



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.7.6

MAY 6, 2021

EFFECTIVE DATE

(05-06-2021)

PURPOSE

- (1) This transmits revised IRM 8.7.6, Technical and Procedural Guidelines for Appeals Bankruptcy Cases.

MATERIAL CHANGES

- (1) This transmittal reissues existing procedures. Editorial changes have been made throughout this IRM. Website addresses, legal references, code sections and IRM references were reviewed and updated accordingly. The following significant changes were made to this IRM:

IRM Reference	Description of Change
8.7.6.1	Revised to create a new section titled Program Scope and Objectives and its related subsections to comply with the Deputy Commissioners of Services and Enforcement and Operations Support memo dated September 14, 2016, entitled Heightened Awareness, Sensitivity, and Understanding of Internal Controls . Prior section Overview of Bankruptcy moved to 8.7.6.2.
8.7.6.1.1	Revised this subsection and content: Changed the title to Background from "The Bankruptcy Statutes" and moved The Bankruptcy Statutes content to 8.7.6.2 Overview of Bankruptcy.
8.7.6.1.2	Revised subsection and content to discuss Authority - moved the prior section under The Automatic Stay to 8.7.6.2.1.
8.7.6.1.3	Revised subsection and content to discuss Program Responsibility - moved the prior section under The Bankruptcy Estate to 8.7.6.2.2.
8.7.6.1.4	Revised subsection and content to discuss Program Reports - moved the prior section under Trustees in Bankruptcy to 8.7.6.2.3.
8.7.6.1.5	Added Related Resources: (1) TBOR content updated based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration).
8.7.6.	As a result of the material changes above, subsections in this IRM have been renumbered accordingly.
Removed prior 8.7.6.2.6	Incorporated AP-08-0520-0007 Reissuance of IG on Issuing Closing Letters on Collection Due Process and Equivalent Hearing Cases with an Open Bankruptcy Petition. Per the IG - removed 8.7.6.2.6 Concluding the CDP/EH Process Before the Automatic Stay Has Lifted in its entirety and removed all references to it throughout 8.7.6.
8.7.6	For consistency with the U.S. code, changed the words prepetition to pre-petition, and postpetition to post-petition throughout 8.7.6.

IRM Reference	Description of Change
8.7.6.2.1	The Automatic Stay; added (4) not prohibited on agreed deficiencies, added an example, added (5) SND when the case is unagreed and added (6) Effect of the Stay.
8.7.6.2.3	The Bankruptcy Estate and Proof of Claims; (1) end of 1st sentenced, added “and earnings from services performed by the debtor after the commencement of the case”. Added (2) The stay against property of the estate continues until the property is no longer property of the estate.
8.7.6.2.4	Suspension of Statute of Limitations ASSED/CSSED; In paragraph (2), added statement from IRM 5.17.8.15 that employment taxes are treated as pre-petition when the wages were earned pre-petition.
8.7.6.2.6	Case Jurisdiction; (2) Corrected the prior IRM references 5.9.1.3.1 to 5.9.1.3.3 on Counsel’s role in bankruptcy.
8.7.6.2.6.1	Appeals Role With Chief Counsel and DOJ; (2) Clarified the content that Insolvency doesn’t make direct referrals to DOJ. In the first sentence removed the titles of officials (i.e. by Area Counsel or Insolvency) who refer bankruptcy cases to DOJ. Insolvency only refers to Department of Justice (DOJ) through the Assistant United States Attorneys (AUSA).
8.7.6.2.6.1	(2) (a) (b), (3), (4) Removed the content “Area Counsel or Insolvency has referred” now reads - the bankruptcy case has been referred to the Department of Justice.
8.7.6.2.7.1	Discharge Under Bankruptcy Chapters; updated and moved the prior table in (2) to (4). (2) covers the types of Bankruptcy Discharges along with two bullets showing the entity and the bankruptcy chapter. Added a Note: When discharges are not available. Added (3) when discharges may be granted with an Alpha listing a-g for the different chapters. Added a Note: For a bankruptcy involving a Limited Liability Company (LLC). Added a Note: The date of the TC 521 releasing the bankruptcy freeze.
8.7.6.2.7.2	No discharge for Repeat Filers; In Paragraph (1) Added chapter 11 between chapter 7 and chapter 13 filings. In paragraph (3), added the words “and the petition date in the current bankruptcy” to clarify the relevant date for determining time intervals required to petition for another discharge. In the table. Added Chapter 11 to Chapter 7 in the 1st and 2nd columns.
8.7.6.2.7.3	Exceptions to Discharge - Individuals; In Paragraph (2), added the following sentence between the prior 1st and 2nd sentence. Additionally, these taxes are not discharged in a Chapter 13 case if the debtor gets a hardship discharge. Added at the end of the paragraph: For additional information see 5.9.17.8 through 5.9.17.8.9. Under Note, removed the statement to contact Insolvency when the case is in the 8th Circuit. Changed the title of the bullet to IRC 6020(b) Assessments Outside the 8th Circuit, Added a new bullet for IRC 6020(b) Assessments in the 8th Circuit - Replaced the prior content under the Note - with the Courts in the 8th Circuit follow the position set forth in the case of In re Colsen see IRM 5.9.17.8.1(3).
8.7.6.2.7.3	(3) Changed the sentence to, Under BAPCPA, the following taxes claimed in a Chapter 13 are now nondischargeable under 11 USC section 1328(a)(2) even if they were provided for in the plan.

IRM Reference	Description of Change
8.7.6.2.8	Ex Parte Considerations; (3) Removed the question from the table “Does the district where the bankruptcy was filed allow installments agreements (IA) for post-petition liabilities” - An IA on post-petition liabilities are no longer processable when a taxpayer is in bankruptcy.
8.7.6.2.9 (2)	Revised the last sentence to insert “the credibility of the taxpayer.”
8.7.6.3.4	Determining if the Automatic Stay Has Lifted; (1) Updated, The individual debtor in a Chapter 11, 12, or 13 case may receive a hardship discharge or a discharge upon completion of the plan. Added comment to Chapter 12 and 13 debtors after the 1st comma (e) entry of a hardship discharge and (f) after the 1st comma “entry of a hardship discharge”. Added a Note: Automatic stay may still be open when a TC 521/TC 522 are posted. Appeals employees should review PACER, check with Insolvency, then Counsel to verify if the stay has been lifted. Added Note: Assessed tax deficiency modules subject to a Chapter 7 asset bankruptcy are often placed into a temporarily uncollectible status (TC 530) on IDRS after the IRS has filed a proof of claim. In these instances, the Service will input a tc 521 on the modules, but that does not necessarily mean that the automatic stay has been terminated. Contact CIO to determine if the stay is still in effect and if there is any discrepancy, contact Counsel for assistance. (c) last sentence changed to” The closing of the case for administrative purposes only, generally will not lift the automatic stay”. Added Note: For post-BAPCPA individual case, the discharge no longer occurs at confirmation. The stay remains in place until completion of plan payments and entry of a discharge order by the court, unless the court has lifted the stay at an earlier date.
8.7.6.3.5	Collection Due Process Cases; (1) Added for additional references see IRM 5.9.3.5 through 5.9.3.6.1.1 and under (2) added at the end of the paragraph “Additional information on bankruptcy and Collection Due Process can be found in 5.9.3.7 through 5.9.3.7.2.
8.7.6.3.8	Post-Petition Liabilities; (1) Added “when permitted” Insolvency may file a NFTL for a special purpose. Removed the wording: and generally will use language. added to the NFTL such as “This Notice of Federal Tax Lien” is not being filed with respect to property while it remains property of the bankruptcy estate of the taxpayer.
8.7.6.3.8	At the end of (2) added: To alert all employees to contact Insolvency through the Centralized Insolvency Operation (CIO) before taking any action on a post-petition period(s).
8.7.6.3.8	(4) Removed the prior wording under (4) and replaced it with: Unless a post-petition liability qualifies for a guaranteed installment agreement (IA), a request for a post-petition IA is not processable when a taxpayer is in bankruptcy.
8.7.6.5.1	Revised the last sentence: IRM 8.25 Trust Fund Penalty, and IRM 5.9.3.10, Debtors’ Delinquent Accounts.
8.7.6.6	Examination Cases; Added two additional bullets for setoffs and offsets that are not prohibited by the automatic stay provisions for examination cases.
8.7.6.6.1	Notification Procedures; Added (8) IRC § 6213 prohibits assessment of an unagreed Examination or AUR deficiency during the time the automatic stay is in place.

IRM Reference	Description of Change
8.7.6.6.4	SNOD in Bankruptcy Cases and the US Tax Court; Removed all references to the obsolete Letter 1384 Notice of Deficiency. Letter 1384 has been replaced with Notice of Deficiency Letters 531-E, 894, 901 and Letter 3523-A, Notice of Employment Tax Determination. Notice 1421 must be enclosed with the appropriate Notice of Deficiency letter. Added (1) Introduction to SNOD and included a statement that a SNOD is issued for unagreed pre 90 day cases. Added (2) with bullets to list the SNOD Letters that are available. Under Note: The ATE needs to inform the Tax Computation Specialist as to what SNOD letter should be used along with Notice 1421.
8.7.6.6.5.1	Pre 90 Day- Income Tax Cases; (7) and (8) replaced Letter 1384 with Letter 531-E, 894, 901, or 3523-A along with Notice 1421.
8.7.6.6.5.2	Docketed Cases; (1) Updated citation to 8.20.7.15.5.
8.7.6.6.7	Jointly filed Returns with One Spouse in Bankruptcy; (2) Input a paragraph for CDP cases which moved the prior (2) on mirroring to (3). Updated the prior content in (3) Appeals Request for Mirroring to match the content in 5.9.4.4.2.
8.7.6.8	Large Bankruptcy Cases; (2) (3) along with 8.7.6.8.1 (2) changed the IRM reference 34.3.1.3 to a Chief Counsel Directives Manual (CCDM) 34.3.1.3.
Exhibit 8.7.6-1	Removed prior section under 4a and added language from CC Notice 2011-006 on Direct Referral Authorization. Added Note: If a case presents a new issue never addressed by the courts (particularly involving BAPCPA), Insolvency must consult Area Counsel to determine whether the case is suitable for a direct referral.
Exhibit 8.7.6-2	Removed prior exhibit of tax division contacts.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.7.6 dated May 2, 2014.

AUDIENCE

Appeals Employees

Steven M. Martin Director, Case and Operations Support

8.7.6

Appeals Bankruptcy Cases

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- 8.7.6-1 Area Counsel Bankruptcy Guidelines

8.7.6.1
(05-06-2021)
Program Scope and Objectives

- (1) Purpose: This IRM contains guidance for Appeals employees dealing with bankruptcy issues.
- (2) Audience: Appeals.
- (3) Policy Owner: Director, Case and Operations Support.
- (4) Program Owner: Director, Policy, Planning, Quality and Analysis (PPQ&A).
- (5) Contact Information: Appeals Employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM section.

8.7.6.1.1
(05-06-2021)
Background

- (1) IRM 5.9, Bankruptcy and Other Insolvencies, contains the Service's position, procedures, information, instructions, guidance, and references concerning bankruptcy cases, stockbroker insolvencies, receiverships, assignments for the benefit of creditors, corporate dissolutions, and bulk sales.

8.7.6.1.2
(05-06-2021)
Authority

- (1) The **U.S. Constitution** grants Congress authority to enact federal bankruptcy laws. The Bankruptcy Act of 1898 formed the basis of federal bankruptcy law. Appeals operates within the guidelines of the US Bankruptcy Code (11 USC) and the Federal Rules of Bankruptcy Procedure.

8.7.6.1.3
(05-06-2021)
Responsibility

- (1) The Director, Case and Operations Support (COS) is the executive responsible for designing, developing, delivering, and monitoring short and long range administration policies, programs, strategies, and objectives for the Appeals organization.
- (2) The Director, Policy, Planning, Quality and Analysis oversees the Appeals Policy function and is responsible for providing technical and procedural guidance to Appeals employees, establishing and maintaining policies and standard procedures for Appeals work streams.
- (3) The Policy Analyst shown on the Product Catalog page, as the originator, is the assigned author of this IRM.

8.7.6.1.4
(05-06-2021)
Program Reports

- (1) Policy, Planning, Quality, and Analysis (PPQA) provides trends and data analyses and detailed summary reports for Appeals.

8.7.6.1.5
(05-06-2021)
Related Resources

- (1) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

8.7.6.2
(05-06-2021)
Overview of Bankruptcy

- (1) This Internal Revenue Manual provides instructions that are unique to Appeals cases where a bankruptcy has been filed. These procedures impact all Appeals employees.
- (2) The Insolvency Organization, a part of the Collection Function for Small Business/Self Employed Operating Division, is responsible for working all

bankruptcy cases and coordinating the bankruptcy laws with the tax laws. The Insolvency Organization is comprised of the Centralized Insolvency Operation located in the Philadelphia Campus site and Field Insolvency groups located throughout the country. IRM 5.9.1, Overview of Bankruptcy through IRM 5.9.21, Electronic Proofs of Claim (EPOC), contains policy, procedures and guidance concerning bankruptcy proceedings for the Service at large. IRS employees outside of Insolvency also share certain responsibilities for bankruptcy cases and can find additional information on bankruptcies in IRM 5.9.1, Overview of Bankruptcy through IRM 5.9.4, Common Bankruptcy Issues.

- (3) The Bankruptcy Act was repealed by the Bankruptcy Reform Act of 1978, which codified the new law in Title 11 of the United States Code as the Bankruptcy Code. Effective in 1979, the Bankruptcy Code made the bankruptcy process less burdensome for the debtor. The Bankruptcy Reform Act of 1994 (BRA 94) brought about a major amendment to the Bankruptcy Code affecting the government's treatment of debtors, notably granting permission to assess taxes while the debtor is under the protection of the automatic stay.
- (4) On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) was signed into law. Most of the provisions of this act became effective October 17, 2005, although some provisions, such as those dealing with Chapter 12 bankruptcies, were effective upon the date of enactment.
- (5) When a debtor files a petition in bankruptcy court, an injunction referred to as the **automatic stay** usually arises by operation of bankruptcy law (11 USC 362). The automatic stay is effective as of the bankruptcy petition date. 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). Any willful violation of the stay may give the debtor the right to claim actual damages and attorney's fees (but not punitive damage fees). The automatic stay is further discussed in IRM 8.7.6.2.1
- (6) Bankruptcy courts generally have jurisdiction over all matters concerning payment of a debtor's financial obligations under the Bankruptcy Code and administration of the bankruptcy estate. Bankruptcy court jurisdiction includes the authority to determine the amount of tax due by the debtor or estate and what taxes will be discharged, meaning the debtor no longer will be personally liable. The bankruptcy court also has jurisdiction over any matters concerning collection of tax debts at issue in the bankruptcy case or collection from any property of the estate.

8.7.6.2.1

(05-06-2021)

The Automatic Stay

- (1) Prior to October 17, 2005, when a debtor filed a petition in bankruptcy court, in all instances the court entered an order for relief which immediately stopped ongoing and future (during the pendency of the bankruptcy) attempts by creditors to collect pre-petition debts owed by the debtor or otherwise exercise control over property of the estate or the debtor (11 USC 362). This essential feature of bankruptcy law created what is known as the *automatic stay*. For most debtors, the automatic stay will remain in effect during the pendency of the bankruptcy case. However, BAPCPA provided that for some **individual** debtors who file bankruptcy on or after October 17, 2005 and have had one or more bankruptcy cases dismissed within the preceding twelve month period, the automatic stay may either terminate within 30 days or not go into effect at all. See IRM 5.9.5.7, Serial Filers.

- (2) 11 USC 362 also prohibits the commencement or continuation of a Tax Court Proceeding while the automatic stay is in effect. BAPCPA amended 11 USC 362(a)(8) to allow for a commencement or continuation of a Tax Court proceeding when all of the following conditions are met:
 - The debtor is an individual taxpayer.
 - The bankruptcy petition was filed on, or after October 17, 2005.
 - The tax liability is for a tax period ending after the bankruptcy petition date (post-petition).
- (3) 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 preconfirmation taxes.
- (4) In most cases, the stay of assessment and suspension of the assessment statute expiration date (ASED) does not apply for agreed cases.

Example: Taxpayers filed their 2015 individual tax return on April 15, 2016. On December 1, 2016, they filed a petition for bankruptcy, and were granted a discharge on May 2, 2019. On March 31, 2017, they signed a **Form 870**, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, agreeing to an additional deficiency on their 2015 return. In this example, the bankruptcy was still open and the automatic stay was in effect. The additional tax needed be assessed before the statute of limitations expired on April 15, 2019, under **IRC 6501**.

- (5) The automatic stay does not prohibit the issuance of a statutory notice of deficiency for unagreed cases. For this reason, the SND must be issued prior to the expiration of the **IRC 6501** assessment statute. However, the stay prohibits the commencement or continuation of certain proceeding before the U.S. Tax Court. The stay of Tax Court proceedings only applies in certain cases of individuals and corporations (11 USC § 362(a)(8)). For bankruptcy cases of individuals, the stay prohibits the commencement or continuation of Tax Court cases concerning tax liabilities for tax years ending before the bankruptcy petition date. For bankruptcy cases of corporations, the stay generally prohibits the commencement or continuation of Tax Court cases concerning tax liabilities for tax years that ended before the confirmation date of the Chapter 11 plan.
- (6) **Effect of the Automatic Stay**, IRC 6213(f), provides the 90-day petition period is suspended while the taxpayer is prohibited from petitioning the Tax Court due to the bankruptcy proceedings, and for an additional 60 days. Thus, while the taxpayer is prohibited from petitioning the Tax Court due to the automatic stay, the assessment statute of limitations is suspended.

8.7.6.2.2 (05-06-2021) The Bankruptcy Estate and Proofs of Claim

- (1) The filing of a bankruptcy petition under any chapter creates a bankruptcy estate. The estate is under the control of the court and generally consists of all of the debtor's interests in any property at the time the case is filed, in addition to property acquired by the estate after the petition is filed.

Note: 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 may also be included in the estate and earnings from services performed by the debtor after the commencement of the case (11 USC 1306). In individual Chapter 11 cases filed on or after October 17, 2005, property of the estate also includes post-petition property of a kind specified in 11 USC 541 that the debtor acquires after the commencement of the case and earnings from services performed by the debtor (11 USC 1115).

- (2) The stay against property of the estate continues until the property is no longer property of the estate. With the exception of serial individual filings discussed in IRM 5.9.5.7, Serial Filers, the stay of any other act continues 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). The automatic stay never goes into effect at all (including the stay with respect to estate property) in certain multiple serial filer cases. If needed, Appeals can contact Insolvency to verify if the taxpayer is a serial filer.
- (3) A proof of claim is 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., § 1305 claims in Chapter 13). Proofs of claim may be for taxes that have been assessed or for which an assessment is being proposed. The **bar date** is a 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 for relief in which to file a proof of claim. The court may grant extensions for cause.
- (4) The Insolvency Organization is the office responsible for timely filing proofs of claim with the court. However, to protect the government's interest, IRS employees outside of the Insolvency Organization who are proposing additional tax liabilities or who have secured tax returns with unpaid balances, are responsible for promptly advising Insolvency of any proposed or unassessed tax liabilities so they may be included as such in the proof of claim.

Example: Pending trust fund recovery penalties, examination deficiencies or recently secured balance due returns that are in the process of being assessed.

Note: Communication between Appeals and Insolvency regarding pending tax liabilities are considered administrative in nature and are not prohibited ex parte communications as defined in Rev. Proc. 2012-18 as long as there is no discussion regarding the merits of the appeal. See IRM 8.7.6.2.8 for additional information regarding ex parte communications.

- (5) Examination, Underreporter, Field Functions and Appeals may not have the final tax information by the bar date. In such cases, Insolvency will file an unassessed (estimated) proof of claim. An amended proof of claim will subsequently be filed as necessary to claim the correct tax liability owed the Service after the completion of an audit and appeal, if one is filed.

8.7.6.2.3
(02-26-2013)

Trustees in Bankruptcy

- (1) There are two types of trustees in bankruptcy, United States Trustees and private trustees.

- (2) U.S. Trustees are appointed by the U.S. Attorney General and employed by the Department of Justice under the Department's United States Trustee Program. A U.S. Trustee oversees the administration of bankruptcy cases in an assigned region. This includes appointing and supervising private trustees assigned to administer Chapter 7, 12, and 13 bankruptcy estates. Although they do not appoint Chapter 11 trustees, U.S. Trustees may ask the bankruptcy court to appoint one.
- (3) Chapter 7, 11, 12, and 13 trustees are private trustees. A private trustee serves in all Chapter 7, 12, and 13 cases, but not in all Chapter 11 cases. Generally, a Chapter 11 debtor manages the business/financial affairs of the bankruptcy estate as the debtor in possession, unless the court orders the appointment of a trustee.
- (4) The role of the trustee varies depending on the type of case. Chapter 7 and 11 trustees are more involved in the daily operations of the debtor's bankruptcy estate. Chapter 12 and 13 trustees have a more limited role, with the focus more on plan confirmation and collecting and disbursing plan payments. Generally, debtors in Chapter 12 and 13 cases continue to manage their own affairs after filing for bankruptcy. In Chapter 12 cases, however, the court is authorized to appoint a trustee to operate the debtor's business where there is evidence of debtor fraud or incompetence.
- (5) The extent to which the Service can disclose return information to a bankruptcy trustee depends on the type of case, the type of trustee and the reason for the disclosure. For a detailed discussion of the rules governing disclosure to a bankruptcy trustee, see IRM 11.3.2, Disclosure to Persons with a Material Interest, and the exhibit at IRM 5.9.19-1, Insolvency Disclosure and Telephone Procedures.

8.7.6.2.4

(05-06-2021)

Suspension of Statute of Limitations by Bankruptcy - ASSED/CSED

- (1) The automatic stay results in a suspension of the period for making some assessments when a bankruptcy petition was filed **before** October 22, 1994. The law suspends the running of the statutory period for assessment for the time the Service is prohibited from making an assessment by reason of the bankruptcy plus 60 days. See IRC 6503 (h). This is a complex area; therefore, refer any questions on the statute of limitations for these cases to Area Counsel on a case by case basis. **The Bankruptcy Reform Act of 1994 lifted the stay for assessment of pre-petition taxes when the bankruptcy petition was filed on or after October 22, 1994.**
- (2) **Pre-petition** taxes are taxes incurred, whether or not assessed, prior to the filing of the bankruptcy petition. An income tax is incurred on the last day of the tax year. Employment taxes and the trust fund recovery penalty are incurred when the wages are paid. However, employment taxes are treated as pre-petition when the wages were earned pre-petition.
 - a. Prior to October 22, 1994, 11 USC 362(a)(6) stayed any act to collect, assess, or recover a claim against the debtor that arose before the petition. In these cases, IRC 6503(h) suspends the statute of limitations for assessment for the length of the automatic stay and for 60 additional days. Because the stay prohibits assessment, the period for issuing a notice of deficiency is also suspended even though the automatic stay does not prohibit the Service from issuing the deficiency notice.
 - b. The Bankruptcy Reform Act of 1994 added an exception to the stay for the assessment of pre-petition taxes when a bankruptcy petition was filed

on or after October 22, 1994 (11 USC 362(b)(9)(D). **As a result, the stay does not prohibit the assessment of taxes.** For these bankruptcy cases, the statute of limitation on assessment continues to run since the Service is no longer prohibited from making the assessment.

Caution: In order to protect the assessment statute, the Service must make an assessment within the normal statutory period, send out a statutory notice of deficiency (SND), or obtain a waiver.

- c. The Service can immediately assess taxes that are not subject to deficiency procedures. The trust fund recovery penalty and most excise taxes do not involve deficiency procedures and are immediately assessable. However, the trust fund recovery penalty may not be assessed unless the notice procedures under IRC 6672(b) have been satisfied. See IRM 8.7.6.5.
- d. For taxes subject to the deficiency procedures (i.e., income, gift, and estate taxes), if an agreement is reached before the statutory notice is sent, the assessment must be processed as if the bankruptcy did not exist. If the case is unagreed, a statutory notice of deficiency must be timely sent. However, for bankruptcy petitions filed before October 17, 2005, 11 USC 362(a)(8) prohibits the taxpayer from petitioning the Tax Court until the automatic stay is lifted. This prohibition applies to both pre-petition and post-petition taxes. Under BAPCPA for individual taxpayers only, if the bankruptcy petition was filed on or after October 17, 2005, the taxpayer can file a petition in Tax Court only for tax years ending after the date of the filing of the bankruptcy petition. IRC 6213 prohibits the Service from making an assessment until the taxpayer's right to petition the Tax Court expires or is waived. The statute is suspended under IRC 6213(f) for the period the taxpayer is prohibited from petitioning the Tax Court by reason of the bankruptcy case plus 60 days and for the period the Service is prohibited from making the assessment under IRC 6213 plus 60 days. See IRC 6503(h) and Rev. Rul. 2003-80, 2003-29 I.R.B. 83.

Note: IRM 8.7.6.6 provides information regarding the statutory notices of deficiency in bankruptcy cases.

- (3) **Post-petition** taxes are taxes incurred, whether or not assessed, after the filing of the bankruptcy petition, for tax periods ending after the petition date. An income tax is incurred on the last day of the tax year. Employment taxes and the trust fund recovery penalty are incurred when the wages are paid. ***The automatic stay does not prohibit the assessment of tax for a post-petition tax period when the debtor is an individual.***
 - a. IRC 6503 does not suspend the running of the limitations period for assessment of post-petition tax liabilities.
 - b. The Service must take action to protect the statutory limitations periods for these taxes. It must issue a notice of deficiency if one is necessary to assess the disputed taxes or secure a waiver to protect the statute of limitations on assessment of deficiencies.
- (4) The running of the collection statute expiration date (CSED) is suspended for the period collection is prohibited (e.g., while the automatic stay is in effect, and in the Chapter 11 context, postconfirmation, provided the Service's claim is allowed, the confirmed plan provides for payment of the tax debt, and the plan is not in default) plus six months. See IRC 6503(h)(2). Computation of a new

CSED is similar to an assessment statute expiration date (ASED) computation. Six months are added to the unexpired time (number of days) remaining on the original statute as of the petition date and that total is added to the discharge or dismissal date (or the date the stay was lifted) to establish the new CSED.

Note: The IRS will never receive less than the original statute plus 60 days for an ASED extension, or the original statute plus six months for a CSED extension.

- (5) All Appeals employees should familiarize themselves with IRM 8.21, Appeals Statute Responsibility.

Caution: Due to the complexities in computing statutes and the changes in the bankruptcy laws, consult with Area Counsel if there is a question as to the correct ASED or CSED date. Additional guidance is also provided in IRM 5.9.4.2, Property of the Estate, and IRM 5.9.4.3, ASED/CSED, as well as IRM 8.21, Appeals Statute Responsibility.

8.7.6.2.5 (02-26-2013) Jurisdiction to Set Liabilities

- (1) As a general rule, 11 USC 505(a) permits the bankruptcy court to determine the amount or the legality of any tax, addition to tax, or tax penalty. This applies to tax liabilities of the debtor or of the estate whether or not the tax was previously assessed, paid, or contested. When a bankruptcy court determines a liability, the Service may immediately assess the tax. See 11 USC 505(c)
- (2) The bankruptcy court may not re-examine a tax liability ruled on by a court of competent jurisdiction before the filing of the bankruptcy petition.
- (3) The bankruptcy court can determine the right of the estate to a tax refund if the taxing authority does not rule on the trustee's refund claim *within 120 calendar days*. (See 11 USC 505(a)(2)(B).)

Note: The regular six-month determination period on a refund claim under IRC 6532(a) is reduced to 120 days in an effort to close the bankruptcy estate as soon as possible.

- (4) While the automatic stay does not ban the issuance of a notice of deficiency to the debtor, it prohibits the commencement or continuation of any civil court proceeding, against the debtor, as well as any Tax Court proceeding. The bankruptcy court can lift the stay and allow the Tax Court to determine the tax liability. See 11 USC 362(a)(8), (b)(9), and (d).

Exception: BAPCPA amended 11 USC 362(a)(8) to allow for a commencement or continuation of a Tax Court proceeding for tax liabilities of an **individual** when the bankruptcy petition was filed on, or after October 17, 2005 **and** the tax liability is for a tax period ending after the bankruptcy petition date (post-petition).

8.7.6.2.6
(05-02-2014)
Case Jurisdiction

- (1) Jurisdiction over bankruptcy litigation involving the government rests with the Department of Justice. Department of Justice attorneys in the Tax Division and local U.S. Attorney offices represent the Service's interests in bankruptcy cases once the case is referred to the Department of Justice by Area Counsel. Insolvency has been delegated limited authority to directly refer certain cases to the Department of Justice (through the Assistant U.S. Attorney) involving matters that require virtually no legal determinations or where the law is clear. See Delegation Order 25-9, IRM 1.2.2.14.9, Servicewide Delegations of Authority. In general, however, when the Service becomes the subject of bankruptcy litigation or decides to file an action in the bankruptcy case, Insolvency refers the case to Area Counsel and Area Counsel refers the matter, if appropriate, to the Tax Division or to the local U.S. Attorney's office.
- (2) **Assistants U.S. Attorney** - Local U.S. Attorney's Offices often handle routine bankruptcy matters for the Department of Justice. IRM 5.9.1.3.1, The Bankruptcy Court, and IRM 5.9.1.3.3, United States Attorney, provide additional information on Counsel's role in bankruptcy cases.
- (3) To process tax cases of debtors efficiently, the Assistant Attorney General, Tax Division, Department of Justice and the Chief Counsel have agreed to a bankruptcy referral procedure. The agreement parallels the docketed case Appeals—Counsel jurisdictional provisions in Rev. Proc. 2016-22. Area Counsel guidelines are found in Chief Counsel Directives Manual (CCDM) 34.3.1.1.7, Procedures in Bankruptcy Cases, see Exhibit 8.7.6-1.
- (4) Each Area Counsel office will designate at least one trial attorney to act as a coordinator of bankruptcy cases. That attorney will provide assistance to Appeals and other Service functions in handling bankruptcy cases.

8.7.6.2.6.1
(05-06-2021)
Appeals' Role With Chief Counsel and the Department of Justice

- (1) Collection Due Process cases are addressed in IRM 8.7.6.3.
- (2) Examination cases - If the taxpayer's bankruptcy case has been referred to the Department of Justice, Appeals will send written notification to the appropriate section chief of the Tax Division, Department of Justice, Washington, D.C. 20044, on all cases that cannot be closed within 30 days of the bankruptcy petition. A copy of the notification should also be sent to the appropriate Insolvency office and to the attorney assigned the case if the attorney is not in the Tax Division. If the case has not been referred to the Department of Justice, send the written notification to the appropriate Insolvency office.
 - a. If Appeals receives the case after the filing of the bankruptcy petition and the bankruptcy case has been referred to the Department of Justice, transmit the written notification within ten work days of the case's receipt.
 - b. If the taxpayer files a bankruptcy petition during the Appeals process, the Appeals Officer should contact the bankruptcy coordinator in Examination Technical Services to ensure that the Field Insolvency caseworker or the CIO liaison is aware of the appeal. See IRM 8.7.6.6.1, Notification Procedures. The Appeals Officer should transmit the written notification to Insolvency as soon as is practicable, but no later than four and one half months after the date of the bankruptcy petition. If the case has been referred to the Department of Justice, the report should also be transmitted to the Tax Division, the attorney assigned the case, if that attorney is not in the Tax Division, and the appropriate Insolvency office. If the Appeals Officer is unsure whether the case has been referred to the Tax Division, the Appeals Officer should contact Insolvency or Area Counsel

for the status of the case and the name of the attorney assigned the case.

- (3) The written notification will provide a one page report, in the form of a memorandum, that explains the case. The report will include an estimate of the time required to settle the case. If this time is more than six months after the petition date and the case has been referred to the Department of Justice request exclusive settlement jurisdiction for the time needed. If the attorney assigned the case does not respond within 15 work days, consider the request granted. If the attorney assigned the case takes exception to the request, close the case before the six month period expires and issue a notice of deficiency if the Service has not issued one.
- (4) In cases where an Appeals settlement appears unlikely, the appropriate Insolvency office should be notified. If the case has been referred to the Department of Justice , the Tax Division and the attorney assigned the case, if that attorney is not a Tax Division attorney, should also be notified. Use Form 5402, Appeals Transmittal and Case Memo, to transmit an interim report with all pertinent information to the appropriate Insolvency office, and if applicable, to the appropriate section chief in the Tax Division, Area Counsel, and/or the local U.S. Attorney's office. The report will contain the following:
 - a. The present state of the case,
 - b. The type of issues involved, and
 - c. Discussion of the complexity of the matter.

8.7.6.2.6.2 (02-26-2013) **Time Limitations on Bankruptcy Cases with Department of Justice Involvement**

- (1) Generally, the agreements between the Department of Justice, Chief Counsel and Appeals give Appeals six months from the date the petition is filed with the bankruptcy court to resolve the case, unless the taxpayer objects to the proof of claim or files an action to have the bankruptcy court determine the tax liability.
- (2) Appeals must obtain additional time from the attorney assigned the case if it's necessary to work the case beyond the six months. The attorney assigned the case will vary, depending on the issue and local jurisdiction. As a result, the attorney assigned the case could be in the Tax Division, Area Counsel, or U.S. Attorney's office.
 - a. Sometimes the case may settle shortly after the expiration of the six month period. In these cases request an extension of settlement jurisdiction from the attorney assigned the case. If the attorney assigned the case does not respond within 15 work days consider the request granted. If the attorney assigned the case takes exception to the request, close the case before the six month period expires. Issue a notice of deficiency if the Service has not done so.
 - b. If agreement cannot be reached, a request for extension of settlement jurisdiction from the attorney assigned the case is not appropriate. Upon consultation with Area Counsel, solicit any appropriate waiver of restrictions on assessments or collection from the taxpayer, debtor in possession or trustee. Issue a notice of deficiency if necessary if the Service has not done so.

8.7.6.2.6.3 (02-26-2013) **Appeals Jurisdiction**

- (1) If the case has **not** been referred to the Department of Justice, Appeals retains full settlement authority including the right to reduce the tax claim even when the Service has filed a proof of claim.

8.7.6.2.7
(02-26-2013)
Dischargeability

- (1) The ultimate goal for the debtor in a bankruptcy filing is to obtain a discharge order from the bankruptcy court. A discharge bars creditors from collecting discharged debts from the debtor personally or the property acquired by the debtor after bankruptcy.
- (2) Discharge determinations of federal taxes are the sole responsibility of the IRS Insolvency function.
- (3) Although the ultimate determination of what federal taxes are dischargeable is determined by Insolvency, Appeals Technical Employees (ATE) should be familiar with applicable Bankruptcy Code sections and how they can relate to resolving tax controversies. The applicable sections include:
 - a. Chapter 7 - 11 USC 727
 - b. Chapter 11 - 11 USC 1141
 - c. Chapter 12 - 11 USC 1228
 - d. Chapter 13 - 11 USC 1328

8.7.6.2.7.1
(05-06-2021)
**Discharge Under
Bankruptcy Chapters**

- (1) IRM 5.9.17, Closing a Bankruptcy Case, deals in depth with discharge issues for the various bankruptcy chapters. Listed below are summaries of the overall application of bankruptcy discharges under the various chapters.
- (2) **Bankruptcy Discharges:** A discharge may be granted to the following:
 - Individual or joint debtors in Chapters 7, 11, 12, or 13

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

- Corporations, partnerships, and Limited Liability Companies (LLCs) that reorganize in Chapter 11 or Chapter 12

Note: Discharge of Limited Liability Companies (LLC) can be complicated. Eligibility for discharge can depend on the bankruptcy chapter filed by the LLC. It can also depend on whether the LLC is a single member disregarded entity or if the LLC reports income on Form 1065, U.S. Return of Partnership Income, or Form 1120, U.S. Corporation Income Tax Return. For additional information, see IRM 5.9.17, Closing a Bankruptcy Case

- (3) **A discharge may be granted to the following entities at the following times:**
 - a. In an Individual or Joint Chapter 7 — When the discharge order is entered by the court;
 - b. In Chapter 11 Cases Filed Prior to October 17, 2005 — Upon confirmation of the plan (11 USC § 1141(d));
 - c. In Chapter 11 Non-individual Cases Filed On or After October 17, 2005 — Upon confirmation of the plan
 - d. In Chapter 11 Individual or Joint Cases Filed On or After October 17, 2005 — Unless otherwise ordered, upon completion of all payments due/ provided for under the plan and the entry of a discharge order;
 - e. In Chapter 11 Hardship Cases — At anytime after confirmation of the plan when modification of the plan is not practicable and the court enters a hardship discharge (11 USC § 1141(5)(B));

- f. In Chapter 12 and Chapter 13 Cases with a Completed Plan — Upon completion of all payments due/provided for under the plan and the entry of a discharge order; and,
- g. In Chapter 12 and Chapter 13 Hardship Cases — When the plan cannot be completed due to circumstances beyond the debtor's control (11 USC § 1228(b) and 11 USC § 1328(b)).

Caution: The date of the TC 521 releasing the bankruptcy freeze on IDRS for Chapters 7, 11, 12, and 13 is the effective date of the discharge; however, a bankruptcy is considered to be pending until the court closes the case. Appeals should review PACER to verify if the automatic stay has been lifted: If PACER is unclear, consult with Insolvency. If after consultation there is still ambiguity, contact Counsel. See SERP under Insolvency National Field/Centralized Site Directory <http://serp.enterprise.irs.gov/databases/who-where.dr/insolvency/national-field-centralized-site-directory.html>.

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

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

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

8.7.6.2.7.2
(05-06-2021)

No Discharge for Repeat Filers

- (1) BAPCPA increased the minimum allowable time interval between Chapter 7, Chapter 11 and Chapter 13 filings and previous discharges.
- (2) The Bankruptcy Code does not prohibit a debtor from filing bankruptcy at shorter intervals, but if the minimum intervals are not met, the court will not grant a discharge.
- (3) The chart below outlines the pre-BAPCPA and BAPCPA discharge/filing intervals required for a debtor to be granted a second discharge. The petition date in the prior bankruptcy, not the discharge date, and the petition date in the current bankruptcy determines if the debtor is eligible for a discharge in the current case. Some circumstances may modify the time intervals. (See 11 USC 727(a), 1328(f).)

Current Chapter	Previous Chapter(s)	Before Oct. 17, 2005	On or after Oct. 17, 2005
7 or 11	7, 11	Six years	Eight years
7 or 11	12, 13	Six years	Six years
13	13	Zero	Two years
13	7, 11, 12	Zero	Four years

8.7.6.2.7.3
(05-06-2021)

Exceptions to Discharge - Individuals

- (1) Although a debtor may receive a discharge, particular tax debts may be excepted from discharge, or “non-dischargeable” under other provisions of the Bankruptcy Code.
- (2) The following taxes are not discharged in an individual Chapter 7, 11, or 12 bankruptcy. Additionally, these taxes are not discharged in a Chapter 13 case if the debtor receives a hardship discharge. The items listed below are general provisions of when taxes are excepted from discharge (non-dischargeable) for individuals. See IRM 5.9.17.8, Discharge and Exceptions to Discharge.

- **The Three Year Rule** - Taxes entitled to priority under 11 USC 507(a)(8) (priority pre-petition taxes). When a bankruptcy petition is filed within three years from the due date of a return, including extensions, it is excepted from discharge (non-dischargeable).
- **The Two Year Rule** - When a return is filed late and a subsequent bankruptcy petition is filed within two years of the late filed return, the taxes will be excepted from discharge 11 USC 523(a)(1)(B)(ii).
- **The 240 Day Rule** - When a bankruptcy petition is filed within two-hundred and forty days of a deficiency assessment (TC 290 or TC 300), it will be excepted from discharge. 11 USC 507(a)(8)(A)(ii).
- **Trust Fund Recovery Penalty** - TFRP assessments are called pecuniary loss penalties and are excepted from discharge under Title 11 USC 507(a)(8)(C)

Note: TFRP assessments are dischargeable in Chapter 13 cases filed prior to October 17, 2005, where it has been provided for in the plan. Under BAPCPA, TFRP assessments are not dischargeable in Chapter 13 cases filed on or after October 17, 2005.

- **IRC 6020(b) Assessments Outside the 8th Circuit** - Generally speaking, assessments made under IRC 6020(b) are excepted from discharge under Bankruptcy Code section 523(a)(1)(B)(i). However, there have been numerous contradictory court rulings on cases where a return is submitted after an IRC 6020(b) assessment was made. On September 2, 2010, the Office of Chief Counsel released *Notice CC 2010-016*, which provided guidance on the dischargeability of taxes for which a return was filed after assessment. The Service takes the position that an assessment made under IRC 6020(b) is non-dischargeable and any subsequent assessment made as a result of a filed return, can be dischargeable. Thus, a single tax year may have a portion that is dischargeable and a portion that is non-dischargeable. When a debtor submits a Form 1040, U.S. Individual Income Tax Return, after an IRC 6020(b) assessment, only the portion of the tax that was not previously assessed would be subject to discharge. If the debtor submitted a Form 1040 after the assessment and reported no additional tax, or a decrease in tax, no portion of the tax would be dischargeable.
- **IRC 6020 (b) Procedures in the 8th Circuit**

Note: Courts in the 8th Circuit follow the position set forth in the case of *In re Col-sen*, 446 F. 3d 836 (8th Cir. 2006). The 8th Circuit consists of courts in North Dakota, South Dakota, Nebraska, Iowa, Missouri, Minnesota, and Arkansas. In these locations, the position of the court is that when the debtor files a document (e.g., a tax return form) that on its face evinces an honest and reasonable attempt to satisfy the tax laws, it qualifies as a tax return whether or not it was filed after a SFR assessment. As such, if the return was filed by the debtor more than 2 years prior to the bankruptcy petition date, the entire liability (including the SFR assessment) is discharged. If the return was filed within 2 years of the petition date, the entire tax liability is non-dischargeable. It does not matter if the tax return filed by the debtor is a refund return, reports no additional tax, or reports additional tax.

- (3) Under BAPCPA, the following taxes claimed in a Chapter 13 are now non-dischargeable under 11 USC 1328(a)(2) even if they were provided for in the plan.
 - Trust fund taxes

- Trust Fund Recovery Penalty assessments
- Taxes with respect to unfiled returns
- Late returns filed within two years of the petition date
- Fraudulent returns
- Taxes that the debtor made a willful attempt to evade or defeat.

Note: The discussion above with respect to assessments made from returns filed after an IRC 6020(b) assessment also applies in Chapter 13 cases.

- (4) On occasions when there is a divergence of opinion within the Insolvency function or between Insolvency and Appeals regarding dischargeability, the ATE should request guidance from Counsel.

8.7.6.2.8
(05-06-2021)

Ex Parte Considerations

- (1) An ex parte communication is an oral or written communication that takes place between an Appeals employee (e.g., Appeals Officers, Settlement Officers, Appeals Team Case Leaders, Appeals Tax Computation Specialists) and employees of other IRS functions without the taxpayer or their representative being given an opportunity to participate in the communication. Written communications include those that are manually or electronically generated. Rev. Proc. 2012-18, Rev. Proc. 2012-10 IRB 1 and IRM 8.1.10, Appeals Function, Ex Parte Communications, contain guidance concerning ex parte communications. Appeals employees must understand the guiding principles governing communications between Appeals and other IRS employees.
- (2) When bankruptcy issues arise in Appeals cases, there may be a necessity to obtain information regarding the bankruptcy filing and status. Not all communications between Appeals and other IRS employees are prohibited. Information pertaining to the bankruptcy filing and status is considered to be ministerial, administrative or procedural in nature and therefore not prohibited ex parte communication. Permitted communications concerning the status of the case should be limited to a direct, narrow exchange of information without any surrounding discussion. These communications are not intended to provide the Insolvency function a chance to discuss the strengths, weaknesses or position in the case, the credibility of the taxpayer, advocate for a particular result, object to potential resolution or otherwise attempt to influence Appeals' decision in any way.
- (3) The following table is a list of typical questions that Appeals may ask to the Insolvency organization. These types of questions are not considered prohibited ex parte communications. The Insolvency organization and its employees are not typically considered an originating function, but there are occasions where Insolvency files a Notice of Federal Tax Lien or issues a levy. If the Insolvency function issued the levy or proposed levy or requested the filing of a Notice of Federal Tax Lien, certain questions below may pose a greater risk that the discussion may transition into topics that might violate the ex parte communication rules. To minimize that possibility, it is best to remind the Insolvency employee of the ex parte communication rules at the beginning of the conversation or give the taxpayer/representative an opportunity to participate in the discussion. If the taxpayer/representative was not part of the discussion and a prohibited ex parte communication occurs, the ATE should share the substance of the discussion with the taxpayer/representative and give the taxpayer/representative an opportunity to respond. Counsel may be contacted in these instances if clarification is needed.

Permitted Questions the Insolvency Function May Be Asked Ex Parte
When and where was the bankruptcy filed?
What chapter?
What is the current status of the bankruptcy? (open/closed/dismissed)
Was a proof of claim filed? (for Chapter 7 asset / Chapter 12 / Chapter 13 / IMF and BMF Chapter 11)
Does the proof of claim contain the tax periods under Appeals' jurisdiction?
Depending upon the chapter, is there a confirmed plan and if so, what was the confirmation date?
Was an adversary proceeding filed to determine what taxes would be discharged?
Has the court found the taxpayer to be a serial filer so that the automatic stay is not in effect?
If there is a confirmed plan, does the plan adequately provide for payment of the tax periods under Appeals' jurisdiction?
Is the confirmed plan in substantial default?
Are there any nondischargeable taxes that will not be fully paid through the plan?
Will liabilities not paid in full through the plan be discharged upon completion of all plan payments and the entry of a discharge order?
Will any taxes be discharged?
Is there any exempt or abandoned property that will be pursued for collection?
Does the Service plan on collecting post-petition preconfirmation interest on Chapter 12, Chapter 13 or individual Chapter 11 cases?
Requests for Insolvency to create MFT 31 accounts.

- (4) The ATE must be aware that although certain questions are not considered prohibited ex parte communications, they could develop into prohibited ex parte communications if the Insolvency employee makes statements about the legitimacy of the petition or claim, etc. It is best to remind the Insolvency employee of the ex parte communication rules at the beginning of the conversation.

Example: An Appeals Technical Employee (ATE) calls the Insolvency function to confirm a bankruptcy filing and to determine if the bankruptcy is still open. The Insolvency employee states that the taxpayer has indeed filed a bankruptcy petition that is still open in the court and then proceeds to tell the ATE that the taxpayer has long eluded paying taxes, has misrepresented facts, made misleading statements on numerous occasions and should never be afforded a discharge.

In this example, the Insolvency employee made a prohibited ex parte communication despite the acceptable question asked by the ATE. The communication would need to be shared with the taxpayer, who must then be given an opportunity to respond.

- (5) ATEs may also be contacted by bankruptcy trustees. There is no ex parte communication concerns because the trustee is not an employee of the IRS. However, there may be restrictions on disclosure under IRC 6103. See IRM 11.3.2.4.12, Bankruptcies, and the exhibit at IRM 5.9.19-1, Insolvency Disclosure and Telephone Procedures.

8.7.6.3
(05-06-2021)
**Collection Due Process
Cases**

- (1) When a bankruptcy proceeding is filed, an injunction commonly known as the bankruptcy automatic stay usually arises by operation of bankruptcy law that is effective on the date that the bankruptcy petition is filed (11 USC 362). The automatic stay generally prohibits all collection activities with respect to pre-petition debts against the debtor or the debtor's property and all collection activities with respect to pre-petition or post-petition debts against property of the bankruptcy estate. The stay also precludes, in most cases, the commencement or continuation of a judicial or administrative proceeding in an attempt to collect or resolve a pre-petition debt outside of the bankruptcy. See IRM 5.9.3.5, Automatic Stay, for more information.

- (2) If a taxpayer files bankruptcy after submitting a Collection Due Process (CDP) or an Equivalent Hearing (EH).

- Suspend the CDP case by inputting SU/PI and E/BNK to the Case Activity Record (CAR)
- Do not issue a Notice of Determination or Decision Letter
- Do not **request a Form 12256**, Withdrawal or **Form 12257**, Summary Notice of Determination

In some cases a completed bankruptcy may resolve many, if not all, of the issues raised in the CDP/EH hearing. There are certain permissible actions which do not violate the automatic stay that should be taken on CDP/EH cases during a concurrent bankruptcy proceeding.

- a. Verification of the bankruptcy filing
- b. Suspending the CDP proceeding
- c. Monitoring and reactivating a suspended case
- d. Determining if the automatic stay has lifted

Additional information on bankruptcy and Collection Due Process can be found in IRM 8.22.6.8, Bankruptcy and IRM 5.9.3.7, Collection Due Process (CDP) Cases.

- (3) If there is an open Offer in Compromise (OIC) case related to the CDP, close the OIC WUNO as a return using cc 20. Send a standalone **Letter 5010, Collection Due Process Offer in Compromise Bankruptcy Return**, to convey the OIC disposition to the taxpayer.

Note: ATE notates on Form 5402, Appeals Transmittal, under "Remarks" to APS that the letter was sent to the taxpayer returning the OIC and to reassign the OIC back to "Collection AO" in AOIC. APS should close the OIC on AOIC as "Final Disposition: 10-Return".

- (4) **Joint CDP with one spouse filing bankruptcy.** When a married couple jointly requests a CDP hearing and only one of the spouses has filed a petition with the bankruptcy court, the CDP hearing as to the debtor spouse should be suspended. Based on certain circumstances, Appeals may decide to move forward with the CDP hearing with respect to the non-debtor spouse. If the non-debtor spouse has a joint liability with the debtor, MFT 31 mirroring is needed to reflect the separate activity on each spouse's account, i.e., non-debtor spouse's CDP hearing and the debtor's bankruptcy proceeding. Appeals should request IRS mirror the account on IDRS, which accommodates Appeals' decision to conduct the non-debtor spouse's hearing without waiting for the resolution of the debtor's bankruptcy. Appeals will contact Centralized Insolvency Operation (CIO) to request MFT 31 mirroring.

Note: A CDP hearing for the non-debtor spouse should generally be postponed during bankruptcy cases in community property states because in most cases the levy sources will be community assets that are property of the estate.

8.7.6.3.1 (02-26-2013) Verification of the Bankruptcy Filing

- (1) Upon notification that a taxpayer has filed bankruptcy, the ATE must promptly verify the following facts of the bankruptcy filing and annotate in the Case Activity Record:
- The entity and TIN(s) that filed the bankruptcy.
 - The date the bankruptcy petition was filed.
 - The case number.
 - The location of the bankruptcy court (e.g. "Southern District of New York").
 - The bankruptcy Chapter.
- (2) The documentation confirming the bankruptcy filing can be obtained from the taxpayer, the taxpayer's representative, PACER (Public Access to Court Electronic Records) at <http://pacer.psc.uscourts.gov/> or the local Insolvency Unit, a part of the Collection Function for the SB/SE Operating Division. The Insolvency National Field/Centralized Site Directory may be accessed through http://serp.enterprise.irs.gov/databases/who-where.dr/inslvncy-bnkrptcy/national_insolvency_field.htm. This National Directory provides local contact telephone numbers for Insolvency Field Offices and Centralized Insolvency Operation based on inventory assignment.

Note: The bankruptcy attorney may make inquiries to Appeals regarding the taxpayer's CDP/EH case but may not have authorization to represent the taxpayer before the Service. A valid Form 2848 must be in effect before addressing any inquiries regarding the CDP/EH process. If the bankruptcy attorney has questions about the taxpayer's liability, refer the attorney to Insolvency.

- (3) If the taxpayer provides the information, a copy of the petition showing the Court's received date stamp and case number should be included. Otherwise, verify the filing through PACER or Insolvency. Transaction Code TC 520 with the bankruptcy closing codes (cc's 60 through 67, 81 and 83 through 89) will also appear on TXMODA. In some cases this may be the first indication of a bankruptcy filing. If so, the employee should obtain the facts about the filing through the sources listed above.

Note: Appeals may contact Insolvency to obtain facts about the bankruptcy filing. This limited inquiry is not considered a prohibited ex parte communication because Appeals is only seeking administrative/ministerial information. See IRM 8.7.6.2.8 for additional information regarding ex parte communications.

- (4) All of the facts of filing, as well as how the Appeals employee verified the bankruptcy filing, must be annotated in the Case Activity Record.
- (5) The Appeals employee may also be contacted by the taxpayer's bankruptcy attorney. The required bankruptcy documentation can be requested from the bankruptcy counsel.
- (6) In all CDP and EH cases, advise the taxpayer that Appeals is suspending any further proceedings in the case until the automatic stay is lifted or the amount and collection of the tax liabilities raised in the hearing are resolved by the bankruptcy. The Appeals employee should request that the taxpayer contact them when the automatic stay has lifted or a plan has been confirmed. However, this does not substitute for the employee's responsibility to monitor the bankruptcy proceeding. See IRM 8.7.6.3.3

Caution: Make no attempt to resolve the tax liabilities and do not request a withdrawal of the CDP/EH hearing until the automatic stay lifts or confirmation of a plan resolves all tax issues.

- (7) Refer the taxpayer and/or representative to Insolvency for any substantive discussions regarding the bankruptcy case.
- (8) Under the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), for petitions filed on or after October 17, 2005, certain Chapter 7, 11, or 13 cases filed by **individuals** may have no automatic stay imposed or the stay may be terminated 30 days after the petition date. This applies solely to individual serial bankruptcy filers. See IRM 5.9.5.7, Serial Filers, or consult with Area Counsel for additional guidance.

8.7.6.3.2
(02-26-2013)
**Suspending the CDP
Proceeding**

- (1) If the ATE determines that the CDP Levy notice was issued after a bankruptcy filing and in violation of the automatic stay, the employee assigned the case will inform the originating function that the levy notice is invalid. Instruct the originating function to input a TC 972 AC 069 so that the invalid CDP levy notice is reflected on IDRS. The originating function will send the taxpayer a letter stating that the notice was invalid and a substitute CDP levy notice may be issued when the automatic stay is no longer in effect. The CDP/EH case will not be suspended but rather closed as a premature referral. See IRM 8.22.5.2.4, Premature Referrals, for closing cases as premature referrals. If the ATE determines that the Notice of Federal Tax Lien was filed after the bankruptcy filing and in violation of the automatic stay, it is mandatory that the lien be withdrawn by the Insolvency organization. The CDP/EH case will then be suspended. See IRM 8.22.5.4.2.4.2, CDP Non-Statute Verification and Documentation. Advise the taxpayer that the Notice of Federal Tax Lien is being withdrawn or the levy is being released and that copies of the lien withdrawal or levy release will be mailed to them.

Note: In the instances where a Notice of Federal Tax Lien was filed in violation of the automatic stay, the appropriate field Insolvency office should be contacted immediately by the Appeals employee assigned

the case and advised to have the lien withdrawn. Insolvency is responsible for initiating lien withdrawals when filed in violation of the automatic stay. If a Notice of Levy was served, Collection should be contacted expeditiously and advised to release the levy.

- (2) The ATE should check IDRS for the TC 520 bankruptcy codes on TXMODA prior to issuing a Notice of Determination or a Decision Letter. A bankruptcy filing may have occurred after the CDP/EH hearing, but prior to the case being closed. A Notice of Determination or Decision Letter should not be issued while a bankruptcy case is pending and the automatic stay is in effect. The taxpayer may voluntarily withdraw the CDP/EH, but the ATE should not coerce the taxpayer into doing so. If the taxpayer does not withdraw the CDP/EH, place the case in E/BNK suspense for monitoring. If a Notice of Determination is issued, it cannot be rescinded. Contact Counsel if a Notice of Determination or a Decision Letter is issued when the automatic stay is in effect.
- (3) The automatic stay may not be in effect for a CDP hearing only involving a post-petition liability and as a result, the hearing could be conducted and a Notice of Determination or Decision Letter could be issued. However, in bankruptcy cases filed **before** October 17, 2005 and in cases filed by corporate debtors on or after October 17, 2005, the automatic stay may prevent a taxpayer from seeking Tax Court review of a Notice of Determination or Decision Letter for post-petition liabilities. In these instances, Notices of Determination or Decision Letters should not be issued and the case placed into suspense.
- (4) Reassign cases that warrant suspension to the AARS for input of the appropriate bankruptcy suspension codes and monitoring of the bankruptcy case. In Appeals offices that do not have an AARS, the ATE will retain the case in inventory and will be responsible for input of the suspension codes as well as monitoring the bankruptcy using the procedures set forth in IRM 8.7.6.3.3.
- (5) To place a case in E/BNK suspension, input the CARATS Action Code BI and enter the date the bankruptcy petition was filed. The system will only allow an input of a BI date that is three years from the current fiscal year. The Bankruptcy field will automatically populate with a Y. Input of the BI Action Code will launch a system generated response of SU-PI and automatically place the case in E/BNK status. Feature Code "BK" is now obsolete.
- (6) If a taxpayer submits a processable offer in compromise in a CDP/EH proceeding and subsequently files bankruptcy, return the offer to the taxpayer and close the OIC Work Unit Number. See IRM 8.22.7.10.9, Offer in Compromise, for procedures on returning an offer in compromise filed under a CDP. The CDP/EH has to remain in open suspense until the bankruptcy is resolved.

8.7.6.3.3 (05-06-2021) **Monitoring and Reactivating a Suspended Case**

- (1) Appeals employees that are assigned cases in E/BNK suspense for all bankruptcy chapters except Chapter 7 no asset filings, will monitor the case every 90 days to determine the status of the bankruptcy. Chapter 7 no asset cases should be monitored monthly due to the generally swift issuance of a discharge order. A CARATS entry must be made documenting the action taken and the status of the proceeding.

Note: The facts of each case may warrant more or less frequent monitoring. If the facts of the case dictate this, document the reason in the CAR.

- (2) PACER is the preferable method of monitoring the proceeding. This system maintains records and provides court notifications as well as the current status of a majority of bankruptcy cases. AARS, SO's or AO's assigned suspended cases should obtain authorization for use of this database via an OL5081 request. PACER may be accessed at <http://pacer.psc.uscourts.gov/>.
- (3) The CDP/EH proceeding may resume once the automatic stay is lifted. For non-individual Chapter 11 debtors and individual debtors whose Chapter 11 cases were filed before October 17, 2005, the stay lifts upon confirmation of the plan.
- (4) To remove a case in E/BNK suspension, input the CARATS Action Code BO and enter the date the stay was lifted. Input of the BO Action Code will launch a system generated response of SU-TO and automatically change the status from E/BNK to the most recent CARATS action code. In cases where a plan in an individual Chapter 11 filed on or after October 17, 2005 or a Chapter 12 or 13 plan has been confirmed (regardless of the date the bankruptcy was filed), the case will remain in E/BNK status and reassigned to an SO or AO to determine if the confirmation of the plan resolves the amount and collection of the tax liabilities raised in the CDP/EH hearing. If the plan resolves all of the CDP/EH issues and the taxpayer withdraws the request for a hearing, then the SO or AO will input the bankruptcy action codes using the date the plan was confirmed.

8.7.6.3.4

(05-06-2021)

Determining if the Automatic Stay Has Lifted

- (1) The following is general guidance on determining when the automatic stay has been lifted and the CDP/EH proceeding may resume. Due to the complexities and unique set of laws governing each of the bankruptcy chapters, seek guidance from Counsel when necessary. The individual Debtor in a Chapter 11, 12, and 13 case may receive a hardship discharge or a discharge upon completion of the plan.
 - a. **Chapter 7 - Liquidation:** For *Individuals*: The earliest of the date the court grants or denies an order of discharge, enters an order of dismissal or enters an order closing the case. **For Non-Individuals (Corporations, Partnerships and certain LLC's)**: The date the court enters an order closing the case or an order dismissing the case, whichever comes first.

Note: Entities, other than individuals, do not receive a discharge in a Chapter 7 proceeding.
 - b. **Chapter 9 - Adjustment of a Municipal Debt:** The earlier of the date the plan for adjustment of debts is confirmed and the required deposit and court determination are made, an order of dismissal or an order closing the case is entered. However, due to the small number of filings under Chapter 9 and unique circumstances of each case, consult with Area Counsel.
 - c. **Chapter 11 - Reorganization:** For *Individuals*: The stay lifts upon the earliest of the completion of all payments due and provided for under the plan and the entry of a discharge order, an entry of an order of dismissal or the entry of an order closing the case. In some jurisdictions courts close individual Chapter 11 cases before the plan is completed and a discharge order is entered. The closing of the case for administrative purposes only, generally will not lift the automatic stay. If this occurs, contact Counsel for guidance.

Note: For post-BAPCPA individual case, the discharge no longer occurs at confirmation. The stay remains in place until completion of plan payments and entry of a discharge order by the court, unless the court has lifted the stay at an earlier date.

Note: In cases where the petition was filed before October 17, 2005, the stay lifts the earliest of the date the plan of reorganization is confirmed, an order closing the case is entered or an order dismissing the case is entered.

For **Non-Individuals (Corporations, Partnerships and certain LLC's)**: the stay lifts upon the earliest of the date the plan or reorganization is confirmed, an order of dismissal or an order closing the case is entered.

- d. **Chapter 11 - Liquidation:** For **Non-Individuals (Corporations, Partnerships and certain LLC's)**: Liquidating non-individual Chapter 11 cases in which the debtor will not engage in business after completion of the plan, the stay is lifted the earliest of the date the court confirms the plan of liquidation, an order of dismissal is entered or the date an order closing the case is entered.
- e. **Chapter 12 - Family Farmers and Fisherman:** The earliest of the completion of all payments due and provided for under the plan and the entry of a discharge order, entry of a hardship discharge, the entry of an order of dismissal or the closing of the case.
- f. **Chapter 13 - Voluntary Reorganization for individual debtors (wage earners and sole proprietors):** The earliest of the completion of all payments due and provided for under the plan and the entry of a discharge order, entry of a hardship discharge, the entry of an order of dismissal or an order closing the case.

Caution: Appeals should not rely on a TC 521 and or a TC 522 by itself to determine if the automatic stay has been lifted. Appeals should review *PACER* to verify if the stay has been lifted. If *PACER* is unclear, consult with Insolvency. If after consultation there is still ambiguity, contact Counsel. See SERP under Insolvency National Field/Centralized Site Directory IRB <http://serp.enterprise.irs.gov/databases/who-where.dr/insolvency/national-field-centralized-site-directory.html>

8.7.6.3.5
(05-06-2021)
**Resuming the CDP
Process When the
Automatic Stay Has
Lifted**

- (1) Once it has been verified that the automatic stay has been lifted, remove the case from E/BNK status. This will systemically revert the case to its pre-suspension status. The ATE can then contact the taxpayer and continue the CDP/EH process.

Reminder: Confirmation of a plan does not lift the automatic stay in individual Chapter 11 cases filed on or after October 17, 2005 or in Chapter 12 or Chapter 13 cases regardless of the date the bankruptcy was filed. These cases will remain in E/BNK status.

- (2) After the automatic stay has lifted, all tax issues with respect to the tax liabilities raised in the CDP/EH hearing may not have been resolved by the bankruptcy. The taxpayer may raise issues such as the collection of nondischargeable taxes, the dischargeability of taxes or the extent to which discharged taxes may be collected from property exempted, abandoned or excluded from the estate. Under these circumstances, continue the CDP/EH hearing in order to resolve these issues. The ATE should refer to IRM 5.9,

Bankruptcy and Other Insolvencies, or consult with Counsel or Insolvency as needed on the dischargeability of taxes or the collection of dischargeable taxes. See IRM 8.7.6.2.7 for basic dischargeability guidelines.

Reminder: If the Insolvency organization is contacted and they provide information pertaining to the dischargeability of taxes and to the extent to which discharged taxes may be collected from exempt, abandoned or excluded property, there is a greater opportunity for prohibited ex parte communications to occur. ATEs must be aware of this increased risk. Should a prohibited ex parte communication occur, the taxpayer must be informed of the communication and given an opportunity to respond. See IRM 8.7.6.2.8 for additional information regarding ex parte communications.

- (3) The automatic stay is terminated in a Chapter 7 case involving a non-individual entity at the earliest of the time of dismissal or closure. In a Chapter 11 case involving a non-individual entity in which all assets are liquidated and the entity will cease doing business after completion of the plan, the automatic stay terminates upon confirmation of the liquidating plan. Because these entities will cease to exist and there will be no assets from which the IRS can collect after the bankruptcy, there is no purpose in resuming the CDP/EH hearing. The ATE will contact the taxpayer *after the lifting of the automatic stay* (BMF Chapter 7 at closing or dismissal; BMF liquidating Chapter 11 at confirmation, closing or dismissal) and ask for a withdrawal of the CDP/EH hearing request. If the taxpayer will not withdraw the hearing request, issue the (Letter 3193, Notice of Determination or Letter 3210, Decision Letter). The Notice of Determination or Decision letter should state that the automatic stay has lifted and levy action is not sustained or the NFTL will be released after the collection statute has expired because all of the assets of the taxpayer have been liquidated and distributed in accordance with the bankruptcy court's order of final distribution or confirmed plan and the taxpayer will cease to exist. As a result, there is no property from which to collect by levy or to which the tax lien could attach.

Note: If the taxpayer disputes the liability, then the hearing may need to be resumed. See IRM 8.22.8, *Liability Issues and Relief from Liability regarding challenges to the underlying tax liability in a CDP hearing*.

- (4) In an **individual Chapter 7** case with **no assets** to be liquidated (Ch7N, no asset), resume the CDP/EH hearing after the discharge order is entered or the case is dismissed. In an **individual Chapter 7** case **with assets** to be liquidated, the hearing may be resumed after the discharge order is entered but there may be instances where the hearing process cannot be completed until the amount of taxes remaining unpaid after final distribution is known. It might be necessary to contact the Insolvency function to determine the priority of the Service's tax claim and the amount and type of assets to be liquidated. No collection action should be allowed to proceed that could potentially interfere with the trustee's liquidation of the taxpayer's assets that are part of the bankruptcy estate. ATEs need to use sound judgment and proceed with caution. Seek Counsel's guidance if legal issues arise.

Note: Assessed tax deficiency modules subject to a Chapter 7 asset bankruptcy are often placed into a temporarily uncollectible status (TC 530) on IDRS after the IRS has filed a proof of claim. In these instances, the Service will input a tc 521 on the modules, but that does not necessarily mean that the

automatic stay has been terminated. Contact CIO to determine if the stay is still in effect and if there is any discrepancy, contact Counsel for assistance.

- (5) In an individual Chapter 11 filed on or after October 17, 2005, a Chapter 12 or a Chapter 13 regardless of the date the bankruptcy was filed, resume the CDP/EH hearing after a discharge order is entered (usually after all of the plan payments have been made) or the case is dismissed

Note: Chapter 11, 12 and 13 plans can be complicated and it may be difficult to determine, if, and to what extent the IRS is entitled to collect taxes administratively after all plan payments have been made. Contact Counsel or Insolvency for assistance. If Insolvency provides information about the IRS's ability to collect taxes, ATEs must be aware that a greater opportunity exists for prohibited ex parte communications. Should a prohibited ex parte communication occur, the taxpayer must be informed of the communication and be given an opportunity to respond. See IRM 8.7.6.2.8 for additional information regarding ex parte communications.

- (6) In a Chapter 11 reorganization case involving a non-individual entity or an individual who filed the case prior to October 17, 2005, resume the CDP/EH hearing after confirmation of the plan. As stated in (4) above, ATEs should proceed cautiously as to not disturb the confirmed plan.
- (7) If a discharge order has been entered in an individual Chapter 7, a Chapter 12 or a Chapter 13 case, or an individual Chapter 11 filed on or after October 17, 2005, a Form 12256, Withdrawal or 12257, Waiver, may be used.

8.7.6.3.6
(05-06-2021)
**CDP/EH Hearings When
a Non-CDP Spouse is in
Bankruptcy in a
Community Property
State**

- (1) The following is general guidance on how to approach CDP and EH hearings for taxpayers residing in community property states whose spouses have filed for Chapter 11 or 13 bankruptcies.
- (2) Holding CDP and EH hearings of a limited scope for a non-debtor individual (the non bankrupt taxpayer) whose spouse has filed for a Chapter 11 or 13 bankruptcy, although not a direct violation of the automatic stay, is complicated by the fact that some or all of the taxpayer's property may be considered property of the bankruptcy estate and therefore protected by the automatic stay.
- (3) The bankruptcy automatic stay generally prohibits any action against the debtor to collect a pre-petition debt, the commencement or continuation of an administrative or judicial action and any collection action against property of the estate. It is clear that trying to resolve a CDP/EH case under these conditions can be extremely hazardous.
- (4) Consistent with Appeals procedures for Chapter 11 and 13 individual taxpayers in bankruptcy, ATEs will likewise suspend CDP/EH hearings for a non-debtor taxpayer until the spouse's bankruptcy plan has been confirmed. Upon confirmation, the ATE can then determine what portion of the taxpayer's assets was included in the postconfirmation bankruptcy estate and to what extent the plan resolves all of the tax issues.
- (5) If the confirmation of the plan does not resolve all of the CDP/EH issues, then the case will remain in E/BNK suspense until the earliest of the completion of all payments and conditions due and provided for under the plan and the entry

of the discharge order or the entry of an order of dismissal. Consult with Counsel if complex issues arise due to specific facts of each individual case.

8.7.6.3.7
(05-06-2021)

**When Only One Spouse
Files an Individual
Chapter 11 or 13
Bankruptcy**

- (1) The following are examples of how to proceed with the CDP process when certain spouses request a CDP hearing and a bankruptcy has been filed by one or both spouses. ATEs should proceed with caution in these circumstances and consult with Counsel if legal issues arise. The following examples are a general guide and a determination must be made based on the facts and circumstances of each case. For individual Chapter 7 filings, the hearing should generally be suspended until the automatic stay terminates. For individual **Chapter 11 or 13** filings, see below.

Joint or Single Filed Return	CDP Requested by One or Both Parties	Bankruptcy Filed by One or Both Parties	Community Property State	Determination
Joint	Both	One	No	Although a hearing may be held for the non-debtor spouse, suspend the hearing until the stay is terminated for the debtor spouse or upon confirmation of the debtor spouse's plan. Each case will present its own unique facts and circumstances. Consult with Counsel when appropriate. If it is determined that a new WUNO should be created, IDRS and ACDS must all be updated accordingly.
Joint	Both	One	Yes	Suspend the case until the automatic stay terminates. Place the case (both spouses) into suspense and monitor for the termination of the stay.
Joint	Both	Both	No	Suspend the case until the automatic stay terminates. Place the case into suspense and monitor for termination of the stay.
Joint	One Spouse	Other Spouse	No	Suspend the case until the automatic stay terminates. Place the case into suspense and monitor for termination of the stay.
Joint	One Spouse	Other Spouse	Yes	Suspend the CDP process for the CDP taxpayer until the automatic stay terminates.
Joint	One Spouse	Same Spouse	No	Suspend the CDP process until the automatic stay terminates.

Joint or Single Filed Return	CDP Requested by One or Both Parties	Bankruptcy Filed by One or Both Parties	Community Property State	Determination
Joint	One Spouse	Same Spouse	Yes	Suspend the CDP process until the automatic stay terminates. The non CDP non bankrupt spouse's community property assets will be a part of the bankruptcy estate but will have no bearing on the CDP process. Confer with Counsel if circumstances warrant.
Single	Single Filer	spouse	Yes	Suspend the CDP process for the taxpayer who requested the CDP hearing.

8.7.6.3.8

(05-06-2021)

Post-petition Liabilities

- (1) Debtors with confirmed plans should not incur additional liabilities. If debtors incur additional liabilities, their cases can be dismissed. In certain locations, post-petition liabilities are allowed to enter the collection stream. When an event occurs that offers a taxpayer CDP rights, ATEs must proceed with **caution**. No event should occur that could be construed by the bankruptcy court as violating the automatic stay. Levies or intent to levy notices are sometimes issued by the Insolvency function when a specific asset is identified. Likewise, the Insolvency function may file an NFTL for a specific purpose when permitted. . In these instances, ATEs should confer with Counsel if collection alternatives are raised by the taxpayer.
- (2) Collection actions by IRS functions other than Insolvency, must not disturb the property of the bankruptcy estate. Most districts consider wages and salary above what is needed to fund the plan as individual property and not property of the estate, but the plan may provide that all such property remains property of the estate. The law in some districts is that all property remains in the estate after confirmation. Appeals employees should contact Insolvency through the Centralized Insolvency Operation (CIO) before taking any action to a post-petition period, Insolvency enters a TC 520 cc 84 on the post-petition periods(s). CIO telephone and fax numbers for internal use can be found on SERP.
- (3) To this end, taxpayers seeking collection alternatives must be handled adeptly by ATEs. No action should occur that could impede the debtor's ability to make plan payments.
- (4) Unless a post-petition liability qualifies for a guaranteed installment agreement (IA), and the automatic stay on property of the estate is no longer in effect (e.g., the bankruptcy court has lifted any stay on property that remains property of the estate, see IRM 5.9.10, Processing Chapter 13 Bankruptcy Cases, a request for a post-petition IA is not processible when a taxpayer is in bankruptcy.
- (5) Guidance from Counsel should be sought when ATEs are considering taxpayer's proposals for collection alternatives on post-petition liabilities.

8.7.6.4
(02-26-2013)
**Offer in Compromise
Cases**

- (1) 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, 2003-36 I.R.B. 517 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.

8.7.6.4.1
(05-06-2021)
**Offer in Compromise
During and After a
Bankruptcy**

- (1) 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*. Refer to IRM 5.8.10, Special Case Processing, The Bankruptcy Code provides procedures to resolve the Service's claim depending on the type of bankruptcy case filed. These are addressed in IRM 5.9, Bankruptcy and Other Insolvencies.
- (2) Taxpayers will occasionally file bankruptcy after they appeal Collection's rejection of an offer. Doubt as to Collectibility and Effective Tax Administration offers from taxpayers in bankruptcy will be sustained rejections. Doubt as to Liability Offers will be returned.
 - a. The closing letter should state, that as a matter of policy, IRS does not consider Form 656 offers in compromise from taxpayers while they are in bankruptcy. The Bankruptcy Code provides procedures to resolve the Service's claim, therefore, the offer in compromise rejected by Collection is sustained.
 - b. A brief Appeals Case Memorandum explaining the circumstances should be sufficient.
- (3) An offer will not be considered under the administrative or CDP offer in compromise procedures until the bankruptcy is concluded or terminated.
 - In Chapter 7 cases, an administrative compromise with the taxpayer can be considered after the taxpayer has received a discharge, or the case is dismissed or the case is closed, whichever occurs first.

Note: In Chapter 7 asset cases where the Service has filed a proof of claim, the taxpayer may have received a discharge but the bankruptcy case has not been closed while the parties are awaiting distribution of funds from the trustee. The Reasonable Collection Potential must include an amount that the Service can reasonably expect to recover from the bankruptcy proceeding, in addition to what can be collected from the taxpayer.
 - In Chapter 11, 12, and 13 cases, an administrative compromise will not be considered until the taxpayer completes payments under the plan and there are remaining balances due not provided for in the plan, the debtor is granted a hardship discharge, or the bankruptcy is dismissed by the court.
- (4) If a taxpayer files an offer in compromise in a CDP or EH hearing and subsequently files bankruptcy, return the offer to the taxpayer. **However, the CDP is to remain open until the bankruptcy is resolved.** See IRM 8.7.6.3.2.
- (5) See IRM 8.23.3.3.2.3, Bankruptcy Consideration, for information on how to proceed if the taxpayer states an intent to file a bankruptcy petition.

8.7.6.5
(05-06-2021)
**Trust Fund Recovery
Penalty Cases**

- (1) A trust fund recovery penalty investigation, recommendation and appeal concerning a taxpayer in bankruptcy is **not** prohibited while the automatic stay is in place. Advise the taxpayer and/or power of attorney of this and follow normal Appeals case procedures as outlined in TFRP IRM 8.25 Trust Fund Penalty, and IRM 5.9.3.10, Debtors' Delinquent Accounts."

Caution: Any type of solicitation of payment is a violation of the automatic stay and strictly prohibited. It is the Service's general policy not to consider collection alternatives while the taxpayer is in bankruptcy. Acceptance of voluntary payments made by a related entity does not violate the automatic stay.

- (2) If the taxpayer elects not to participate in the appeal then make a determination on the merits of the case based on the information in the administrative case file.
- (3) If a taxpayer filed bankruptcy prior to the case coming to Appeals, then the Revenue Officer is responsible for notifying the Insolvency Organization of the proposed amount so an unassessed/estimated proof of claim can be filed.
- (4) If the taxpayer files bankruptcy after submitting an IRC 6672 appeal, then the Appeals employee assigned the case must promptly notify the Insolvency Organization of the proposed amount. After a final determination has been made, the Appeals employee assigned the case must advise the Insolvency Organization of the final determination so an amended proof of claim can be filed, if warranted. See IRM 8.7.6.3.1 for procedures on verifying the bankruptcy filing and contacting the Insolvency Organization.

Reminder: Appeals may contact Insolvency to obtain facts about the bankruptcy filing. This limited inquiry is not considered prohibited ex parte communications because Appeals is only seeking administrative/ministerial information. See IRM 8.7.6.2.8 for additional information regarding ex parte communications.

- (5) In cases where the bankruptcy petition was filed on or after October 22, 1994, the assessment of taxes is excepted from the automatic stay. For these bankruptcy cases, the statute of limitation on assessment continues to run since the Service is no longer prohibited from making the assessment. The trust fund recovery penalty and most excise taxes do not involve the deficiency procedures and are immediately assessable. The Service must timely assess taxes that are allowed to be immediately assessed absent bankruptcy. However, the trust fund recovery penalty may not be assessed unless the notice procedures under IRC 6672(b) have been satisfied.

Caution: In order to protect the assessment statute, the Service must make a Trust Fund Recovery Penalty assessment within the normal statutory period or secure a properly executed Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Period . Furthermore, the filing of a bankruptcy by the related corporation or entity from which the Trust Fund Recovery Penalty generated, does not preclude the investigation, proposal and assessment of a Trust Fund Recovery Penalty, nor does it suspend the ASERD.

- (6) In a Chapter 7 case, trust fund taxes or taxes required to be collected or withheld, are expressly excepted from discharge under 11 USC 523.
- (7) In Chapter 13 case where a plan has been confirmed:
 - a. If the petition was filed **before** October 17, 2005, a Trust Fund Recovery Penalty can be discharged when the Service fails to include the Trust Fund Recovery Penalty on a timely filed or otherwise allowable proof of claim. This is contingent on the debtor completing all of the provisions of the confirmed Chapter 13 plan and the granting by the court of a discharge.
 - b. Under BAPCPA, in Chapter 13 cases filed **on or after** October 17, 2005, the debtor will not receive a discharge for any trust fund recovery penalties, even if those liabilities were not included on a proof of claim. 11 USC 1328(a)(2).
- (8) A taxpayer may challenge Appeals' determination sustaining the trust fund recovery penalty through the bankruptcy court by filing a complaint to determine tax liability or filing an objection to the Service's proof of claim. See IRM 8.7.6.2.5.

8.7.6.6
(05-06-2021)
Examination Cases

- (1) The automatic stay provisions of 11 USC 362 **do not** prohibit the following:
 - The audit of a tax return.
 - Determination of the correct tax liability.
 - Issuance of a statutory notice of deficiency.
 - Issuance of a Notice of Determination granting or denying relief from joint or several liability (innocent spouse).
 - Demand for a tax return.
 - The making of an assessment for most taxes and issuance of one informational notice for cases filed on or after October 22, 1994.
 - In cases filed on or after October 17, 2005, the filing of a petition in Tax Court by an individual concerning **post-petition** tax periods and the filing of a petition in Tax Court by a corporation concerning tax periods the bankruptcy court has **no** authority to determine.
 - Setoff of pre-petition income tax refunds to pre-petition income tax liabilities, for bankruptcies commencing on or after October 17, 2005
 - Offsets for domestic support obligations, for bankruptcies commencing on or after October 17, 2005.

8.7.6.6.1
(05-06-2021)
Notification Procedures

- (1) The Compliance function (Examination) will make a timely determination if any returns of a taxpayer in bankruptcy are under examination and, if not, whether an examination will be made because of this notification.
- (2) If an examination is open on a pre-petition period, an employee with Examination Technical Services will:
 - a. Contact the responsible Field Insolvency caseworker or CIO liaison.
 - b. Continue with established examination bankruptcy procedures.
 - c. Advise Insolvency of any proposed Examination initiated deficiencies or adjustments that might result in a refund or a credit to the taxpayer. This should be done at the earliest possible time before the bar date by sending Insolvency a memorandum, or a locally developed form, along with a copy of the transmittal letter with the Examination report or a copy of the Revenue Agent Report (RAR).

Note: Insolvency will not perform a periodic follow-up with Compliance. Responsibility to notify Insolvency rests entirely with the Compliance function.

- (3) In cases where Technical Services is aware of the bankruptcy and an appeal is filed, the Appeals Officer will contact the bankruptcy coordinator with Technical Services and advise of the determination on the case. The bankruptcy coordinator will then contact the Insolvency Organization with the correct amounts of the liabilities.

Note: The coordinators can be located by accessing the Technical Services website at *Knowledge Management Bankruptcy Web page*

- (4) If the bankruptcy was filed during the appeal process, then the Appeals employee must immediately take the following actions:
 - a. Verify the bankruptcy filing using the procedures for CDP cases outlined in IRM 8.7.6.3.1 The bankruptcy filing can also be identified by a “-V” freeze (or a “-W” freeze for CCs 81 and 84) on a transcript and “Bankruptcy” printed on the 1st page of AMDISA.
 - b. Promptly complete the determination on the case and advise the bankruptcy coordinator and, if applicable, the Counsel or Department of Justice attorney assigned the bankruptcy case of the results.
 - c. If the case cannot be closed in 30 days, advise Technical Services and if applicable, the attorney assigned the case, of the proposed tax deficiency so an unassessed/estimated proof of claim can be filed.
 - d. After the correct tax liability has been established, advise Technical Services so that they can instruct Insolvency to file an amended proof of claim if warranted.
- (5) On campus sourced cases, it might be necessary to contact the Insolvency function directly. Contact the Centralized Insolvency Organization for the name of the Insolvency employee. To contact the Centralized Insolvency Organization by phone, go to the Who/Where tab on SERP and click on the Insolvency (Bankruptcy) Tools. Then go to Insolvency (Bankruptcy) National Field/Centralized Site Directory where the telephone number for the CIO will be listed http://serp.enterprise.irs.gov/databases/who-where.dr/inslvncy-bnkrptcy/national_insolvency_field.htm. Be aware of prohibited ex parte communications. See IRM 8.7.6.2.8 for additional information regarding ex parte communications.
- (6) In agreed cases, the assessment must be processed as if the bankruptcy did not exist if the bankruptcy petition was filed after October 22, 1994 or if it is for a post-petition tax liability.

Caution: Ensure that the assessment statute is protected in all cases.

- (7) Debtors may challenge the merits of the tax liability in the bankruptcy court. They may do so by filing an action to have the bankruptcy court determine their tax liability under 11 USC 505 or by objecting to the Government's proof of claim. Upon the filing of such an objection or a section 505 action, the Tax Division of the Department of Justice obtains exclusive settlement authority. Therefore, when Appeals receives notification that the debtor has filed an action to determine tax liability or an objection to the Government's proof of claim, Appeals will:

- a. Cease work on the case.
 - b. Issue a notice of deficiency if the Service has not issued one and it is appropriate.
 - c. Immediately close the case to the Tax Division and send a copy of the closing to Insolvency and the attorney assigned the bankruptcy case, if the attorney is not in the Tax Division. See IRM 8.7.6.2.6.1.
- (8) IRC § 6213 prohibits assessment of an unagreed Examination or AUR deficiency during the time the automatic stay prohibits the taxpayer from filing a Tax Court petition and for 60 days thereafter.

8.7.6.6.2
(05-06-2021)
**Technical Advice
Requests**

- (1) If technical advice is necessary, send the request for technical advice to Chief Counsel's office through the designated Area Counsel trial attorney under expedited procedures. Chief Counsel procedures state that:
- a. If the Service has an established litigating position, Chief Counsel's office must respond to Area Counsel's inquiry within 10 work days of the request.
 - b. If no such position exists, Chief Counsel's office must provide Area Counsel with technical advice within 30 days.
 - c. To ensure expedited technical advice from Chief Counsel's office, send copies of all technical advice requests to the appropriate Division Counsel and to the Associate Chief Counsel (Procedure and Administration) for coordination.
 - d. The technical advice request should notify the Chief Counsel's office responsible for the technical advice of the bankruptcy filing and that Area Counsel authorized the request under the expedited procedures.
- (2) The ATE should check with the designated Area Counsel trial attorney that all copies of the technical advice requests have been sent to Chief Counsel's office. If no response is received within 45 days, the ATE should ask the designated attorney to check on the status of the request.

Caution: A field office may not request technical advice on an issue if the same issue of the same taxpayer (or of a related taxpayer or member of an affiliated group) is in a docketed case for any taxable year. Rev. Proc. 2021-2, 2007-1 I.R.B. 88. Consequently, technical advice cannot be requested if an action is pending in the debtor's bankruptcy case concerning the issue that would be the subject of the request. In addition to an action filed by the debtor (e.g., objection to claim or action to determine tax under 11 USC 505), a tax issue could be litigated in a bankruptcy case as a result of the government filing an objection to the debtor's disclosure statement or to confirmation of the debtor's plan.

8.7.6.6.3
(02-26-2013)
**Preparing a Settlement
Computation**

- (1) If a settlement computation is needed in a case where an assessment has been made under a bankruptcy proceedings, the ATE should inform the Tax Computation Specialist (TCS) to follow the format of jeopardy assessment cases located in IRM 8.17.5.21.

8.7.6.6.4
(05-06-2021)
**Statutory Notices of
Deficiency in
Bankruptcy Cases and
the United States Tax
Court.**

- (1) A notice of deficiency, also called a "statutory notice of deficiency", "statutory notice" or "90 Day Letter", is a legal notice in which the Commissioner determines the taxpayer's tax deficiency. The statutory notice of deficiency (SNOD) is a legal determination that is presumptively correct and consists of:
 - a. A letter explaining the purpose of the notice, the tax period(s) involved, the amount of the deficiency and the taxpayer's options,
 - b. An agreement form (waiver) to allow the taxpayer to agree to the additional tax liability,
 - c. A statement showing the computation of the deficiency and
 - d. An explanation of the adjustments.

See IRM 8.17.4, Notices of Deficiency, and IRM 8.7.16, Appeals Employment Tax Procedures.

- (2) The Appeals Technical Employee (ATE) will select the appropriate SNOD Letter to issue when a taxpayer has an open bankruptcy and for an unagreed Pre 90-day cases. See IRM 8.7.6.6.5.1 below for Pre 90-Day Income Tax Cases. The ATE needs to issue the appropriate SNOD for the taxpayers status as listed below:
 - Letter 531-E, Notice of Deficiency, relates to Form 5330 or Form 990-T assessments,
 - Letter 894, Notice of Deficiency, is used for individuals,
 - Letter 901, Statutory Notice, has selectable paragraphs for liabilities involving or not involving affiliated companies, and
 - Letter 3523-A, Notice of Employment Tax Determination is used for IRC Section 7436.

The Notice 1421, How Bankruptcy Affects Your Right to File a Petition in Tax Court in Response to a Notice of Deficiency, must be enclosed with the selected SNOD Letter. The automatic stay does not prohibit the issuance of a Statutory Notice of Deficiency.

- Note:** If cases are referred to a Tax Computation Specialist for computations, the ATE should inform the TCS that the taxpayer has an open bankruptcy and indicate what SNOD Letter to use with the Notice 1421.
- (3) The Bankruptcy Code prohibits debtors from filing petitions with the Tax Court if they are under the protection of the automatic stay with the exception of certain cases filed under BAPCPA. Under BAPCPA, an individual's post-petition tax liabilities may be heard by the Tax Court. See IRM 8.7.6.6 and IRM 8.7.6.2.6.1.
 - (4) IRC 6503(a) suspends the statute of limitations on assessment from the date that the Service issues a SNOD until the end of the period under IRC 6213(a) within which the taxpayer may file a petition to the Tax Court and if the taxpayer files a petition, until the Tax Court decision is final and for 60 days more.
 - (5) Unless an exception applies under BAPCPA, the filing of a bankruptcy petition suspends the time the debtor has to petition the Tax Court. This is true no matter which comes first, the bankruptcy petition or the statutory notice of deficiency. The filing of a bankruptcy petition does not suspend the time if the time to petition the Tax Court has passed before the bankruptcy petition was filed. The debtor's opportunity to petition the Tax Court continues when the

automatic stay is lifted or terminated. In these cases IRC 6213(f) gives the taxpayer 60 additional days, plus whatever remains of the 90-day period under IRC 6213(a) to petition the Tax Court following the lifting of the automatic stay. Consult with Area Counsel on a case by case basis.

- (6) When the Service issues a statutory notice of deficiency, the debtor may ask the bankruptcy court to determine the tax liability under 11 USC 505 (a) or the debtor may ask the bankruptcy court to lift the automatic stay so that the debtor can petition the Tax Court. For cases filed **before** October 17, 2005, the debtor cannot file a petition with the Tax Court and an existing Tax Court case cannot proceed without the bankruptcy court lifting the automatic stay. It makes no difference whether the SNOD is for pre-petition tax or post-petition tax periods. For cases filed **on or after** October 17, 2005, an individual debtor is prohibited from commencing or continuing a case in Tax Court concerning a pre-petition tax liability and a corporate debtor is prohibited from commencing or continuing a case in Tax Court concerning a tax liability for a taxable period the bankruptcy court is authorized to determine.

8.7.6.6.5
(05-06-2021)
Impact of a Bankruptcy Filing on an Open Appeals Examination Sourced Case

- (1) This section discusses the impact a bankruptcy filing has on an open Appeals Examination sourced case and the reports that must be generated by Appeals when closing a case for a taxpayer who is in bankruptcy.
- (2) On all cases, prepare a complete report on Form 5402, Appeals Transmittal and Case Memo. Send a copy of the report to the bankruptcy coordinator with Examination Technical Services, who will advise the Insolvency Organization of Appeals' determination. See IRM 8.7.6.6.1. See *Knowledge Management Bankruptcy Web page* for locations of the local Examination Technical Services Group. For campus sourced cases, send a copy of the report to the Insolvency employee assigned to the case. Contact the Centralized Insolvency Organization for the name of the Insolvency employee. The CIO telephone number can be obtained from SERP at http://serp.enterprise.irs.gov/databases/who-where.dr/inslvncy-bnkruptcy/national_insolvency_field.htm.
- (3) The following is meant to be a general guide of how to proceed when a bankruptcy filing impacts an open Appeals Examination sourced case.

8.7.6.6.5.1
(05-06-2021)
Pre 90-Day Income Tax Cases

- (1) Typically, a bankruptcy is filed just prior to the case coming to Appeals or shortly thereafter. It is imperative that Appeals employees are aware that for bankruptcy filings made after October 22, 1994, the ASED is not suspended regardless of when the bankruptcy is filed. Appeals should follow established procedures for Pre-90 cases, keeping in mind that there is an open ASED.
- (2) **Agreed Cases** - If Appeals is able to resolve the issues as an agreed case, the bankruptcy filing does not prohibit the Service from making the assessment on bankruptcy filings made after October 22, 1994. The ATE must follow established procedures and ensure that the assessment is made **within the normal ASED**.
- (3) If the case is settled, notify the Examination Technical Support Group of the decision.

Reminder: For bankruptcy petitions filed on or after October 22, 1994, the assessment of taxes is excepted from the automatic stay. Consequently, the Service is not prohibited from making an assessment, subject to any statutory notice requirements. In agreed

cases, the Service must make the assessment within the normal statutory period of assessment. Furthermore, the automatic stay does not prohibit the assessment of taxes for post-petition periods.

- (4) If Appeals concedes the case, notify the Examination Technical Support Group that the proof of claim requires an amendment.
- (5) Instructions for modification of agreements in Joint Committee cases (other than potential Joint Committee Cases described in the next paragraph) are contained in IRM 8.7.9, Joint Committee (JC) Case Procedures.
- (6) Instructions for modification of agreements concerning potential Joint Committee cases arising from tentative allowances of carryback losses and/or unused credit for years not yet examined are contained in IRM 8.2, Pre 90-Day and 90-Day Cases.
- (7) **Unagreed Cases** - If the case cannot be resolved and there is an open bankruptcy filing, Appeals will issue the appropriate Notice of Deficiency Letter 531-E, Notice of Deficiency, Letter 894, Notice of Deficiency, Letter 901, Statutory Notice, or Letter 3523-A Notice of Employment Tax Determination, along with Notice 1421, How Bankruptcy Affects Your Right to File a Petition in Tax Court in Response to a Notice of Deficiency, prior to the expiration of the ASER. This SND letter informs the taxpayer of when it is appropriate to file a Tax Court petition and what their options are with the bankruptcy court.
- (8) Once the appropriate SNOD and Notice 1421 are issued, the case should be closed on ACDS following established deficiency procedures and field cases should be forwarded to Exam Technical Services and campus cases should be returned to the originating campus function for monitoring. See IRM 8.7.6.6.1.
- (9) Appeals will transmit a complete report on a Form 5402, Appeals Transmittal and Case Memo, with the pertinent documentation when closing a case of a debtor.

Note: If the taxpayer has filed either an objection to the Government's claim or a complaint to have the bankruptcy court determine the tax liability, Appeals will send the closed case, with the original administrative file, to the attorney assigned the case (i.e., the Tax Division attorney or Assistant U.S. Attorney, as applicable). If the attorney assigned the case is not in the Tax Division, Appeals will also send a copy of the transmittal form and case memorandum to the appropriate section chief in the Tax Division. See IRM Exhibit 8.7.6-1, Area Counsel Bankruptcy Guidelines for additional information. The last paragraph in the case memorandum and item 12 of the Form 5402, Appeals Transmittal, will contain the following statement: "This case is being transferred to [insert applicable government attorney name or office] for litigation because the taxpayer, a debtor in bankruptcy, has filed [insert applicable description: an objection to the Government's claim/an action asking the bankruptcy court to determine the tax liability]."

- (10) A case transferred to the Tax Division or an Assistant U.S. Attorney will be treated as a closed unagreed case. A duplicate administrative file will be prepared and maintained in Appeals until the attorney assigned the case completes action on the case.

- (11) If neither an objection to the Government's proof of claim nor a complaint to determine the tax liability is filed, the Appeals Officer will forward the case to APS with instructions to transfer the case to the appropriate Examination Technical Service Group or the originating campus function to suspend and monitor the case for the lifting of the automatic stay. The ATE must also provide the date the bankruptcy petition was filed.

8.7.6.6.5.2
(02-26-2013)
Docketed Cases

- (1) When a bankruptcy filing occurs **prior** to the taxpayer's filing of a petition in the U.S. Tax Court (and the bankruptcy remains open and the automatic stay is in effect), the filing of the Tax Court petition is a violation of the automatic stay provision of Bankruptcy Code section 11 U.S.C 362(a)(8). This code provision prohibits the commencement or continuation of a proceeding before the United States Tax Court. This is only applicable to an individual's (IMF) **pre-petition** tax years or a corporate taxpayer where the bankruptcy court had jurisdiction to determine the tax (usually a tax period that ends before confirmation). In these instances, Appeals has **no jurisdiction** to work the case and it must be returned to the originating function. Inform Counsel that a bankruptcy petition was filed prior to the Tax Court filing. Counsel will submit a motion to the Tax Court requesting that the case be dismissed because the Tax Court lacks jurisdiction to hear the case. Once Counsel concurs, field sourced cases should be closed using closing code 08 on ACDS and sent to Examination Technical Services where bankruptcy coordinators will monitor the bankruptcy and make the assessment at the appropriate time. Instruct APS to send the case to the appropriate coordinator listed at <http://mysbse.web.irs.gov/exam/tip/bankruptcy/contacts/12268.aspx> Campus sourced cases should be closed using closing code 08 on ACDS and APS should be instructed to send the case back to the originating campus function to monitor the bankruptcy. Appeals has no jurisdiction on these cases and they must be returned to the campus functions for monitoring. See IRM 8.20.7.15.5, Bankruptcy - Dismissed Docketed Case Closing Procedure.
- (2) When a bankruptcy filing occurs **after** the taxpayer's filing of a petition in the U.S. Tax Court, Counsel should be informed expeditiously. The Tax Court proceeding will generally be stayed until the automatic stay is lifted or terminated. The Tax Court will generally ask for updates from the debtor approximately every six months. Generally, the administrative file will be returned to Counsel.. Follow Counsel's directives in these instances.

8.7.6.6.5.3
(02-26-2013)
Penalty Appeals

- (1) A bankruptcy filing will generally have little impact on penalty appeal cases that do not require deficiency procedures. Penalties that do not involve deficiency procedures are immediately assessable. Penalties that require deficiency procedures (see IRM 8.11.1.2, Introduction to Penalties Worked in Appeals), should follow established guidelines, keeping in mind that for bankruptcy filings made after October 22, 1994, the ASER is not suspended regardless of when the bankruptcy is filed and that there is an open ASER.
- (2) Any adjustments that need to be made to an account should generally be done by Appeals. The Insolvency function should be notified of any adjustment so that the Service's proof of claim can be amended, if warranted.

8.7.6.6.6

(02-26-2013)

Objections to the Government's Proof of Claim and Requests for the Bankruptcy Court to Determine the Liability

- (1) Debtors may challenge the merits of the tax liability in the bankruptcy court. They may do so by filing an action to have the bankruptcy court determine their tax liability or by objecting to the Government's proof of claim. Upon the filing of such an objection or action, the Tax Division, U.S. Department of Justice obtains exclusive settlement authority. Therefore, when Appeals receives notification that the debtor has filed an action to determine tax liability or an objection to the Government's proof of claim, Appeals will:
 - a. Cease work on the case.
 - b. Issue a notice of deficiency, if the Service has not issued one and it is appropriate, and
 - c. Immediately close the case to the attorney assigned the case (i.e., the Tax Division attorney or the Assistant U.S. Attorney, as applicable).

8.7.6.6.7

(05-06-2021)

Jointly Filed Returns with One Spouse in Bankruptcy - Exam Cases

- (1) **Petitions to Tax Court** - When one spouse is in bankruptcy during an examination of a joint pre-petition tax year and the IRS issues a statutory notice of deficiency, the time for filing the bankrupt spouse's Tax Court petition is suspended and the assessment statute is suspended until the bankrupt spouse is granted or denied a discharge or dismissed from bankruptcy. However, the time to file a Tax Court petition and the assessment statute for the deficiency is not extended on the spouse who did not file bankruptcy. If the non-debtor spouse (the spouse that did not file for bankruptcy) does not timely file a Tax Court petition, the deficiency against the non-debtor spouse must be assessed within the normal ASED.
- (2) **Mirroring** - When Appeals must make an assessment on a non-debtor spouse while a bankruptcy is pending, the modules should be mirrored to create MFT 31 accounts.
- (3) **Appeals Requests for Mirroring** - If Appeals determines the deficiency assessment must be made on the non bankrupt spouse because of the assessment statute, Appeals will contact Centralized Insolvency Operation (CIO) to request MFT 31 Mirroring of a joint tax period. The request should be sent via secure e-mail to ***CIO Issues**. If the ASED is expiring in less than 12 weeks, it must be noted in the request. The request for mirroring of the account must be documented in the AIS history.
- (4) **Required Actions by Appeals** - Appeals will:
 1. Contact Insolvency with its determination that the non-bankrupt spouse must be assessed the deficiency.
 2. The ATE will request that APS input a TC 421 to reverse the MFT 30 -L freeze so mirroring of the MFT 30 module can be done;
 3. The ATE will monitor IDRS for the TC 421 to post on the MFT 30 module and then contact Insolvency.
 4. The ATE will monitor IDRS for the creation of the MFT 31 mirrored modules and re-input the TC 420 on the MFT 30 module.
- (5) **Required Actions by Insolvency** - Insolvency will:
 1. Maintain the bankruptcy freeze (-V or -W for closing code 81). The mirroring can be accomplished without the reversal of the bankruptcy freeze and will remain unreversed to ensure the automatic stay is not violated.

2. Input the required transaction codes to mirror the module according to IRM 5.9.4.4.2, MFT 31 Mirroring Requested by Appeals and Other Organizations, and IRM 5.9.17.22.1, MFT 31 Mirror Modules.

Caution: Only Insolvency should reverse the bankruptcy freeze code on any module.

8.7.6.7
(02-26-2013)

Joint Committee Cases

- (1) Bankruptcy does not affect Joint Committee jurisdiction for cases resolved in Appeals. Joint Committee jurisdiction would be eliminated by a determination of tax liability in the bankruptcy court, district court, United States Claims Court or the Tax Court.
- (2) If Appeals and the taxpayer agree on a case involving a refund or credit over \$2 million, Appeals will perform the following actions:
 - a. Report to the Joint Committee. See IRM 8.7.9 , Joint Committee Cases and Delegation Order 4-18.
 - b. Notify the Examination Technical Services of the action taken and the attorney assigned the taxpayer's bankruptcy case, if the bankruptcy case has been referred to the Tax Division or an Assistant U.S. Attorney.

8.7.6.8
(05-06-2021)

Large Bankruptcy Cases

- (1) This section discusses large dollar amount bankruptcy cases.
- (2) Cases of special significance will be considered as large bankruptcy cases. See Chief Counsel Directives Manual (CCDM) 34.3.1.3 for criteria and procedures. These include:
 - a. Cases in which the outstanding assessed liability exceeds \$10 million.
 - b. Cases for which the potential deficiency to the tax liability exceeds \$1 million (income, excise, and other), taking into account all open tax years.
 - c. Cases involving taxpayers with assets of \$50 million or more.
 - d. Cases previously identified by any other function as a large bankruptcy case.
 - e. Any other case the ATE and the Appeals Team Manager identify as a large bankruptcy tax case, such as, cases where a large group of taxpayers may be affected, criminal implications may be important, potential for notoriety may exist, or the taxpayer may belong to a business that is part of the Appeals Domestic Operations Program.
- (3) Typically, an attorney in SB/SE Area Counsel will be in charge of coordinating the Service's efforts with regard to the bankruptcy case. See Chief Counsel Directives Manual (CCDM) 34.3.1.3. That attorney will provide assistance to Appeals and other Service functions in handling bankruptcy cases. LB&I Area Counsel will also provide assistance with substantive tax issues, as necessary.
- (4) Work units designated as large bankruptcy cases will be subject to expedited procedures. They will require coordination with Area Counsel.

8.7.6.8.1
(05-06-2021)

Large Bankruptcy Case Procedures

- (1) ATEs must properly identify large bankruptcy work units. They must take immediate action to begin the internal processing of the case. They should quickly prepare the case for its referral to Area Counsel.

- (2) The ATE must notify Area Counsel as soon as Appeals becomes aware of a large bankruptcy case. Chief Counsel Directives Manual 34.3.1.3 discusses the procedural guidelines to be followed in large bankruptcy cases.
- (3) If Appeals proposes a notice of deficiency, the designated Area Counsel attorney should be advised and given an opportunity to review the notice of deficiency before the appropriate official authorizes the mailing.

Caution: Be careful when only a part of a consolidated corporate taxpayer files for protection under the reorganization provision of the Bankruptcy Code. The tax liability must be based on an analysis of the consolidated corporate taxpayer, not just the debtor company.

8.7.6.9 (02-26-2013) Other Types of Bankruptcy Cases

- (1) There are several other bankruptcy cases that Appeals employees may encounter:
 - Employment Tax Cases under IRC 7436 ; and
 - Tax Equity and Fiscal Responsibility Act (TEFRA) cases.

8.7.6.9.1 (05-06-2021) Employment Tax Cases under IRC 7436.

- (1) 11 USC 362 prohibits the commencement or continuation of a Tax Court proceeding while the automatic stay is in effect, except for certain cases filed on or after October 17, 2005 (BAPCPA cases) 11 U.S.C. § 362(a)(8). For bankruptcy cases filed on or after October 17, 2005, the automatic stay does not prohibit the commencement or continuation of a Tax Court proceeding filed by an individual concerning a tax liability for a tax period ending after the bankruptcy petition date (post-petition liabilities). A corporate debtor that files a bankruptcy petition on or after October 17, 2005, is not prohibited from commencing or continuing a Tax Court case concerning a tax period the bankruptcy court has no authority to determine.
- (2) The Service is permitted to issue a Notice of Employment Tax Determination Under IRC 7436 while the automatic stay is in effect and should do so to prevent expiration of the statute of limitations on assessment, which continues to run during the bankruptcy proceeding.
- (3) Unless BAPCPA applies, the taxpayer may not file a petition contesting the Service's "Notice of Employment Tax Determination Under IRC 7436" without first obtaining relief from the automatic stay in bankruptcy court. Pub 3953 Q&A's About Tax Court Proceedings for Determination of Employment Status Under IRC Section 7436 contains language advising the taxpayer of this fact.

8.7.6.9.2 (02-26-2013) Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)

- (1) There are instances when partners subject to unified audit and litigation procedures under TEFRA may file bankruptcy.
- (2) Due to the complexities of the TEFRA statutes and procedures, this IRM will not go into detail on the bankruptcy aspects of a TEFRA case. See IRM 8.19.6 Partner Cases, for guidance when either the TEFRA key case or an investor in a TEFRA key case files for bankruptcy.

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Exhibit 8.7.6-1 (05-06-2021)

Area Counsel Bankruptcy Guidelines

	Area Counsel Bankruptcy Guidelines
1	Scope of Referral Procedures Set forth are the procedures for referring matters to the Tax Division, U.S. Department of Justice or the United States Attorney.
2	Sensitive and Important Cases
	a. Matters that must be reviewed by the Procedure & Administration, Branch 5 will be referred to the Tax Division.
	b. Matters involving a debtor that is a prominent individual or a major corporation will be referred to the Tax Division, except as provided in (5)(a) below.
3	Notification to Tax Division
	a. Referral letter (and attachments):
	1. A full referral letter will be prepared for matters referred to the Tax Division or to a United States Attorney's Office which either has its own specialized tax unit or prepares and files its own pleadings; for all other referrals, a referral letter will be prepared discussing only those matters not addressed by enclosed pleadings and a short form referral letter is sufficient if the enclosed pleadings address all matters requiring discussion. Copies of all referral letters and pleadings will be provided to the appropriate Section Chief of the Tax Division.
	b. Area Counsel will immediately notify the Tax Division by telephone of adverse orders in any matters directly referred to the U.S. Attorney.
4	Specific Matters and Referral Instructions CC Notice 2011-006
	a. Refer to the United States Attorney: "Direct Referral Authorization. The authorization to commence direct referrals to the United States Attorney's Office for cases where the IRS's proof of claim is <i>less than \$1 million</i> , applies to the following matters:

Exhibit 8.7.6-1 (Cont. 1) (05-06-2021)
Area Counsel Bankruptcy Guidelines

	Area Counsel Bankruptcy Guidelines
	<ol style="list-style-type: none"> 1. Motions on behalf of the IRS and objections to plans based on the debtor's failure to file tax returns and responses to the debtors' objections to unassessed (estimated) claims filed by the IRS in cases where the debtor failed to file an income tax return 2. Motions on behalf of the IRS and objections to plans based on debts in excess of the eligibility for Chapter 13 debtors. 3. Motions to dismiss or convert cases, except those involving organizations that claim an exemption from taxation under IRC § 501. 4. Motions relating to the debtor's failure to make timely payments under a plan and/or accrual of post-confirmation liabilities. 5. Responses to objections to IRS claims that are based on the debtors' claimed payment of tax or claims that the debtor filed a return. 6. Responses to objections to IRS claims that are based on valuation of the property securing the claim. 7. Responses to objections to IRS claims that are based on the fact that the claim has been superseded by a subsequent claim. 8. Agreed cash collateral or adequate protection hearings, including stipulations or agreements for the use of cash collateral. 9. Responses to debtor's motion to determine dischargeability of a tax debt, except where: <ul style="list-style-type: none"> • The denial of discharge would be premised on 11 USC § 523(a)(1)(C) (such as fraudulent returns or evasion of tax), or; • The determination concerns a tax for which the debtor filed a return or a document that purports to be a return, after the due date (including extension) or; • The determination of dischargeability is requested by IRS (late or no notice
	b. Referrals to the Tax Division (note that referrals to the Tax Division must be made by Counsel):
	<ol style="list-style-type: none"> 1. objection to attorney fees; 2. any of the matters listed in (4)(a) above upon request by a Tax Division Section Chief to a particular Area Counsel office; and 3. all other Bankruptcy Code matters except as provided in (4)(a) above.
5	Acceptance or Rejection of Plans: Subject to the following conditions, and with the concurrence of the United States Attorney, these matters may be filed directly by Area Counsel:
	a. The Tax Division will first be alerted if a prominent individual or a major corporation is the debtor;
	b. If the Tax Division is involved in litigation that would be affected by the plan, the Tax Division will first be consulted.
6	Settlement Authority
	a. Before Objection to Proof of Claim:
	<ol style="list-style-type: none"> 1. Except as provided in (a) (2) below, before objection the Service may settle, compromise or reduce the proof of claim; however, if settlement is based to any extent on litigating hazards, the Service must obtain a closing agreement binding both the debtor and the trustee. [In a no-asset case the agreement of the trustee is not necessary.] 2. If a settlement based on litigating hazards for an unassessed tax subject to the deficiency procedures cannot be effectuated within six months of the filing of the petition in bankruptcy, settlement may only be effectuated by the Service in accordance with CCDM 34.8.1, Settlement Procedures; Settlement Procedures Overview.

Exhibit 8.7.6-1 (Cont. 2) (05-06-2021)
Area Counsel Bankruptcy Guidelines

	Area Counsel Bankruptcy Guidelines
	b. After Objection to Proof of Claim:
	<ol style="list-style-type: none"> 1. If the case is in the Appeals Division when an objection is filed, the matter must be immediately referred to the Tax Division. 2. In all other cases, if the trustee agrees to an extension so that the matter will in any event not be brought on for hearing earlier than 30 days after termination of negotiations, the matter may be determined by Service personnel based on criteria ordinarily used by revenue agents or revenue officers in settling cases. If it appears that the matter cannot be resolved without consideration of litigating hazards, the matter must be immediately referred to the Tax Division.

