MANUAL TRANSMITTAL

5.9.18

Department of the Treasury
Internal Revenue Service

DECEMBER 16, 2022

EFFECTIVE DATE

(12-16-2022)

PURPOSE

(1) This transmits a revised IRM 5.9.18, Bankruptcy and Other Insolvencies, Automated Discharge System (ADS).

MATERIAL CHANGES

(1) IRM 5.9.18.1(3) - Updates Policy Owner contents.

(2) IRM 5.9.18.1(4) - Updates Program Owner contents.

(3) IRM 5.9.18.1.3(1) - Changes Specialty Collection - Insolvency to Specialty Collection Insolvency.

(4) IRM 5.9.18.1.4(3) - Adds the Quality Knowledge Base Home Page.

(5) IRM 5.9.18.1.5(3) - Adds the use of the Automated Insolvency System (AIS) for case management, assignments and documentation.

(6) IRM 5.9.18.1.6(3) - Adds the Acronyms Database.

(7) IRM 5.9.18.1.6(4) - Rearranges the list of acronyms in alphabetical order and adds to the list of commonly used acronyms.

(8) IRM 5.9.18.1.7(6) - Adds the Insolvency Interface Program (IIP) User Guide as a related source.

(9) IRM 5.9.18.1.7(7) - Adds the Insolvency Knowledge Base Home Page as a related source.

(10) IRM 5.9.18.1.7(8) - Adds Taxpayer Bill of Rights (TBOR) as a related source.

(11) IRM 5.9.18.2(2) - Removes reference that the Automated Discharge System (ADS) is sometimes referred to as IIP2 in the note.

(12) IRM 5.9.18.3(2) - Adds reminder in caseworker actions IF/THEN chart to document the AIS history with the name of the exam coordinator and set follow-up dates. Also, adds instructions if there is an open TC 520 cc 70 or 80 in IDRS under IRC 7122.

(13) IRM 5.9.18.6(9) - Clarifies procedure that ALL CRIMREST DDRs are worked by Field Insolvency (FI) due to the complex issues.

(14) IRM 5.9.18.6(10) - Removes IRM 21.7.8.4.1.5.3 and adds Abstract 140 - Indoor Tanning Tax (irsnet.gov).

(15) IRM 5.9.18.6.1(2) - Updates narrative to PDTN DDR for FTP to a table and changes date example to determine the Debit Interest to Date.

(16) IRM 5.9.18.6.1(5) - Clarifies cc INTST can be reviewed to determine if unpaid penalties exists for Chapter 7 cases and in Chapter 13 cases, review TXMOD to determine the amount of penalties to abate. Adds Note about 7-day grace period for timely filed returns in determining dischargeability,

(17) IRM 5.9.18.6.1(8) - Updates title to Extension to File - Penalties Dischargeable, Tax is Not (EXTEN PDTN).

(18) IRM 5.9.18.6.2(1) - Updates non-dischargeability information on No Return; Return Not Assessed.

(19) IRM 5.9.18.6.3 - Updates Fraud Technical Advisor to Fraud Enforcement Advisor.

(20) IRM 5.9.18.6.6(4) - Adds section titled “FI WFTP Review.”

(21) IRM 5.9.18.6.7(4) - Adds Exhibit 5.9.18-3 to the discharge action procedures.

(22) IRM 5.9.18.6.7(5) - Clarifies procedures for No Action Required.

(23) IRM 5.9.18.6.8 - Adds South Dakota (may elect) as a community property state and commonwealth.

(24) IRM 5.9.18.6.9 - Removes information regarding classification of priority excise tax for the ESRP.

(25) IRM 5.9.18.7(2) - Updates IRM for the TABLE - Post-Petition Payments and Credits.

(26) Editorial changes were made throughout this section to add clarity and to update, correct, or add citations.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.9.18, dated April 14, 2020.

AUDIENCE

Field Insolvency and the Centralized Insolvency Operation

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5.9.18
Automated Discharge System (ADS)

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5.9.18.1
(12-16-2022)
Program Scope and Objectives

(1) **Purpose**. This IRM provides guidance for Insolvency employees related to the Automated Discharge System (ADS). The discharge determination process and related procedures are discussed within.

(2) **Audience**. Insolvency caseworkers and management in Specialty Collection Insolvency (SCI), which consists of Field Insolvency (FI) and the Centralized Insolvency Operation (CIO), are the primary users of this IRM section. Advisors, Revenue Officers (ROs), and other SB/SE employees may also refer to these procedures. Employees in functions other than SB/SE may refer to this section when working with a taxpayer that has filed an insolvency proceeding.

(3) **Policy Owner**. Director of Collection Policy, SB/SE, 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) and SB/SE Collection.

(6) **Program Goals**. The Automated Discharge System provides accurate and efficient automated discharge determination and the automated input of case related closing transactions.

5.9.18.1.1
(09-14-2017)
Background

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

5.9.18.1.2
(04-14-2020)
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.

5.9.18.1.3
(12-16-2022)
Responsibilities

(1) The Director, Specialty Collection Insolvency is responsible for program oversight.

(2) IRM 5.9.1, Overview of Bankruptcy, provides a list of titles and responsibilities with an explanation of their roles and authority.

5.9.18.1.4
(12-16-2022)
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) Quality Knowledge Base Home Page *Quality (irsnet.gov)*.

5.9.18.1.5
(12-16-2022)
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) Operational and Program reviews are conducted on a yearly basis. See IRM 1.4.51.17.2, Operational Reviews, and IRM 1.4.51.17.5, Program Reviews, for more information.

(3) 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 is restricted. See IRM 5.9.3.2, Automated Insolvency System (AIS).

5.9.18.1.6
(12-16-2022)
Terms/Definitions/ Acronyms

(1) Glossary terms used by Insolvency can be found in Exhibit 5.9.1-1, Glossary of Common Insolvency Terms.

(2) Common acronyms acceptable for use in the AIS history are listed in Exhibit 5.9.1-2, Acronyms and Abbreviations.

(3) Additional, acceptable acronyms and abbreviations are found in the ReferenceNet Acronym Database, *Acronyms Database (irs.gov)*.

(4) Acronyms used locally in this IRM section are shown in the table below.

Acronyms

Acronym	Definition
ADS	Automated Discharge System
AIS	Automated Insolvency System
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
CIO	Centralized Insolvency Operation
DDR	Discharge Determination Report
ESRP	Employer Shared Responsibility Payment
FI	Field Insolvency
FTP	Failure to Pay
IDRS	Integrated Data Retrieval System
IIP	Insolvency Interface Program
PDTN	Penalties Dischargeable, Tax is not
SBSE	Small Business/Self Employed
USC	United States Code

5.9.18.1.7
(12-16-2022)
Related Resources

(1) The US Bankruptcy Code 11 USC

(2) Bankruptcy Rules (Federal Rules of Bankruptcy Procedure)

(3) Applicable Case Law

(4) Local Bankruptcy Court Rules

(5) Document 13219, Automated Insolvency System (AIS) User Guide

(6) Document 11834, Insolvency Interface Program (IIP) User Guide

(7) Insolvency Knowledge Base Home Page: *Specialty Collection Insolvency (SCI) (irsnet.gov)*

(8) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them in 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 TBOR, see *Taxpayer Bill of Rights | Internal Revenue Service (irs.gov)*

5.9.18.2
(12-16-2022)
Automated Discharge System

(1) **Systemic Discharge Determinations.** The Automated Discharge System (ADS) interfaces with the Integrated Data Retrieval System (IDRS) to automate discharge actions for Chapter 7 and Chapter 13 bankruptcies. ADS selects tax modules that are eligible for discharge processing, identifies cases requiring review by Insolvency caseworkers, and inputs closing actions on IDRS. Some closures require managerial approval before systemic abatements can proceed.

(2) **ADS Actions.** ADS eliminates manual tasks through automated processing. ADS:

a. expands the functionality of AIS by automating the disposition of bankruptcy cases after discharge;
b. selects tax modules eligible for abatement;
c. identifies cases requiring employee review before closing actions are finalized; and
d. inputs case closing actions on IDRS after any required approval.

Note: The acronym ADS will be used exclusively throughout this IRM chapter.

(3) **DDR Resolutions.** The Centralized Insolvency Operation (CIO) exclusively runs ADS. All Chapter 7 and Chapter 13 cases with a discharge date and a ″RI CH7&HARDSHIPCH13 - RI″ or ″SI 13 PLAN COMPLETED - SI″ in the method of closure field are processed regardless of whether the cases are assigned to the CIO or Field Insolvency. However, the CIO only receives and resolves discharge determination reports (DDRs) generated by ADS for cases assigned to the CIO. Therefore, Field Insolvency is responsible for properly resolving DDRs generated on cases assigned to its inventory. Field Insolvency caseworkers must generate applicable reports (e.g. court closure follow-up reports) to identify cases in their inventory requiring DDR resolution.

5.9.18.3
(12-16-2022)
CIO Predischarge Review

(1) **Case Classification Review.** To alert the Centralized Insolvency Operation (CIO) to conditions that might affect the final disposition of a Chapter 7 or Chapter 13 case, Insolvency caseworkers must input a case classification indicator on the Classification screen on AIS. An open case classification indicator alerts the caseworker working the case closure to read the AIS history and take appropriate actions before continuing with ADS processes.

(2) **Caseworker Actions.** Court closure follow-up lists for Chapter 7 cases and Chapter 13 cases should be printed and worked at a minimum of twice a week. When the caseworker accesses a discharge, before an ″RI CH7&HARDSHIPCH13 - RI″ or ″SI 13 PLAN COMPLETED - SI″ is entered into the method of closure field on AIS, the caseworker must check the case class screen for open classifications. If an open case classification is present, the caseworker must read the AIS history to determine the special circumstance(s) that may need to be addressed before the case is run through ADS. The table below presents possible reasons for taking predischarge actions and what those actions might be if an open case classification is present.

IF...	THEN...
There is an open “WILLFUL” classification, potential for fraud or willful evasion has been identified,	The caseworker must review the case history to verify that the liabilities are non-dischargeable. If willful evasion has been confirmed and the taxes are excepted from discharge, process the discharge manually.
There is an open “NoNotice” classification, the Service was not notified of a Chapter 7A or 13 bankruptcy prior to the government bar date and the IRS does not appear on the debtor’s mailing matrix,	The caseworker must review the case history to verify that timely notice was not received by the IRS and that a determination was made that taxes are non-dischargeable. If so, follow these steps: • Input the discharge date • Input the noticed on date • Close the “NoNotice” classification • Select “No Notice” as the case closure method • Request the TC 521 through IIP; and • Reinstate any installment agreement Refer to IRM 5.9.17.8.9, Procedures for Processing Bankruptcy Discharges when the IRS Received No Notice or Late Notice in the Asset Case.
There is an open “PDSC ISSUE” case classification, and certain liabilities have not been provided for in the Pre-BAPCPA Chapter 13 plan, or unusual plan provisions exist that affect discharge,	Process the discharge manually, omitting the discharge of the liabilities not provided for in the plan. ***Caution:*** Because these discharges will not be filtered through ADS, the caseworker must ensure all other discharge issues are addressed adequately.
There is an open “IA” or “IA Issues” classification, a reinstatement of an installment agreement may be required,	Follow the instructions in IRM 5.9.4.20, Installment Agreements and Bankruptcy, and process the discharge through ADS.

IF...	THEN...
There is an open “TTEE RFND” classification, refund turnover orders or requests are in force,	Check IDRS to determine if credit is available on the module for which the refund has been requested. Proceed as follows: 1. If the credit was available prior to discharge being issued by the court, refund must be sent to the trustee. Take action to generate Form 5792, Request for IDRS Generated Refund. Set 14 day follow up to ensure TC 840 posts. 2. If return has been filed and no credit is available for any or all modules for which the refund has been requested, close TTEE RFND classification on the Classification screen, update AIS history to reflect actions, and input method of closure on AIS (″RI CH7&HARDSHIPCH13 - RI″ or ″SI 13 PLAN COMPLETED - SI″). 3. If returns are filed with a balance due for the periods requested, document AIS history to state return(s) filed and no refund due, close “TTEE RFND” classification, and input method of closure on AIS (″RI CH7&HARDSHIPCH13 - RI″ or ″SI 13 PLAN COMPLETED - SI″). 4. If no return filed and case is Chapter 13, document AIS history to state no return filed for period requested and case discharged. 5. If no return filed and case is Chapter 7 and time has not expired in accordance with IRM guidelines, leave classification open, document AIS history to state trustee turnover is still in effect, and input method of closure (″RI CH7&HARDSHIPCH13 - RI″).
An Exam or URP/IRP classification is open and an assessment is pending or re-assessment of a TC 291 or TC 301 should be reversed to TC 290 or TC 300,	Contact the appropriate Bankruptcy Exam or AUR Coordinator and advise them the bankruptcy has been discharged and the assessment can be made or the reversed assessment should be reinstated. Notate the AIS history with the name of the coordinator contacted and set a 30 day follow-up on the AIS Follow-Up Screen. CIO employees should also reassign the case to the technical team lead. When a response e-mail is received, update the AIS history with response information and update the follow-up date, when applicable.
An Exam or URP/IRP classification is open and an assessment is pending or re-assessment of a TC 291 or TC 301 should be reversed to TC 290 or TC 300, and Exam says it **will not** proceed with the assessment or reassessment,	Annotate the AIS history accordingly, close the classification, and process the discharge through ADS.(See IRM 5.9.15.3.2(5), Deposit to Unidentified Remittance File (URF) or Excess Collections File (XSF).)

IF...	THEN...
An Exam or URP/IRP classification is open and an assessment is pending or re-assessment of a TC 291 or TC 301 should be reversed to TC 290 or TC 300, and Exam says it **will** proceed with the assessment or re-assessment, and the tax period(s) involved is a pre-petition period and/or a post-petition period included in the plan of a Chapter 13 case,	After contacting Exam or AUR, input a four month follow-up date on the Letter screen on AIS and reassign to the Lead to monitor for the assessment(s) to post. Close classification and initiate the discharge through ADS.
An Exam or URP/IRP classification is open and an assessment is pending or re-assessment of a TC 291 or TC 301 should be reversed to TC 290 or TC 300, and Exam/AUR says it **will** proceed with the assessment or re-assessment, and the tax period(s) involved is a post-petition period not included in the Chapter 13 plan or a tax period in a Chapter 7N case.	After contacting Exam or AUR, close classification and process the discharge through ADS.
There is a TC 520 cc 80 (or 70)	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, 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.

Caution: In the above scenarios if a lien release is required and abatement of the period(s) on the NFTL will be delayed, a manual input of the lien release to ALS must be requested. (See IRM 5.9.17.18, Release of Federal Tax Liens.)

5.9.18.4
(12-16-2022)
Discharge Determination Reports (DDRs)

(1) **Processing Reports.** Once a discharge is received and the case is loaded to ADS for discharge processing, the ADS program generates reports to advise Insolvency caseworkers of both:

- actions taken by ADS
- when a case decision is required by the employee

(2) **ADS.** Discharge Determination Reports (DDRs) are generated when ADS Process K is initiated by the CIO Automated Process Control (APC) team. (See IRM 5.9.12.6, Automated Discharge System.) The DDRs can be found on the "ADS" screen on AIS after accessing the case via the "Taxpayer" screen on AIS.

(3) **Types of DDRs.** Two types of DDRs result from ADS Process K:

a. pre-discharge determinations which consist of "Problem Conditions" and "Hold Conditions," and

b. post-discharge determinations which consist of “Flagged Conditions”. Flagged means ADS has identified conditions that require action by the caseworker.

(4) **Flagged Options.** When a flagged TIN or module requires further action, the options are limited to:

a. forwarding the module for abatement (post-determinations only); or
b. processing the TIN or module manually (pre- and/or post-determination DDR).

(5) **Proper ADS Case Closure.** When a case is closed properly through ADS, the method of closure field on the AIS Taxpayer screen will be “RC REG DIS COMPLTE - RC” or “SC SUP DIS COMPLTE - SC.” Adding a closed on AIS date after a method of closure field with an “RA REG DIS PROCSNG - RA” or “SA SUP DIS PROCSNG - SA” indicates improper closing actions and is unacceptable.

5.9.18.5
(09-14-2017)
Problem Conditions

(1) **Resolving Problem Conditions.** When ADS encounters a circumstance that prevents processing a TIN, it generates a DDR with a specific problem condition. ADS will continue trying to process the discharge, and it will generate reports until one of the following occurs:

a. The problem condition is resolved, after which ADS will successfully process all modules of the TIN; or
b. The caseworker manually works the TIN and makes a decision of a manual request **M** on the ADS Module screen.

(2) **Social Security Number with an “N.”** A social security number (SSN) with an “N” indicates a period is on non-master file (NMF). ADS does not process NMF accounts. The caseworker must remove the TIN from ADS Processing and notify ADS the TIN has been worked. The caseworker must complete the procedures outlined in Exhibit 5.9.18-2, ADS Manual Determination Closing Action. In addition, the caseworker must take the following actions:

IF...	THEN...
A penalty adjustment is requested for a non-dischargeable period,	• Prepare Form 3177, Notice of Action for Entry on Master File, to request input of TC 971 cc 033. Include on that form a request for a TC 550 to extend the CSED. ***Note:*** Insolvency is responsible for computing the new CSED and entering it on Form 3177 . • Prepare Form 1331-B, Notice of Adjustment, for the abatement of penalties.
A full abatement is being requested,	• Form 3177 will not be completed. NMF cannot input TC 971 cc 031, so the caseworker should not request this transaction code and closing code. • Prepare Form 1331-B for adjustment of the balance due to $0.

IF...	THEN...
Both dischargeable and non-dischargeable periods are on NMF,	• Complete Form 3177 with TC 971 cc 033 and TC 550 and Form 1331-B for the non-dischargeable period(s), and • Complete Form 1331-B for both the dischargeable period(s) and non-dischargeable period(s).

Then:

1. Forward Form 3177 (if applicable) and Form 1331-B along with Form 3210, Document Transmittal, to the Cincinnati Submission Processing Campus.
2. Reassign the case to the lead's inventory and set a 45-day follow-up to monitor for the non-master file unit to post the TC 971 cc 033 and TC 550, if applicable, and all Form 1331-B adjustments.
3. When the adjustments have posted, prepare a new Form 3177 to request a TC 521 with the appropriate closing code be input to reverse the bankruptcy freeze. Forward the Form 3177 to the Cincinnati Submission Processing Campus.
4. Complete manual closing screen actions per Exhibit 5.9.18-2, ADS Manual Determination Closing Actions.

Caution: If a lien release is in order for non-master file module(s), a manual input of the lien release to ALS must be requested prior to initiating the NMF closing actions. (See IRM 5.9.17.18, Release of Federal Tax Liens.)

(3) **Invalid TIN Format.** If the TIN is not in the proper SSN/EIN format, ADS cannot process the discharge adjustment. The correct format is XXX-XX-XXXX for SSN and XX-XXXXXXX for EIN. The caseworker must work the abatement manually by following the procedures provided in Exhibit 5.9.18-1, Discharge Determination and IDRS Actions, and then initiate ADS closure processing by completing the manual closing screen actions shown in Exhibit 5.9.18-2, ADS Manual Determination Closing Actions.

(4) **SFR with More than One TC 300.** When a substitute for return (SFR) contains more than one TC 300, the caseworker must decide if the condition can be resolved so only one TC 300 remains on the account. If this cannot be done, the entire TIN must be processed manually. For guidance in making the discharge determination, see IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR Was Prepared, Exhibit 5.9.17-6, Determining Dischargeability Upon Completion of the Chapter 13 Plan When a SFR is Present, and 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. The caseworker must complete the procedures in Exhibit 5.9.18-1, Discharge Determination and IDRS Actions, to resolve the DDR, followed by the steps in Exhibit 5.9.18-2, ADS Manual Determination Closing Actions, to complete manual closing screen action.

Caution: In Chapter 7 and Chapter 13 cases, SFRs may be non-dischargeable. (See IRM 5.9.2.10.1.2, A Valid Tax Return.)

(5) **MFT Is Not 55 and Return Received Date Not Valid.** If the Master File Tax (MFT) code is **not** 55 and the return received date is not valid, a DDR is

generated. ADS requires a return received date to make a discharge determination with the exception of MFT 55. ADS uses the last day of the period for the return received date for MFT 55. IDRS is unlikely to display a tax module "A" (TXMODA) without a return received date. Since the date is critical, ADS will continue to check for it. The caseworker must complete the steps given in Exhibit 5.9.18-1, Discharge Determination and IDRS Actions, to resolve the DDR and then complete manual closing screen action per Exhibit 5.9.18-2, ADS Manual Determination Closing Actions .

(6) **Discharge Does Not Process Partnership or Corporation.** ADS does not discharge modules identified as partnerships or corporations (MFT codes 02 or 06). The caseworker must remove the TIN from ADS processing and resolve all the modules manually. The caseworker must complete the procedures in Exhibit 5.9.18-1, Discharge Determination and IDRS Actions, to resolve the DDR. To complete manual closing screen action, follow the steps in Exhibit 5.9.18-2, ADS Manual Determination Closing Actions.

(7) **SFR and TC 300 with Disposal Code 03, 04, or 09, but No TC 870 Date.** ADS cannot make a discharge determination on a period with an agreed assessment without the return received date. The TC 870 date represents the received date of the agreed assessment. Since adding a TC 870 date is highly unlikely, all periods of the TIN must be processed manually. IRM 5.9.2.10.1.2, A Valid Tax Return, states the conditions under which a module with an SFR assessment may be dischargeable or may be subject to exceptions to discharge. For guidance in making the discharge determination, see IRM 5.9.17.8 , Determining Dischargeability of Late Filed Returns in Which a SFR Was Prepared, Exhibit 5.9.17-6 , Determining Dischargeability Upon Completion of the Chapter 13 Plan When a SFR is Present, and 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. The case worker must complete the procedures in Exhibit 5.9.18-1, Discharge Determination and IDRS Actions, to resolve the DDR. Exhibit 5.9.18-2, ADS Manual Determination Closing Actions, gives instructions to complete manual ADS closing actions.

(8) **SFR and TC 300 with Disposal Code 03, 04, or 09 but No TC 870 Date or ASED Date.** This condition is the same as in paragraph (7) above, except the ADS program also scans the ASED date to determine the return received date. Without the dates ADS cannot make a discharge determination. IRM 5.9.2.10.1.2, A Valid Tax Return, states the conditions under which a module with an SFR assessment may be dischargeable or may be subject to exceptions to discharge. For guidance in making the discharge determination, see IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR Was Prepared, Exhibit 5.9.17-6, Determining Dischargeability Upon Completion of the Chapter 13 Plan When a SFR is Present, and 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. The case worker must complete the Exhibit 5.9.18-1, Discharge Determination and IDRS Actions procedures to resolve the DDR. Exhibit 5.9.18-2, ADS Manual Determination Closing Actions, outlines steps to complete manual closing actions.

(9) **-V or -W FRZ Not Present.** If the -V or -W bankruptcy freeze is not present, ADS cannot make a discharge determination. Complete the following procedures to correct the DDR:

- On IDRS, input TC 520(s) with appropriate closing code on the pre-petition period(s) where it is missing using command code REQ77 (See IDRS Command Code Job Aid on SERP.)
- On AIS, update the Freeze screen with the corresponding TC 520 information that was input on IDRS including all applicable tax periods.
- Document the AIS history.

Note: Once the transaction posts, ADS automatically resumes the discharge processing. No follow-up action is necessary.

5.9.18.6
(12-16-2022)
Flagged Conditions

(1) **Individual Modules.** ADS only flags potentially dischargeable modules that require a manual determination. After the module is flagged, ADS returns to the unflagged modules in that same account to complete discharge processing. Flagged conditions do not hold entire TINs as do problem or hold conditions.

(2) **Potential Trust Fund Recovery Penalty (TFRP).** ADS identifies an MFT 55 period if a zero balance is showing, and no TC 240 is present. Prior to the Bankruptcy Reform Act of 1994, some districts held the assessment because of the prohibition to assess until after discharge. The caseworker must determine if the TFRP will be assessed. (See IRM 5.9.3.10, Trust Fund Recovery Penalty.) The caseworker must complete the following procedures to determine if a TFRP will be assessed and correct the flagged condition:

1. Review AIS case history for previous assessment determination.
2. Examine the proof of claim for TFRP estimated periods.
3. Check command code UNLCE for assessment periods and amounts and corporation EIN (see IRM 2.4.41, Command Code UNCLE. This option provides general information on UNLCE, as well as, error responses, and definers).
4. Review corporation account for TFRP LEM tolerance.
5. Review Form 941 periods for ASED(s).
6. Check Integrated Collection System (ICS) by EIN for the name and contact information of the revenue officer assigned the corporate account, and histories regarding potential assessment.
7. Contact the assigned revenue officer directly for information.

IF...	THEN...
An assessment is appropriate based on local guidelines,	A follow-up date must be set for posting of the assessment.
The TFRP has posted after the discharge date,	Determine if it will be discharged. (See IRM 5.9.17.8, Discharge and Exceptions to Discharge.)
A TFRP is to be assessed and **is** included in the Chapter 13 plan (dischargeable),	The caseworker must follow the procedures in Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions.
The TFRP **is to be assessed** and is **not** included in the Chapter 13 plan (non-dischargeable),	The caseworker must follow the procedures in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.

IF...	THEN...
The TFRP **is** to be assessed in a Chapter 7,	The caseworker must follow the procedures in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.
The TFRP **is not** to be assessed,	The caseworker must follow the procedures in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.

Reminder: In a Chapter 13, the TFRP is excepted from discharge and is returned to the collection stream regardless of whether it is provided for in the plan (11 USC 1328(a)(2)).

(3) **Potential Split Period Assessment.** ADS identifies Chapter 13 cases for MFT 55 and MFT 13 modules with a petition date prior to the last day of the tax period. ADS cannot determine if a period is quarterly or annual. Not all MFT 55 assessments are TFRP; some may be other types of penalties assessed quarterly. The case worker must determine if the potential split period assessment has a portion of the liability that is non-dischargeable. (See IRM 5.9.17.8, Discharge and Exceptions to Discharge, and IRM 5.9.17.22, Adjustment Methods for Discharged Liabilities.) If the liability is discharged, follow the procedures in Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions. If the liability is partially dischargeable, follow the steps in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.

(4) **Business Master File Splits.** Split period assessments DDRs are generated for Business Master File (BMF) liabilities as well. ADS flags a BMF liability with a petition date between the first and last day of the period. (See IRM 5.9.13.19(2), Claimable Liability.)

- If the entire liability is dischargeable, the caseworker must follow procedures in Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions.
- If part of the liability is **not** dischargeable, the caseworker must complete the procedures outlined in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.

(5) **Multi-Assessment Unpaid.** ADS identifies a tax module with a petition date more than three years after the return due date that has multiple assessments, and at least one assessment is unpaid. The caseworker must determine if the unpaid assessments are dischargeable. (See IRM 5.9.17.8, Discharge and Exceptions to Discharge, IRM 5.9.13.19.3(2), The Concept of Tolling, and IRM 5.9.17.22, Adjustment Methods for Discharged Liabilities.) The caseworker must complete the following procedures:

- If the entire liability is dischargeable, the caseworker must follow procedures in Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions.
- If any of the assessments are **not** dischargeable, the caseworker must complete the procedures outlined in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.

(6) **Possible Trust Fund.** ADS flags potential trust fund modules when the due date of the return is more than three years from the petition date, **and** the MFT is 01, 04, or 11.

a. The caseworker must determine if non-dischargeable trust fund amounts are still due and if the non-trust fund portion of the assessment is dischargeable. (See IRM 5.9.17.8, Discharge and Exceptions to Discharge and IRM 5.9.17.22, Adjustment Methods for Discharged Liabilities.)
b. To determine the trust fund and non-trust fund balances due, the caseworker should refer to IRM 5.9.3.10.1, Calculating Trust Fund, and IRM 5.19.14.3.2, Trust Fund Calculation. If, after subtracting all payments, **no** trust fund is due, follow the steps in Exhibit 5.9.18-3, ADS Forward for Manager Closing Action. However, if **trust fund taxes remain due**, any unpaid **non-trust fund portion** must be abated manually. (See Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.)

(7) **Excise Tax - Possible Non-Trust Fund.** ADS flags modules where the due date of the return is more than three years prior to the petition date and the MFT code is 03 and abstract codes are 022, 026, and 027.

a. The caseworker must determine if non-dischargeable trust fund amounts are still due and if the non-trust fund portion of the assessment is dischargeable. (See IRM 5.9.13.19.3(2), The Concept of Tolling, and IRM 5.9.17.22, Adjustment Methods for Discharged Liabilities.)
b. If **no trust fund taxes are due**, follow the steps in Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions, to complete ADS processing.
c. If **trust fund taxes are due**, any unpaid **non-trust fund portion** must be abated manually. Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination, outlines the steps for completing the AIS closure.

(8) **Possible Non Trust Fund** ADS flags potential trust fund modules subject to a Chapter 13 super discharge when the MFT is 01, 11 or 14. Trust fund taxes will not be dischargeable in a Chapter 13 case with a discharge upon completion of the plan per 11 USC 1328(a).

a. The caseworker must determine if non-dischargeable trust fund amounts are still due and if the non-trust fund portion of the assessment is dischargeable. (See IRM 5.9.17.8 ,Discharge and Exceptions to Discharge, and IRM 5.9.17.22, Adjustment Methods for Discharged Liabilities.
b. To determine the trust fund and non-trust fund balances due, the caseworker should refer to IRM 5.9.3.10.1, Calculating Trust Fund, and IRM 5.19.14.3.2, Trust Fund Calculation. If, after subtracting all payments, **no trust fund is due**, follow the steps in Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions. However, if **trust fund taxes remain due**, any unpaid **non-trust fund portion** must be abated manually. (See Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.)

(9) **Criminal Restitution**. ADS will flag IMF modules with a criminal restitution assessment on an MFT 31 module identified by TC 971 with action code 102. Restitution ordered in a case of an individual will be assessed with one of the following:

- TC 290 with Reason Code 141 to 150
- TC 298 with Reason Code 141 to 150

The restitution assessment and the interest should not be discharged on an IMF module.

IF	Then
the module contains only the restitution assessment and interest,	the CRIMREST flag should be worked by following Exhibit 5.9.18-5, Not Discharged Closing Action.
the penalty and interest on the penalty are dischargeable,	caseworkers should work the CRIMREST flag in these cases by following Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.
the penalty and interest on the penalty are not dischargeable,	caseworkers should work the CRIMREST flag in these cases by following Exhibit 5.9.18-5, Not Discharged Closing Action.

All CRIMREST DDRs are worked by Field Insolvency (FI) due to the complex issues. See IRM 5.9.17.8.8, Discharge and Restitution Assessments. All other issues need to be addressed prior to reassigning cases to FI to address the Criminal Restitution issues.

(10) **Excise Tax for Indoor Tanning Services (TANTAX).** ADS will flag modules where an excise tax on indoor tanning services has been assessed. The tax is identified on MFT 03 where you will find an Abstract Number 140 under the Posted Return section on TXMOD with a TC 150 or TC 290 in the Return Transaction area. (See *General - Abstract 140 – Indoor Tanning Tax (irsnet.gov)*.) The excise tax for indoor tanning services imposed under IRC 5000B is excepted from discharge for (i) an individual Chapter 7 or Chapter 11 debtor pursuant to section 523(a)(1)(A) and (ii) a Chapter 13 debtor pursuant to Bankruptcy Code section 1328(a)(2). Follow IRM 5.9.17.8, Discharge and Exceptions to Discharge, to determine if the penalties are dischargeable.

5.9.18.6.1
(12-16-2022)
Penalty Abatement DDRs

(1) **Non-Dischargeable Taxes.** ADS flags modules where the tax is non-dischargeable, but the penalties could be dischargeable. This condition may exist with Chapter 7 discharges as well as Chapter 13 hardship discharges. This flag also includes non-hardship Chapter 13 discharges cases. Specifically trust fund taxes, taxes due on unfiled returns or late returns filed within two years prior to the petition date, and taxes resulting from fraudulent returns or that the debtor willfully attempted to evade or defeat are not dischargeable for Chapter 13 cases. Penalty abatement determinations must be made in situations where a tax liability is non-dischargeable, since under 11 USC 523(a)(7), penalties are sometimes dischargeable even when the associated taxes are not. Thus, a DDR is generated to notify the caseworker to make a determination on the dischargeability of a module, and, if appropriate, manually process the penalty abatement using the discharge date as the effective date.(See IRM 5.9.17.8, Discharge and Exceptions to Discharge, 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), IRM 5.9.13.19.3(2), The Concept of Tolling , and IRM 5.9.17.22, Adjustment Methods for Discharged Liabilities.)

Reminder: All exceptions to discharge under 11 USC 523(a) apply to Chapter 13 hardship discharges.

(2) **Penalty Abatement.** When processing a PDTN DDR, the caseworker must determine if there are any TC 276 Failure to Pay (FTP) Penalties to be abated.

IF	THEN
A determination is identified to abate an assessed TC 276, Failure to Pay (FTP) Penalty,	Input TC 271 for the amount to be abated using the discharge date as the effective transaction date.
There are no FTP abatements required nor there is any accrued FTP,	The caseworker must input a TC 270 for .00 using the discharge date as the effective transaction date.
There is manually assessed interest or an unreversed TC 340 with a money amount greater than .00 present on the module,	Adjust the interest as required or the caseworker must input a TC 340 for .00 when inputting the abatement.

Note: To determine the Debit Interest to Date (DB-INT-TO-DT), refer to the chart, IDRS Online Input Table, in the Document 6209, IRS Processing Codes and Information.

Example: If you are inputting the abatement on 07/13/2022, you will input the DB-INT date as 08/01/2022.

(3) **Priority - Penalties Dischargeable, Tax Is Not (PDTN).** ADS flags modules where the due date of the return is more than three years before the petition date and tax is still determined to be priority (non-dischargeable) because of tolling of time from prior bankruptcies. The three-year period under 11 USC 523(a)(7) for determining if a penalty is non-dischargeable may also be equitably tolled. The caseworker must determine if penalties must be discharged even though the tax is not discharged. The caseworker should complete the following procedures to remove the case from ADS:

- If dischargeable unpaid penalties exist, abate the applicable penalties on line, then follow the procedures listed in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination.
- If no dischargeable penalties exist or if all penalties have been paid, follow steps given in Exhibit 5.9.18-5, Not Discharged Closing Action.

(4) **240 Days - Penalties Dischargeable, Tax is Not (PDTN).** ADS flags modules where the return due date is more than three years before the petition date, and an assessment (TC 150, TC 290, or TC 300) was made within 240 days before the petition date. This flag is limited to Chapter 7 discharges and Chapter 13 hardship discharges. The caseworker must determine if penalties should be discharged even though the tax is not dischargeable. To remove from ADS, the caseworker must:

a. Abate the applicable penalties on line and then follow the steps given in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination, if dischargeable penalties exist; or
b. Follow instructions in Exhibit 5.9.18-5, Not Discharged Closing Actions, if no dischargeable penalties are posted.

Reminder: When determining pre-petition taxes entitled to priority status, the 240 day period is suspended when an Offer in Compromise (OIC) is pending or is in effect. See IRM 5.9.13.19.3(1), Unsecured Priority, Priority Classification.

(5) **2 Year Rule - Penalties Dischargeable, Tax Is Not (PDTN).** ADS identifies modules where the return due date is more than three years before the petition date, and the tax return was filed within two years before the petition date. Originally this flag was limited to Chapter 7 and Chapter 13 hardship discharges. However, it now has been expanded to include all Chapter 13 cases. The caseworker must determine if unpaid penalties are present to discharge even though the tax is not dischargeable. Command code INTST can be reviewed to determine if unpaid penalties exist for Chapter 7 cases. In Chapter 13 cases, review TXMOD to determine the amount of penalties to abate. IDRS does not separate TC 670, 680, 690 on INTST. Caseworkers should use the discharge date as the transaction date when inputting abatement transactions. The caseworker must complete the following procedures to remove from ADS:

a. Abate the applicable penalties on line and then follow the steps given in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination, if dischargeable penalties exist; or
b. Follow instructions in Exhibit 5.9.18-5, Not Discharged Closing Actions, if no dischargeable penalties have posted.

Note: There is a 7-day grace period when the tax return is received before the FTF assessment. The 7-day grace period is applicable for the return due date and filed extensions. If a timely filed return is received, keep in mind the 7-day grace period when determining dischargeability.

(6) **Unagreed SFR - Penalties Dischargeable, Tax Is Not (PDTN).** ADS identifies modules where the tax period has an SFR and an unagreed indicator. An unagreed indicator is where the following is **not** present:

- Disposal code 03, 04, 09
- TC 560
- TC 599 cc 39, 64, or 89

The caseworker must determine if penalties are present on the tax module to discharge even though the tax itself is not dischargeable. IRM 5.9.2.10.1.2, A Valid Tax Return, states the conditions under which a module with an SFR assessment may be dischargeable or may be subject to exceptions to discharge. The caseworker should complete the following procedures to remove the case from ADS:

a. Abate the applicable unpaid penalties on line and then follow the steps given in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination, if dischargeable penalties exist; or
b. Follow instructions in Exhibit 5.9.18-5, Not Discharged Closing Actions, if no dischargeable penalties exist or if the penalties have been full paid.

(7) **Fraud - Penalties Dischargeable, Tax Is Not (PDTN).** ADS will identify modules where the fraud indicator TC 320 is present on TXMODA. The caseworker must determine if penalties should be discharged even though the tax is not. As stated above this flag will apply to Chapter 13 cases, which would otherwise be subject to a Chapter 13 super discharge, as well as, to Chapter 7 and Chapter 13 hardship discharges. To remove the account from ADS, the caseworker must:

a. Abate the applicable penalties on line and then follow the steps given in Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination, if dischargeable penalties exist; or
b. Follow instructions in Exhibit 5.9.18-5, Not Discharged Closing Action, if no dischargeable penalties have posted.

(8) **Extension to File - Penalties Dischargeable, Tax is Not (EXTEN PDTN)** ADS will flag periods that have a Transaction Code 460 and the original return due date was more than three years prior to the petition date and the extended date (TC 460) is within three years of the petition date. This flag is limited to Chapter 7 discharges and Chapter 13 hardship discharges. When working the flag, caseworkers must determine if the Failure to Pay Penalty (FTP) and/or the Estimated Tax Penalty is dischargeable. The caseworker must consider the transaction or event that gave rise to the penalty. An extension for filing a return is not an extension for paying the tax. The **event date** for the failure to file (FTF) penalty is changed by an approved extension for filing of the return. The **event date** for the failure to pay (FTP) penalty is not changed by an approved extension for filing the return. Refer to IRM 5.9.17.8(8), Discharge and Exceptions to Discharge, Non-Pecuniary Loss Penalties - Non-Dischargeable (Within Three Year Rule). Use the chart provided in 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), to determine whether penalties are dischargeable under these conditions. The caseworker must complete the following procedures to remove from ADS:

a. Abate the applicable penalties online and then follow the steps given in Exhibit 5.9.18-4, Partial Abatement/DDR Manual Determination, if dischargeable penalties exist; or
b. Follow instructions in Exhibit 5.9.18-5, Not Discharged Closing Actions, if no dischargeable penalties have posted or if the penalties have been full paid.

5.9.18.6.2
(12-16-2022)
(Super Discharge) No Return or Return Not Assessed

(1) **No Return; Return Not Assessed.** ADS flags Chapter 13 modules where no TC 150 has posted to the account. If a return has not been filed prior to the petition date, any taxes due for that return are not dischargeable. Any open returns not assessed should not be closed. The caseworker must input TC 521 and complete the procedures outlined in Exhibit 5.9.18-2, ADS Manual Determination Closing Actions, to clear the account from ADS.

5.9.18.6.3
(12-16-2022)
Fraud Conditions

(1) **Possible Fraud.** ADS flags modules as possible fraud when the due date of the return to the petition date is greater than three years, a TC 350 (negligence penalty) appears on the TXMOD, and a TC 914 or 910 (case held or assigned to Criminal Investigation) is present.

a. A determination must be made if fraud exists which excepts a period from discharge. See IRM 5.9.17.8, Discharge and Exceptions to Discharge, IRM 5.9.17.8.2, The Fraud and Willful Evasion Exemption, and IRM 5.9.4.12, Bankruptcy Fraud.
b. If fraud exists and the case is Chapter 7 or Chapter 13 hardship or a non-hardship Chapter 13 case, the CIO caseworker should reassign the case to the appropriate Field Insolvency caseworker. A decision to forward a case to Area Counsel or a Fraud Enforcement Advisor will be made by Field Insolvency.

Note: Refer to the exhibit in Exhibit 5.9.5-1, Transfer Steps for Cases with No Open Confirmed Plan Monitoring (CPM) Plan Screen or No Open Other Investigation Screen, for instructions on the AIS transfer of cases between Field Insolvency and the CIO.

(2) **Assistance in Determining Fraud.** Fraud Enforcement Advisors assist employees in identifying and documenting indicators of fraud cases for referral to Criminal Investigation (CI). Fraud enforcement advisors are made up of revenue agents and revenue officers and are located in designated areas across the country. The Philadelphia Campus has a fraud enforcement advisor assigned to work issues arising from CIO processing. The fraud enforcement advisor may contact Counsel for help in developing a quality referral to CI.

- If the fraud referral is not accepted by CI, the caseworker must determine if the case will be referred to Area Counsel based on the fraud exception to discharge.
- If written concurrence is received from Counsel stating the taxes are non-dischargeable based on the fraud exception to discharge, the caseworker must complete the procedures in Exhibit 5.9.18-5, Not Discharged Closing Action, to remove the case from ADS.
- If fraud does **not** exist, the caseworker follows the steps in Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions.

Note: If an MFT 30 module is flagged and there is a related MFT 35 module, it will also be flagged. If it is determined that fraud exists, the MFT 35 will not be discharged.

5.9.18.6.4
(12-16-2022)
Abandoned/Exempt/ Excluded Property DDR

(1) **Abandoned/Exempt/Excluded Property Review.** ADS identifies modules as flagged conditions when a TC 582 (Notice of Federal Tax Lien indicator) exists and command code IRPTRL shows at least one of the following with a dollar amount greater than zero:

- Mortgage Interest Paid (MTG INT PD)
- Rents
- Investment Expenses (INVEST EXP)

(2) **ADS Dollar Tolerance.** The total aggregate balance due modules with a TC 582 present must be greater than the database dollar criteria established in the ADS parameters for the system to generate this DDR.

(3) **Non-Dischargeable Periods.** The caseworker must determine the dischargeability of the flagged periods, including penalties. (See IRM 5.9.17.8, Discharge and Exceptions to Discharge, and IRM 5.9.13.19.3(2), The Concept of Tolling.) If a period is non-dischargeable, steps in Exhibit 5.9.18-5, Not Discharged Closing Action are followed to remove the case from ADS.

(4) **Dischargeable Periods and Exempt/Abandoned/Excluded Property.** In most instances, investigations for exempt, abandoned or excluded property are completed "up-front" instead of when a discharge is received. The caseworker should review the case history and the case classifications to determine if the review has been completed.

IF	THEN
If an EAEP investigation was not completed prior to discharge,	CIO will follow the EAEP research procedures in IRM 5.9.17.5.1, Pre-discharge Review for Exempt, Abandoned, or Excluded Property (EAEP) in Chapter 7 No Asset Cases. If the case meets transfer criteria, the CIO will transfer the case to FI.
If the asset review has been completed and there is no collection potential from EAEP after discharge,	The CIO caseworker will take the necessary discharge actions to resolve the DDR.
If collection will be pursued from EAEP,	The FI caseworker will retain the case and take collection action. (See IRM 5.9.17.5.2, Collection from Exempt, Abandoned, or Excluded Property (EAEP)).

5.9.18.6.5
(04-14-2020)
Section 1305 Claims

(1) **Post-petition Claims.** ADS flags a Chapter 13 post-petition module in status 72. This indicates a TC 520 is posted to the module. At the time the Field Insolvency specialist addresses the post-petition liability, (s)he must update the AIS history with an explanation of how that liability will be handled upon discharge. If Field Insolvency prepares an 11 USC 1305 claim, the Field caseworker must document in the history that payment of the post-petition module has been provided for in a plan or in a modified plan. (See IRM 5.9.10.9.2, 11 USC Section 1305 Claims, and IRM 5.9.17.15.1(1), BAPCPA Discharges.)

(2) **Unpaid 1305 Claims.** If a 1305 claim has been partially paid at the time of discharge, the caseworker should research IDRS and the AIS payment screen for misapplied payments. If misapplied payments are found that fully pay the 11 USC 1305 claim, the payments in question should be transferred to the post-petition period and a follow-up input for the payment transfer(s) to post. Once the payments have posted to the 1305 period, the period should be discharged, unless exceptions to discharge apply. The caseworker should process the closure following Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions.

Note: Certain taxes will be excepted from discharge even if provided for in the plan. Liabilities on an 11 USC 1305 claim are non-dischargeable when the post-petition return was filed late.

(3) **Transfer for Trustee Contact.** If the AIS history confirms a chapter 13 plan has been modified or a modified plan has been approved and the plan

includes provisions for payment of an 11 USC 1305 claim, full pay has not been received, and misapplied payments are not found, the case should be transferred to Field Insolvency for contact with the trustee. When the issue has been resolved between the trustee and Field Insolvency, the case will be transferred back to the CIO for final disposition.

5.9.18.6.6
(12-16-2022)
Willful Failure to Pay

(1) **Counsel Request.** The willful failure to pay flag was established at the request of Counsel to identify potential "Toti" cases based on the court's decision in **Toti v. United States, 24 F. 3d 806 (6th Cir. 1994)**. The reviewer must determine if the flagged condition is an exception to discharge as outlined in 11 USC 523. (See IRM 5.9.17.8, Discharge and Exceptions to Discharge, and IRM 5.9.17.8.2, The Fraud or Willful Evasion Exception to Discharge.)

(2) **Systemic Identification.** ADS identifies modules where the:

a. due date of the return to the petition date is greater than three years;
b. prior tax year's adjusted gross income (AGI) is greater than the ADS parameter set by management; and
c. aggregate balance is greater than the ADS parameter based on Counsel referral criteria.

Note: If an MFT 30 module is flagged and there is a related MFT 35 module, it will also be flagged. If is it determined that the willful failure to pay exists, the MFT 35 module will not be discharged.

(3) **Caseworker Actions.** The bankruptcy caseworker must:

1. review AIS History screen and AIS Classification screen to determine if a willful failure to pay investigation has been performed (See IRM 5.9.6.10.3(3) FI Investigation); and
2. if no investigation has been performed, reassign the case to Field Insolvency to complete the investigation and to prepare a referral to Counsel for written concurrence not to discharge taxes based on the exception to discharge, if necessary.
3. if the AIS History and Classification screens confirm an investigation was previously completed, follow the discharge guidance provided by the FI caseworker in the "Summary History" on AIS.
4. Document AIS history with actions taken.

If Counsel's guidance is **not** to except from discharge and the case is Chapter 7, the caseworker should follow the steps in Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions. If written Counsel concurrence is received to except a Chapter 7 module from discharge, the caseworker must complete the procedures outlined in Exhibit 5.9.18-5, Not Discharged Closing Action.

(4) **Field Insolvency (FI) Willful Failure to Pay (WFTP) Review.** Willfulness means that the intended act was done knowingly. The Willful Failure to Pay (WFTP) may be reviewed hand-in-hand during the EAEP review. BC 523 and the Toti case concerns the willful failure to pay taxes as an exception to discharge whether the debtor attempted to willfully evade or defeat taxes under BC 523(a)(1)(C) by failing to file returns and pay taxes as willful evasion exception to discharge. IRM 5.9.2.10.1(5), Willful Evasion, to judge actions as constituting willful evasion, the IRS must consider the following strictures:

a. A preponderance of the evidence is the standard to prove willful evasion,

b. Failure to file and pay taxes is usually not enough to demonstrate willful evasion. But a debtor's voluntary conscious and intentional failure to file returns for an extended period of time may qualify as willful evasion under 11 USC 523(a)(1)(C),

c. Some courts require the IRS to prove some affirmative misconduct, such as concealed or fraudulently transferred assets.

Caution: Insolvency must obtain written approval from Counsel before returning cases to the collection stream where taxes were not discharged on the grounds of willful evasion.

See IRM 5.9.5.4.4(2), Chapter 7NA Individual Cases, for summary history and classification information and IRM 5.9.17.8.2, The Fraud or Willful Evasion Exception to Discharge.

5.9.18.6.7
(12-16-2022)
Post-petition Payment

(1) **Post-petition Payment, Violation of Automatic Stay: TC 670=05/706 /820.** When the flagged condition is Post Petit Payment, Viol stay-TC 670 pay=05/706/820, a payment is identified as a TC 670 = 05 (Notice of Levy), TC 706 (Overpayment Applied from Another Tax Module), or a TC 820 (Credit Transferred). ADS identifies modules with a TC 670 followed by designated payment code of 05, 18, 19, 20, or 21 or TC 706, or TC 820 with a transaction date between the petition date and the discharge date. This DDR generates for regular discharges, but not for super discharges. The reviewer must determine if the post-petition payment is a violation of the stay. (See IRM 5.9.4.5.1(3), Table - Credits, Refunds, Offsets (Post-BAPCPA), IRM 5.9.4.5.1(4),Table - Credits, Refunds, Offsets (Pre-BAPCPA), and IRM 5.9.4.5.2, Post-Petition Payments and Credits).

(2) **Levy Payments.** Levy payments are often identified as TC 670 with designated payment code 05, however levy payments may also be identified with a designated payment code of 18, 19, 20, or 21. If the levy payment results in an overpayment on a module, it may systemically roll over to other modules as a TC 706 or TC 820. When addressing TC 706 or TC 820, the caseworker must refer to the module from which the credit has been transferred to determine if the payment was originally derived from a post-petition levy of the debtor. When a credit is identified as a levy payment, the caseworker should prepare Form 5792, Request for IDRS Generated Refund. (See IRM 5.9.16.3, Manual Refunds).

Note: IDRS research is necessary to verify that the TC 670 with a DPC=05 is an actual levy payment. Miscoded levy payments can be identified through research of Remittance Transaction Research (RTR) and IDRS command code IADIS to identify payroll installment agreements featuring automatically debited payments from bank accounts or wages.

(3) **Non-Levy Payment.** If the credit is a TC 706 or TC 820 representing a post-petition payment to a pre-petition liability, and does not represent proceeds from a notice of levy, the caseworker should review local rules/standing orders or AIS history to determine if the offset of a post-petition refund to a pre-petition liability is allowed, and if so, abide by the local rules/standing orders.

(4) **Discharge Actions.** After post-petition payment issues have been addressed, the caseworker must determine if any or all of the liabilities are dischargeable. If so, the caseworker should follow procedures in Exhibit 5.9.18-3, ADS Forward for Manager Approval Closing Actions or Exhibit 5.9.18-1, Discharge

Determination and IDRS Actions, for full abatements or follow Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination, for partial abatements.

(5) **No Action Required.** If no action is necessary or no liability is dischargeable, the caseworker should follow the procedures in Exhibit 5.9.18-5, Not Discharged Closing Action.

5.9.18.6.8
(12-16-2022)
Community Property

(1) **Non-Debtor Spouse.** A DDR is generated when ADS identifies a bankruptcy filed in a community property state or commonwealth when a non-debtor spouse has filed joint tax returns with a debtor spouse. A determination must be made if the account should be mirrored or discharged for both spouses.

Note: Non-dischargeable periods in community property states are still mirrored to ensure the Collection Statute Expiration Date (CSED) is only extended on the petitioning spouse. See IRM 5.9.17.23(3), Periods Excepted from Discharge.

The community property states and commonwealth are:

- Arizona
- California
- Idaho
- Louisiana
- Nevada
- New Mexico
- Texas
- Washington
- Wisconsin
- Puerto Rico
- Alaska (may elect)
- South Dakota (may elect)

(2) **Marital Property.** Property acquired during marriage is presumed to be community property with certain exceptions, such as an inheritance where only one spouse is the heir. All community property becomes a part of the bankruptcy estate, including the interest of the non-debtor spouse.

(3) **"Hypothetical Discharge. "** Upon the debtor spouse's discharge, the non-debtor spouse receives a "hypothetical discharge." (See IRM 25.18.4.18.4, Discharge Provisions) This hypothetical discharge is only good as long as the spouses remain subject to community property laws which are determined by the state where the taxpayers domicile (live). The Service assumes the spouses are subject to community property laws as long as both are alive, they remain married to each other, and they domicile in a community property state or commonwealth. (See IRM 25.18.1.3 ,Determining if Community Property Laws Apply.)

(4) **Necessary Research.** When working community property DDRs, caseworkers should review the official bankruptcy forms filed by the debtor to determine the debtor's marital status at the time of bankruptcy filing. IMFOLI also shows the current marital status of the debtor based on the most recently filed return.

Note: If at any time during the bankruptcy, the debtor and non-debtor spouse divorce, or the debtor dies, the community property estate ceases to exist, and collection can proceed against the non-debtor spouse.

(5) **Joint Dischargeability.** If the debtor listed (s)he was married at the time of the bankruptcy filing and IDRS/CFOL research indicates the debtor remains married to the same non-debtor spouse, the caseworker can process any joint dischargeable periods for abatement. However, if the debtors are no longer married or for some other reason are no longer subject to collection from community property, the accounts must be mirrored if the balance due meets the dollar criterion for mirroring.

(6) **Undetermined Marital Status.** If a caseworker is unable to determine the debtor's marital situation at time of filing the bankruptcy and at the time of discharge using PACER and IDRS, the jointly filed returns should be treated as community property for abatement purposes.

(7) **Manual Designation.** If the determination is made to treat the joint liabilities according to community property provisions and not mirror the account, the caseworker should close the DDR by selecting **M** (Manual) and should manually abate the periods on IDRS and release the bankruptcy freeze code.

(8) **"Forward" to Abate and Mirror.** If the determination is made to mirror the account because community property criteria do not apply, the caseworker should **F** (Forward) the case to the manager's queue for approval. Systemic mirroring will begin upon the manager's inputting the ADS approval code. Once mirroring is complete, ADS will perform the appropriate automated discharge and closing actions on these mirrored modules.

Note: Do not **F** (Forward) the module if the period is non-dischargeable. This includes PRI-NDS DDRs in which the primary TIN is non-dischargeable.

(9) **Documentation.** The AIS history must be updated to reflect the research leading to treating the joint liabilities as community property or the reasons for proceeding with mirroring.

5.9.18.6.9
(12-16-2022)
Employer Shared Responsibility Payment MFT 43

(1) **ADS Background**. For bankruptcy purposes, the Employer Shared Responsibility Payment (ESRP) MFT 43 liability is treated as an excise tax for which a return is not required.

(2) **ADS Discharge Actions**. ADS will flag a module where the MFT code is 43 and the date of the TC 971 AC 782 is within the three years prior to the petition date. ADS will make the discharge determination for this condition and input closing transactions on IDRS. If any additional flagged conditions prevent systemic discharge on the module, the caseworker must determine appropriate discharge actions according to the chapter of the bankruptcy, method of closure, and the exceptions to discharge. The ESRP is excepted from discharge under the applicable provisions of 11 USC 523(a)(1) when that section is applicable. See IRM 5.9.17, Closing a Bankruptcy Case, and IRM 5.9.17.8.11, Discharge and Employer Shared Responsibility Payment (ESRP) Liabilities, for more information.

5.9.18.7
(12-16-2022)
Hold Conditions

(1) **Processing on All Modules Held.** ADS creates a hold condition when any IDRS module indicates a credit balance. All modules on that TIN will be placed on hold until the credit condition no longer exists. The goal of the condition is to resolve the credit and then allow ADS to continue the discharge determination on all periods of the TIN. No follow-up action is necessary. (See IRM 5.9.4.5, Credits, Refunds and Offsets, and IRM 5.9.17.8, Discharge and Exceptions to Discharge.)

(2) **Initial Credit Balance and Unresolved Credit Balance.** Two "hold condition" DDRs are generated by ADS:

a. Initial Credit Balance
b. Unresolved Credit Balance

The unresolved credit balance results from an initial credit balance remaining unresolved after 30 days from the ADS start date. The caseworker should resolve the credit balance through offset or refund as appropriate. When the module is no longer a credit balance, ADS automatically resumes processing. If the credit cannot be resolved, the caseworker must manually process all the periods of the TIN. The following table provides guidance in resolving credit balances.

IF...	THEN...
Liabilities exist and the credit is pre-petition,	Determine if an offset is applicable. (See IRM 5.9.4.5.1(3), Table — Credits, Refunds, Offsets (Post-BAPCPA), or IRM 5.9.4.5.1(4), Table - Credits, Refunds, Offsets (Pre-BAPCPA).)
An offset is not applicable,	Per any local rules/standing orders or trustee turnover request, prepare Form 5792, Request for Manual Refund. (See IRM 5.9.16.3, Manual Refunds, and Exhibit 5.9.16-1, Instructions for Preparing Form 5792.)
An offset is applicable, follow any local rules or standing orders that apply,	Input the credit transfer on IDRS. (See IRM 21.5.8.4, IDRS Guidelines for Credit Transfers, and IRM 21.5.8.4.1, Credit Transfer Input on IDRS.) Document the AIS history.
Liabilities exist and the credit is post-petition,	Determine if an offset is applicable. (See IRM 5.9.4.5.2(6),Table - Post-Petition Payments and Credits.)
Liabilities exist, the credit is post-petition, and an offset **is not** applicable,	Per any local rules/standing orders or trustee turnover request, prepare Form 5792, Request for Manual Refund. (See IRM 5.9.16.3, Manual Refunds, and Exhibit 5.9.16-1, Instructions for Preparing Form 5792.)
Liabilities exist, the credit is post-petition, and an offset **is** applicable,	Follow any local rules or standing orders that apply; input the credit transfer on IDRS. (See IRM 21.5.8.4, IDRS Guidelines for Credit Transfers, and IRM 21.5.8.4.1, Credit Transfer Input on IDRS.)
No liabilities exist but the Service has filed an unassessed (estimated) proof of claim and credit is on/for that period,	Review the AIS history and claim screen for an assessment amount or information verifying a liability exists, and review IDRS for assessment posting to verify if an assessment has posted where money can be applied.

IF...	THEN...
No liabilities exist but the Service has filed an unassessed (estimated) proof of claim and credit is on/for that pre-petition period and **no** assessment has posted,	Apply the payment(s) to other tax periods with balances due of the same claim type(secured, priority, or general), if they exist. If there are no other balances due of the same claim type, prepare Form 2424, Account Adjustment Voucher, to transfer the credit to Unidentified Remittance if credit received date is less than one year old; or prepare Form 8758, Excess Collections File Addition, to transfer to Excess Collections. (See IRM 3.17.220.2.2.1, Preparation of Form 8758.) Send prepared Form 2424 or Form 8758 to appropriate Campus Accounting Branch. Document the AIS history-.(See IRM 5.9.15.3.2(3), Assessment Proposed or No Return Filed.)
No liabilities exist but a -L freeze (Exam) or a TC 922 (Underreporter) exists on a module for which the Service has filed an unassessed (estimated) proof of claim and the credit is on/for that period,	E-mail the Exam or Underreporter contact to advise of lift of stay and request the assessment be made. ***Note:*** If the credit is not on the proper period, create a dummy module by moving the credit to the period to be assessed.
No liabilities are posted, but a -L freeze (Exam) or a TC 922 (Underreporter) exists on a module for which the Service has filed an unassessed (estimated) proof of claim and the credit is on/for that period and an assessment **is** to be made,	Monitor for the assessment to post. If the credit has not already posted to assessment period, offset whole or part of credit to the assessment period as per the plan, creating a dummy module if necessary. (See IRM 21.5.8.4, IDRS Guidelines for Credit Transfers, and IRM 21.5.8.4.1, Credit Transfer Input on IDRS.)
No liabilities exist but a -L freeze (Exam) or a TC 922 (Underreporter) exists on a module for which the Service has filed an unassessed (estimated) proof of claim and the credit is on/for that pre-petition period and an assessment **is not** to be made,	Apply the payment(s) to other tax periods with balances due of the same claim type, if they exist, with any remaining balance refunded to the trustee (See IRM 5.9.15.3.2(4), Open Exam or AUR Indicators), prepare Form 5792 Request for Manual Refund. (See IRM 5.9.16.3, Manual Refunds.) Document the AIS history.
No liability exists and no unassessed (estimated) proof of claim was filed and no pre-petition returns await processing,	Per any local rules/standing orders or trustee turnover request, prepare Form 5792, Request for Manual Refund. (See IRM 5.9.16.3, Manual Refunds.)
The credit balance DDR cannot be resolved,	Follow the steps in Exhibit 5.9.18-1, Discharge Determination and IDRS Actions, and the steps in Exhibit 5.9.18-2, ADS Manual Determination Closing Actions.

Exhibit 5.9.18-1 (12-16-2022)
Discharge Determination and IDRS Actions

Manual Closing Procedures for Full Abatement. If a case cannot be closed through ADS, the following procedures are input manually on IDRS to abate fully dischargeable periods or assessments. (See Exhibit 5.9.18-4, Partial Abatement / DDR Manual Determination, for partial abatement procedures.)

1. Determine dischargeability of all periods under the Taxpayer Identification Number (TIN).
2. Input TC 971 AC 031 on all dischargeable periods using CC REQ77.
3. Input TC 521 with appropriate closing code for all dischargeable periods allowing a two cycle posting delay, using command code REQ77 (see SERP, IDRS Command Code Job Aid).
4. Non-dischargeable periods should be closed by inputting TC 521 with the appropriate closing code.

Caution: Before taking discharge actions, cases should be reviewed for exempt/abandoned/excluded property issues and non-debtor spouse issues. If MFT 31 mirroring is required, refer to IRM 5.9.17.22.1, MFT 31 or MFT 65 Mirror Modules.

Exhibit 5.9.18-2 (04-14-2020)
ADS Manual Determination Closing Actions

Steps for Manual Determinations. When ADS cannot fully abate dischargeable assessments, and manual IDRS inputs are required, the caseworker should take the following actions on ADS:

1. Starting from the Taxpayer screen on AIS, select the **ADS** button.
2. Navigate to the desired module by selecting the appropriate index number.
3. Select **M** (manual determination) from the drop-down menu.
4. Select the **Save** button on the ADS screen to save your decision.
5. Select the history button to **Exit** the ADS screen and access the history screen for that case.

Note: If lengthy manual processing time is required, a **P**(Pending) should be selected in the ADS decision menu. The **P** will stop the generation of DDRs for the affected TIN; however, if ADS is updated with a **P**, the caseworkers must finish with an **M**).

Exhibit 5.9.18-3 (04-14-2020)
ADS Forward for Manager Approval Closing Actions

Managerial Approval. When ADS closing actions require a manager's approval, the steps in the table below should be observed.

Step	Action
1	Starting from the Taxpayer screen on AIS, select the **ADS** button.
2	Navigate to the desired module by selecting the appropriate index number..
3	Select **F** from the drop-down decision menu.
4	Select the **Save** button on the ADS screen to save your decision.
5	Select the history button to **Exit** the ADS screen and access the history screen for that case.
6	Document the actions taken on the AIS History screen.
7	If the manager rejects the abatement, they will contact the manager of the employee who forwarded the case for approval for resolution. Once the caseworker resolves the DDR, an F is reentered to forward for full abatement or an M is entered for discharges requiring manual closures.

Exhibit 5.9.18-4 (12-16-2022)
Partial Abatement / DDR Manual Determination

Actions for Partial Abatements. When a period qualifies for abatement of non-pecuniary penalties and interest on those penalties, the caseworker should take the following actions:

1. Input TC 971 AC 033 on all partially dischargeable periods using command code REQ77.

Note: TC 971 AC 033 is a ledger entry to indicate partial abatement due to bankruptcy. Unlike TC 971 AC 031, it does not trigger systemic abatements.

2. Input appropriate abatement transactions on IDRS for non-pecuniary penalties using command code REQ54.
3. At the same time the penalty abatements are input on IDRS using CC REQ77, input TC 521 with appropriate closing code(s) with a two cycle delay.
4. Starting from the Taxpayer screen on AIS, select the **ADS** button.
5. Navigate to the desired module by selecting the appropriate index number.
6. Select **M** (manual determination) from the d drop-down menu.
7. Select the **Save** button on the ADS screen to save your decision.
8. Select the history button to **Exit** the ADS screen and access the history screen for that case.
9. Document the actions taken on the AIS History screen.

Note: If a caseworker is unable to complete the manual processing, they may select **H** (Hold) in the ADS decision menu. The **H** prevents the generation of DDRs for the affected period; however, if the caseworker updates the decision field with **H**, they must always finish with an **M**.

Exhibit 5.9.18-5 (04-14-2020)
Not Discharged Closing Action

This exhibit gives closing steps for any DDR where the action is Not Discharged Closing Action. If a caseworker is working a DDR, and a period is non-dischargeable and no other actions are required, the caseworker should take the following actions:

1. Input TC 521 with appropriate closing code to IDRS using command code REQ77 (see SERP Command Code Job Aid).
2. Starting from the Taxpayer screen on AIS, select the **ADS** button.
3. Navigate to the desired module by selecting the appropriate index number.
4. Select **M** (manual determination)from the drop-down menu.
5. Select the **Save** button on the ADS screen to save your decision.
6. Select the history button to **Exit** the ADS screen and access the history screen for that case.
7. Document the actions taken on the AIS History screen.