



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.27.3

APRIL 4, 2018

EFFECTIVE DATE

(04-04-2018)

PURPOSE

- (1) This transmits revised IRM 4.27.3, Bankruptcy, Review and Processing Procedures.

MATERIAL CHANGES

(1)

IRM Reference	Description of Change
	Minor editorial changes have been made throughout this IRM. Website addresses, legal references and IRM references were reviewed and updated as necessary.
4.27.3.1	Has been re-purposed to align with IRM 1.11.2.2.5, Address Management and Internal Controls requirements to give examiners broader perspective of how bankruptcy may affect the examination.
4.27.3.1.1	Added a Background subsection.
4.27.3.1.2	Added an Authority subsection.
4.27.3.1.3	Added a Roles and Responsibilities subsection.
4.27.3.1.4	Added an Acronym and Codes subsection.
4.27.3.1.5	Added a Terms subsection.
4.27.3.1.6	Added a Related Resources subsection.
4.27.3.2	Re-purposed subsection from Examination Coordination to Insolvency to provide a brief Introduction.
4.27.3.3	Moved Closures of Cases at the Group Level to IRM 4.27.3.4 and added Examination Coordination with Insolvency (previously in IRM 4.27.3.2).
4.27.3.3.1	IRM 4.27.3.2.1 moved to IRM 4.27.3.3.1 and updated.
4.27.3.3.1.1	IRM 4.27.3.2.1.1 moved to IRM 4.27.3.3.1.1.
4.27.3.4 through 4.27.3.7	IRM 4.27.3.4 through IRM 4.27.3.7 material was removed. These are procedures performed by Technical Services and are found in IRM 4.8.2.10.4.
4.27.3.4	Moved from IRM 4.27.3.3, Closure of Cases at the Group Level.

IRM Reference	Description of Change
4.27.3.5	Re-purposed IRM 4.27.3.5 to BRA 94 and BAPCPA 05: Effect of Automatic Stay on or after October 22, 1994 from IRM 4.27.4.2, Statute of Limitations Considerations (obsolete).
4.27.3.6	Re-purposed IRM 4.27.3.6 to Bankruptcy TEFRA Investors from IRM 4.27.4.5, Statute of Limitations Considerations (obsoleted).

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.27.3, dated August 21, 2009.

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4.27.3

Review and Processing Procedures

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4.27.3.1
(04-04-2018)
**Program Scope and
Objectives**

- (1) *Purpose.* This IRM section is an introduction and outline of review and processing procedures with bankruptcy cases; including statute of limitations.
- (2) *Audience.* These procedures apply to all SB/SE Field and Specialty examiners, excluding Estate and Gift Tax.
- (3) *Policy Owner.* The Director, Examination Field and Campus Policy, which is under the Director, Headquarters Examination.
- (4) *IRM Owner.* Field Examination Special Processes, which is under the Director, Examination Field and Campus Policy.
- (5) *Primary Stakeholders.* SB/SE is the primary stakeholder of the examination Bankruptcy Program.
- (6) *Contact Information.* To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.

4.27.3.1.1
(04-04-2018)
Background

- (1) This section provides procedures for SB/SE examiners to coordinate, review, and close bankruptcy cases.

4.27.3.1.2
(04-04-2018)
Authority

- (1) **Authority** - The U.S. Constitution grants Congress authority to enact federal bankruptcy laws. The Bankruptcy Act of 1898 formed the basis of federal bankruptcy law until 1979, when enactment of the Bankruptcy Code (11 USC) repealed the old law and codified procedures making 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.
- (2) **Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)** - On April 20, 2005, the 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.
- (3) **Bankruptcy Code** - The Bankruptcy Code provides an orderly method for the debtor's financial rehabilitation (Chapters 11, 12, and 13) or the liquidation and distribution of a debtor's assets (Chapter 7). This federal law is intended to be applied uniformly among all states and possessions.
- (4) **Jurisdiction** - 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.
- (5) **Bankruptcy Judges** - Bankruptcy judges are appointed by the appellate circuit courts for a term of 14 years, as provided under Article I of the U.S. Constitution.

4.27.3.1.3
(04-04-2018)

Roles and Responsibilities

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for field employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayers' rights.
- (2) The Director, Examination Field and Campus Policy (formerly known as the Director, Examination AUR/Policy), reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the field examination process.
- (3) Field Examination Special Processes, which is under the Director, Examination - Field and Campus Policy, is the group responsible for providing oversight and policy and procedural guidance on specialized examination processes to SB/SE field examiners and group managers.

4.27.3.1.4
(04-04-2018)

Acronyms and Codes

- (1) The following table lists commonly used acronyms and command codes with their definitions as used throughout this IRM:

Acronym/Code	Definition
AIMS	Audit Information Management System
ASED	Assessment Statute Expiration Date
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
BRA94	The Bankruptcy Reform Act of 1994
FESP	Field Exam Special Processes
IRP	Information Returns Processing
IRPTR	Information Returns Processing Transcript Requests
PSP	Planning and Special Programs
SNOD	Statutory Notice of Deficiency

4.27.3.1.5
(04-04-2018)

Terms

- (1) The following table lists commonly used terms and associated definitions as referenced throughout this IRM:

Terms	Definition
Automatic Stay	Prior to October 17, 2005, when a debtor filed a petition in bankruptcy court, a stay of collection actions went into effect in every case and 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 remains in effect during the pendency of the bankruptcy. But, for 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 with respect to the debtor and the debtor's property that is not property of the bankruptcy estate, or not go into effect at all. See IRM 5.9.5.7, Serial Filers, for more information.
Bankruptcy	Refers to a judicial process to resolve a debtor's problems in paying debts incurred by the debtor. The term <i>bankruptcy</i> is used in connection with the federal bankruptcy laws enacted by Congress. Bankruptcy case refers to a case filed in a federal bankruptcy court under one of the chapters of the Bankruptcy Code (Title 11). The terms <i>insolvency proceeding</i> and <i>receivership</i> refer to proceedings brought under state laws and supervised by the state courts. There are also federal receiverships. A bankruptcy can either be voluntary or involuntary. 11 USC § 303 provides the requirements to file an involuntary petition.
Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)	An act that amended the Bankruptcy Code. Most of the provisions of BAPCPA are effective for cases filed on or after October 17, 2005. However, some BAPCPA provisions, such as certain provisions relating to Chapter 12 debtors, took effect on April 20, 2005, the date of enactment. Many provisions of BAPCPA are intended to keep debtors from abusing the bankruptcy system. Such provisions may limit the imposition of the automatic stay in cases of serial filings, require tax compliance from individual debtors, and establish a means test for Chapter 7 debtors. BAPCPA also added a new Chapter 15 to deal with cross-border bankruptcies.
Bankruptcy Code	The laws of bankruptcy codified under Title 11, USC §§ 101 through 1532.

Terms	Definition
Bankruptcy Court	U.S. District Courts have standing orders referring all cases arising under Title 11 to bankruptcy judges, which are referred to as bankruptcy courts. See 28 USC § 157.
Bankruptcy Petition	The form filed by the debtor (or against the debtor by creditors in an involuntary bankruptcy) with the bankruptcy court requesting relief from debts. It is filed to commence a case under a specific chapter of the Bankruptcy Code.
Bankruptcy Reform Act of 1994 (BRA 94)	An act that amended the Bankruptcy Code, signed into law and effective for all bankruptcy cases filed on or after October 22, 1994. It made changes to the bankruptcy law such as permitting assessments and issuing notice and demand during the automatic stay and the filing of late proofs of claim in Chapter 7 cases.
Bar Date	The date fixed by the court or by statute as the date by which a creditor must file a proof of claim. In general, a claim of a governmental unit, including the IRS, is considered timely if it is filed before 180 days after the order of relief (11 USC § 502(b)(9)).
Chapter 7	A case filed under Chapter 7 of the Bankruptcy Code by an individual, business, or other entity, where creditors are paid by liquidation and distribution of the debtor's available assets.
Chapter 9	A bankruptcy case for a governmental unit. In order to qualify as a debtor under Chapter 9, an entity must, among other things: be a municipality, be authorized to be a debtor by state law, be insolvent or unable to meet its debts as they mature, and desire to effect a plan to adjust such debts.
Chapter 11	A reorganization case filed under Chapter 11 of the Bankruptcy Code by an individual, business, or other entity. The case is intended to result in a reorganization plan, although Chapter 11 plans can provide for the liquidation of the debtor's assets, as well. A plan can last several years; however, a large percentage eventually liquidate. Unless the court orders otherwise for cause, an individual debtor may receive a discharge upon completion of all payments under the Chapter 11 plan. If an individual debtor is unable to complete all the plan payments, the court may grant the debtor a hardship discharge in certain instances. In general, a non individual debtor receives a discharge upon plan confirmation.

Terms	Definition
Chapter 12	This chapter applies to family farmers and fishermen. It closely resembles a Chapter 13 but without a <i>super discharge</i> that was available to Chapter 13 debtors in bankruptcies filed prior to October 17, 2005. Creditors are paid pursuant to a plan. Plan payments are paid through a trustee who handles all disbursements. Plan payments may be paid seasonally. The debtor may receive a discharge upon completion of all payments under the Chapter 12 plan. If a debtor is unable to complete all the plan payments, the court may grant the debtor a “hardship discharge” in certain instances.
Chapter 13	This chapter applies to individuals with regular income, including wage earners, sole proprietors, and other self-employed individuals. Chapter 13 is a case where creditors are paid pursuant to a plan. The debtor may receive a discharge upon completion of all payments under the Chapter 13 plan. If a debtor is unable to complete all the plan payments, the court may grant the debtor a hardship discharge in certain instances.
Chapter 15	This chapter applies when (1) a foreign court or a foreign representative seeks assistance in the United States in connection with a foreign insolvency proceeding; (2) assistance is requested in a foreign country in connection with a case under 11 USC; (3) a foreign insolvency proceeding and a domestic bankruptcy for the same debtor are pending concurrently; or (4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under Title 11 USC.
Claim	A right to payment, even if unliquidated, contingent, or disputed. Proofs of claim may include tax liabilities which have not been assessed. Also, see <i>Proof of Claim</i> .
Confirmation	The time when the court grants final approval to the debtor’s plan. Applicable only in Chapters 11, 12, and 13 bankruptcies.
Creditor	Person or entity with a claim against the debtor and/or property of the debtor at the time the bankruptcy petition is filed.

Terms	Definition
Debtor	The individual or entity (corporation, partnership, municipality) that: (1) files a voluntary petition, or (2) has an order of relief entered against it when an involuntary petition is filed with the bankruptcy court.
Discharge	<p>A court order that prohibits the collection of many pre-petition debts as a personal liability of the debtor. It is the event that triggers forgiveness of debt in a bankruptcy case. Generally, a discharge is granted:</p> <ul style="list-style-type: none"> a. In an individual debtor's Chapter 7 case, after the time for challenging discharge has expired and/or after all timely challenges to discharge have been resolved; b. In a Chapter 11 case of a corporation when the plan is confirmed; c. In a Chapter 11 case of an individual when the plan is completed or when the court grants a hardship discharge; and d. In Chapter 12 and 13 cases, when the plan is completed (3-5 years) or when the court grants a hardship discharge to the debtor.
Dismiss	If the bankruptcy case is dismissed, the legal affect is that the bankruptcy is deemed void.
Estate	<p>A bankruptcy estate is created upon the commencement of the bankruptcy case which is generally when the petition is filed. It generally consists of all of the debtor's interests in any property at the time the case is filed, plus property acquired by the estate after the petition is filed.</p> <p>Note: The estate may also include a non-debtor spouse's community property interests.</p> <p>In an individual Chapter 7 or 11 case, the bankruptcy estate is a separate taxable entity (IRC 1398). In Chapter 13 cases and in individual Chapter 11 cases filed on or after October 17, 2005, certain assets acquired by the debtor post-petition may also be included in the estate along with post-petition earnings from services performed by the debtor (11 USC §§ 1306 and 1115).</p>
Examiner	An examiner may be appointed in a Chapter 11 case to investigate the financial affairs of the debtor. An examiner does not replace the debtor-in-possession as a Chapter 11 trustee does.
Individual Debtor	A person who files bankruptcy as an individual rather than as a partnership, limited liability company (LLC) or corporation. The individual debtor may file singularly or jointly with a spouse.

Terms	Definition
Insolvency	Generally, understood to mean an inability to pay debts as they become due. However, the Bankruptcy Code refers to an insolvent entity as one whose debts are greater than the fair market value of its assets (11 USC § 101(32)). A debtor need not be insolvent to file bankruptcy. See <i>Bankruptcy</i> .
Liquidation	The act of reducing tangible and intangible assets to cash. This applies to Chapter 7 cases in which the business ceases to exist and its assets are sold. For individuals, the liquidation is limited to non-exempt assets. Some debtors liquidate through a Chapter 11 bankruptcy case.
Petition Date	The date the bankruptcy petition was filed in the bankruptcy court.
Pre-Petition	The period of time before the bankruptcy petition was filed.
Principle of Bankruptcy	The general underlying principle of bankruptcy is to provide a debtor an avenue to pay what the debtor can afford while receiving forgiveness for debt that cannot be satisfied.
Proof of Claim	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 (11 USC § 1305 claims in Chapter 13).
Reorganization	The process through which a Chapter 11 debtor promises to resolve or pay creditors' claims.
Schedules and Statements	After a bankruptcy is filed, all debtors must timely file: (1) schedules of assets and liabilities, and (2) a statement of financial affairs. In addition, individual debtors must file a schedule of income and a schedule of expenses.

Terms	Definition
Trustee	<p>In a case under Chapters 7, 12, or 13, the trustee is the officer appointed by the United States Trustee to administer the bankruptcy estate and has a fiduciary duty to the bankruptcy estate. The trustee is the representative of the bankruptcy estate and has a fiduciary duty to unsecured creditors. In a case under Chapter 11, the debtor-in-possession (DIP) generally has the rights and powers of a trustee unless the court orders a trustee be appointed.</p> <p>Listed are several definitions of a trustee and the corresponding Chapter(s) of bankruptcy:</p> <ul style="list-style-type: none"> •Chapter 7 trustee: A disinterested person appointed by the United States Trustee or elected by creditors to administer the Chapter 7 case. Referred to as a panel trustee or case trustee. The Chapter 7 trustee is responsible for a particular Chapter 7 case. •Chapter 11 trustee: The court can order the appointment of a Chapter 11 trustee to replace the debtor-in-possession. The DIP, or the Chapter 11 trustee, is a fiduciary responsible for administering the Chapter 11 case. The United States Trustee or a party in interest may request the court appoint a Chapter 11 trustee for cause. •Chapter 12 trustee: A trustee is appointed in every Chapter 12 case. Referred to as a standing trustee, the trustee typically reviews the debtor's proposed plan and recommends modifications, as needed. After confirmation, the trustee typically serves as disbursing agent of the debtor's payments under the plan. •Chapter 13 trustee: A trustee is appointed in every Chapter 13 case. Referred to as a standing trustee, the trustee typically reviews the debtor's proposed plan and recommends modifications, as needed. After confirmation, the trustee typically serves as disbursing agent of the debtor's payments under the plan.

4.27.3.1.6
(04-04-2018)

Related Resources

- (1) Procedural guidance on bankruptcies can be found throughout IRM 4.27, Bankruptcy, and IRM 5.9, Bankruptcy and Other Insolvencies.
- (2) Document 13219, Automated Insolvency System - User Guide.
- (3) My SB/SE Bankruptcy webpage <http://mysbse.web.irs.gov/examination/tip/bankruptcy/default.aspx>.
- (4) The following table contains related IRMs which cover additional procedures that examiners may use in bankruptcy procedures and are referenced throughout this IRM:

IRM	Title
IRM 4.20	Examination Collectibility
IRM 4.31.2	TEFRA Examinations - Field Office Procedures
IRM 4.31.7	TEFRA Bankruptcy
IRM 5.9.1	Overview of Bankruptcy
IRM 5.9.2	The Bankruptcy Code and Collection
IRM 5.9.3	Debtor's Delinquent Accounts
IRM 5.9.4	Common Bankruptcy Issues
IRM 5.9.13	Manual Proofs of Claim and Common Claim Issues
IRM 25.1.2.6	Bankruptcy Fraud

4.27.3.2
(04-04-2018)
Introduction

- (1) Please see IRM 4.27.1.2, Introduction, for detailed information on bankruptcy.

4.27.3.3
(08-21-2009)
**Examination
Coordination with
Insolvency**

- (1) Bankruptcy proceedings impose deadlines for action for both the debtor (taxpayer) and the creditor (IRS).
- (2) The deadline for filing proofs of claim is called the "bar date". The court sets the bar date in a Chapter 11. In Chapters 7, 12, and 13 the bar date is the later of:
 - a. Before 180 days after the petition date, or
 - b. 90 days after the first meeting of creditors.
- (3) It is imperative that examiners contact Insolvency as soon as they are aware that a taxpayer under examination has filed for bankruptcy. Your Examination Bankruptcy Coordinator in Technical Services will provide the name of the Insolvency Bankruptcy Specialist. Insolvency needs to advise Bankruptcy Court by the bar date, of all IRS tax debt of a taxpayer. You will need to provide Insolvency any potential deficiencies, penalties and interest.
- (4) Under the BAPCPA a debtor is required to file returns. This means the IRS will not receive a payment on this claim from the bankruptcy case. It also means that, upon discharge, the IRS may not recover from the debtor personally. The IRS may file a claim for such returns within 60 days after the return is filed.
- (5) The IRS' failure to meet the bar date (or bar date extension) may result in the IRS' claim being disallowed. This means, upon discharge, the IRS may not recover from the debtor personally. Thus, the IRS must ensure that it files accurate claims with the court in a timely manner.
- (6) The court can extend a creditor's bar date for cause.

4.27.3.3.1
(04-04-2018)
**Questionable Returns
Filed with Insolvency
During Bankruptcy
Proceedings**

- (1) Some returns submitted to Insolvency by debtors are questionable. For instance, they may not reflect the income showing on the debtor's schedules, the information presented in his/her statement of financial affairs, or data on master file sources such as IRPTR.
- (2) Insolvency needs to have these questionable returns reviewed by Examination so an accurate proof of claim can be filed with the court in a timely manner.

Note: Insolvency is responsible for following normal processing procedures to have tax returns received, processed, and assessed.

4.27.3.3.1.1
(04-04-2018)
**Returns Eligible For
Review**

- (1) Insolvency will request an exam review of questionable returns using Form 3449, Referral Report.
- (2) The questionable returns must meet the criteria in paragraph 7.
- (3) The referral must be made at least 45 days before the bar date. The bar date should be notated at the top of the referrals.
- (4) Form 3449, along with copies of the questionable returns, will be forwarded to PSP.
- (5) Upon receipt of the referral, PSP will review the referral to ensure:
 - a. The referral was made at least 45 days before the bar date;
 - b. The questionable returns meet the criteria in paragraph 7.
- (6) If less than 45 days before the bar date remains and/or the questionable returns do not meet the criteria described below, the referral will be returned to Insolvency, unless special arrangements have been made.

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4.27.3.3.2
(08-21-2009)
**PSP Classification of
Questionable Returns**

- (1) PSP will establish the return(s) on AIMS.
- (2) PSP will provide Insolvency with an estimated deficiency within 15 days of the bar date.
 - a. The estimate provided must be based on facts that can be presented in court should the debtor object to the IRS' estimated claim.
 - b. Refer to IRC 7491, Burden of proof, for additional information.
- (3) If the referral is a result of source documentation, such as, IRP reports, PSP will forward the case to Technical Services.
- (4) If the referral involves issues that require further development, PSP will assign the case to an examination group.

- (5) PSP may determine at any time during the review process that the return should be surveyed before assignment.

4.27.3.3.3
(08-21-2009)

**Technical Services
Review of Questionable
Returns**

- (1) A Technical Services reviewer will determine if there is adequate documentation to issue a statutory notice of deficiency.
- (2) If there is not adequate documentation to support issuance of a statutory notice of deficiency, the reviewer will return the case to PSP, advising that the case needs further development.

Caution: The reviewer needs to provide an estimated deficiency to Insolvency prior to returning the case to PSP.

- (3) If there is adequate documentation, the reviewer will issue a notice of deficiency and provide a copy to Insolvency.
- (4) A 30-day letter does not need to be issued prior to the issuance of a notice of deficiency with regard to the tax return situations addressed above. *Luhring v. Glotzbach*, 304 F.2d 560, 565 (4th Cir. 1962) and *Rosenberg v. Commissioner*, 450 F.2d 529, 533 (10th Cir. 1971).

4.27.3.3.4
(08-21-2009)

**Returns Under
Examination When the
Bankruptcy Petition is
Filed**

- (1) It is imperative that Insolvency be provided at least 30 days prior to the bar date, deficiency or estimated deficiency amounts for returns under examination. All communication should stipulate the bar date because of its importance.
- (2) When a return is warehoused at a campus waiting for classification or assignment, Area PSP will instruct the campus holding the return to forward the return immediately to the Area PSP.
- (3) If a return is in a status below 10, Area PSP, Campus Exam, or Centralized Files & Scheduling (whomever is assigned the return) will take one of the following actions:
 - a. Advise Insolvency that the return will be closed survey before assignment;
 - b. Advise Insolvency the return has been assigned to an examination group; or
 - c. Advise Insolvency of the estimated deficiency amount.
- (4) If a return is assigned to an exam group, the group must notify Insolvency of the disposition of the case. Your Examination Bankruptcy Coordinator in Technical Services will provide the name of the Insolvency Bankruptcy Specialist.
 - a. If the return is in the group's unassigned inventory, the manager will ensure Insolvency is provided the deficiency or estimated deficiency amount.
 - b. If the return is in assigned inventory, the examiner will ensure Insolvency is provided the deficiency or estimated deficiency amount.
 - c. Prior to closing the case from the group, the examiner will provide Insolvency with a copy of the report of adjustments.
- (5) If a notice of deficiency is issued to a bankrupt taxpayer, Technical Services will provide Insolvency with a copy of the notice of deficiency issued to a bankrupt taxpayer.

4.27.3.4
(08-21-2009)
**Closure of Cases at the
Group Level**

- (1) Most unagreed cases should be forwarded to Technical Services for closure to Appeals or issuance of a SNOD, depending on the response to the preliminary letter issued in accordance with IRM 4.27.2.5, Closing Procedures-Unagreed Cases with Automatic Stay. The following types of cases may be forwarded for assessment and/or closure without review after Insolvency has been notified of the final audit results:
 - a. Survey;
 - b. No change;
 - c. Overassessments/refunds;
 - d. Agreed cases, except for pre-petition taxable periods where the bankruptcy petition was filed before 10/22/94 (pre-BRA '94 bankruptcy cases); or
 - e. All cases where a notice of deficiency is not required (some employment and some excise tax cases except for pre-petition taxable periods for cases filed before 10/22/94.)
- (2) Taxpayers, who disagree with the deficiency determination, including penalties and interest, may file a written protest and request an appeals conference.
 - a. Upon receipt of the request, the case will be referred to Appeals.
 - b. Upon conclusion of Appeals consideration of a bankruptcy case, Appeals will confirm the automatic stay is in effect.
 - c. For cases where the stay is in effect, Appeals will forward those cases to the appropriate Area Technical Service Examination Bankruptcy Coordinator after issuing the notice of deficiency.
 - d. When appropriate, the case will be suspended if assessment is prohibited by the bankruptcy stay.
 - e. All other Appeals closures will be processed by normal Appeals processing procedures.

4.27.3.5
(04-04-2018)
**BRA 94 and BAPCPA 05:
Effect of Automatic Stay
on or after October 22,
1994**

- (1) For bankruptcy petitions filed after October 21, 1994, the automatic stay provision of the U.S. Bankruptcy Code does not prohibit assessment of agreed deficiencies against the taxpayer. For this reason, the suspending of the statute of limitations period under IRC 6503(h)(1) does not apply in agreed cases.

Example: A taxpayer files her 2012 individual tax return on April 15, 2013. On December 1, 2013, she files a petition for bankruptcy, and is not granted a discharge until May 2, 2016. On March 31, 2014, she signs a Form 870, Waiver of Restrictions on Assessment & Collection of Deficiency in Tax & Acceptance of Overassessment, agreeing to an additional deficiency on her 2012 return. Although still in bankruptcy, the additional tax must be assessed before the statute of limitations expires on April 15, 2016, under IRC 6501(a).

- (2) The automatic stay does not prohibit the issuance of a statutory notice of deficiency for unagreed cases. However, the stay still prohibits the commencement or continuation of certain proceeding before the U.S. Tax Court (see *Halpern v. Commissioner*, 96 T.C. 895 (1991)). For bankruptcy cases filed before October 17, 2005, the stay prohibits the commencement or continuation of any Tax Court case "concerning the debtor". For bankruptcy cases filed on or after October 17, 2005, the stay of Tax Court proceedings only applies in certain cases of individuals and corporations (11 U.S.C. § 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. For this reason, the statutory notice of deficiency must be issued prior to the expiration of the IRC 6501(a) assessment statute.

- (3) Once Technical Services issues a SNOD, IRC 6213(a) suspends the statute of limitations during the 90-day petition period and IRC 6503(a)(1) suspends the limitation period for an additional 60 days.
- (4) 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 statute of limitations is suspended.
- (5) The IRS may obtain a valid consent to extend the statute of limitations on assessment from entities in bankruptcy.

4.27.3.6
(04-04-2018)
**Bankrupt TEFRA
Investors**

- (1) When a TEFRA investor files for bankruptcy protection, the ASED on the affected pre-petition years becomes shortened. The most common ASED date will be the one year date which is imposed by IRC 6229(f)(1), Items Becoming NonPartnership Items.
- (2) Examiners are encouraged to contact their area TEFRA coordinator when determining the ASED of a TEFRA investor because this is a specialized area.
- (3) See IRM 4.31.2, TEFRA Examinations - Field Office Procedures, and IRM 4.31.7, TEFRA Bankruptcy, for additional information. More specific guidance related to this topic may be found in:
 - a. IRM 4.31.2.4.6, Suspension of Statute with Issuance of FPAA.
 - b. IRM 4.31.2.4.7, Items Becoming Nonpartnership Items.
 - c. IRM 4.31.7.6.2, Individual Returns.

