



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

5.17.8

APRIL 13, 2020

## EFFECTIVE DATE

(04-13-2020)

## PURPOSE

- (1) This transmits revised IRM 5.17.8, *Legal Reference Guide for Revenue Officers, General Provisions of Bankruptcy*.

## MATERIAL CHANGES

- (1) IRM 5.17.8, *General Provisions of Bankruptcy*, has been updated to provide clarity and expansion of existing material. The following table illustrates changes within this IRM revision.

IRM	Change
5.17.8.1	Revised title and expanded subsections to include IRM internal controls information.
5.17.8.13	Revised time frame for general bar date.
5.17.8.15	IPU 20U0138 issued 1/21/2020 added guidance for treatment of Employer Shared Responsibility Payment (ESRP) Master File Tax (MFT) 43 liabilities.
5.17.8.17	IPU 20U0138 issued 1/21/2020 added guidance for ESRP MFT 43 Post Petition liabilities.
5.17.8.28	Revised automated stay effective timeframe.

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

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 5.17.8, *General Provisions of Bankruptcy*, dated October 6, 2016 and incorporates content from interim guidance SBSE 05-1217-0089, *Processing the MFT 43, Employer Shared Responsibility Payment (ESRP) in Bankruptcy Cases*, dated January 1, 2018 and IPU 20U0138 *ESRP MFT 43 Liabilities* dated January 21, 2020.

## AUDIENCE

Small Business /Self Employed Revenue Officers and Specialty Collection - Insolvency

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5.17.8

General Provisions of Bankruptcy

## Table of Contents

5.17.8.1 Program Scope and Objectives

5.17.8.1.1 Background

5.17.8.1.2 Authority

5.17.8.1.3 Responsibilities

5.17.8.1.4 Program Management and Review

5.17.8.1.5 Program Controls

5.17.8.1.6 Terms and Acronyms

5.17.8.1.7 Related Resources

5.17.8.2 The Insolvency Program's Role

5.17.8.3 The Bankruptcy Code

5.17.8.4 Jurisdiction of the Bankruptcy Court

5.17.8.5 Types of Bankruptcies

5.17.8.6 Voluntary and Involuntary Bankruptcies

5.17.8.7 Notice to Government of Commencement of Bankruptcy Proceeding

5.17.8.8 Trustees

5.17.8.9 First Meeting of Creditors and the Creditors' Committee

5.17.8.10 Automatic Stay - 11 USC § 362

5.17.8.11 Adequate Protection

5.17.8.12 Use, Sale, or Lease of Property

5.17.8.13 Proofs of Claim

5.17.8.14 Secured Claims

5.17.8.15 Unsecured Priority Claims

5.17.8.16 Unsecured General Claims

5.17.8.17 Post-petition Claims/Administrative Expenses

5.17.8.18 Interest

5.17.8.19 Penalties

5.17.8.20 Return Filing Requirements

5.17.8.21 Determination of Tax Liability

5.17.8.22 Exceptions to Discharge

5.17.8.23 Property of the Estate

5.17.8.24 Turnover to the Trustee — Assets Seized Pre-petition

5.17.8.25 Exempt Property

5.17.8.26 Trustee's Power to Avoid Preferences

5.17.8.27 Setoff

5.17.8.28 Effect of Bankruptcy on the Limitation Period for Assessment and Collection

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Exhibits

5.17.8-1 Glossary of Common Bankruptcy Terms

5.17.8.1  
(04-13-2020)  
**Program Scope and Objectives**

- (1) **Purpose.** This Internal Revenue Manual (IRM) contains guidance for Revenue Officers concerning bankruptcy cases and proceedings. It explains the provisions and concepts of bankruptcy law that generally apply to all bankruptcy cases.
- (2) **Audience.** This IRM section is designed for use by Small Business/Self-Employed (SB/SE) Revenue Officers (ROs) and management. Specialty Collection - Insolvency (SCI) caseworkers and management in the Centralized Insolvency Operation (CIO) and Field Insolvency (FI) may also refer to this section. Caseworkers in functions other than SB/SE may refer to this section when dealing with a taxpayer that has filed bankruptcy.
- (3) **Policy Owner.** Director, Collection Policy, SB/SE.
- (4) **Program Owner.** Collection Policy, SB/SE, Insolvency is the program owner of this IRM.
- (5) **Primary Stakeholders.** The primary stakeholders are Field Collection, Civil Enforcement Advice and Support Operations (CEASO), Chief Counsel, and Specialty Collection - Insolvency.
- (6) **Program Goals.** The goal is to provide fundamental knowledge and procedural guidance for working bankruptcy cases. Following the guidance in this IRM will ensure cases are worked in accordance with bankruptcy laws and regulations.

5.17.8.1.1  
(04-13-2020)  
**Background**

- (1) The purpose of federal bankruptcy law is to provide a uniform, fair, and equitable method of distribution of the debtor's assets to his creditors; or, to formulate a plan by which the debtor pays creditors from future earnings; and at the same time, give the deserving debtor an opportunity to start over with a clean slate.
- (2) Under the Bankruptcy Code, a debtor has the choice of liquidating assets to pay debts (Chapter 7 and liquidating Chapter 11) or reorganizing their financial situation to pay creditors over a period of time (Chapters 11, 12, and 13). However, the debtor must meet the qualifications of the desired bankruptcy. See IRM 5.9.1, *Overview of Bankruptcy*, for more information.

5.17.8.1.2  
(04-13-2020)  
**Authority**

- (1) The Insolvency program operates within the guidelines of the Title 11, United States Code (11 USC) and the Federal Rules of Bankruptcy Procedure.

5.17.8.1.3  
(04-13-2020)  
**Responsibilities**

- (1) IRM 5.17.1.8, *Revenue Officer's Role*, provides the duties and responsibilities of a Revenue Officer. Revenue Officers will use this IRM to gain a general overall understanding when administering cases in which the taxpayer is in bankruptcy.
- (2) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), *Execution of Duties in Accord with Taxpayer Rights*. For additional information about the TBOR, see <https://irssource.web.irs.gov/Lists/General%20News/DispItemForm.aspx?ID=126>

5.17.8.1.4  
(04-13-2020)

**Program Management  
and Review**

- (1) IRM 1.4.50.8.2.1, *Management Information Systems (MIS) Reports*, contains guidance on Field Collection reports.
- (2) National quality reviews and consistency reviews are conducted on a consistent basis. See IRM 1.4.50.12.1, *EQRS*, and IRM 1.4.50.12.2, *NQRS*, for more information.
- (3) Operational and Program reviews are conducted on a yearly basis. See IRM 1.4.50.13.2, *Operational Reviews*, and IRM 1.4.50.13.5, *Program Reviews*, for more information.

5.17.8.1.5  
(04-13-2020)

**Program Controls**

- (1) Managers are required to follow program management procedures and controls addressed in IRM 1.4.50.11, *Group Controls*, and IRM 1.4.50.12, *Quality*.
- (2) Caseworkers and managers use the Integrated Collection System (ICS) for case management, assignment, and documentation.

5.17.8.1.6  
(04-13-2020)

**Terms and Acronyms**

- (1) A glossary of terms used in this section can be found in Exhibit 5.17.8-1, *Glossary of Common Bankruptcy Terms*.
- (2) Acceptable acronyms and abbreviations can be found in the ReferenceNet Acronym Database, which may be viewed at: <http://rnet.web.irs.gov/Resources/Acronymbdb.asp>.
- (3) The following table lists acronyms and definitions used specifically in this IRM.

Acronym	Definition
ACA	Affordable Care Act
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
CIO	Centralized Insolvency Operation
DIP	Debtor in Possession
ESRP	Employer Shared Responsibility Payment
FI	Field Insolvency
NFTL	Notice of Federal Tax Lien
SRP	Shared Responsibility Payment

5.17.8.1.7  
(04-13-2020)

**Related Resources**

- (1) Procedural guidance on insolvencies can be found throughout IRM 5.9, *Bankruptcy and Other Insolvencies*.
- (2) The United States Bankruptcy Code and Rules, including Local Bankruptcy Court Rules.

5.17.8.2  
(04-13-2020)  
**The Insolvency  
Program's Role**

- (1) The Insolvency program maintains records and files concerning the investigation, preparation, and filing of claims in all bankruptcy proceedings and is the point of contact for revenue officers. The case file is maintained by Insolvency. Insolvency has the responsibility of protecting the government's interests in all bankruptcy cases. However, Insolvency may request assistance from, or refer a case to, the appropriate Associate Area Counsel (SB/SE) or Assistant U.S. Attorney (AUSA) office. For additional information, see IRM 5.9.4.15, *Referrals — Representing IRS in Bankruptcy Court*, and subsections.

5.17.8.3  
(04-13-2020)  
**The Bankruptcy Code**

- (1) The purpose of federal bankruptcy law is:
  - To provide a uniform, fair, and equitable method of distribution of the debtor's assets to his creditors; or,
  - To formulate a plan by which the debtor pays creditors from future earnings; and,
  - At the same time, give the deserving debtor an opportunity to start over with a clean slate.
- (2) Initially, there were state insolvency laws but no federal bankruptcy laws. Bankruptcy law is now contained in a federal statutory scheme called the "Bankruptcy Code." The Bankruptcy Rules contain procedures for implementation of most Bankruptcy Code provisions.
- (3) The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") made major revisions to the Bankruptcy Code. BAPCPA changes generally apply to cases filed on or after October 17, 2005.
- (4) The Bankruptcy Code is divided into several chapters. Chapters 1, 3, and 5 contain general provisions applicable to all types of bankruptcies. Important sections include:
  - a. 101: Definitions (including debt, claim, creditor, family farmer, and small business debtor)
  - b. 109: Who may be a debtor
  - c. 362: Automatic stay
  - d. 502: Allowance of claims or interests
  - e. 521: Debtor's duties, including filing returns and providing copies to the trustee
  - f. 522: Exemptions
  - g. 541: Property of the estate
  - h. 544-549: Trustee's powers to avoid pre-petition and post-petition transfers of property
- (5) Chapter 7 deals with liquidating bankruptcies, which are called "Chapter 7 cases," in which the debtor's non-exempt assets are used to pay creditors. See IRM 5.17.9, *Chapter 7 Bankruptcy (Liquidation)*.
- (6) Chapter 11 deals with reorganizations of individuals and non-individual debtors which are called "Chapter 11 cases." The non-individual debtor may be a corporation, partnership, or Limited Liability Company (LLC). See IRM 5.17.10, *Chapter 11 Bankruptcy (Reorganization)*. In these cases, plans to pay creditors over a period of time are proposed, with the plan to be funded from future earnings or from liquidation of the debtor's assets.

- (7) Chapter 12 deals with family farmer and family fisherman reorganizations, which are called “Chapter 12 cases” and are similar to Chapter 11 and 13 cases. See IRM 5.17.11.20, *Chapter 12*.
- (8) Chapter 13 deals with reorganizations of individuals with regular income, which are called “Chapter 13 cases,” in which payments are made from the debtor’s future earnings pursuant to a plan. See IRM 5.17.11, *Chapter 13 Bankruptcy (Individuals with Regular Income)* for additional information on Chapter 13 cases.

5.17.8.4  
(04-13-2020)  
**Jurisdiction of the  
Bankruptcy Court**

- (1) Bankruptcy courts generally have jurisdiction over all matters concerning payment of a debtor’s debts under the Bankruptcy Code and administration of the bankruptcy estate. Bankruptcy courts are under the district courts and receive their jurisdiction from the district court.
- (2) Bankruptcy court jurisdiction includes the authority to determine the amount of tax due by the debtor or estate and what taxes will be discharged (i.e., the taxes for which the debtor will no longer be personally liable). The bankruptcy court also has jurisdiction over any matters concerning payment of any tax debts claimed against the estate, validity of liens, turnover of property to the estate, exemptions of property from the estate, and confirmation of plans. See 28 USC § 157.

**Note:** The Bankruptcy Code provides a means for balancing the interests of the taxpayer and the Service, as does the administrative offer in compromise (OIC). An administrative offer in compromise is one submitted in accordance with the guidelines and procedures set forth in Rev. Proc. 2003-71 and IRM 5.8, *Offer in Compromise*. Administrative and legal problems would be created if a tax liability were simultaneously the subject of a court supervised bankruptcy case and the administrative offer in compromise process. Accordingly, when a taxpayer has filed for bankruptcy protection, the IRS’s policy is not to consider administrative offers in compromise from a taxpayer in bankruptcy. This issue is more specifically addressed in IRM 5.9.4.11, *Offers in Compromise and Bankruptcy*. See also IRM 5.8.10.2, *Offer in Compromise, Special Case Processing, Bankruptcy*.

- (3) When a taxpayer files a bankruptcy petition, the automatic stay (discussed below) begins in most cases. Although audit activity can continue and assessments can be made, the automatic stay generally stops all of the IRS’s normal collection procedures.

5.17.8.5  
(04-24-2015)  
**Types of Bankruptcies**

- (1) Under the Bankruptcy Code, a debtor has the choice of:
  - Liquidating assets to pay debts (Chapter 7 and liquidating Chapter 11) or
  - Reorganizing their financial situation to pay creditors over a period of time (Chapters 11, 12, and 13).

However, the debtor must meet the qualifications of the desired bankruptcy chapter.

- (2) A Chapter 7 liquidation case is administered by a trustee who:
  - Collects all the debtor’s non-exempt assets,
  - Reduces the assets to cash, and

- Distributes the funds to creditors in the priority set forth in 11 USC § 726.

In collecting the debtor's assets, the trustee may use his powers to avoid certain pre-petition and post-petition transfers.

- (3) In a Chapter 11, the debtor as a debtor-in-possession ("DIP") typically continues to operate its business while formulating a plan to pay the claims of creditors. BAPCPA made Chapter 11 for individuals very similar to Chapter 13.
- (4) In a Chapter 12, a debtor continues to operate while formulating and paying a bankruptcy plan. The debtor must be a family farmer or family fisherman with regular annual income. Chapter 12 bankruptcy plans are generally paid over a period of three to five years.
- (5) In a Chapter 13, the debtor, who must be an individual with regular income, formulates a plan to pay his creditors over a period of three to five years from future earnings.
- (6) The debtor must meet the requirements in 11 USC § 109 to be a debtor in a particular chapter.

5.17.8.6  
(08-01-2010)  
**Voluntary and  
Involuntary  
Bankruptcies**

- (1) Bankruptcy cases may be voluntary or involuntary. A voluntary proceeding is one in which the debtor files a petition for relief in bankruptcy. The filing of the voluntary petition is the "order for relief" in the case. Along with the petition, the debtor must file certain schedules or statements. See 11 USC § 521 and Bankruptcy Rule 1007.
- (2) An involuntary bankruptcy is one instituted by creditors filing a petition for relief against a debtor. See 11 USC § 303. In contrast to the voluntary case, the "order for relief" is entered at some point after the petition is filed, when the court determines that the criteria for an involuntary bankruptcy are met. An involuntary case may only be commenced under Chapter 7 or Chapter 11. The debtor must be eligible to be a debtor under the chapter for which the petition was filed.
- (3) Instead of joining with other creditors to file an involuntary petition, the IRS should explore other options to collect tax debts. In the event an involuntary petition is filed by other creditors, however, the IRS should file a proof of claim in order to protect its interests.
- (4) Under 11 USC § 302, a joint case is commenced by the filing of a single petition by an individual qualified to be a debtor under Chapter 7, 11, 12, or 13, and the individual's spouse. The court may determine that the assets and liabilities of the two debtors will be combined in a single pool to pay creditors. Bankruptcy Rule 1015 provides for joint administration of the estates.

5.17.8.7  
(04-13-2020)  
**Notice to Government of  
Commencement of  
Bankruptcy Proceeding**

- (1) Notice of Chapter 7, 12, and 13 cases must be given to the IRS when it is listed as a creditor in the debtor's schedules. See Bankruptcy Rule 2002(g).
- (2) Bankruptcy Rule 2002(j) provides that, in a Chapter 11 case, notice must be given to the IRS at the address set out in a register maintained under Bankruptcy Rule 5003(e) for the district in which the case is pending. Notice may either be mailed or given through the electronic noticing system. IRS must be noticed in all Chapter 11 cases. It does not matter if IRS was listed as a creditor in the debtor's schedules.

- (3) The Bankruptcy Rules do not prescribe the place of notice to the IRS in Chapter 7, 12, or 13 cases. 11 USC § 342(e) and (f) authorize creditors to designate addresses to receive notices in Chapter 7 and 13 cases. The IRS has designated one national address for the court's mailing matrix for all Chapter 7, 12, or 13 notices. That address is the Centralized Insolvency Operation in Philadelphia. See IRM 5.9.5.2.2, *Mailing Matrix*, and IRM 5.9.11.2, *Insolvency Mail*, for additional information.

5.17.8.8  
(10-06-2016)  
**Trustees**

- (1) Various types of "trustees" participate in particular bankruptcy cases:
- The United States Trustee
  - A panel trustee or case trustee
  - A Chapter 13 trustee
  - A Chapter 12 trustee
  - A trustee of a Chapter 11 liquidating trust
- (2) The United States Trustee (employed by the U.S. Department of Justice) is a supervisory agency that monitors Chapters 7, 11, 12, 13, and 15 trustees. (See 28 USC § 586(a)(3))
- (3) A trustee is appointed in every Chapter 7 case. A trustee may also be appointed, "for cause", in a Chapter 11 case.
- (4) Prior to confirmation, the Chapter 13 trustee (also called a standing trustee) frequently assists the court in evaluating proposed plans for confirmation. After confirmation, the Chapter 13 trustee functions largely as a disbursing agent. The Chapter 13 trustee receives the debtor's monthly plan payments and disburses funds to the creditors according to the plan.
- (5) The trustee in a Chapter 7 or 11 bankruptcy case is the representative of the estate. The trustee has the capacity to sue and the trustee can be sued.
- (6) In some Chapter 11 cases, the plan provides for the creation of a liquidating trust. In these cases, a trustee is designated to oversee the trust. The liquidating trustee is not a trustee under the Bankruptcy Code. The trustee's duties can only be determined by reference to the plan or court orders.
- (7) The United States Trustee for the district in which the case is pending may serve as trustee, if necessary. A person who has served as an examiner in the case may not serve as the trustee.
- (8) A bankruptcy trustee qualifies by posting an adequate bond (11 USC § 322). The amount of the bond and sufficiency of the surety on the bond are determined by the United States Trustee. A proceeding on a trustee's bond may not be commenced more than two years after the date of the trustee's discharge. The selection and qualification of an individual as trustee does not prevent a subsequent replacement. The court may remove a trustee, other than the United States Trustee or an examiner, for cause after notice and a hearing.

5.17.8.9  
(08-01-2010)  
**First Meeting of  
Creditors and the  
Creditors' Committee**

- (1) 11 USC § 341 provides that within a reasonable time after the order for relief in a case, the United States Trustee shall convene and preside at a meeting of creditors (often referred to as the § 341 meeting).
- a. The debtor is required to attend the meeting and to submit to examination under oath. The purpose of the meeting is to give creditors and the trustee an opportunity to examine the debtor regarding the debtor's acts

and property, and in respect to any other matter that may affect the debtor's right to a discharge or the administration of the bankruptcy estate.

- b. The § 341 meeting can be a valuable tool for the IRS to obtain information about the debtor's financial status.
- c. Bankruptcy Rule 2003 governs the procedural aspects of the creditors' meeting (date, place, who presides, minutes, report).
- d. Additionally, under Bankruptcy Rule 2004, the court may order the examination of the debtor or any entity upon motion of any party in interest, separate from the § 341 meeting.

- (2) In a Chapter 7 case, another purpose of the § 341 meeting is the election of a case trustee and, where appropriate, of a creditors' committee. A creditors' committee may:

- Consult with the trustee or the United States Trustee in connection with the administration of the estate,
- Make recommendations to the trustee or United States Trustee respecting the performance of the trustee's duties, and
- Submit questions to the court or the United States Trustee concerning the administration of the estate.

**Note:** Only creditors with undisputed general unsecured claims can join Chapter 7 creditors' committees (11 USC § 705(a)). Although the IRS can participate on a creditors' committee when the IRS holds a general unsecured claim, the IRS ordinarily does not participate.

- (3) In Chapter 11 cases, creditors' committees often play a prominent role. The members are selected by the United States Trustee. The committee functions as the representative of creditors who hold allowable, unsecured, non-priority claims. Governmental entities such as the IRS, are generally excluded from participation on Chapter 11 creditors' committees. (11 USC §§ 1102, 101(41))
- (4) Not later than the day before the § 341 meeting, Chapter 13 debtors are required to submit tax returns for the taxable periods ending within the four years before the petition date, although this deadline may be extended under certain circumstances. (11 USC § 1308)

#### 5.17.8.10

(04-13-2020)

#### **Automatic Stay - 11 USC § 362**

- (1) Under 11 USC § 362(a), an automatic stay arises by operation of law as soon as the bankruptcy petition, whether voluntary or involuntary, is filed. The stay prohibits most collection activity. Specifically, it prohibits:
- a. Commencement or continuation of a judicial or administrative proceeding against the debtor to recover a pre-petition claim;
  - b. Enforcement of a judgment that was obtained pre-petition against the debtor or the property of the estate;
  - c. Any act to obtain possession of property of the estate or from the estate, or to exercise control over property of the estate;
  - d. Any act to create, perfect, or enforce a lien against property of the estate;
  - e. Any act to create, perfect, or enforce a lien against the debtor's property securing a pre-petition debt;
  - f. Any act to collect, assess, or recover a pre-petition claim against the debtor;

- g. Setoff of any pre-petition debt owing to the debtor against any claim against the debtor (but, see the exception for cases filed under the BAPCPA, below);
  - h. Commencement or continuation of a proceeding before the Tax Court concerning a corporate debtor's tax liability for any taxable period the bankruptcy court may determine; or,
  - i. Commencement or continuation of a proceeding before the Tax Court concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the bankruptcy petition.
- (2) Some actions the IRS must avoid after bankruptcy has been filed because of the automatic stay are:
- a. Verbally requesting payment of pre-petition taxes;
  - b. Sending balance due notices on pre-petition taxes other than the "first" or new assessment notice, assuming the assessment is allowable under the Bankruptcy Code;
  - c. Issuing Form 668-A, *Notice of Levy*, or Form 668-W, *Notice of Levy on Wages, Salary, and Other Income*, for pre-petition tax periods;
  - d. All seizure and levy action directed at property of the estate;
  - e. Issuing or continuing to enforce a collection summons or filing any collection suit;
  - f. Making certain refund offsets, other than offsets allowed in BAPCPA cases; and
  - g. Filing a new NFTL (post-petition).

**Note:** In addition, it is the policy of the IRS not to continue most collection due process proceedings during bankruptcy.

- (3) The automatic stay does not prohibit the following:
- a. Commencing or continuing a criminal action or proceeding against the debtor;
  - b. Commencing or continuing an action or proceeding by a governmental unit to enforce police or regulatory power;
  - c. An audit to determine tax liability;
  - d. The issuance of a notice of deficiency;
  - e. Demand for a tax return;
  - f. Refiling a Notice of Federal Tax Lien. *United States v. Sayres*, 43 B.R. 437 (W.D. N.Y. 1984); *In re O'Callaghan*, 342 B.R. 364 (Bankr. M.D. Fla. 2006);
  - g. Intercepting certain tax refunds for the purpose of setting them off against past-due support obligations; and,
  - h. For cases filed on or after October 17, 2005, the effective date of BAPCPA, setting off pre-petition income tax refunds against pre-petition income tax liabilities.

**Note:** Even if a setoff is not permitted under BAPCPA, temporary retention of refunds, rather than actual offsets, is permitted. *Citizens Bank v. Strumpf*, 516 U.S. 16 (1995).

**Note:** Local standing orders or bankruptcy rules in some court jurisdictions may permit certain refund offsets. In such jurisdictions, the permitted refund offsets will not violate the automatic stay.

- (4) The stay of an act against property of the estate continues until the property is no longer part of the estate. The stay of any other act continues until the earliest of the time:
  - a. The case is closed;
  - b. The case is dismissed; or
  - c. A discharge is granted or denied.
- (5) For cases filed on or after October 17, 2005, the effective date of BAPCPA, the stay may terminate 30 days after the bankruptcy petition is filed, or may not go into effect at all, if the debtor had one or more bankruptcies dismissed within one year before the latest bankruptcy and dismissal was not for failure to pass the means test. Insolvency should contact Associate Area Counsel (SB/SE) if it is believed that the automatic stay has terminated or has not gone into effect in a case. (See IRM 5.9.5.7, *Serial Filers*, and related subsections and exhibits for additional information.)
- (6) Upon request of a party in interest, such as a creditor, and after notice and a hearing, the bankruptcy court shall grant relief from the stay by terminating, annulling, modifying, or conditioning the stay:
  - a. For cause, including the lack of adequate protection for property in which the moving party has an interest, or
  - b. Regarding the stay of an act against property if the debtor has no equity in the property, and the property is not necessary to an effective reorganization.
- (7) The party requesting relief from the stay has the burden of proof with respect to whether the debtor has equity in the property. The party opposing the motion has the burden of proof with respect to all other issues.
- (8) Section 7433(e) of the Internal Revenue Code (IRC) creates a cause of action for taxpayers who suffer damages when the IRS willfully violates the automatic stay or discharge provisions. Treasury Regulations under IRC § 7433(e) describe the administrative procedures the taxpayer must follow before filing a judicial action. (Treas. Reg. § 301.7433-2(e)) Additionally, 11 USC § 362(k) allows for damages to be recovered by an individual who is injured by a willful stay violation.
- (9) Actions in violation of the automatic stay must be corrected expeditiously. Corrective actions may include; for example, prompt release of pre-petition continuous wage levies and prompt reversal of post-petition setoffs.

5.17.8.11  
(08-01-2010)  
**Adequate Protection**

- (1) Creditors who have a secured interest in any property of the debtor are entitled to adequate protection under the Bankruptcy Code. "Adequate protection" means preservation of the value of the property or collateral securing a creditor's claim; thereby, maintaining the status quo. Adequate protection may be required for the continuation of the automatic stay under 11 USC § 362(d) for the debtor's use, sale, or lease of estate property under 11 USC § 363(e), and for the granting of a senior lien on collateral to obtain credit under 11 USC § 364(d). The Service is entitled to adequate protection for its secured claim in both real and personal property.
- (2) Adequate protection only applies to claims of secured creditors. The IRS is entitled to adequate protection only if its claim is secured by a filed Notice of Federal Tax Lien (NFTL).

- (3) 11 USC § 361 sets forth three examples of adequate protection:
- a. Single cash payment or periodic cash payments to compensate for a decrease in value of the secured creditor's interest in the property (e.g., commencing periodic payments to the secured creditor before plan confirmation);
  - b. Additional or replacement liens; or
  - c. The indubitable equivalent of the creditor's interest in the property; e.g., something equal to the value of the secured creditor's interest, other than administrative priority under 11 USC § 503(b)(1). See In re Swedeland Dev. Group, Inc., 16 F.3d 552 (3d Cir. 1994); In re Martin, 761 F.2d 472 (8th Cir. 1985).

**Note:** These examples are not exclusive. Adequate protection may include other means; such as, a requirement that the debtor maintain insurance on the collateral.

5.17.8.12  
(08-01-2010)  
**Use, Sale, or Lease of  
Property**

- (1) 11 USC § 363 governs the use, sale, or lease of property of the estate. Under 11 USC § 363(b), the trustee or debtor-in-possession may use, sell, or lease the estate property other than in the ordinary course of business only after notice and a hearing. Bankruptcy Rule 6004 governs the procedural requirements for filing a motion for use, sale, or lease of property not in the ordinary course of business. If the business of the debtor is authorized to be operated under Chapter 7 (11 USC § 721), Chapter 11 (11 USC § 1108), Chapter 12 (11 USC §§ 1203, 1204), or Chapter 13 (11 USC § 1304), the trustee or debtor-in-possession may, without notice or hearing, use, sell, or lease property of the estate in the ordinary course of business.
- (2) Under 11 USC § 363(c)(2), cash collateral may not be used, sold, or leased by the trustee or debtor-in-possession without the consent of each entity that has an interest in the cash collateral or the court's authorization after notice and a hearing. Bankruptcy Rule 4001 sets forth the procedural requirements for cash collateral motions.
  - a. Under 11 USC § 363(a), "cash collateral" is defined as cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest.
  - b. Cash collateral also includes the proceeds, products, offspring, rents, or profits of property subject to a security interest as provided in 11 USC § 552(b), whether existing before or after the commencement of a bankruptcy case. This includes accounts receivable of the debtor.
- (3) Under 11 USC § 363(e), on request of an entity that has an interest in property to be used, sold, or leased, the court may provide adequate protection of such interest.
- (4) Under 11 USC § 363(f), a trustee may sell property free and clear of liens where certain conditions are met. Most often; however, adequate protection requires that the tax lien and all other liens attach to the sale proceeds with the same priority that they had in the property prior to the sale.

5.17.8.13  
(04-13-2020)  
**Proofs of Claim**

- (1) 11 USC § 501 provides that a creditor may file a proof of claim. A properly filed proof of claim is deemed allowed unless objected to by a party in interest (11 USC § 502(a)). A proof of claim is filed for claims (taxes) that arose pre-petition. See 11 USC § 101(10)(A).
- (2) Governmental entities have 180 days from the date of the order for relief, or such later time as the bankruptcy rules may provide, in which to file proofs of claim (11 USC § 502(b)(9)). The general bar date for other creditors in Chapter 7 and 13 cases is 70 days after the petition date. A tax claim is timely if filed by the later of either of these two deadlines.

**Note:** Under BAPCPA, for Chapter 13 cases, a claim of a governmental unit for a tax with respect to a return required to be filed under 11 USC § 1308 is also timely if it is filed on or before 60 days after the return is filed.

- (3) An untimely tax claim can be disallowed solely on the basis that it was filed late (11 USC § 502). This may mean no payment in a Chapter 11 or 13 plan. However, in a Chapter 7 case, a late-filed priority claim is entitled to share in a distribution with timely-filed priority claims, so long as it is filed before the trustee takes certain actions relating to the distribution (11 USC § 726(a)).
- (4) When IRS does not receive notice in an individual asset case in sufficient time prior to the bar date to file a timely proof of claim, the debt owed to IRS is not discharged. See IRM 5.9.13.7.1(6), *Late Filed Claims, Notice Received with Insufficient Time to File A Timely Proof of Claim*. Also, 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.
- (5) If a creditor does not timely file a proof of claim, the debtor, a co-obligor, or the trustee may file a proof of such claim (11 USC § 501 and Bankruptcy Rule 3004). The court is to mail notice of the filing to the creditor, debtor, and the trustee. The creditor may file a proof of claim which supersedes the proof of claim filed by the debtor. See IRM 5.9.13.3, *Manual Proofs of Claim and Common Claim Issues, Filing Entities*.
- (6) The payment of claims differs depending on how the claim is classified. The three types of pre-petition claims are (a) secured, (b) unsecured priority, and (c) unsecured general. Post-petition claims may also be provided for in bankruptcy as discussed further in IRM 5.17.8.17, *Post-petition Claims/Administrative Expenses*.
- (7) A proof of claim listing an unassessed liability can be filed to protect the Government's interest before the exact liability of the taxpayer is determined. The claim serves to meet the bar date and notify parties of the claim. The Government should be in a position to show the court that the liability is reasonable. As soon as the correct or complete amount due can be determined, an amended proof of claim should be filed.
- (8) 11 USC § 502 allows any party in interest to object to a claim. Pursuant to Bankruptcy Rules 3002 and 3003, the court may extend the time within which a claim may be timely filed. Section 502(b) lists several grounds for disallowing a claim, including tardiness (11 USC § 502(b)(9)). If more time is needed to complete an audit or conduct research, advise Associate Area Counsel as soon as possible. Associate Area Counsel will need the case in sufficient time to permit filing of a timely motion for extension. The court may also establish the limitation period for requesting an extension pursuant to Bankruptcy Rule

3003(c)(3). When the case is referred to Associate Area Counsel, ensure the reasons an extension is needed are included in the referral. The court will only grant an extension for cause. Associate Area Counsel will ensure proper action is taken to secure an extension of the period for filing the claim. Insolvency should be prepared to file a timely proof of claim for an estimated amount if the extension is denied.

5.17.8.14  
(04-13-2020)  
**Secured Claims**

- (1) Under 11 USC § 506(a), the IRS has a secured claim when:
  - a. It has properly filed a pre-petition Notice of Federal Tax Lien (NFTL), and there is equity in the debtor's property to which the lien attaches; or
  - b. It has a tax claim that is subject to setoff under 11 USC § 553.
- (2) The allowed amount of a secured claim will be determined after a valuation of the property.
  - a. The balance, if any, of the IRS's claim will be allowed as an unsecured claim and will be classified as either priority or general unsecured. All property of the debtor must be valued in order to ascertain the value of the federal tax lien.
  - b. For purposes of determining the IRS's secured claim, the federal tax lien attaches to the debtor's property that became estate property as of the commencement of the case, including property exempted under 11 USC § 522. (See 11 USC § 522(c)(2)(B)) The federal tax lien also attaches to property exempt from federal tax levy. American Trust v. American Cmty. Mut. Ins. Co., 142 F.3d 920 (6th Cir. 1998); Matter of Voelker, 42 F.3d 1050 (7th Cir. 1994).
  - c. Some of the debtor's property never becomes property of the estate and is excluded. ERISA-qualified pension plans and other plans listed under 11 USC § 541 are examples. The value of excluded property is not used to calculate the amount of the IRS's secured claim.
- (3) Under 11 USC § 506(b), a creditor is oversecured when the value of secured collateral exceeds the amount of the debt owed to the creditor. An oversecured creditor is entitled to post-petition interest on the secured claim. The creditor is also allowed any reasonable fees, costs, or charges provided by an agreement or by state statute under which the claim arose. When IRS is oversecured, IRS is entitled to receive post-petition interest on an allowed and oversecured claim. (United States v. Ron Pair Enterprises, Inc., 489 U.S. 235 (1989))
- (4) It is not necessary to file a claim in bankruptcy to preserve a lien on the debtor's pre-petition assets that are not sold and distributed during the bankruptcy case. While receiving a discharge will prevent a creditor from enforcing a dischargeable debt against the debtor personally, the IRS may enforce its lien for dischargeable taxes against the debtor's exempt property if an NFTL was filed before the bankruptcy petition was filed. (In re Isom, 901 F.2d 744 (9th Cir. 1990)) However, a lien for dischargeable taxes cannot be enforced against after-acquired property of the debtor. See IRM 5.9.17.5, *Bankruptcy and Other Insolvencies, Closing a Bankruptcy Case, Exempt, Abandoned or Excluded Property (EAEP)*, and subsections, for additional information.
- (5) Excluded property never becomes property of the bankruptcy estate. The statutory lien remains a claim against pre-petition property even after the bank-

ruptcy discharge. This allows IRS to levy on abandoned or excluded property to collect dischargeable liabilities after the discharge. See IRM 5.9.17.5, and subsections, for additional information.

- (6) Under 11 USC § 544, the trustee has the rights and powers of a judgment lien creditor. Accordingly, if an NFTL has not been filed prior to the institution of the bankruptcy case, the tax claims will be unsecured. The date the NFTL was filed should be clearly shown on the proof of claim. The trustee may not use 11 USC § 544 or 11 USC § 545(2) to prevail over NFTLs filed pre-petition for the types of property described in IRC § 6323(b), since the trustee is not a “purchaser.” (11 USC § 545(2); In re Walter, 45 F.3d 1023 (6th Cir. 1995); In re Berg, 121 F.3d 535 (9th Cir. 1997))

5.17.8.15  
(01-21-2020)  
**Unsecured Priority  
Claims**

- (1) Bankruptcy Code § 507 sets forth the expenses and unsecured claims that have priority and the order of their priority. This will affect the claim’s treatment in bankruptcy.
- (2) Whether the tax was incurred before or after the date of the petition for relief will affect its priority. To determine whether a tax is incurred before or after the petition, a tax on income for a particular period is considered incurred on the last day of the period. Taxes on an event, or measured by an event, are considered as being incurred on the date of the transaction or the event. For example:
- Taxes due on the transfer of assets by reason of death are incurred on the date of death.
  - Taxes due on a gift are incurred on the date that the gift is given.
  - Excise taxes due to the sale of gasoline are incurred at the time the gasoline is sold.

While employment taxes are incurred when wages are paid, they are treated as pre-petition liabilities when the wages were earned pre-petition.

- (3) The treatment of pre-petition Employer Shared Responsibility Payment (ESRP) MFT 43 liabilities in bankruptcy plans depends on the classification of the liability on the proof of claim - secured, unsecured priority, or unsecured general. For additional information on treatment of liabilities in bankruptcy plans according to classification, see:
- IRM 5.9.8.14.2, *The Plan of Reorganization*
  - IRM 5.9.9.5, *Chapter 12 Plans*, through IRM 5.9.9.7, *Chapter 12 “Pay-out” Arrangements*
  - IRM 5.9.10.5, *The Chapter 13 Plan*, and subsections.
- (4) In a Chapter 7 case, claimants within a priority category as set forth in the subsections of 11 USC § 507 are paid pro-rata when the bankruptcy estate is not sufficient to provide full payment.
- (5) 11 USC § 507(a)(2), as amended by BAPCPA, gives second priority to administrative expenses as defined under 11 USC § 503(b). Any tax incurred by the estate is an administrative expense under 11 USC § 503(b)(1)(B)(i). These taxes include:
- a. Income and excise taxes;
  - b. Employees’ and employers’ shares of employment taxes on wages earned and paid after the petition date;

- c. Taxes attributable to an excessive allowance of a tentative net operating loss carry back adjustment received by the estate as a “quickie” refund under IRC § 6411;
  - d. Any fine, penalty, or reduction in credit relating to a tax which is an administrative tax also constitutes an administrative expense under 11 USC § 503(b)(1)(C); and
  - e. Administrative expenses include the actual, necessary costs of preserving the estate. Thus, IRC § 4971 penalties for underfunding pension plans may be administrative expenses if the underfunding obligation occurred during the administration of the bankruptcy estate.
- (6) Under 11 USC § 507(a)(8), as amended by BAPCPA, eighth priority is given to the following taxes:
- a. Taxes on income or gross receipts for a taxable year ending on or before the date the bankruptcy petition was filed for which a return was due, including extensions, within three years before the bankruptcy;
  - b. Taxes on income or gross receipts assessed within 240 days before the bankruptcy petition was filed, exclusive of any time that an offer in compromise related to that tax was pending or in effect during the 240-day period, plus 30 days, and exclusive of any time during which a stay of proceedings against collection was in effect in a prior bankruptcy case during the 240-day period plus 90 days;
  - c. Taxes on income or gross receipts not assessed before, but assessable after, the commencement of the case, unless the tax is of a kind specified in the discharge exceptions of 11 USC § 523(a)(1)(B) or (C) for fraud, unfiled returns, or late filed returns within two years of the petition date;
  - d. A tax required to be collected or withheld and for which the debtor is liable in whatever capacity (11 USC § 507(a)(8)(C)). This includes the trust fund recovery penalty under IRC § 6672.
  - e. Employer’s share of employment tax on wages earned from the debtor before the petition date for which a return was last due, including any extensions, within three years before the petition date (11 USC § 507(a)(8)(D)); or
  - f. A penalty related to a claim of a kind specified in section 507(a)(8) and in compensation for actual pecuniary loss (11 USC § 507(a)(8)(G)). The trust fund recovery penalty also falls within this category.
- (7) Certain excise taxes are also entitled to eighth priority under 11 USC § 507(a)(8)(E). These are excise taxes on:
- a. A pre-petition transaction for which a return is last due, including extensions, within three years before the petition date, or
  - b. A transaction occurring within three years before the petition date for which no return is required.

**Note:** Under BAPCPA, all the time periods for determining priority under 11 USC § 507(a)(8) are suspended for any period during which the IRS is prohibited from collecting the tax as a result of a collection due process hearing, the stay of a prior bankruptcy case, or a confirmed plan, plus 90 days.

Liabilities incurred by individuals under the individual shared responsibility provision (SRP) of the Affordable Care Act (ACA), and assessed on MFT 35

and/or mirrored as a MFT 65 individual shared responsibility payment (SRP) mirror assessment on IDRS, are treated as an excise tax under 11 USC § 507(a)(8)(E) in a bankruptcy case.

- (8) The ESRP MFT 43 liability will be treated as an excise tax under 11 USC § 507(a)(8)(E)(ii). See IRM 5.9.13.19.3, *Unsecured Priority*, for more information.
- (9) A claim for an erroneous refund or credit has the same priority as a claim for the tax to which such refund or credit relates.

5.17.8.16  
(08-01-2010)  
**Unsecured General  
Claims**

- (1) Any portion of the IRS's pre-petition claim that cannot be classified as either secured or unsecured priority is a general unsecured claim.

5.17.8.17  
(01-21-2020)  
**Post-petition  
Claims/Administrative  
Expenses**

- (1) Section 503(b)(1)(A) provides generally that administrative expenses include "the actual, necessary costs and expenses of preserving the estate." Taxes incurred by the estate are specifically given administrative expense claim status by 11 USC § 503(b)(1)(B)(i). Generally, administrative tax claims are claims for tax liabilities (including estate income and employment taxes) incurred post-petition by the bankruptcy estate.
- (2) A post-petition liability incurred by an individual debtor (rather than the estate) in a Chapter 7 or 11 case cannot be claimed in the bankruptcy case. This includes any post-petition liability owed by an individual debtor for tax incurred under the Shared Responsibility Provision (SRP) of the Affordable Care Act (ACA), which is assessed on IDRS under MFT 35 and/or mirrored separately as a SRP liability for each spouse on IDRS under MFT 65. Under IRC § 1398, the individual debtor and the debtor's bankruptcy estate in a Chapter 7 or 11 case are separate taxable entities. Taxes on the individual debtor's post-petition wages in a Chapter 7 cases are incurred by the individual debtor, while taxes on income arising from assets which are property of the estate are incurred by the estate.

**Note:** Under BAPCPA, 11 USC § 1115 provides that for individuals in a Chapter 11, post-petition wages are included as property of the estate. IRB Notice 2006-83, 2006-2 C.B. 596, provides detailed guidance on tax reporting requirements for individuals filing Chapter 11 bankruptcy on or after October 17, 2005. See Pub 908, *Bankruptcy Tax Guide*, and IRM 5.9.8.14, *Processing Chapter 11 Bankruptcy Cases, Internal Revenue Code § 1398 Issues*, for additional information.

- (3) An ESRP MFT 43 liability is post-petition when the Service issues Letter 226-J, *ESRP Preliminary Contact*, to an employer notifying them that one of their employees was allowed the premium tax credit (PTC) and the Letter 226-J date is after the bankruptcy petition date. The date of Letter 226-J is determined by the date of the TC 971 AC 782 on the ESRP MFT 43 module on IDRS. The treatment of post-petition ESRP MFT 43 liabilities depends upon the type of bankruptcy case filed by the debtor. It also depends upon whether the debtor is an individual or a non-individual.
- (4) Taxes collectible as expenses of administration shall be assessed against the estate following normal assessment procedures. The notice and payment

demand should be sent to the trustee or debtor in possession. If payment is not received, a request for payment of administrative expenses may be filed with the court.

**Note:** Under BAPCPA, the IRS is not required to file a request for payment of administrative expenses in order for the expenses to be allowed. However, an administrative claim should nevertheless be filed because it puts the debtor and creditors on notice of the tax liability and the amount due. It also assists in the referral of the case to Counsel for dismissal or conversion and helps ensure that the claim will be treated as an allowed administrative claim. (See IRM 5.9.8.19.4.2, *Post-Confirmation Tax Liabilities of the Individual Debtor (Post-BAPCPA)*, for additional information.)

- (5) Administrative expenses accrue interest and penalties to the date of payment.
- (6) In Chapter 13 cases, the IRS may file a proof of claim for taxes that become payable while the case is pending (11 USC § 1305(a)(1)). This includes post-petition 1040 liabilities and post-petition SRP (MFT 35 and/or MFT 65) liabilities. If the Form 1040 is post-petition (see IRM 5.9.10.9(1), *Post-Petition Tax Liabilities*), the SRP (MFT 35 and/or MFT 65) liability is also post-petition. The debtor may not file such a claim on behalf of the IRS.

5.17.8.18  
(10-06-2016)  
**Interest**

- (1) Pre-petition interest has the same status as a claim for the underlying tax: secured, priority, or general unsecured. (11 USC §§ 101(5) and 502(b); In re Garcia, 955 F.2d 16 (5th Cir. 1992); In re Larson, 862 F.2d 112 (7th Cir. 1988))
- (2) The IRS generally is not entitled to claim post-petition interest on its pre-petition claims since a creditor cannot claim interest which has not matured as of the petition date (11 USC § 502(b)(2)). If the underlying tax is non-dischargeable, however, the post-petition interest on such tax is also non-dischargeable. The non-dischargeable tax and interest may be collected from the debtor after the discharge is granted.
- (3) 11 USC § 506(b) provides that post-petition interest will be paid on claims that are “oversecured” (i.e., the value of the collateral securing the claim exceeds the amount of the claim).
- (4) Administrative expense tax claims accrue interest to the date of payment.

5.17.8.19  
(04-24-2015)  
**Penalties**

- (1) Pre-petition penalties on a secured claim are treated as secured. They are payable as part of the secured claim except in a Chapter 7 case. In Chapter 7, 11 USC § 726(a)(4) provides a low distribution priority for secured tax penalties, unless the penalty is compensation for actual pecuniary loss (as with the trust fund recovery penalty).
- (2) Pre-petition penalties on an unsecured tax claim are treated as general unsecured unless the penalty is compensation for actual pecuniary loss. It does not matter if the tax claim itself is entitled to priority or general unsecured status.
- (3) Post-petition penalties are not allowable on pre-petition tax claims, but may sometimes be collectible from the debtor after the discharge. Non-pecuniary loss penalties are non-dischargeable if they relate to a non-dischargeable tax and the transaction or event giving rise to the penalty occurred within three years of the petition date. Also, IRC § 6658 prohibits the accrual of certain

penalties during the pendency of the bankruptcy case – from the date the petition is filed until the date the case is closed or dismissed.

- (4) The Trust Fund Recovery Penalty is a pecuniary loss penalty. If not secured, it is an unsecured priority claim (11 USC § 507(a)(8)(C) and (G)). It is not dischargeable except in Chapter 13 cases filed prior to October 17, 2005, where it has been provided for in the plan. Under BAPCPA, it is no longer dischargeable in Chapter 13 cases (11 USC § 1328(a)(2)).

5.17.8.20  
(04-24-2015)  
**Return Filing  
Requirements**

- (1) IRC § 1398 contains special tax provisions for an individual filing under Chapter 7 or 11. Individual debtors in those chapters have the right to terminate their tax year when the petition is filed.
- (2) The bankruptcy estate in an individual Chapter 7 or 11 case is an entity separately taxable from the individual and must file its own tax returns. The Chapter 7 trustee has the duty to file the estate's tax returns, as does the Chapter 11 trustee or Debtor-in-Possession (DIP).
- (3) In corporate and partnership Chapter 7 and 11 cases, no separate taxable entity is created (IRC § 1399). The trustee, the officers, or managers of the DIP are responsible for filing any required returns.
- (4) Trustees can apply to be relieved of the filing requirements in corporate cases when the corporation has neither assets nor income. The procedures are contained in Revenue Procedure 84-59.
- (5) In Chapters 12 and 13, the debtor's bankruptcy estate is not a separate taxable entity for federal income tax purposes. The individual debtor is responsible for filing the returns for all income earned while in bankruptcy.
- (6) Under BAPCPA, a Chapter 13 debtor must file all required tax returns for all periods ending within four years of the bankruptcy petition date (11 USC § 1308). Failure to do so by the first scheduled 341 meeting date, or by the date to which the meeting is held open by the trustee, is a basis for conversion or dismissal of the case (11 USC § 1307(e)). See *In re Perry*, 389 B.R. 62 (Bankr. N.D. Ohio 2008). Pub 5082, *What You Should Know About Chapter 13 Bankruptcy and Delinquent Tax Returns*, also provides information about tax filing requirements for Chapter 13 debtors.
- (7) Ordinarily, disregarded limited liability companies (LLCs), partnerships, and Subchapter S corporations are not themselves liable for a federal income tax. The bankruptcy estates of these pass-through entities are not separate taxable entities pursuant to IRC § 1399.
  - a. Nevertheless, when a pass-through debtor is liquidating or engaged in other potentially significant income-producing activity during a Chapter 11 case, the IRS may want to consider the status and the tax effect upon the partners or shareholders of the pass-through debtor, where possible.
  - b. It may be difficult for the IRS to obtain timely Form 1065 or 1120S returns from the fiduciaries of liquidating pass-through debtors for post-petition tax years. However, the IRS may need the information on these returns in order to file proper claims in the bankruptcy cases of the partners or of the shareholders that may also be pending or that may be filed soon after the pass-through debtor engages in its income-producing activity.

5.17.8.21  
(04-13-2020)

### Determination of Tax Liability

- (1) The bankruptcy court may determine the liability of the debtor or the bankruptcy estate. It does not matter if the liability was previously assessed or paid and whether or not a proof of claim is filed. This includes:

- Any tax,
- Any fine or penalty relating to a tax, and
- Any addition to tax.

The bankruptcy court may not re-determine a tax liability that was adjudicated before a court of competent jurisdiction before the bankruptcy petition was filed (11 USC § 505(a)).

- (2) Bankruptcy courts do not have authority to determine the tax liabilities of parties other than the debtor or the debtor's bankruptcy estate. See the following cases for additional information:

- In re Prescription Home Health Care, Inc., 316 F.3d 542 (5th Cir. 2002)
- In re Brandt-Airflex Corp., 843 F.2d 90 (2nd Cir. 1988)
- United States v. Huckabee Auto Co., 783 F.2d 1546 (11th Cir. 1986)
- American Principals Leasing Corp. v. United States, 904 F.2d 477 (9th Cir. 1990)
- In re Kaplan, 104 F.3d 589 (3d Cir.1997)
- In re Wolverine Radio Co., 930 F.2d 1132 (6th Cir. 1991)

- (3) A bankruptcy court should not determine tax liabilities of debtors or of bankruptcy estates that may not be claimed or paid through the bankruptcy case. For instance, in a no-asset Chapter 7 case, a bankruptcy court should abstain from deciding the debtor's pre-petition tax liabilities. Similarly, a bankruptcy court should refrain from determining taxes:

- When an individual debtor's post-petition tax liabilities cannot be claimed in a bankruptcy case, or
- When an individual debtor's post-petition tax liabilities have not been claimed in a bankruptcy case.

Under the same reasoning, a bankruptcy court should not determine the tax liability of a reorganized Chapter 11 non-individual debtor for any post-confirmation taxes.

- (4) The trustee must file an administrative claim for refund for the bankruptcy court to determine the right of a bankruptcy estate to a tax refund. The claim must either be denied or not acted upon for 120 days (rather than the six months provided in IRC § 6532). 11 USC § 505(a)(2)(B); see also Rev. Proc. 2010-27, Rev. Proc. 2010-31 and IRB 183.
- (5) A trustee may request a prompt determination for administrative period taxes by filing the appropriate tax return (11 USC § 505(b)(2)). See IRM 5.9.4.9, *Prompt Determination Request from Trustee*, and subsections, for additional information.
- a. The IRS has 60 calendar days from the date of the request to decide whether to audit the return. The IRS has a total of 180 calendar days from the date of the trustee's request to complete the audit. A longer period may be granted for cause with the court's permission.
  - b. The trustee, the debtor, and any successor to the debtor are discharged upon payment of the tax shown on the return when:

- The IRS does not notify the trustee within 60 calendar days that the return has been selected for audit, or
- The IRS does not complete the audit and notify the trustee of any tax due within 180 calendar days.

**Note:** This date may be extended by order of the court. See 11 USC § 505(b)(2)(ii).

- c. After the IRS completes the audit, the trustee, debtor, and any successor to the debtor are discharged upon payment of the tax determined by the court. The trustee, debtor, and any successor to the debtor are also discharged upon payment of the tax determined by the IRS.
  - d. These discharge provisions do not apply if the return is fraudulent or contains a material misrepresentation.
  - e. Rev. Proc. 2006-24 (May 30, 2006) made Rev. Proc. 81-17 obsolete. Rev. Proc. 2006-24 established the procedures for trustees to file a prompt determination request with the Centralized Insolvency Operation (CIO) in Philadelphia. Announcement 2011-77 then updated the address to file requests with the CIO.
  - f. Under BAPCPA, the bankruptcy estate, the trustee, and the debtor are discharged upon payment of the tax.
- (6) Trustees and Debtors-in-Possession (DIPs) may file requests with Insolvency for prompt audit determinations under 11 USC § 505(b) in bankruptcy cases filed by partnership debtors. Trustees and DIPs may also file requests for prompt audit determinations in bankruptcy cases filed by Subchapter S corporations. The prompt audit determination request may be filed with the partnership's post-petition Form 1065. The prompt audit determination request may also be filed with the Subchapter S corporation's Form 1120-S.
- a. The IRS does not treat a Form 1065, *U.S. Partnership Return of Income*, as a return eligible for a prompt determination under 11 USC § 505(b). This is because the Form 1065 is an information return. A prompt audit of the information return could not report or uncover any unpaid liability of the partnership debtor's bankruptcy estate for any federal income tax.
  - b. It is unusual for a corporation filing Form 1120-S, *U.S. Small Business Corporation Income Tax Return*, to be liable for a federal income tax in the year a Form 1120-S is filed. Yet, it is not inconceivable that the corporation could be liable for a federal income tax. Accordingly, IRS does now honor requests made pursuant to 11 USC § 505(b) for post-petition Forms 1120-S, even when the Form 1120-S reflects no federal income tax liability. However, a request for a prompt determination by a debtor Subchapter S corporation will discharge only the parties specifically included in section 505(b). The non-debtor shareholders are not included in section 505(b) and will not be discharged.
  - c. In a partnership's bankruptcy case, the bankruptcy court does not have proper jurisdiction to determine the federal tax liabilities of any of the non-debtor partners. In a Subchapter S corporation's bankruptcy case, the bankruptcy court does not have proper jurisdiction to determine the federal tax liabilities of any of the non-debtor shareholders. (American Principals Leasing Corp. v. U.S., 904 F.2d 477 (9th Cir. 1990))

5.17.8.22  
(04-13-2020)

### Exceptions to Discharge

- (1) From a debtor's viewpoint, the primary purpose of bankruptcy is to obtain relief from indebtedness. Creditors are barred from collecting discharged debts from the debtor personally (11 USC § 524). However, tax liens may be enforceable against property owned by the debtor before bankruptcy even though the tax debt was discharged. See IRM 5.9.17.5, *Bankruptcy and Other Insolvencies, Closing a Bankruptcy Case, Exempt, Abandoned or Excluded Property (EAEP)*, and subsections for additional information about collection of tax debts discharged in bankruptcy after the discharge.
- (2) Section 523 provides that certain debts of an individual debtor are excepted from discharge. The following taxes are non-dischargeable under 11 USC § 523(a)(1) for individuals who receive a discharge in Chapter 7, 11, or 12. They are also non-dischargeable for an individual who receives a hardship discharge in Chapter 13:
  - a. "Gap" period taxes which arise only in involuntary cases which are entitled to priority under 11 USC § 507(a)(3);
  - b. Pre-petition taxes entitled to priority status under 11 USC § 507(a)(8);
  - c. Taxes with respect to which a return was not filed or was filed late within two years before the petition date; and
  - d. Taxes for which the debtor filed a fraudulent return or that the debtor willfully attempted in any manner to evade or defeat.

**Caution:** Liabilities assessed on IDRS under MFT 35 and/or mirrored as a MFT 65 module for the debtor under the Shared Responsibility Provision (SRP) of the Affordable Care Act (ACA) are taken from the debtor's Form 1040. When the tax on the debtor's Form 1040 is non-dischargeable, the tax assessed for the SRP (MFT 35 and/or MFT 65) of the ACA is often, but not always, excepted from discharge.

- (3) Pursuant to 11 USC § 523(a)(7), a non-pecuniary loss penalty is non-dischargeable if it relates to a tax that is non-dischargeable under 11 USC § 523(a)(1). The transaction or event that gave rise to the penalty must have occurred within three years before the petition date. Thus, a penalty relating to a non-dischargeable income tax is only non-dischargeable if the tax accrued within three years before the bankruptcy petition. *In re Roberts*, 906 F.2d 1440 (10th Cir. 1990); *In re Burns*, 887 F.2d 1541 (11th Cir. 1989); *McKay v. United States*, 957 F.2d 689 (9th Cir. 1992); *In re Miller*, 300 B.R. 422 (Bankr. N.D. Ohio 2003). For additional information on non-pecuniary loss penalties, see IRM 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*, and IRM 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)*.
- (4) Liabilities excepted from discharge by section 523 survive the bankruptcy and may be collected from any property of the debtor after the discharge. After discharge, dischargeable liabilities may be collected from exempt property secured by a pre-petition Notice of Federal Tax Lien (NFTL). Dischargeable liabilities may also be collected from abandoned or excluded property due to the Service's statutory lien. An NFTL is not required to collect discharged taxes from abandoned or excluded property.

- (5) Pre-petition and post-petition interest on non-dischargeable taxes is also non-dischargeable, as are any post-petition penalties on these taxes. Bruning v. United States, 376 U.S. 358 (1964); Hanna v. United States, 872 F.2d 829 (8th Cir. 1989).
- (6) Under BAPCPA, the following taxes claimed in a Chapter 13 are now non-dischargeable when the debtor receives a discharge upon completion of the Chapter 13 plan (11 USC § 1328(a)(2)) :
  - Trust fund taxes
  - Taxes with respect to unfiled returns
  - Late returns filed within two years of the petition date
  - Fraudulent returns
  - Those taxes that the debtor made a willful attempt to evade or defeat.

**Caution:** Liabilities for the SRP (MFT 35 and/or mirrored under MFT 65) of the ACA are taken from the debtor's Form 1040. When the tax on the debtor's Form 1040 is non-dischargeable, the tax assessed for the SRP (MFT 35 and/or mirrored under MFT 65) of the ACA is often, but not always, excepted from discharge.

5.17.8.23  
(04-13-2020)  
**Property of the Estate**

- (1) The bankruptcy estate is created by operation of law as soon as a voluntary or an involuntary petition is filed commencing a case (11 USC § 541). In general, only property of the estate is administered in the bankruptcy case. See IRM 5.9.8.14(5), *Internal Revenue Code § 1398 Issues, Determining if Income is Property of the Estate or Property of the Debtor*, for additional information on estate or individual property in Chapter 11 bankruptcy cases.
- (2) Generally, the estate is comprised of all the debtor's legal and equitable property interests as of the commencement of the case.
- (3) Proceeds, rents, or profits of estate property are also estate property.
- (4) Property that an individual debtor acquires by inheritance or through a divorce settlement within 180 days after the petition date is treated as estate property.
- (5) In Chapters 12 and 13, the estate of an individual debtor may include after-acquired property such as wages and income (11 USC §§ 1207, 1306). In general, wages earned by an individual debtor in a Chapter 7 case are not property of the estate (11 USC § 541(a)(6)). In cases filed on or after October 17, 2005, post-petition wages and after-acquired property of an individual Chapter 11 debtor are property of the estate (11 USC § 1115(a)).
- (6) Community property is included in the estate to the extent it is under the sole or joint management and control of the debtor or to the extent it is liable for an allowable claim.
- (7) Property held by nominees or alter egos, or which the debtor transferred as a fraudulent conveyance, is property of the estate. The trustee may avoid certain pre-petition and post-petition transfers of property and bring such property into the estate for distribution.
- (8) Generally, property cannot be excluded from the estate by agreement between parties that the debtor's interest will terminate upon financial insolvency or bankruptcy. However, under 11 USC § 541(c)(2), the debtor's interest in a trust that is subject to a restriction on transferability enforceable under non-

bankruptcy law is excluded. Under this provision interests in ERISA-qualified pension plans are excluded from the estate. Under 11 USC § 541(b), as amended by BAPCPA, interests in other types of pension plans may also be excluded.

5.17.8.24  
(04-13-2020)  
**Turnover to the Trustee  
— Assets Seized  
Pre-petition**

- (1) 11 USC § 542(a) requires an entity in possession, custody, or control of property of the estate (including exempt property) to deliver that property to the trustee, unless the property is of inconsequential value to the estate.
- (2) Under 11 USC § 542(b), with certain limited exceptions, an entity that owes a debt (e.g., a tax refund) to the debtor that is property of the estate and that is matured, payable on demand, or payable on order must pay such debt to or on the order of the trustee, subject to any setoff rights under 11 USC § 553.
- (3) Pursuant to United States v. Whiting Pools, Inc., 462 U.S. 198 (1983), property, whether tangible or intangible, levied upon pre-petition but not transferred before the bankruptcy is filed, is property of the bankruptcy estate subject to turnover. See IRM 5.9.5.8, *Levies and Bankruptcy*, for additional information.
  - a. Accordingly, if an IRS levy on accounts receivable, bank accounts, wages, insurance proceeds, and other intangibles has not resulted in the receipt of those funds by the IRS at the time the bankruptcy is filed, they are property of the bankruptcy estate. Any tangible property seized pre-petition, but not sold pre-petition, is property of the bankruptcy estate subject to turnover (however, see below, regarding IRS rights to adequate protection before turnover).
  - b. In any case where the IRS has received a pre-petition payment, ownership has transferred to the IRS and the property is not property of the estate. However, the payment may be subject to recovery by the estate as a preference. See IRM 5.17.8.26, *Trustee's Power to Avoid Preferences*, for additional information.
- (4) The courts generally recognize IRS rights to adequate protection where a levy is served pre-petition because the levy provides the IRS with an interest in the levied-upon property. In any case where the IRS is entitled to adequate protection, the IRS should immediately contact the debtor-in-possession or trustee to reach an adequate protection agreement, notify the court, and request relief from the automatic stay. Adequate protection arguments are usually made in Chapter 11 cases, but may occasionally be made in Chapter 7 and 13 cases. A referral should be made to the Associate Area Counsel (SB/SE) for the necessary legal action to be taken. Referrals are subject to the tolerances in IRM 5.9.4.15.4, *Referral Tolerances*. For additional information about adequate protection and cash collateral in Chapter 11 cases, see IRM 5.9.8.6, *Adequate Protection*, and IRM 5.9.8.8, *Cash Collateral/Property Depreciation of the Estate*.

5.17.8.25  
(04-13-2020)  
**Exempt Property**

- (1) Exempt property is property that an individual debtor may elect to place outside of the estate. The exempt property cannot be liquidated by the trustee. Section 522 of the Bankruptcy Code governs the types and amounts of property that the debtor can exempt from the bankruptcy estate. 11 USC § 522(b) provides that the debtor may choose to utilize the Bankruptcy Code exemptions listed in 11 USC § 522(d) or elect the exemptions provided by other Federal or applicable state law. States may legislatively opt out of the Bank-

ruptcy Code exemption scheme and allow the debtors in their state only those exemptions provided by state law. Joint debtors must make the same exemption election.

- (2) Exempt property is not liable for any debts of the debtor except alimony, security interests, non-dischargeable tax debts, and tax debts secured by a Notice of Federal Tax Lien (NFTL).
- (3) Only individuals can claim exempt property.
- (4) Taxes that are discharged with an NFTL properly filed pre-petition may still be collectible from exempt property (11 USC § 522(c)(2)(B)). See IRM 5.9.17.5, *Exempt, Abandoned, or Excluded Property (EAEP)*, and subsections for additional information.

5.17.8.26  
(04-24-2015)  
**Trustee's Power to Avoid  
Preferences**

- (1) Pursuant to 11 USC § 547(b), the trustee may avoid certain pre-petition transfers of the debtor's interests in property to bring that property back into the bankruptcy estate. Such transfers benefit one creditor at the expense of others and are known as preferences.
- (2) To qualify as a preference, a tax payment must:
  - a. Be made while the taxpayer was insolvent;
  - b. Be made on or within 90 days before the petition date;
  - c. Be a payment outside the normal course of business and not made according to ordinary business terms;
  - d. Be for an amount that is more than the creditor would have received in a Chapter 7 liquidation; and
  - e. Be a payment on account of an antecedent debt (e.g., a late payment of tax).
- (3) Pursuant to 11 USC § 547(b), a trustee may avoid a transfer of an "interest of the debtor in property." An interest of the debtor in property does not include property that the debtor holds in trust for another (11 USC § 541(d)). In Begier v. IRS, 496 U.S. 53 (1990), the Supreme Court held that a voluntary pre-petition payment of trust fund taxes (withheld employment taxes and excise taxes collected from purchasers) cannot be avoided under 11 USC § 547(b) because the funds paid were not property of the debtor. The funds were held in trust for the United States under IRC § 7501(a).
- (4) Although "antecedent debt" is not defined by the Bankruptcy Code, it is clear that the term "antecedent debt" refers to a debt incurred before the date of the transfer. As long as the payment is made by the due date of the return (or by the due date of an extension) without a penalty, there is no antecedent debt. Timely payments of tax cannot be avoided under 11 USC § 547.
- (5) A tax payment must be made on or within 90 days before the filing of the bankruptcy petition to be avoidable (11 USC § 547(b)(4)). For payments by check, the relevant date is the date the check is honored by the drawee bank.

5.17.8.27  
(04-13-2020)  
**Setoff**

- (1) Outside of bankruptcy, the IRS has the right to set off tax overpayments against tax debts (IRC § 6402). 11 USC § 553 preserves the IRS's right to offset pre-petition claims against pre-petition refunds except as prohibited by the automatic stay. Under BAPCPA, the automatic stay no longer prohibits offsets of pre-petition income tax claims against pre-petition income tax refunds. BAPCPA also allows offsets of income tax refunds to domestic support obligations. (See IRM 5.9.4.5, *Credits, Refunds, and Offsets*, and subsections, for additional information.)
- (2) Pre-petition tax refunds are property of the estate under 11 USC § 541(a). The IRS may be required to turn over the refund to the trustee unless the refund is protected under 11 USC § 553.
- (3) If the automatic stay prohibits the IRS from setting off, but the IRS's right of setoff is protected under 11 USC § 553, the IRS is not required to turn over the refund. The IRS may temporarily freeze the refund until it has the authority to exercise its setoff rights (*Citizens Bank of Md. v. Strumpf*, 516 U.S. 16 (1995)).
- (4) In many jurisdictions, bankruptcy courts have issued standing court orders that modify the automatic stay to permit setoff in some or all circumstances and dispense with the requirement to turn over pre-petition refunds to the bankruptcy trustee.
- (5) Generally, in Chapter 7, 11, and 13 cases, post-petition overpayments can be offset directly to post-petition tax periods.

5.17.8.28  
(04-13-2020)  
**Effect of Bankruptcy on the Limitation Period for Assessment and Collection**

- (1) IRC § 6503(h) suspends the running of the period of limitation on collection (IRC § 6502) in a case under the Bankruptcy Code during the period in which the IRS is prohibited by reason of such case from collecting, plus six months thereafter. The collection period is suspended while the automatic stay is in effect, and in a Chapter 11 case, while the plan is in effect and not in default. Under BAPCPA, an individual in a Chapter 11 case does not receive a discharge until all payments under the plan have been completed. Thus, the automatic stay remains in effect until the *earliest* of the date the case is dismissed or closed by the court or until a discharge is granted or denied (11 USC § 362) . When the taxpayer is a "serial filer" the automatic stay and collection period suspension may be impacted. For additional information on the automatic stay, collection statute suspension, and assessment statute in a bankruptcy case, see:
  - IRM 5.9.3.5, *Automatic Stay*
  - IRM 5.9.4.3, *ASED/CSED*
  - IRM 5.9.4.3.1, *BRA 94 and BAPCPA's Effect on Assessments*
  - IRM 5.9.4.4, *Examination and Insolvency*
  - IRM 5.9.5.7, *Serial Filers*
  - IRM 5.9.5.7.1, *Systemic Identification in Serial Filer Cases*
  - IRM 5.9.8.10, *Collection Statute of Limitations and Chapter 11 Plans*
  - IRM 5.9.17.19, *ASED/CSED Considerations*
- (2) The limitation period for assessments is not suspended by IRC § 6503(h) because assessments are not prohibited by the automatic stay.
- (3) However, where a notice of deficiency has been issued, the debtor may be prohibited from commencing a Tax Court case by the automatic stay, which indirectly tolls the assessment statute. See Rev. Rul. 2003-80, 2003-29 I.R.B. 83 (July 21, 2003).

- a. The filing of a Tax Court petition, as well as the continuation of a Tax Court proceeding, are precluded by the automatic stay (11 USC § 362(a)(8)). Regardless of whether the IRS issues a Notice of Deficiency before or after the taxpayer files bankruptcy, the taxpayer may be prohibited by 11 USC § 362(a)(8) from filing a Tax Court petition. Under BAPCPA, the automatic stay prohibits an individual from filing a Tax Court petition or continuing a Tax Court case only for taxable periods ending before the date of the order for relief (generally, the date the bankruptcy petition was filed). For corporate debtors, BAPCPA prohibits the commencement or continuation of a Tax Court case for any taxable period for which the bankruptcy court may determine the liability. Generally, this will include all pre-confirmation taxes.
- b. IRC § 6213(f) suspends the running of time for filing a Tax Court petition while the automatic stay is in effect and for 60 days thereafter.
- c. IRC § 6213(a) prohibits the making of an assessment until the period for filing a Tax Court petition (generally 90 days under § 6213(a)) has run. If a Tax Court petition has been filed, the assessment is prohibited until the Tax Court decision is final.
- d. Thus, the IRS is prohibited from assessing an unagreed deficiency on a pre-petition period while the automatic stay is in effect. The prohibition is in effect when a notice of deficiency is issued within 90 days of bankruptcy. The prohibition is also in effect when a notice of deficiency is issued post-petition and the automatic stay is still in effect.
- e. IRC § 6503(a)(1) suspends the running of the assessment period for the period during which the IRS is prohibited from making the assessment and for 60 days thereafter. If the deficiency is placed on the docket of the Tax Court, the assessment period is suspended until the decision of the Tax Court becomes final and for 60 days thereafter.

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**Exhibit 5.17.8-1 (04-13-2020)****Glossary of Common Bankruptcy Terms**

The list below contains terms commonly used in insolvency cases. Additional terms may be found in IRM Exhibit 5.9.1-1, *Glossary of Common Insolvency Terms*.

<b>Term</b>	<b>Definition</b>
<b><i>Abandonment</i></b>	<p>The process of severing a bankruptcy estate's interest in property. The bankruptcy court may permit the trustee to abandon any property of the estate that is burdensome or of inconsequential value to the estate. Abandonment to avoid adverse tax consequences when the property is sold is an issue when the debtor is an individual in Chapter 7 or Chapter 11.</p> <p><i>Affirmative Act:</i> The trustee may actively abandon or a party in interest may request abandonment. Notice and a hearing is required, although notice can be general, and a hearing is not always held.</p> <p><i>Administrative Abandonment:</i> If the property is listed in the schedules, but it is not administered by the trustee (i.e., sold), then it is abandoned to the debtor upon closing of the estate.</p>
<b><i>Adequate Protection</i></b>	<p>A secured creditor is allowed to have its secured interest "adequately protected" while the automatic stay is in effect. This arises when the property is depreciating or, in some cases, when the accrued interest on a defaulted loan is diminishing the equity in the property. The court may award the creditor some protection against the loss of value rather than modifying the automatic stay. Adequate protection most commonly consists of periodic cash payments and replacement liens in post-petition assets. Other provisions can also be included to protect the collateral; such as, a requirement that the debtor maintain insurance on the property.</p>
<b><i>Adequate Protection Agreement</i></b>	<p>An agreement between a debtor and a secured creditor to protect the creditor's secured claim until a plan of reorganization is confirmed.</p>
<b><i>Administrative Expense</i></b>	<p>The actual, necessary expenses of preserving the estate, including any tax incurred by the estate. This includes tax liabilities for periods ending post-petition and before discharge or dismissal for which the estate is liable. Administrative expenses are entitled to priority under 11 USC § 507(a)(2). 11 USC § 503 defines allowable administrative expenses. IRC § 1398(h) explains the proper handling of these expenses on the bankruptcy estate's tax return.</p>
<b><i>Adversary Proceeding</i></b>	<p>A lawsuit within the bankruptcy case in which one party files a complaint to seek relief (for example; to recover money or property, to determine the validity of a lien, to determine dischargeability of a debt, or to obtain an injunction). Adversary proceedings involve more legal formalities than contested matters. Rule 7001 of the Federal Rules of Bankruptcy Procedure determines when an adversary proceeding must be filed.</p>
<b><i>AMDIS</i></b>	<p>The Audit Management Display Information System (AMDIS) is one of Examination's command codes used on the Integrated Data Retrieval System (IDRS) to show any return that is being audited by the Examination function.</p>

**Exhibit 5.17.8-1 (Cont. 1) (04-13-2020)**  
**Glossary of Common Bankruptcy Terms**

<b>Term</b>	<b>Definition</b>
<b><i>AMDISA</i></b>	Same as AMDIS, except it displays specific information on an open tax period.
<b><i>AIMS</i></b>	The Audit Information Management System (AIMS) is the Examination computer system used by Exam. AIMS is researched by Insolvency when tax accounts have audit indicators, such as a Transaction Code (TC) 420 on IDRS.
<b><i>AIS</i></b>	Automated Insolvency System (AIS). The bankruptcy database maintained by Insolvency. Its many functions work together to allow Insolvency to manage all of the bankruptcy cases in Insolvency's inventory.
<b><i>ASED</i></b>	The Assessment Statute Expiration Date (ASED) marks the date the statutory period of time for assessing a tax ends. The timeframe for assessing a tax is normally three years from the due date of a return or three years from the date the return is filed, whichever is later (IRC § 6501).
<b><i>Asset Case</i></b>	All Chapter 9, 11, 12, and 13 cases are considered asset cases. A Chapter 7 case may be an asset case or a no asset case. A Chapter 7 case in which the debtor has assets which are non-exempt (i.e., available for use in satisfying creditors' claims) is considered an asset case. If the debtor in a Chapter 7 case has only exempt or excluded assets; such as, a personal home or a retirement plan, which are not available to pay claims, the case is considered a no asset case.
<b><i>Automatic Stay</i></b>	<p>An injunction that arises when a bankruptcy is filed (11 USC § 362). It is a prohibition on the commencement or continuation of any legal or enforcement activities against the debtor, the debtor's property, and property of the estate (subject to certain exceptions).</p> <ul style="list-style-type: none"> <li>• Generally, the stay terminates when the discharge is granted or denied or the case is closed or dismissed, whichever event occurs earliest.</li> <li>• Any willful violation of the stay may give the debtor the right to claim actual damages and attorney's fees (but not punitive damages).</li> </ul> <p><b>Note:</b> Creditors may ask the court for relief from the automatic stay to permit them to pursue collection remedies; such as, a foreclosure action on real property or to offset a tax refund.</p>
<b><i>Bankruptcy</i></b>	A judicial process to resolve a debtor's problems in paying debts incurred by the debtor. The term bankruptcy is usually used in connection with the federal bankruptcy laws enacted by Congress. While "bankruptcy" generally refers to a proceeding brought in the federal bankruptcy courts governed by the Bankruptcy Code, the terms insolvency proceeding and receivership usually refer to proceedings brought under state laws and supervised by the state courts. A bankruptcy can either be voluntary or involuntary. 11 USC § 303 provides the requirements allowing creditors to file an involuntary petition.

## Exhibit 5.17.8-1 (Cont. 2) (04-13-2020)

## Glossary of Common Bankruptcy Terms

Term	Definition
<b><i>Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)</i></b>	Most of the provisions of BAPCPA are effective for cases filed on or after October 17, 2005. However, some BAPCPA provisions; such as, certain provisions relating to Chapter 12 debtors, took effect on April 20, 2005, the date of enactment. Many provisions of BAPCPA are intended to keep debtors from abusing the bankruptcy system. Such provisions severely limit the imposition of the automatic stay in cases of serial filings, require tax compliance from individual debtors, and establish a means test for Chapter 7 debtors. BAPCPA also added a new Chapter 15 to deal with cross-border bankruptcies.
<b><i>Bankruptcy Code</i></b>	The laws of bankruptcy codified under Title 11, United States Code, §§ 101 through 1532.
<b><i>Bankruptcy Court</i></b>	A division of a United States District Court. All District Courts have standing orders referring bankruptcy cases to bankruptcy judges. See 28 USC §§ 157 and 1334.
<b><i>Bankruptcy Estate</i></b>	See <i>Estate</i> .
<b><i>Bankruptcy Petition</i></b>	The form filed by the debtor (or against the debtor by creditors in an involuntary bankruptcy) with the bankruptcy court requesting relief from creditors. It is filed to commence a case under any chapter of the Bankruptcy Code.
<b><i>Bankruptcy Reform Act of 1994 (BRA 94)</i></b>	Signed into law and effective for all bankruptcy cases filed on or after October 22, 1994. It made changes to the bankruptcy law; such as, permitting assessments and the issuance of notice and demand without violating the automatic stay and the filing of late proofs of claim for priority taxes in Chapter 7 cases.
<b><i>Bankruptcy Rules</i></b>	Rules of procedure that govern the practice and procedure in bankruptcy cases. The official name for these rules is the "Federal Rules of Bankruptcy Procedure."
<b><i>Bar Date</i></b>	The date fixed by the court, or by statute, as the date by which a creditor must file a proof of claim. The Service is allowed a minimum of 180 days after the order of relief in which to file a proof of claim. The court may grant extensions for cause.
<b><i>Case Docket</i></b>	The official record of the bankruptcy case. It shows every event occurring in and every document filed in the case. The docket is maintained by the bankruptcy clerk's office.
<b><i>Cash Collateral</i></b>	11 USC § 363(a) defines cash collateral as "cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents." It simply means cash or cash equivalents which are property of the estate and in which the IRS or other creditors have a secured interest. Cash collateral includes accounts receivable. The trustee or the debtor-in-possession may not use cash collateral without the court's approval or the consent of interested parties.

**Exhibit 5.17.8-1 (Cont. 3) (04-13-2020)**  
**Glossary of Common Bankruptcy Terms**

<b>Term</b>	<b>Definition</b>
<b><i>Change of Venue</i></b>	Change of location of the bankruptcy filing; usually due to the debtor relocating from one part of the country to another. The bankruptcy jurisdiction is changed to a court in the debtor's new location.
<b><i>Chapter 7</i></b>	A liquidation proceeding filed under Chapter 7 of the Bankruptcy Code by an individual, business, or other entity, where creditors are paid by liquidation and distribution of the debtor's non-exempt assets, if any, are available.
<b><i>Chapter 9</i></b>	A bankruptcy proceeding for a governmental unit. In order to qualify as a debtor under Chapter 9, an entity must, among other things, be a municipality, be authorized to be a debtor by state law, be insolvent or unable to meet its debts as they mature, and desire to effect a plan to adjust such debts.
<b><i>Chapter 11</i></b>	A reorganization proceeding filed under Chapter 11 of the Bankruptcy Code by an individual, business, or other entity where creditors are paid under a plan. A plan can last several years; however, a large percentage eventually fail. Chapter 11 plans may also provide for the liquidation of the debtor's assets. Individual debtors may receive a discharge upon completion of the Chapter 11 plan or a hardship discharge.
<b><i>Chapter 12</i></b>	This chapter applies to family farmers and fishermen. It closely resembles a Chapter 13; but, without a super discharge. Creditors are paid under a plan. Payments may be paid seasonally. Debtors may receive a discharge upon completion of the Chapter 12 plan or a hardship discharge.
<b><i>Chapter 13</i></b>	This chapter applies to individuals with regular income, sole proprietors, and other self-employed individuals. Chapter 13 is a reorganization proceeding for individuals with regular income, including wage earners, where creditors are paid under a plan. Plan payments are paid through a trustee who handles all disbursements. There are debt limitations to qualify for a Chapter 13. See 11 USC § 109(e). The super discharge has been limited by BAPCPA. The debtor may receive a discharge upon completion of the Chapter 13 plan or a hardship discharge.
<b><i>Chapter 15</i></b>	This chapter applies when: (1) A foreign court or a foreign representative seeks assistance in the United States in connection with a foreign proceeding; (2) Assistance is requested in a foreign country in connection with a case under 11 USC; (3) A foreign proceeding and a domestic bankruptcy for the same debtor are pending concurrently; or (4) Creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under 11 USC.
<b><i>Claim</i></b>	A right to payment even if unliquidated, contingent, or disputed. Proofs of claim may include tax liabilities which have not been assessed. See also <i>Proof of Claim</i> .

## Exhibit 5.17.8-1 (Cont. 4) (04-13-2020)

## Glossary of Common Bankruptcy Terms

Term	Definition
<b><i>Co-Debtor Stay</i></b>	Under the Bankruptcy Code, the co-debtor stay applies only to consumer debts in Chapters 12 and 13 cases. <i>It does not apply to taxes. See Consumer Debt.</i>
<b><i>Commencement Date</i></b>	The day on which a bankruptcy petition is filed.
<b><i>Complaint</i></b>	A pleading filed by a party to the bankruptcy case to initiate an adversary proceeding. The complaint must be served with a summons.
<b><i>Confirmation</i></b>	The time when the court grants final approval to the debtor's plan of reorganization. Applicable only in bankruptcies filed under Chapters 11, 12, and 13.
<b><i>Consumer Debt</i></b>	A debt incurred by an individual primarily for personal, family, or household purposes. <i>Does not include taxes. See Co-Debtor Stay.</i>
<b><i>Conversion</i></b>	When a debtor voluntarily or involuntarily changes from one chapter of bankruptcy to another chapter with the approval of the bankruptcy court.
<b><i>Cram Down</i></b>	In the event any class of claims or interests is impaired under a plan of reorganization in Chapter 11 and does not garner the minimum percentage of votes to accept the plan, the plan's proponent may request the court to confirm the plan by the alternative cram down method. As long as at least one class of creditors approves the plan, the plan does not discriminate unfairly, and meets the fair and equitable treatment of creditors test; as well as, other requirements for confirmation under the Bankruptcy Code, the court may confirm the plan.
<b><i>Creditor</i></b>	Person or entity with a claim for a debt against the debtor and/or property of the debtor at the time the bankruptcy petition is filed.
<b><i>CSED</i></b>	The date on which the collection statute expires is called the Collection Statute Expiration Date (CSED). The statutory period for collecting a tax is normally ten years from the date of assessment (IRC § 6502). IRC § 6503(h) suspends the CSED while the automatic stay is in effect and for six months thereafter.
<b><i>Debtor</i></b>	The person or entity (corporation, partnership, municipality, etc.) that: (1) files a voluntary petition, or (2) has an order of relief entered against it when an involuntary petition is filed by creditors meeting certain requirements with the bankruptcy court.
<b><i>Debtor-in-Possession (DIP)</i></b>	The debtor in a Chapter 11 reorganization is known as a debtor-in-possession (DIP) when the debtor remains in full control of all of the assets. The DIP is charged with the duties and responsibilities of a fiduciary to maximize the assets of the estate for the benefit of all creditors and has many of the rights and authority of a trustee.

**Exhibit 5.17.8-1 (Cont. 5) (04-13-2020)**  
**Glossary of Common Bankruptcy Terms**

<b>Term</b>	<b>Definition</b>
<b><i>Discharge</i></b>	<p>A court order which extinguishes the debtor's personal liability on many pre-petition debts. It is the event triggering a permanent injunction on collecting a debt in a bankruptcy case. Generally, a discharge is granted:</p> <p>(a) <u>In an individual debtor's Chapter 7 case</u> - No earlier than 60 days after the date set for the first meeting of creditors (11 USC § 341 Meeting). Only individuals receive a discharge in a Chapter 7 case;</p> <p>(b) <u>In a Chapter 11 non-individual case</u> - When the plan is confirmed;</p> <p>(c) <u>In a Chapter 11 individual case</u> - When the plan is completed or when the court grants a hardship discharge; and</p> <p>(d) <u>In Chapter 12 and 13 cases</u> - When the plan is completed (three to five years) or when the court grants a hardship discharge.</p> <p>Individual Chapter 11 debtors whose bankruptcies were filed prior to October 17, 2005 were discharged at confirmation of the plan.</p>
<b><i>Discharge Date</i></b>	The date the court records the discharge.
<b><i>Discharge, Denial of</i></b>	<p>The situation in which a debtor goes through the bankruptcy proceeding and is determined to remain responsible (usually for cause) for all of the pre-petition liabilities. There is no income from the forgiveness of debt because none was given. A denial of discharge has the same effect with respect to the debtor's liability for pre-petition debts as a dismissal. A denial of discharge is the result of an adversary proceeding filed against the debtor.</p>
<b><i>Discharge Injunction</i></b>	<p>Under 11 USC § 524, a discharge operates as an injunction against any collection action to recover discharged tax liabilities from the debtor. Damages against the IRS could result if the injunction is violated. Also, see <i>Violation of Stay</i>. The discharge injunction may not prevent the IRS from collecting on any lien it may have on exempt, abandoned, or excluded property.</p>
<b><i>Disclosure Statement</i></b>	<p>In a Chapter 11 case, an approved disclosure statement must generally accompany the proposed plan of reorganization before the plan is confirmed. The disclosure statement must contain adequate information concerning the affairs of the debtor to allow the creditors to make an informed judgment about the plan. However, for cases under BAPCPA, small businesses may be subject to less stringent disclosure statement requirements. See 11 USC § 1125(f).</p>
<b><i>Dismissal</i></b>	<p>The term used when a bankruptcy proceeding is terminated prematurely. Debts are not forgiven. The debtor does not receive a discharge. If a bankruptcy case involving an individual is dismissed by the court, the estate is not treated as a separate entity for federal tax purposes (IRC § 1398(b)(1)). The debtor's tax status is treated as if a bankruptcy case had not been filed. When a bankruptcy case is dismissed, the debtor is restored to the debtor's pre-petition position. Upon dismissal, the debtor is no longer protected by the automatic stay. IRS can resume administrative collection.</p>

## Exhibit 5.17.8-1 (Cont. 6) (04-13-2020)

## Glossary of Common Bankruptcy Terms

Term	Definition
<b><i>Distribution Order</i></b>	A Distribution Order authorizes the case trustee to pay creditors the amounts listed in the order. It is usually prepared by the Chapter 7 case trustee and entered by the court.
<b><i>Estate</i></b>	<p>A bankruptcy estate is created upon the filing of the bankruptcy case. It generally consists of all of the debtor's interests in any property at the time the case is filed. The estate includes property acquired by the estate after the petition is filed. However, certain property is excluded from the estate. Excluded property is usually certain types of retirement accounts.</p> <p><b>Note:</b> The estate may also include a non-debtor spouse's community property interests. In an individual Chapter 7 or 11 case, the bankruptcy estate is a separate taxable entity. In Chapter 13 cases, certain assets acquired by the debtor post-petition are also included in the estate (11 USC § 1306). In individual Chapter 11 cases filed on or after October 17, 2005, property of the estate also includes post-petition earnings from services performed by the debtor (11 USC § 1115).</p>
<b><i>Examiner</i></b>	An examiner may be appointed in a Chapter 11 case to investigate the financial affairs of the debtor. An examiner does not replace the debtor-in-possession, as a Chapter 11 trustee does.
<b><i>Excluded Assets</i></b>	A property interest that does not become property of the bankruptcy estate upon the petition date. An NFTL is not required for collection from excluded assets on either dischargeable or non-dischargeable periods.
<b><i>Exempt Property</i></b>	Property intended to assist the debtor in making a fresh start and that 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 taxes secured by a Notice of Federal Tax Lien (NFTL). Depending upon state law, a debtor may choose between state and federal exemptions. Only individuals can exempt property (e.g., a homestead, vehicles, personal furnishings).
<b><i>53 Account - CNC</i></b>	A balance due account that is considered Currently Not Collectible (CNC). Frequently used in Chapter 7 corporate accounts and Chapter 11 liquidating bankruptcies at close of bankruptcy. Processed by use of Form 53.
<b><i>First Meeting of Creditors (Section 341 Meeting)</i></b>	The meeting at which the debtor is required to testify under oath about financial affairs and to respond to questions from creditors and the trustee. Usually held within 20 to 50 days after a case is commenced under any chapter of the Bankruptcy Code. It is also referred to as the § 341 Meeting, 341 Meeting, or 341 Hearing (11 USC § 341).

**Exhibit 5.17.8-1 (Cont. 7) (04-13-2020)**  
**Glossary of Common Bankruptcy Terms**

<b>Term</b>	<b>Definition</b>
<b><i>Fraudulent Conveyance</i></b>	A transfer of any property by the debtor within one year before the bankruptcy petition with the intent to hinder, defraud, or delay a creditor. When brought to light, the trustee can successfully challenge the transfer and request turnover of the property to the estate (11 USC § 548). For cases filed on or after October 17, 2005, the look back period is two years.
<b><i>Fresh Start</i></b>	Refers to the goal of bankruptcy to give the debtor a new financial life free from many past debts. The discharge gives a debtor a fresh start. However, some debts are excepted from discharge. See 11 USC § 523.
<b><i>Gap Period Taxes</i></b>	Tax liabilities and penalties which accrue during the interim period after an involuntary bankruptcy case is filed and before an order for relief is entered.
<b><i>General Unsecured Claim</i></b>	See <i>Unsecured General Claim</i> .
<b><i>Hardship Discharge</i></b>	When circumstances beyond the debtor's control prevent the Chapter 13 debtor from modifying or completing the plan, the debtor can receive the same type of discharge that would have been received had the debtor been discharged in a Chapter 7 case, if certain requirements are met (11 USC § 1328(b)). Chapter 12 affords a similar discharge but under more limited circumstances (11 USC § 1228(b)). Similar to the Chapter 13 case, the court may grant an individual in Chapter 11 case a hardship discharge in appropriate circumstances (11 USC § 1141(d)(5)).
<b><i>Impaired Class</i></b>	A class of claim or interest holders is generally "impaired" by a Chapter 11 plan unless the plan leaves the claim or interest holders' non-bankruptcy legal, equitable, and contractual rights unaltered (11 USC § 1124(1)).
<b><i>Individual Debtor</i></b>	A person who files bankruptcy as an individual rather than as a partnership, Limited Liability Company (LLC), or corporation. The individual debtor may file singly or jointly with a spouse.
<b><i>Insider</i></b>	If the debtor is an individual, an "insider" includes a relative or partner of the debtor, a partnership in which the debtor is a general partner, a general partner of the debtor, or a corporation of which the debtor is a director, officer, or person in control. If the debtor is a corporation, an "insider" includes a director or officer of the debtor or a person in control of the debtor (11 USC § 101(31)). An insider may be subject to different treatment under the Bankruptcy Code. For example, the time period for recovering preferential transfers to an insider is one year as opposed to 90 days for transfers made to non-insiders.
<b><i>Insolvency</i></b>	Generally, understood to mean an inability to pay debts as they become due. However, the Bankruptcy Code refers to an insolvent entity as one whose debts are greater than the fair market value of its assets (11 USC § 101(32)). A debtor need not be insolvent to file bankruptcy. See <i>Bankruptcy</i> .

## Exhibit 5.17.8-1 (Cont. 8) (04-13-2020)

## Glossary of Common Bankruptcy Terms

Term	Definition
<b><i>Involuntary Bankruptcy Petition</i></b>	The situation in which creditors meeting certain criteria file a bankruptcy petition, forcing a debtor into bankruptcy involuntarily. See <i>Bankruptcy</i> and <i>Order for Relief</i> .
<b><i>IRC § 6020(b)</i></b>	IRC § 6020(b) allows the IRS to prepare and execute a return when a taxpayer fails to make a required return or makes a false or fraudulent return. A section 6020(b) return is not a return for purposes of the exceptions to discharge under section 523(a) of the Bankruptcy Code. For additional information, see IRM 5.9.17.8.1, <i>Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared</i> .
<b><i>Joint Return/Separate Bankruptcy Petitions Filed by Each Spouse</i></b>	The situation in which spouses file a joint income tax return and file separate bankruptcy petitions either on the same date or on different dates. The cases may or may not be “consolidated” into a single case.
<b><i>Joint Return/Single Debtor (Debtor and Non-Debtor Spouse)</i></b>	The situation in which spouses file a joint income tax return but only one spouse declares bankruptcy. The person who files for bankruptcy protection is known as the debtor. The other spouse, who did not file bankruptcy, is known as the non-debtor spouse.
<b><i>Levy</i></b>	An IRS enforcement tool used to seize tangible and intangible assets. The IRS must turn over to the estate property subject to levy but may seek adequate protection.
<b><i>Lien</i></b>	A claim attaching property or rights to property as collateral for payment on a debt or obligation. See <i>Notice of Federal Tax Lien (NFTL)</i> , for additional information.
<b><i>Lifting the Automatic Stay</i></b>	Relief obtained by a specific creditor from the bankruptcy court that lifts the injunction under 11 USC § 362, allowing the creditor to take a certain action. The automatic stay terminates as to all creditors when the discharge is granted or the case is closed or dismissed, whichever event occurs earliest. For cases filed on or after October 17, 2005, the stay may also terminate 30 days after the petition date if the debtor is an individual in a Chapter 7, 11, or 13 case and the individual was dismissed from an individual Chapter 7, 11, or 13 bankruptcy within the previous 12 months.
<b><i>Liquidation</i></b>	The act of reducing tangible and intangible assets to cash. This applies to Chapter 7 cases in which the business ceases to exist and its assets are sold. For individuals, the liquidation is limited to non-exempt assets. Some debtors liquidate through a Chapter 11 plan.
<b><i>Local Rules</i></b>	Each bankruptcy court may make and amend its own local rules governing its practice and procedures in that specific jurisdiction. However, the local rules cannot be inconsistent with the Federal Rules of Bankruptcy Procedure.
<b><i>Monthly Operating Reports</i></b>	The reports required to be filed in all Chapter 11 cases by debtors-in-possession or trustees. Generally, the reports include a cash receipts and disbursements journal, income statement, and balance sheet analysis.

**Exhibit 5.17.8-1 (Cont. 9) (04-13-2020)**  
**Glossary of Common Bankruptcy Terms**

<b>Term</b>	<b>Definition</b>
<b>No Asset Case</b>	A no asset case is one where no equity in the debtor's assets is available to pay unsecured creditors because all of the debtor's assets are exempt, excluded, fully encumbered by secured liens, or have little value (Chapter 7). Generally, the IRS and other creditors do not file claims in no asset cases, unless or until the bankruptcy trustee provides further notice that assets have been found (Bankruptcy Rule 2002(e) and 3002(c)(5)).
<b>Non-Exempt Assets</b>	Assets which are part of the bankruptcy estate (i.e., the property available to satisfy creditors' claims). See also <i>Asset Case</i> .
<b>Non-Pecuniary Loss Penalty</b>	A non-pecuniary loss penalty is a punitive penalty, or "fine." Examples are failure to file, failure to pay, frivolous, fraud, and willful misconduct penalties. Generally, the Service receives only minimal payments on these types of penalties. These penalties may not accrue while the bankruptcy is pending and they may be non-dischargeable if they relate to a non-dischargeable tax. For additional information on discharge and non-pecuniary loss penalties, see IRM 5.9.17-9, <i>Processing TC 604 Reversals and Determining Dischargeability when an Individual Received a Discharge Upon Completion of the Plan in a Chapter 13 Case</i> , and IRM 5.9.17-11, <i>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)</i> .
<b>Notice of Federal Tax Lien (NFTL)</b>	For tax purposes, a properly filed NFTL secures the tax liability up to the value of the equity in the debtor's assets. There is a prohibition on filing a new NFTL on a pre-petition tax debt until after the lifting of the stay. Refiling of an existing NFTL is allowed as this is a continuation of a pre-petition filed NFTL. See also <i>Secured Claim</i> .
<b>Objection to Claim</b>	A motion filed with the bankruptcy court by a debtor, creditor, or trustee to object to all or part of a claim. If necessary, a hearing will be held to resolve the dispute. Most bankruptcy court litigation, including objections to claim, are brought by motion pursuant to the less formal contested matter procedures.
<b>180-Day Reports</b>	Each Chapter 7 trustee must submit to the United States Trustee an interim report on each asset case that was open at the beginning of the reporting period. The interim report consists of an Estate Property Record and Report and a Cash Receipts and Disbursements Record.
<b>Order for Relief</b>	The filing of a bankruptcy petition constitutes an order for relief in a voluntary bankruptcy case. In an involuntary case, the court orders relief after notice and hearing on the merits of the involuntary case (Bankruptcy Rule 1013).
<b>PACER (Public Access to Court Electronic Records)</b>	An electronic court notification/information system providing ready information to the public on court records. PACER maintains records and provides a current status on the majority of bankruptcy cases.

Exhibit 5.17.8-1 (Cont. 10) (04-13-2020)  
Glossary of Common Bankruptcy Terms

Term	Definition
<b><i>Pecuniary Loss Penalty</i></b>	Assessed to reimburse and compensate the government for an actual loss of taxes. Always treated as a priority classification on the Service's proof of claim, unless entitled to a secured position if a valid lien was filed prior to the commencement of the bankruptcy case.
<b><i>Person</i></b>	As used for bankruptcy purposes, "person" includes an individual, business entity (partnership, corporation, etc.), but not a governmental unit (11 USC § 101(41)).
<b><i>Petition Date</i></b>	The date the bankruptcy petition was filed in the bankruptcy court.
<b><i>Plan of Reorganization</i></b>	A proposed method of payment submitted by the debtor and/or other interested parties in a bankruptcy case to the bankruptcy court and creditors for review and approval. Creditors have the right to vote to accept or reject the plan and/or object to it. Plans are filed in Chapters 11, 12, and 13 bankruptcy cases. Only the debtor can propose a plan in Chapter 12 and 13 cases.
<b><i>Post-Confirmation</i></b>	The period that occurs after the plan is confirmed.
<b><i>Post-Petition</i></b>	The period after the bankruptcy petition is filed.
<b><i>Post-Petition Pre-Confirmation</i></b>	The period from the petition date to the confirmation date.
<b><i>Post-Petition Taxes</i></b>	Taxes incurred after the filing of the bankruptcy petition for tax periods ending after the petition date.
<b><i>Preference</i></b>	A pre-petition transfer of the debtor's property to a creditor made on or within 90 days before the filing of bankruptcy (or one year if the transfer is to an insider), which enables the creditor to receive more than in a Chapter 7 liquidation. The trustee may avoid the transfer and recover the property for the estate unless one of several exceptions apply, including the exception for payments of debts made in the ordinary course of business (11 USC § 547). The voluntary pre-petition payment by the debtor of trust fund taxes to the Service is not a payment of property of the debtor, and thus, cannot be recovered as a preference.
<b><i>Pre-Packaged Bankruptcies</i></b>	A bankruptcy which includes a plan of reorganization that the creditors negotiate and accept prior to the filing of the bankruptcy petition.
<b><i>Pre-Petition</i></b>	The period of time before the bankruptcy petition was filed.
<b><i>Pre-Petition Taxes</i></b>	Taxes incurred, whether or not assessed, prior to the filing of the bankruptcy petition. An income tax accrues on the last day of the tax year.
<b><i>Priority</i></b>	The concept relating to the order and the extent to which the various creditors' unsecured claims are satisfied out of the available assets of the bankruptcy estate (11 USC § 507).

**Exhibit 5.17.8-1 (Cont. 11) (04-13-2020)**  
**Glossary of Common Bankruptcy Terms**

<b>Term</b>	<b>Definition</b>
<b><i>Priority Claim</i></b>	A claim with priority over other unsecured claims. 11 USC § 507 sets forth the prerequisites and order of payment for priority claims, including taxes with return due dates less than three years prior to the petition date, income tax assessments made within 240 days before the petition date, income tax deficiencies that are unassessed but are assessable prior to the petition date unless the taxes are excepted from discharge under 11 USC § 523(a)(1)(B) or (C), and trust fund taxes.
<b><i>Proof of Claim</i></b>	A document a creditor files with the bankruptcy court to assert a right of payment from the bankruptcy estate for pre-petition debts. A claim can also be filed for post-petition debts in some instances (e.g., 11 USC § 1305 claims in Chapter 13).
<b><i>Property of the Estate</i></b>	All legal or equitable interests of the debtor at the time the bankruptcy is filed. This includes potential claims and lawsuits the debtor may yet file against a third party. It is from this estate the trustee will liquidate assets to pay creditors in a Chapter 7 case and affects the amount creditors must be paid in plans under Chapters 11, 12, and 13 (11 USC § 541).
<b><i>Pro rata</i></b>	According to a calculated share; distributed proportionately.
<b><i>Receivership</i></b>	See under term <i>Bankruptcy</i> .
<b><i>Reorganization</i></b>	The process through which a Chapter 11, 12, or 13 debtor promises to resolve or pay creditors' claims.
<b><i>Res Judicata</i></b>	The principle that an existing final judgment rendered on the merits by a court of competent jurisdiction is conclusive. It bars the parties from re-litigating the same claims in another proceeding.
<b><i>Rule 2004 Examination</i></b>	Similar to a deposition but broader in scope. It permits any party in interest to examine any entity about the acts, conduct, or property of the debtor, the liabilities and financial condition of the debtor, or about any matter which may affect the administration of the debtor's estate, or the debtor's right to a discharge.
<b><i>Schedules</i></b>	After a bankruptcy is filed, all debtors must timely file: (1) A schedule of assets and liabilities, (2) A schedule of current income and current expenditures, and (3) A statement of financial affairs.
<b><i>§ 341 First Meeting of Creditors</i></b>	See <i>First Meeting of Creditors</i> .

**Exhibit 5.17.8-1 (Cont. 12) (04-13-2020)**  
**Glossary of Common Bankruptcy Terms**

<b>Term</b>	<b>Definition</b>
<b><i>Secured Creditor</i></b>	A creditor having a lien, security interest, or other encumbrance which has been properly perfected as required by law with respect to property owned by the debtor. The creditor has a secured claim to the extent of the value of the collateral or to the extent of the creditor's right to offset a mutual debt owed to the debtor against the creditor's claim against the debtor (11 USC § 506(a)). For tax purposes, a properly filed Notice of Federal Tax Lien secures the tax liability up to the value of the equity in the assets. A federal tax liability may sometimes be secured because the Service has a setoff right against a debtor's right to federal tax refunds or overpayment of tax, or by amounts other federal agencies may owe the debtor.
<b><i>Short Year Election</i></b>	An individual debtor (and spouse) have the option of filing short year income tax returns for the pre-petition and post-petition portions of the tax year, if certain requirements are met. This election applies to individual taxpayers who have filed a Chapter 7 or 11 bankruptcy case (IRC § 1398(d)).
<b><i>Small Business Case</i></b>	A Chapter 11 case where the debtor's liabilities are less than \$2,566,050 and no active creditor's committee exists. Many, if not most, Chapter 11 cases will fall within this definition. The debt limitation must be adjusted every three years under 11 USC § 104 to reflect the Consumer Price Index. The latest adjustment was on April 1, 2016.
<b><i>Sovereign Immunity</i></b>	The doctrine that the United States is immune from suit for damages or other monetary recovery unless the United States waives its immunity from suit (e.g., by a statute permitting a damages suit against the United States). Immunity for damages has been waived under IRC § 7433(e) and immunity has been waived for other actions under the Bankruptcy Code set forth in 11 USC § 106(a).
<b><i>Substitute for Return (SFR)</i></b>	A procedure by which the Examination function of the IRS establishes an account and examines the records of taxpayer when the taxpayer/debtor refuses or is unable to file a return, and information received by the Service indicates a return should be filed. The Substitute for Returns (SFR) program under IRC § 6212 uses Statutory Notice of Deficiency (SNOD) procedures (i.e., 30-day Letter and 90-day Letter).
<b><i>Super Discharge</i></b>	For cases filed prior to October 17, 2005, the discharge granted to an individual debtor upon the successful completion of a Chapter 13 plan or to a corporation or a partnership upon the effective date of a confirmed Chapter 11 plan. All pre-petition tax debts provided for in a Chapter 13 plan are discharged. In the case of a corporation or partnership in Chapter 11 that is not liquidating, all pre-confirmation debts, including administrative period taxes, are generally discharged. For Chapter 13 cases filed on or after October 17, 2005, certain exceptions to the super discharge apply, including certain tax debts.

## Exhibit 5.17.8-1 (Cont. 13) (04-13-2020)

## Glossary of Common Bankruptcy Terms

Term	Definition
<b>Trustee</b>	<p>In a case under Chapters 7, 12, or 13, the trustee is the person appointed by the United States Trustee to administer the processing of a bankruptcy case. The trustee is the representative of the bankruptcy estate and owes fiduciary duties to unsecured creditors. In a case under Chapter 11, the debtor-in-possession (DIP) generally serves as the trustee unless the court orders a trustee be appointed and is under the same fiduciary obligation. Listed are several definitions of a trustee and the corresponding chapter(s) of bankruptcy:</p> <ul style="list-style-type: none"> <li>• <b>Chapter 7 Trustee:</b> A disinterested person appointed by the United States Trustee or elected by creditors to administer the Chapter 7 case. Referred to as a panel trustee or case trustee. The Chapter 7 trustee is responsible for a particular Chapter 7 case.</li> <li>• <b>Chapter 11 Trustee:</b> A Chapter 11 trustee is responsible for a particular Chapter 11 case. The trustee is appointed by the court or has been elected by the creditors to replace the debtor-in-possession, after the court makes a determination that the DIP should be replaced. The DIP, or the Chapter 11 trustee, is a fiduciary responsible for administering the Chapter 11 case. The United States Trustee or a party in interest may request the court appoint a Chapter 11 trustee for cause.</li> <li>• <b>Chapter 12 Trustee:</b> An individual appointed to serve by the United States Trustee in every Chapter 12 case. Referred to as a Chapter 12 standing trustee.</li> <li>• <b>Chapter 13 Trustee:</b> An individual appointed to serve by the United States Trustee in a Chapter 13 case. Every Chapter 13 case has a trustee. Referred to as a Chapter 13 standing trustee.</li> </ul> <p><b>Note:</b> The Chapter 12 and 13 standing trustees are responsible for disbursement of payments under the plans for the respective bankruptcy chapters and do not have the same rights and obligations as a Chapter 7 or 11 trustee.</p>
<b>United States Trustee</b>	An employee of the Department of Justice charged with supervision of the administration of all bankruptcy cases (28 USC § 586). The United States Trustee has a statutory right to appear and be heard on any issue in any bankruptcy case (11 USC § 307).
<b>Unsecured Creditor</b>	A creditor who has no perfected security interest in property of the estate to secure its claim, or no right of setoff, or whose debt exceeds the value of the creditor's collateral or right of setoff (11 USC § 506(a)). Unsecured creditors may be either priority or general unsecured creditors.
<b>Unsecured Creditors Committee</b>	Appointed in Chapter 11 cases by the United States Trustee. The committee is comprised of creditors willing to serve, who generally hold the largest unsecured claims, and whose claims are representative of the type of unsecured debt in the case.
<b>Unsecured General Claim</b>	A claim that is not entitled to either secured or priority status. General unsecured creditors may recover a low percentage on their claims or may recover nothing at all.

## Exhibit 5.17.8-1 (Cont. 14) (04-13-2020)

## Glossary of Common Bankruptcy Terms

Term	Definition
<b><i>Violation of Stay</i></b>	An improper collection action made during the period in which the automatic stay is in effect. In addition to prohibiting acts to collect pre-petition liabilities, the automatic stay also prohibits any enforcement actions against property of the bankruptcy estate. Examples of collection actions prohibited during the automatic stay (on pre-petition tax liabilities) include the solicitation of an installment agreement, making demand for payment, or the serving of a levy. The Service can be liable for damages and attorney's fees for violations of the automatic stay, but punitive damages cannot be awarded. See also <i>Discharge Injunction</i> .

