Internal Revenue Manual 5.16.1.2.9 (09-18-2018)
Hardship

1.   Follow the procedures in IRM 5.15.1, *Financial Analysis Handbook*, to determine the correct resolution of the case based on the taxpayer's assets and equity, income and expenses:

- A hardship exists if a taxpayer is unable to pay reasonable basic living expenses.

- The basis for a hardship determination is from information about the taxpayer's financial condition provided on Form 433–A, *Collection Information Statement for Wage Earners and Self-Employed Individuals* or Form 433–B, *Collection Information Statement for Businesses*.

- Generally, these cases involve no income or assets, no equity in assets or insufficient income to make any payment without causing hardship.

- An account should not be reported as CNC if the taxpayer has income or equity in assets, and enforced collection of the income or assets would not cause hardship.

- Hardship accounts are closed using cc 24 through 32. See Exhibit 5.16.1-2.

- Mandatory follow-up may be appropriate for certain hardship cases. See *IRM 5.16.1.6*, *Mandatory Follow-Up*

Reminder:

Hardship closing codes can **only** be used for individual or joint IMF assessments, sole proprietorships, partnerships where a general partner is personally liable for the partnership taxes, and LLCs, where an individual owner is identified as the liable taxpayer. See IRM 5.16.1.2.4 for decedent cases.

2.   Restitution based assessments may be closed CNC due to hardship. Restitution based assessments will appear on MFT 31 with a TC 290 and/or 298. The module will contain a TC 971 AC 102 and a TC 971 AC 180-189. If a taxpayer is making restitution payments in accordance with a court order, the restitution

payments are an allowable expense. Court ordered restitution payments are allowable expenses.

3.   When a court orders restitution paid to federal as well as nonfederal victims, the Service will not pursue enforced collection actions until the nonfederal victims are paid in full. In those instances, the account may be closed as a CNC hardship using a closing code calculated in accordance with IRM 5.16.1.2.9(13), with a mandatory follow-up date based on information contained in the court order. The government may take steps to protect its interest, such as filing a NFTL.

4.   There may be cases where the taxpayer cannot full pay a Restitution Based Assessment (RBA) and an MMIA or PPIA will be established for related civil assessments, exclusive of the RBA (that is, the RBA is not included as part of the IA). In these cases, the RBA modules may be closed as a CNC hardship using closing code 32. Refer to IRM 5.14.4, *Withdrawals and Installment Agreements with Special Circumstances* , for guidance on establishing an MMIA or PPIA for these accounts.

5.   Make a field call to the taxpayer's last known address. Secure a Collection Information Statement (CIS) if possible. The CIS must support the CNC recommendation to report the account as hardship. If the taxpayer has equity in assets, the reason collection is not being pursued must be documented in the history. See IRM 5.15.1, *Financial Analysis - Financial Analysis Handbook*. Verification of a CIS is not required if the aggregate unpaid balance of assessments is less than ≡ ≡ ≡ ≡ ≡ ≡ and the information on the CIS appears reasonable.

6.   Under certain conditions, a CIS is not required before reporting an account CNC. The aggregate unpaid balance of assessments, including any prior CNCs, must be less than ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ and at least one of the following conditions must exist:

- The taxpayer has a terminal illness or excessive medical bills.

- The taxpayer is incarcerated.

- The taxpayer's only source of income is Social Security, welfare, or unemployment.

- The taxpayer is unemployed with no source of income. Consider a mandatory follow-up or Manually Monitored Installment Agreement (MMIA) for seasonal workers.

Note:

Employees are required to secure documentation from the taxpayer prior to declaring the account uncollectible if internal documents such as IRPTR and RTVUE do not confirm the taxpayers' circumstance.

7.   The following verification is required for accounts when the aggregate unpaid balance of assessments is between ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ :

- On-line locator services, such as Accurint. Follow security guidelines when using public internet search engines.

- If the last filed income tax return was due within the last two years and was filed by the taxpayer, review the return or the return information by using CC RTVUE/TRDBV. If using RTVUE and assets are indicated, secure a copy of the return to pursue any leads.

- Income reported on the CIS may be verified using the information from IRMF on the ICS Levy Information screen, or CC IRPTR/IRPTRJ.

8.   For accounts where the aggregate unpaid balance of assessments is greater than ≡ ≡ ≡ ≡ ≡ the following additional verification is required:

- Motor vehicle records or Accurint (if motor vehicle records are available through Accurint in the state where the taxpayer is located)

- Courthouse records check, on-line or in-person, for real or personal property ownership. An in-person courthouse records check is not required for personal property only. See IRM 5.1.18.4, *Real Property Records*.

9.   For accounts where the aggregate unpaid balance of assessments is greater than ≡ ≡ ≡ ≡ ≡ ≡ ≡ the following additional verification is required:

- **Full credit report** on IMF and sole proprietor taxpayers and LLCs (where an individual owner is identified as the liable taxpayer). This includes balance due cases where recently filed returns will result in additional assessments causing the liability to be in excess of ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ . For additional information on credit reports, see IRM 5.1.18.20, *Consumer Credit Reports*. Credit reports are optional for accounts with an aggregate unpaid balance of assessments below ≡ ≡ ≡ ≡ ≡ ≡ ≡ .

- Conduct FinCEN research when IRPTR reflects that a taxpayer has filed a Foreign Bank Account Reporting (FBAR) form to obtain the name of the bank where the account is located, the amount in the account, co-owners, and other useful information. See IRM 5.1.18.18, *Foreign Bank and Financial Account Report.*

- CC AMDIS, if there is a -L freeze on the account indicating open Examination activity. If there is an open examination, contact the revenue agent to determine any additional sources of collection or the need to limit the scope of the examination based upon collectibility.

- Audit File or Special Agents Report if the assessment originated in Examination or Criminal Investigation (CI). The file can be secured by requesting the DLN of the TC 29X/30X.

Note:

An Audit file is required only if the Examination assessment is for one of the immediate two preceding years. If unable to obtain any information from the special agent, consider consulting with Advisory. If there is a TC 910 on the module, the taxpayer may have filed a financial statement with the probation office.

10.   IRC 6343(e) requires the release, as soon as practicable, of a levy on salary or wages due a taxpayer upon agreement with the taxpayer that the tax is not collectible. See IRM 5.11.2, *Serving Levies, Releasing Levies and Returning Property*. Steps should be taken to accomplish the release immediately. Case histories must be reviewed to ensure that wage levies are released prior to declaring an account uncollectible under hardship closing codes. The case history must be documented.

Reminder:

If TC 670 with designated payment code (DPC) 05 (levy) is present on any module or a regular series of payments is noted, ensure that the disposition of the levy is known.

11.   A compliance check will be made and the results documented in the case history for all hardship determinations per IRM 5.16.1.2(4). All open filing requirements or Del Ret modules must generally be resolved and closed appropriately when reporting an account CNC.

12.   Open Del Ret modules may be resolved by closing as little or no tax due, or income below filing requirement (P-5-133), if warranted by the facts of the case. See IRM 5.1.11, *Delinquent Return Investigations*, for options to resolve delinquent return accounts. If the taxpayer is required to file and refuses, a referral or summons may be appropriate. See IRM 25.5, *Summons Handbook* for summons procedures.

Caution:

If a hardship determination is verified, a levy cannot be issued or left in place to persuade a taxpayer to file.

Note:

Accounts may be reported CNC hardship if a CIS can be verified, even if there are unfiled returns. If the unfiled return is needed to confirm the hardship

determination (i.e., income, expenses and/or assets reported on the CIS), the Bal Dues should be held until the return is secured and the CIS can be verified, but levies cannot be issued to collect the Bal Dues if all other income/asset checks appear to confirm hardship.

13.   Use the hardship closing code that most closely corresponds to the taxpayer's total living expenses allowed. See Form 433-A (Rev 12-2012), *Collection Information Statement for Wage Earners and Self-Employed Individuals*; Section 5, Monthly Income and Expense Analysis; Line 49, Total Living Expenses. If the closing code chosen does not correspond to the taxpayer's allowed expenses, document the reason for the deviation in the summarizing statement for the CNC decision. Generally, do not select a code *below* the taxpayer's total living expenses allowed. Do not use a higher code simply to prevent re-issuance of the account.

Example:

Monthly living expenses allowed x 12 (months) = Annual living expense amount. Select the hardship closing code with the closest dollar amount above the annual living expense amount.

Note:

If the closest closing code amount is only $300.00 more than the annual living expense amount, the next higher closing code would be selected. The history would be documented that an increase in Total Positive Income (TPI) of only $300.00 above total living expenses allowed annually would not enable the taxpayer to make monthly payments.

14.   The systemic process for reactivating hardship CNC accounts relies on an increase in TPI above a predetermined amount based on the hardship closing code when the case is closed as CNC:

- The TPI is reviewed annually when a taxpayer files an income tax return.

- For BMF accounts on sole proprietorships, partnerships (where a general partner is personally liable for the partnership taxes) and LLCs (where the owner is identified as the liable taxpayer), TPI is determined by the annual income of the individual, general partner or member of the LLC.

- The Social Security Number (SSN) of the individual, general partner or member of an LLC (where the owner is identified as the liable taxpayer) must be cross-referenced on IDRS.

- When a BMF account is closed as hardship on ICS, the "Input on IMF to reactivate BMF CNC" will automatically be selected and a TC

130 with the EIN, BMF name control and CNC closing code will be input on the IMF entity, under the SSN of the individual, general partner or sole member of an LLC (where the owner is identified as the liable taxpayer).

- The TC 130 input on IMF to reactivate BMF CNC is a separate input from the cross-reference EIN/SSN input. This is also a separate input from the TC 130 input for refund offsets, which is input on the BMF entity. Employees must still determine if the TC 130 for refund offset is required and select either "TC 130 requested before" or "TC 130 input required" . The input document for the TC 130 is Part 3 of Form 53 (Form 3177). Part 3 of Form 53 on ICS will be transmitted to CCP via a systemically generated e-mail after GM approval of the CNC.

Reminder:

When Form 53 is prepared manually, employees will need to check the appropriate TC 130 box for "Refund Offset" and check the box for "Input on IMF to reactivate BMF CNC" . Part 3 of a manually prepared Form 53 must be mailed to CCP.

15.   Note:
16.
17.   Refer to IRM 5.1.12.21.3.2, *Offset an IMF Refund*, for additional guidance on situations where input of a TC 130 is required.

18.   Taxpayers must be advised that interest and penalties will continue to accrue on the account even though the collection action is suspended. In addition, before reporting an account CNC, other collection options such as Offer in Compromise should be discussed with the taxpayer.

19.   Case Closing Letter 4223, *Case Closed - Currently Not Collectible*, will be issued to the taxpayer and/or Power of Attorney (POA) when a case is closed as CNC - hardship. The case closing letter will only be used when the collection investigation on the taxpayer entity is concluded. Letter 4223 is systemically generated on ICS after GM approval of the CNC. Follow procedures in IRM 5.1.1.5, *Case Closing Letters*. For cases not on ICS, Letter 4223 is available on the publishing web site located at http://publish.no.irs.gov/catlg.html.

Exception:

A case closing letter should not be sent when a suit recommendation is the final Collection action, and the case has been placed into CNC status as suggested in IRM 25.3.2.6(6), *Litigation and Judgments - Suits by the United States Revenue Officer Referral and Account Disposition*.

20.   IRC § 7345 requires the IRS to notify the State Department that an individual is certified as owing a seriously delinquent tax debt. The State

Department generally will not issue or renew a passport to an individual after receiving the certification from the IRS. Section 7345 does not prohibit the IRS from exercising discretion to exclude certain debts from certification. . The IRS has exercised discretion to exclude debts that are currently not collectible (CNC) due to hardship. The IRS will reverse the certification of seriously delinquent tax debt and notify the State Department within 30 days if a certified taxpayer is later determined to be currently not collectible due to hardship. In some situations, employees may need to request expedited decertification. See IRM 5.1.12.27.