input a TC 971 AC 069 to the modules included in the Letter 2975-C on IDRS.**

IF	THEN
Individual Filed Return (FS 1, 3, or 4)	<ul style="list-style-type: none"> • Send Letter 2975-C (IRM 5.9.17.24.1). • Input STAUP for 6 cycles (2206). • Close any installment agreement case clas- sifications on AIS. • Document the AIS history to reflect action(s) taken. • Input closure date on the Taxpayer Screen in the "On AIS" date. • Note any action(s) taken on the Business Objects report.
Joint Filed Return (FS 2) and additional debt accrued on jointly filed return(s) that was not included in the original joint IA	<ul style="list-style-type: none"> • Send Letter 2975-C (IRM 5.9.17.24.1). • Input STAUP for 6 cycles (2206). • Close any installment agreement case clas- sifications on AIS. • Document the AIS history to reflect action(s) taken. • Input closure date on the Taxpayer Screen in the "On AIS" date. • Note any action(s) taken on the Business Objects report.

Exhibit 5.9.17-5 (Cont. 1) (07-25-2022)**Installment Agreement Cannot Be Reinstated**

IF	THEN
Joint Filed Return (FS 2) and balance due on separate filed return filed by the primary taxpayer on the IA that was not in the original IA	<ul style="list-style-type: none"> • Send Letter 2975-C (IRM 5.9.17.24.1) to the person listed as the primary taxpayer. • Input STAUP for 6 cycles (2206). • Close any installment agreement case classifications on AIS. • Document the AIS history to reflect action(s) taken. • Input closure date on the Taxpayer Screen in the "On AIS" date. • Note any action(s) taken on the Business Objects report.
Liability exists on MFT 31 modules for both the debtor and non-debtor spouse and both have accrued an additional tax liability on individually filed returns or on a joint return that was not included in the original IA	<ul style="list-style-type: none"> • Send Letter 2975-C (IRM 5.9.17.24.1). • Input STAUP for 6 cycles (2206). • Close any installment agreement case classifications on AIS. • Document the AIS history to reflect action(s) taken. • Input closure date on the Taxpayer Screen in the "On AIS" date. • Note any action(s) taken on the Business Objects report.
Liability exists on MFT 31 modules for both the debtor and non-debtor spouse and only one has accrued an additional debt from an individually filed tax return	<p>On the account of the individual that accrued the additional debt:</p> <ol style="list-style-type: none"> Send Letter 2975-C (IRM 5.9.17.24.1). Reverse the TC 520 (if not already reversed/pending). Input STAUP for 6 cycles (2206). <p>On the account of the individual that is in compliance (no additional debt accrued), reinstate the IA on IDRS waiving the user fee.</p> <p>AIS actions on both after the above is completed:</p> <ol style="list-style-type: none"> Close any installment agreement case classification(s) on AIS. Document the AIS history to reflect any action(s) taken. Input the closure date on the Taxpayer Screen in the "On AIS" date. Note any action(s) taken on the Business Objects report.

Exhibit 5.9.17-5 (Cont. 2) (07-25-2022)
Installment Agreement Cannot Be Reinstated

IF	THEN
Liability exists on MFT 31 module(s) for non-debtor spouse only and they accrued additional debt(s)	<ul style="list-style-type: none">• Send Letter 2975-C (IRM 5.9.17.24.1).• Input STAUP for 6 cycles (2206).• Close any installment agreement case classifications on AIS.• Document the AIS history to reflect action(s) taken.• Input closure date on the Taxpayer Screen in the "On AIS" date.• Note any action(s) taken on the Business Objects report.

Exhibit 5.9.17-6 (08-11-2014)**Determining Dischargeability Upon Completion of the Chapter 13 Plan when a SFR Assessment is Present**

Follow the chart below to determine dischargeability of late filed returns in Chapter 13 cases with a discharge upon plan completion in which a substitute for return was prepared under IRC 6020(b) in post-BAPCPA cases in all locations except the 8th Circuit. The 8th Circuit includes North Dakota, South Dakota, Nebraska, Iowa, Missouri, Minnesota, and Arkansas.

IF...	THEN...
1040 due within 3 years of the petition date,	The 3 year rule is not applicable if provided for under the plan and the debtor receives a discharge.
Unagreed SFR,	The tax is non-dischargeable ; however, penalties may be dischargeable.
Agreed SFR on or after 9/13/2005	The tax is non-dischargeable ; however, the penalties may be dischargeable.
No tax return has been filed by the debtor,	The tax is non-dischargeable ; however, the penalties may be dischargeable.
1040 filed before the SFR assessment date and the filing date is more than 2 years before the petition date,	The tax is dischargeable if provided for by the plan and all required payments were made.
1040 filed after the SFR assessment date, the filing date is within 2 years of the petition date, and there is a subsequent TC 290 or TC 300 with an additional tax assessment,	<p>The caseworker must consider the original SFR assessment (TC 290/TC 300) and subsequent TC 290/TC 300 separately.</p> <ul style="list-style-type: none"> • The original assessment will be non-dischargeable. • The subsequent assessment will be non-dischargeable. <p>Penalties may be dischargeable.</p>
1040 filed after the SFR assessment date, the filing date is more than 2 years before the petition date, and there is a subsequent TC 290 or TC 300 with an additional tax assessment,	<p>The caseworker must consider the original SFR assessment (TC 290/TC 300) and subsequent TC 290/TC 300 assessment separately.</p> <ul style="list-style-type: none"> • The original assessment will be non-dischargeable; however, penalties may be dischargeable. • Subsequent assessment will be dischargeable if provided for under the plan.
1040 filed after the SFR assessment date, the filing date is within 2 years of the petition date, and there is a subsequent TC 290 or TC 300 for \$.00 or a TC 291 or TC 301 with a tax decrease,	The total outstanding tax liability is non-dischargeable ; however, penalties may be dischargeable.
1040 filed after the SFR assessment date, the filing date is more than 2 years before the petition date, and there is a subsequent TC 290 or TC 300 for \$.00 or a TC 291 or TC 301 with a tax decrease,	The total outstanding tax liability is non-dischargeable ; however, penalties may be dischargeable.

Exhibit 5.9.17-7 (08-11-2014)**Determining Dischargeability when a SFR Assessment is Present in the Chapter 11 or Chapter 7 Individual Case and in the Chapter 13 Case with a Hardship Discharge**

Follow the chart below to determine dischargeability of late filed returns in all other cases in which a substitute for return was prepared under IRC 6020(b) in all locations except the 8th Circuit. The 8th Circuit includes North Dakota, South Dakota, Nebraska, Iowa, Missouri, Minnesota, and Arkansas.

IF...	THEN...
The tax return was due, including extensions, within 3 years of the petition date,	The tax is non-dischargeable .
Unagreed SFR	The tax is non-dischargeable ; however, penalties may be dischargeable.
Agreed SFR prior to 9/13/2005,	Determine the date of the agreement (TC 599 cc 89), <ul style="list-style-type: none"> • If within 2 years of the petition date, non-dischargeable. • If more than 2 years of the petition date dischargeable. Penalties may be dischargeable.
Agreed SFR on or after 9/13/2005,	Tax is non-dischargeable ; however, penalties may be dischargeable.
No tax return has been filed by the debtor,	The tax is non-dischargeable ; however, penalties may be dischargeable.
1040 filed before the SFR assessment date and the filing date is within 2 years of the petition date,	The tax is non-dischargeable ; however, penalties may be dischargeable.
1040 filed before the SFR assessment date and the filing date is more than 2 years before the petition date,	Tax is dischargeable .
1040 filed before the SFR assessment date and the assessment date is within 240 days of the petition date,	Tax is non-dischargeable ; however, penalties may be dischargeable.
1040 filed after the SFR assessment date, the filing date is within 2 years of the petition date, and there is a subsequent TC 290 or TC 300 with an additional tax assessment,	The caseworker must consider the original SFR assessment (TC 290/TC 300) and subsequent assessment separately. <ul style="list-style-type: none"> • The original assessment will be non-dischargeable. • The subsequent assessment will be non-dischargeable. Penalties may be dischargeable.

Exhibit 5.9.17-7 (Cont. 1) (08-11-2014)**Determining Dischargeability when a SFR Assessment is Present in the Chapter 11 or Chapter 7 Individual Case and in the Chapter 13 Case with a Hardship Discharge**

IF...	THEN...
1040 filed after the SFR assessment date, and the subsequent TC 290 or TC 300 with an additional tax assessment was within 240 days of the petition date,	<p>The caseworker must consider the original SFR assessment (TC 290/TC 300) and subsequent TC 290/TC 300) separately.</p> <ul style="list-style-type: none"> • Original assessment will be non-dischargeable. • The subsequent assessment within 240 days of the petition date will be non-dischargeable. <p>Penalties may be dischargeable.</p>
1040 filed after the SFR assessment date, the filing date is more than 2 years before the petition date, and there is a subsequent TC 290 or TC 300 with an additional tax assessment,	<p>The caseworker must consider the original SFR assessment (TC 290/TC 300) and subsequent assessment separately.</p> <ul style="list-style-type: none"> • The original assessment will be non-dischargeable. • The subsequent assessment will be dischargeable. <p>Penalties may be dischargeable.</p>
1040 filed after the SFR assessment date, the filing date is within 2 years of the petition date, and there is a subsequent TC 290 or TC 300 for \$.00 or a TC 291 or a TC 301 with a tax decrease,	The total outstanding tax liability is non-dischargeable ; however, penalties may be dischargeable.
1040 filed after the SFR assessment date, the filing date is more than 2 years before the petition date, and there is a subsequent TC 290 or TC 300 for \$.00 or a TC 291 or TC 301 with a tax decrease,	The total outstanding tax liability is non-dischargeable ; however, penalties may be dischargeable.
1040 filed after the SFR assessment date, there is a subsequent TC 290 or TC 300 for \$.00 or a TC 291 or TC 301 with a tax decrease, and the assessment date was within 240 days of the petition date,	The total outstanding tax liability is non-dischargeable ; however, penalties may be dischargeable.

Exhibit 5.9.17-8 (07-02-2021)**Processing TC 604 Reversals and Determining Dischargeability in Chapter 7 and Chapter 11 Individual, Chapter 12 Individual, and Chapter 13 Cases with a Hardship Discharge**

Caseworkers must re-establish modules on IDRS to allow AUR to assess a deficiency on the modules. The chart below discusses the steps to re-establish the modules. Then, caseworkers must make a manual discharge determination in cases that are re-opened due to the TC 604 reversal requests from AUR. In these cases, the Automated Discharge System (ADS) will not make a second “systemic” determination.

Note: If there is a credit after adjustment, the RSED has not expired, and there is no longer a trustee turnover request open, then the credit should offset or refund to the taxpayer.

Use this chart when making a manual determination in Chapter 7 and Chapter 11 individual, Chapter 12 individual, and Chapter 13 cases with a hardship discharge.

STEP	IF...	THEN...
1	Case has been closed on AIS,	<ul style="list-style-type: none"> Remove closure date from the Taxpayer Screen on AIS, Document the request from AUR to reverse the TC 604 to allow them to assess the deficiency in the AIS history, and Document which MFT(s) and Period(s) are included in the request from AUR.
2	TC 520(s) have been reversed,	Input a TC 520 on the module requiring the TC 604 reversal. The closing code depends on the type bankruptcy and the location. The TC 520 closing codes can be found at http://serp.enterprise.irs.gov/databases/who-where.dr/insolvency/tc-520-closing-codes.html
3	Bankruptcy payments on the proposed deficiency were transferred to Excess Collections,	<ul style="list-style-type: none"> Prepare Form 8765 to move the payments back to the respective module(s), Input a TC 570 on the module(s) to prevent the payments from refunding, and Schedule a follow-up to ensure all credits transfer.
4	A TC 971 AC 031 and subsequent TC 604 posted to the module on IDRS to bring the module to ST 12,	<ul style="list-style-type: none"> Input or request input of a TC 972 AC 031, Request a 2 cycle posting delay (to ensure the TC 520 posts first), and Schedule a follow-up to ensure the TC 605 posts to IDRS, re-establishing the balance due.
5	The requested TC 520(s), TC 605(s), and credit transfers have posted to IDRS,	<ul style="list-style-type: none"> Contact AUR to advise them to proceed with their assessment process, Ask them for an approximate assessment date, and Schedule a follow-up on AIS for 10 days after the estimated assessment date to see if the assessment has posted.

Exhibit 5.9.17-8 (Cont. 1) (07-02-2021)**Processing TC 604 Reversals and Determining Dischargeability in Chapter 7 and Chapter 11 Individual, Chapter 12 Individual, and Chapter 13 Cases with a Hardship Discharge**

STEP	IF...	THEN...
6	The assessment has not posted,	<ul style="list-style-type: none"> • Contact AUR to question the delay, obtain a new estimated date of assessment, and • Schedule a new follow-up.
7	<p>The additional assessment has posted to IDRS:</p> <ul style="list-style-type: none"> • AUR did not assert a fraud penalty when they assessed the additional tax on the return, • The original balance due on the return (TC 150 balance) was abated in the prior closure of the case, and • The unreported income was not an attempt to willfully evade the tax, <p>Note: Consultation with Area Counsel may be required for concurrence with assertions of the willful evasion exception to discharge. (See IRM 5.9.17.8 and IRM 5.9.17.8.2.)</p>	<p>The unagreed AUR deficiency that could not be assessed during the pendency of the bankruptcy because the debtor was prohibited from filing a petition with the Tax Court is a priority tax and non-dischargeable. (USBC 507(a)(8)(A)(iii)) The penalties may be dischargeable. See Exhibit 5.9.17-11 to determine if the penalties are dischargeable. The caseworker must determine if the original assessment and additional assessments made prior to the bankruptcy are dischargeable:</p>

Exhibit 5.9.17-8 (Cont. 2) (07-02-2021)

Processing TC 604 Reversals and Determining Dischargeability in Chapter 7 and Chapter 11 Individual, Chapter 12 Individual, and Chapter 13 Cases with a Hardship Discharge

STEP	IF...	THEN...
		<ol style="list-style-type: none"> 1. Did the taxpayer list IRS as a creditor in the case or did the IRS otherwise have knowledge of the bankruptcy case in time to file a claim? No - Go no further to determine dischargeability. The tax, penalty, and interest are non-dischargeable. Yes - Continue to # 2. 2. Was the return due date, with extensions, within the 3 years prior to the bankruptcy petition date? Yes - Go no further to determine dischargeability. The original tax and additional pre-petition assessments and interest on the tax are non-dischargeable. See Exhibit 5.9.17-11 to determine if the penalties are dischargeable. No - Proceed to # 3. 3. Was the return filed late, within the 2 years prior to the petition date? Yes - Go no further to determine dischargeability. The tax and interest on the original return and additional pre-petition assessed tax are non-dischargeable. See Exhibit 5.9.17-11 to determine if the penalties are dischargeable. No - Proceed to # 4. 4. Was the assessment date of the original assessment (TC 150) within the 240 days prior to the petition date? Yes - The tax remaining and interest on the TC 150 are non-dischargeable. No - The tax and interest on the original assessment are dischargeable. See Exhibit 5.9.17-11 to determine if the penalties on the original assessment are dischargeable. 5. Was the assessment date of the additional pre-petition assessments (TC 290 or TC 300) within the 240 days prior to the petition date? Yes - The tax and interest on the TC 290 or TC 300 are non-dischargeable. No - The tax and interest on the tax are dischargeable. See Exhibit 5.9.17-11 to determine if the penalties on the additional assessment posted prior to the bankruptcy are dischargeable. 6. Was the original assessment a SFR? See IRM 5.9.17.8.1 to determine dischargeability

Exhibit 5.9.17-8 (Cont. 3) (07-02-2021)

Processing TC 604 Reversals and Determining Dischargeability in Chapter 7 and Chapter 11 Individual, Chapter 12 Individual, and Chapter 13 Cases with a Hardship Discharge

STEP	IF...	THEN...
		<p>Caution: When determining dischargeability, tolling of the priority “look back” periods may apply. Tolling of the three-year or 240-day “look back” periods may be applicable when the debtor had a prior bankruptcy case or a prior Collection Due Process levy case. The 240-day period may also be tolled when there was an OIC pending or in effect within the 240 days prior to the filing of the bankruptcy petition. (See IRM 5.9.13.19.3, Unsecured Priority.) Additionally, the debtor may not be entitled to a discharge in the current bankruptcy case when they received a discharge in a prior bankruptcy case. See IRM 5.9.5-3, Allowable Elapsed Time Between Bankruptcy Filings and Discharges, for limitations when the debtor received a discharge in a prior bankruptcy. If the debtor has received a discharge in a prior bankruptcy case, refer the case to Area Counsel for guidance. The Service may need to seek a revocation of the discharge in the current case.</p>

Exhibit 5.9.17-8 (Cont. 4) (07-02-2021)**Processing TC 604 Reversals and Determining Dischargeability in Chapter 7 and Chapter 11 Individual, Chapter 12 Individual, and Chapter 13 Cases with a Hardship Discharge**

STEP	IF...	THEN...
		<ul style="list-style-type: none"> Request a TC 971 AC 031 when the tax, penalty, and interest due on the original and additional assessments are dischargeable. When only a portion of the tax, or only the penalties are dischargeable, request a TC 971 AC 033 on the module to identify a partial abatement due to the bankruptcy discharge on IDRS. Prepare Form 3870 to request abatement on the dischargeable liabilities. There may be instances where the original assessment is dischargeable but the additional assessment is non-dischargeable. Submit the Form 3870 to Collection Centralized Case Processing (CCCP) or input the adjustment directly to IDRS based on local procedures. Schedule a follow-up to monitor for posting of the abatements. Request TC 520 reversal and IIP closure of the case on AIS once all adjustments have posted to IDRS.
8	AUR assessed a fraud penalty,	<ul style="list-style-type: none"> Taxes and interest on the original and additional assessments are non-dischargeable. See Exhibit 5.9.17-11 to determine dischargeability of the penalties. Request a TC 971 AC 033 on IDRS to identify a partial abatement on the module. Prepare a Form 3870 to abate applicable penalties. Schedule a follow-up to ensure penalty abatements post to IDRS. Request TC 520 reversal and IIP closure of the case on AIS once all adjustment has posted to IDRS.

Exhibit 5.9.17-9 (07-02-2021)**Processing TC 604 Reversals and Determining Dischargeability when an Individual Received a Discharge Upon Completion of the Plan in a Chapter 13 Case**

Caseworkers must re-establish modules on IDRS to allow AUR to assess a deficiency on the modules. The chart below discusses the steps to re-establish the modules. Then, caseworkers must make a manual discharge determination in cases that are re-opened due to TC 604 reversal requests from AUR. In these cases, the Automated Discharge System (ADS) will not make a second “systemic” discharge determination.

Note: If there is a credit after adjustment, the RSED has not expired, and there is no longer a trustee turnover request open, then the credit should offset or refund to the taxpayer.

Use this chart when making a manual discharge determination in Chapter 13 cases when the debtor received a discharge upon completion of the bankruptcy plan.

STEP	IF...	THEN...
1	Case has been closed on AIS,	<ul style="list-style-type: none"> Remove the closure date from the Taxpayer Screen on AIS, Document the request from AUR to reverse the TC 604 to allow them to assess the deficiency in the AIS history, and Document which MFT(s) and Period(s) are included in the request from AUR.
2	TC 520(s) have been reversed,	Input a TC 520 on the module requiring the TC 604 reversal. The closing code depends on the type bankruptcy and the location. The TC 520 closing codes can be found at http://serp.enterprise.irs.gov/databases/who-where.dr/insolvency/tc-520-closing-codes.html
3	Bankruptcy payments on the proposed deficiency were moved to Excess Collections,	<ul style="list-style-type: none"> Prepare Form 8765 to move the payments back to the respective module(s), Input a TC 570 on the module(s) to prevent the payments from refunding, and Schedule a follow-up to ensure all credits transferred.
4	A TC 971 AC 031 and subsequent TC 604 posted to the module on IDRS to bring the module to ST 12,	<ul style="list-style-type: none"> Input or request input of a TC 972 AC 031, Request a 2 cycle posting delay (to ensure the TC 520 posts first), and Schedule a follow-up to ensure the TC 605 posts to IDRS, re-establishing the balance due.

Exhibit 5.9.17-9 (Cont. 1) (07-02-2021)**Processing TC 604 Reversals and Determining Dischargeability when an Individual Received a Discharge Upon Completion of the Plan in a Chapter 13 Case**

STEP	IF...	THEN...
5	The requested TC 520(s), TC 605(s), and credit transfers have posted to IDRS,	<ul style="list-style-type: none">• Contact AUR and advise them to proceed with their assessment process,• Ask them for an approximate assessment date, and• Schedule a follow-up on AIS for 10 days after the estimated assessment date to see if the assessment has posted.
6	The assessment has not posted,	<ul style="list-style-type: none">• Contact AUR to question the delay,• Obtain a new estimated date of assessment, and• Schedule a new follow-up.

Exhibit 5.9.17-9 (Cont. 2) (07-02-2021)

Processing TC 604 Reversals and Determining Dischargeability when an Individual Received a Discharge Upon Completion of the Plan in a Chapter 13 Case

STEP	IF...	THEN...
7	The additional assessment and payment transfers (if applicable) have posted to the module on IDRS,	<p>Determine if the remaining balance due on the module was discharged upon completion of the plan. Consider the following:</p> <ol style="list-style-type: none"> 1. Was IRS listed as a creditor in the case? Yes - Tax, penalties, and interest are dischargeable unless the liability meets one of the exceptions to discharge listed # 2 through # 7. Proceed to # 2. No - The tax, penalties, and interest are non-dischargeable. 2. If IRS was added as a creditor in the case or otherwise had knowledge of the case, did we have sufficient time to file a proof of claim prior to the bar date? Yes - The tax, penalties, and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7. Proceed to # 3. No - The tax, penalties, and interest are non-dischargeable. Consultation with Area Counsel may be required when determining if the IRS was adequately noticed in the case. 3. Was the return filed prior to the filing of the bankruptcy petition? Yes - The tax, penalties, and interest are dischargeable unless the liability meets one of the exceptions to discharge listed in # 2 through # 7. Proceed to # 4. No - Taxes and interest on the tax are non-dischargeable. Penalties and interest on any assessed penalties are dischargeable. 4. Was the return filed late and within 2 years of the petition date? Yes - The tax and interest on the tax are non-dischargeable. Penalties and interest on the penalties are dischargeable. No - The tax, penalty, and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7.

Exhibit 5.9.17-9 (Cont. 3) (07-02-2021)

Processing TC 604 Reversals and Determining Dischargeability when an Individual Received a Discharge Upon Completion of the Plan in a Chapter 13 Case

STEP	IF...	THEN...
		<p>5. Was the return fraudulent as evidenced by the presence of the fraud penalty (TC 340)? Yes - The tax and interest on the tax are non-dischargeable. The penalties and interest on the penalties are dischargeable. No - The tax, penalties, and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7.</p> <p>6. Was the liability due to a Substitute for Return (SFR)? Yes - The tax and interest on the tax are non-dischargeable in all jurisdictions except the 8th Circuit. (See IRM 5.9.17.8.1 for more information regarding the dischargeability of SFRs.) Penalties and interest on the penalties are dischargeable. See IRM 5.9.17.8.1 for additional information. No - The tax, penalties, and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7.</p> <p>7. Did the debtor willfully attempt to evade or defeat the tax? Yes - The tax and interest on the tax are non-dischargeable. The penalties may be dischargeable if the plan included this tax to be paid in the plan. No - The tax, penalties, and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7.</p> <p>Note: Consultation with Area Counsel may be required for concurrence with assertions of the willful evasion exception to discharge. (See IRM 5.9.17.8 and IRM 5.9.17.8.2)</p> <p>Caution: If the confirmed plan contains language that discharges all pre-petition tax liabilities, contact Area Counsel because the plan, though incorrect, may be binding.</p>

Exhibit 5.9.17-9 (Cont. 4) (07-02-2021)**Processing TC 604 Reversals and Determining Dischargeability when an Individual Received a Discharge Upon Completion of the Plan in a Chapter 13 Case**

STEP	IF...	THEN...
8	The tax, penalties, and interest are dischargeable,	<ul style="list-style-type: none"> • Request a TC 971 AC 031 to abate the module in full, • Schedule a follow-up to ensure the module has abated in full on IDRS, and • Request TC 520 reversal and IIP closure once all adjustments have posted to IDRS.
9	The tax and interest are non-dischargeable and the penalties are dischargeable,	<ul style="list-style-type: none"> • Request a TC 971 AC 033 to indicate a partial discharge on IDRS, • Prepare a Form 3870 to abate the assessed penalties (the interest on the penalties should systemically adjust when the penalty adjustments post to IDRS), • Send the Form 3870 to Collection Centralized Case Processing (CCCP) to request abatement of penalties, • Schedule a follow-up to ensure the adjustments have posted to IDRS, and • Request TC 520 reversal and IIP closure once all adjustments have posted to IDRS.

Exhibit 5.9.17-10 (07-25-2022)**Processing TC 604 Reversals and Determining Dischargeability Upon Completion of the Plan in an Individual Chapter 11 or Individual Chapter 12 Case**

Caseworkers must re-establish modules on IDRS to allow AUR to assess a deficiency on the modules. The chart below discusses the steps to re-establish the modules. Schedule follow-up on AIS to ensure timely action. Then, caseworkers must make a manual discharge determination in cases that are re-opened due to TC 604 reversal requests from AUR. In these cases, the Automated Discharge System (ADS) will not make a second “systemic” discharge determination.

Note: If there is a credit after adjustment, the RSED has not expired, and there is no longer a trustee turnover request open, then the credit should offset or refund to the taxpayer.

Use this chart when making a manual discharge determination in individual Chapter 11 and Chapter 12 cases when the debtor has received a discharge upon completion of the bankruptcy plan.

STEP	IF...	THEN...
1	The case has been closed on AIS,	<ul style="list-style-type: none"> Remove the closure date from the Taxpayer Screen on AIS, Document the request from AUR to reverse the TC 604 to allow them to assess the deficiency in the AIS history, and Document which MFT(s) and Period(s) are included in the request from AUR.
2	The TC 520(s) have been reversed,	Input a TC 520 on the module requiring the TC 604 reversal. The closing code depends on the type of bankruptcy and the location. The TC 520 closing codes can be found at http://serp.enterprise.irs.gov/databases/who-where.dr/insolvency/tc-520-closing-codes.html
3	Bankruptcy payments on the proposed deficiency were moved to Excess Collections,	<ul style="list-style-type: none"> Prepare Form 8765 to move the payments back to the respective modules(s), Input a TC 570 on the module(s) to prevent the payments from refunding, and Schedule a follow-up to ensure all credits are transferred.
4	A TC 971 AC 031 and subsequent TC 604 posted to the module on IDRS to bring the module to ST 12,	<ul style="list-style-type: none"> Input or request input of a TC 972 AC 031, Request a 2 cycle posting delay (to ensure the TC 520 posts first), and Schedule a follow-up to ensure the TC 605 posts to IDRS, re-establishing the balance due.

Exhibit 5.9.17-10 (Cont. 1) (07-25-2022)**Processing TC 604 Reversals and Determining Dischargeability Upon Completion of the Plan in an Individual Chapter 11 or Individual Chapter 12 Case**

STEP	IF...	THEN...
5	The requested TC 520(s), TC 605(s), and credit transfers have posted to IDRS,	<ul style="list-style-type: none">• Contact AUR and advise them to proceed with their assessment process,• Ask them for an approximate assessment date, and• Schedule a follow-up on AIS for 10 days after the estimated assessment date to see if the assessment has posted.
6	The assessment has not posted,	<ul style="list-style-type: none">• Contact AUR to question the delay,• Obtain a new estimated date of assessment, and• Schedule a new follow-up.

Exhibit 5.9.17-10 (Cont. 2) (07-25-2022)

Processing TC 604 Reversals and Determining Dischargeability Upon Completion of the Plan in an Individual Chapter 11 or Individual Chapter 12 Case

STEP	IF...	THEN...
7	The additional assessment and payment transfers (if applicable) have posted to the module on IDRS,	<p>The unagreed AUR deficiency that could not be assessed during the pendency of the bankruptcy because the debtor was prohibited from filing a petition with the Tax Court is a priority tax and is non-dischargeable. (See USBC 507(a)(8)(A)(iii)) The penalties may be dischargeable. See Exhibit 5.9.17-11 below to determine if penalties are dischargeable. Determine if the remaining balance due on the module due to the original tax on the return (TC 150) or additional tax (TC 290 or TC 300) assessed prior to the bankruptcy was discharged upon completion of the plan. Consider the following:</p> <ol style="list-style-type: none"> 1. Was IRS listed as a creditor in the case? Yes - Tax and interest on the tax are dischargeable unless the liability meets one of the exceptions to discharge listed in # 2 through # 8 below. Proceed to # 2. See Exhibit 5.9.17-11 to determine if the penalties are dischargeable. No - The tax, penalties, and interest are non-dischargeable 2. If IRS was added as a creditor in the case or otherwise had knowledge of the case, did we have sufficient time to file a proof of claim prior to the bar date? Yes - The tax and interest on the tax are dischargeable unless the liability meets one of the other exceptions to discharge in # 2 through # 8. Proceed to # 3. See Exhibit 5.9.17-11 to determine if the penalties are dischargeable. No - The tax, penalties, and interest are non-dischargeable. <p>Note: Consultation with Area Counsel may be required when determining if the IRS was adequately noticed in the case.</p>

Exhibit 5.9.17-10 (Cont. 3) (07-25-2022)

Processing TC 604 Reversals and Determining Dischargeability Upon Completion of the Plan in an Individual Chapter 11 or Individual Chapter 12 Case

STEP	IF...	THEN...
		<p>3. Was the return due date, with extensions within the 3 years prior to the petition date? Yes - The tax and interest on the tax are non-dischargeable. No - The tax and interest are dischargeable unless the liability meets one of the other exceptions to discharge listed in # 2 to # 8. See Exhibit 5.9.17-11 to determine if the penalties are dischargeable.</p> <p>4. Was the return filed prior to the filing of the bankruptcy petition? Yes - The tax and interest on the tax are dischargeable unless the liability meets one of the other exceptions to discharge listed in # 2 through # 8. Proceed to # 5. No - Taxes and interest on the tax are non-dischargeable. See Exhibit 5.9.17-11 to determine if the penalties are dischargeable.</p> <p>5. Was the return filed late and within 2 years of the petition date? Yes - The tax and interest on the tax are non-dischargeable. No - The tax and interest on the tax are dischargeable unless the liability meets one of the other exceptions to discharge in # 2 through # 8. See Exhibit 5.9.17-11 to determine if the penalties are dischargeable.</p> <p>6. Was the return fraudulent as evidenced by the presence of the fraud penalty (TC 340)? Yes - The tax and interest on the tax are non-dischargeable. No - The tax and interest on the tax are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 8. See Exhibit 5.9.17-11 to determine dischargeability of penalties.</p>

Exhibit 5.9.17-10 (Cont. 4) (07-25-2022)

Processing TC 604 Reversals and Determining Dischargeability Upon Completion of the Plan in an Individual Chapter 11 or Individual Chapter 12 Case

STEP	IF...	THEN...
		<p>7. Was the liability due to a Substitute for Return (SFR)? Yes - The tax and interest on the tax are non-dischargeable in all jurisdictions except the 8th Circuit. (See IRM 5.9.17.8.1 for more information regarding the dischargeability of SFRs.) No - The tax and interest on the tax are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 8. See Exhibit 5.9.17-11 to determine dischargeability of penalties.</p> <p>8. Did the debtor willfully attempt to evade or defeat the tax? Yes - The tax and interest on the tax are non-dischargeable. No - The tax and the interest on the tax are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 8. See Exhibit 5.9.17-11 to determine dischargeability of penalties.</p> <p>Note: Consultation with Area Counsel may be required for concurrence with assertions of the willful evasion exception to discharge. (See IRM 5.9.17.8 and IRM 5.9.17.8.2.)</p> <p>Note: When determining dischargeability, tolling of the priority “look back” periods may apply. Tolling of the three-year or 240-day “look back” periods may be applicable when the debtor had a prior bankruptcy case or a prior Collection Due Process levy case. The 240-day period may also be tolled when there was an OIC pending or in effect within the 240 days prior to the filing of the bankruptcy petition. (See IRM 5.9.13.19.3.)</p> <p>Caution: If a confirmed plan contains language that discharges all pre-petition tax liabilities, consult Area Counsel; the IRS may be bound by the improper plan.</p>

Exhibit 5.9.17-10 (Cont. 5) (07-25-2022)**Processing TC 604 Reversals and Determining Dischargeability Upon Completion of the Plan in an Individual Chapter 11 or Individual Chapter 12 Case**

STEP	IF...	THEN...
8	The tax, penalties, and interest are dischargeable,	<ul style="list-style-type: none"> • Request a TC 971 AC 031 to abate the module in full, • Schedule a follow-up to ensure the module has abated in full on IDRS, and • Request TC 520 reversal and IIP closure once all adjustments have posted to IDRS.
9	The tax and interest are non-dischargeable and the penalties are dischargeable,	<ul style="list-style-type: none"> • Request a TC 971 AC 033 to indicate a partial discharge on IDRS, • Prepare a Form 3870 to abate the applicable penalties, • Send the Form 3870 to Collection Centralized Case Processing (CCCP) to request abatement of applicable penalties, • Schedule a follow-up to ensure the adjustments have posted to IDRS, and • Request TC 520 reversal and IIP closure once the adjustments have posted to IDRS.

Exhibit 5.9.17-11 (08-11-2014)**Determining Dischargeability of Non-Pecuniary Loss Penalties when the Underlying Tax is Non-Dischargeable (Except in the Chapter 13 Case with a Discharge Upon Completion of the Plan)**

Non-Pecuniary Loss Penalties. When a taxpayer receives a discharge in a bankruptcy case, there may be instances when the taxes are non-dischargeable and penalties are dischargeable. Caseworkers may need to determine when penalties are dischargeable when they have manually determined that the tax is non-dischargeable. Caseworkers may also need to determine when penalties are dischargeable when the Automated Discharge System (ADS) generates a “PDTN” Discharge Determination Report (DDR). Use the table below to determine if the penalties are dischargeable in all cases except those cases where the debtor received a discharge upon completion of a Chapter 13 plan. Use Exhibit 5.9.17-9 to determine dischargeability of penalties in Chapter 13 cases when the debtor received a discharge upon completion of the plan.

IF...	AND...	THEN...
The failure to pay penalty (TC 270 or TC 276) was assessed,	The return due date was within 3 years of the petition date (do not include extensions),	The penalty is non-dischargeable.
The failure to pay penalty (TC 270 or TC 276) was assessed,	The return due date was more than 3 years prior to the petition date (do not include extensions),	The penalty is dischargeable.
The estimated tax penalty (TC 170 or TC 176) was assessed,	The return due date was within 3 years of the petition date (do not include extensions),	The penalty is non-dischargeable.
The estimated tax penalty (TC 170 or TC 176) was assessed,	The return due date was more than 3 years prior to the petition date (do not include extensions),	The penalty is dischargeable.
The failure to file penalty (TC 160 or TC 166) was assessed,	The return due date or extended due date was within 3 years of the petition date,	The penalty is non-dischargeable.
The failure to file penalty (TC 160 or TC 166) was assessed.	The return due date or extended due date was more than 3 years prior of the petition date,	The penalty is dischargeable.
The fraud penalty (TC 320) was assessed,	The return was filed within 3 years of the petition date,	The penalty is non-dischargeable.
The fraud penalty (TC 320) was assessed,	The return was filed more than 3 years prior to the petition date,	The penalty is dischargeable.
The negligence penalty (TC 350) was assessed,	The return was filed within 3 years of the petition date,	The penalty is non-dischargeable.
The negligence penalty (TC 350) was assessed,	The return was filed more than 3 years prior to the petition date,	The penalty is dischargeable.
The substantial underpayment of tax penalty (TC 240) was assessed,	The return was filed within three years of the petition date,	The penalty is non-dischargeable if the underlying tax is non-dischargeable.

Exhibit 5.9.17-11 (Cont. 1) (08-11-2014)

Determining Dischargeability of Non-Pecuniary Loss Penalties when the Underlying Tax is Non-Dischargeable (Except in the Chapter 13 Case with a Discharge Upon Completion of the Plan)

IF...	AND...	THEN...
The substantial underpayment of tax penalty (TC 240) was assessed,	The return was filed more than 3 years prior to the petition date,	The penalty is dischargeable.

Exhibit 5.9.17-12 (12-09-2016)**Adjusting Individual TFRP Accounts**

Caseworkers may be required to adjust TFRP accounts of individuals when there are multiple TFRP assertions and payments are made by one or more parties. Follow the chart below when adjusting these accounts.

Reminder: Caseworkers should not wait until case closure to address credits on TFRP modules. Credit transfers, amended claims, or manual refunds may be required. For additional information, see IRM 5.9.17.16, Trust Fund Recovery Penalty (TFRP) Adjustments.

IF	CIO Action	FI Insolvency Action
Bankruptcy payments have been misapplied,	The payment team must correct misapplied payments in Chapter 13 cases and advise the TFRP Unit of corrections made.	FI must correct misapplied payments in Chapter 7A, 11, or 12 cases and advise the TFRP Unit of corrections made.
The credit is the result of a bankruptcy payment coded for interest,	The payment team must assess interest. Advise the TFRP Unit that the payment was intended for interest and interest assessed on the taxpayer in bankruptcy.	Same as CIO Action.

Exhibit 5.9.17-12 (Cont. 1) (12-09-2016)

Adjusting Individual TFRP Accounts

IF	CIO Action	FI Insolvency Action
The TFRP is overpaid, it is a joint bankruptcy, and both debtors have TFRP assessments.	Refer the case to FI.	<p>Review the proof of claim (POC) to determine if a TFRP assessment(s) for a matching period is included for both taxpayers and whether there was a POC statement advising the bankruptcy trustee to only pay the liability once. A matching period refers to both taxpayers assessed the TFRP for the same period for the same company.</p> <p>Review the Confirmed Plan Monitoring (CPM) screen to determine if the matching period(s) for both taxpayers is included in the CPM and review if payments have been applied to both matching assessments.</p> <p>If payments were received for both assessments and they are full paid, determine if the excess payments should be applied to another period or refunded to the bankruptcy trustee or DIP.</p> <p>If the POC is full paid, advise the trustee or DIP to stop sending payments.</p> <p>If trustee payments were received for only one of the accounts, review IDRS to determine if there were credits (i.e., TC 241) applied as a result of payments made by other responsible parties.</p> <p>If there are credits as a result of payments made by other responsible parties:</p> <ul style="list-style-type: none"> • Determine at what point the assessment was full paid. • Determine if interest needs to be assessed on any account. • Determine if bankruptcy payments should be applied to another periods or returned to the bankruptcy trustee or DIP. • Determine if the POC needs to be amended. • Determine if the CPM screen needs to be corrected. <p>If there are credits as a result of payments made by the business:</p> <ul style="list-style-type: none"> • Determine if bankruptcy payments should be applied to another period, returned to the bankruptcy trustee, or returned to the DIP. • Determine if the POC needs to be amended. • Determine if the CPM screen needs to be corrected. <p>Note: If credit transfer is needed, the caseworker will prepare the request for credit transfer and submit the request to the respective TFRP Unit for processing. TFRP Unit addresses and phone numbers can be found on SERP. If a manual refund is needed, the caseworker will prepare Form 5792.</p> <p>Caseworker will advise the TFRP Unit of any action requested on the account(s).</p>

Exhibit 5.9.17-12 (Cont. 2) (12-09-2016)
Adjusting Individual TFRP Accounts

IF	CIO Action	FI Insolvency Action
The TFRP is overpaid, it is a joint bankruptcy but only one debtor has a TFRP assessment, or the TFRP is overpaid and it is an individual bankruptcy,	Refer the case to FI.	<p>Review IDRS to determine if there were credits (i.e., TC 241) applied as a result of payments made by other responsible parties.</p> <p>If there are credits as a result of payments made by other responsible parties:</p> <ul style="list-style-type: none"> • Determine at what point the assessment was full paid. • Determine if interest needs to be assessed on any account. • Determine if bankruptcy payments should be applied to another periods or returned to the bankruptcy trustee or DIP. • Determine if the POC needs to be amended. • Determine if the CPM screen needs to be corrected. <p>If there are credits as a result of payments made by the business:</p> <ul style="list-style-type: none"> • Determine if bankruptcy payments should be applied to another period, returned to the bankruptcy trustee, or returned to the DIP. • Determine if the POC needs to be amended. • Determine if the CPM screen needs to be corrected. <p>Note: If credit transfer is needed, the caseworker will prepare the request for credit transfer and submit the request to the respective TFRP Unit for processing. TFRP Unit addresses and phone numbers can be found on SERP. If a manual refund is needed, the caseworker will prepare Form 5792.</p> <p>Caseworker will advise the TFRP Unit of any action requested on the account(s).</p>
TFRP is not overpaid but installment payments or regular payments are being made by another party and credits are being cross-referenced to the account in bankruptcy.	Refer the case to FI.	Review the TFRP assessments on IDRS to determine if the POC needs to be amended and the CPM screen corrected.

