

FORM 4 AND UNIFORM TRANSACTION CODE (UTC) QUESTIONS AND ANSWERS

Dates

1) Which dates must be reported with the Form 4?

Trustees should include in their Form 4 submissions the date submitted and the date the case was filed or converted to chapter 7. The date submitted is the date that the Form 4 is prepared and/or submitted by the trustee to the United States Trustee. The date filed or converted to chapter 7 is either the date the case was filed under chapter 7 or the date the case converted to chapter 7 from another chapter.

Taxes

2) Where should the chapter 11 payroll taxes (e.g., 941 taxes) paid during the pendency of chapter 7 appear on the Form 4 for a converted case?

These payroll taxes should be reported under "Operating Expenses" in the section titled "Prior Chapter Administrative Fees." See Q and A #4 for the applicable UTCs.

3) What about payroll taxes paid in connection with an operating chapter 7 case?

If payroll taxes are paid in connection with operating a business in chapter 7, the taxes should be reported under "Expenses of Operating Business in Chapter 7."

4) Which UTCs are used for the employee and employer portions of payroll taxes?

The answer depends on when and how the payroll tax liability was generated.

- a. For an operating chapter 7 case in which no sub-codes are used, the employer and employee payroll taxes are classified under 2690-000. If sub-codes are used, the employee portion is coded as 2690-720 and the employer portion is coded as 2690-730.
- b. If prior chapter wages are paid from the chapter 7 estate and no sub-codes are used, the employer and employee payroll taxes are classified under 6950-000. If sub-codes are used, the employee portion is coded as 6950-720 and the employer portion is coded as 6950-730.
- c. If priority § 507(a)(3) wages are paid, the employee payroll taxes are classified under 5300-000 and the employer payroll taxes are coded as 5800-000 (Claims of Governmental Units).

5) Where should real property taxes be reported?

Pre-petition real property tax claims are reported under Secured Claims: Other Governmental Tax Liens, UTC 4700-000. Post-petition real property taxes are reported under Ch. 7 Admin.: Other State or Local Taxes, UTC 2820-000.

6) Real property tax payments frequently contain pre- and post-petition amounts. Must the trustee divide the payment between 4700-000 and 2820-000?

Yes, if the total amount paid exceeds \$1,000. If \$1,000 or less, 4700-000 may be used for the full amount.

7) Sometimes a portion of a tax refund belongs to the debtor. The trustee deposits the refund to the estate account and writes a check to the debtor for his or her pro-rata share. How should the deposit and check be coded?

When a portion of a tax refund represents property of the debtor, the trustee has two options with regard to the deposit. The entire amount may be assigned UTC 1124-000 (if scheduled) or 1224-000 (if unscheduled). Alternatively, the deposit may be split between 1124-000 (Tax Refunds) and 1180-00x (Non-Estate Receipts), if scheduled, or 1224-00x (Tax Refunds) and 1280-00x (Non-Estate Receipts), if not scheduled. Under both options, the code for the check to the debtor is 8500-00x. The wildcard is shown as “x” because the trustee will need to determine whether “0” or “2” applies.

8) How should a state’s Gross Receipts Tax (GRT) be coded?

This is a tax assessed on professional fees. Professionals add it to their invoices for professional services. Thus, combine the GRT with the professional fees for UTC coding purposes.

9) Taxing authorities’ claims can include secured, priority, general unsecured, interest, and penalty components. Please explain how these components are coded using the UTCs.

Secured taxes	4300 (IRS pre-petition tax liens) 4700 (Real property pre-petition tax liens) 4800 (State and local pre-petition personal property tax liens)
Priority taxes	5800 (priority claims of gov. § 507(a)(8))
General unsecured taxes	7100 (general unsecured § 726 (a)(2))
Interest on priority taxes	5800 if pre-petition; 7990 (surplus case interest on priority and general unsecured claims) if post-petition interest is being paid under § 726 (a)(5)
Secured/unsecured penalties	7300 (general unsecured fines and penalties - § 726(a)(4))

10) How should trustees record sales tax collected upon the sale of estate property?

Combine the sales tax with the base sales price when coding the deposit for Form 2 and use the UTC applicable to the type of property sold and whether it is scheduled or unscheduled. Generally, either 1129-000 or 1229-000 would be used. For the remittance to the taxing authority, use 2820-000 (Other State and Local Taxes/post-petition).

Interest

11) Where should the trustee report the interest paid to each type of claim as provided in § 726(a)(5)?

The interest paid to priority and general unsecured creditors should be coded as 7990-000. On Form 4, the interest is reported under General Unsecured Claims.

“Other” Expenses

12) Would a § 506(c) expense allowed to a trustee fall under “Other Expenses”?

Not necessarily. The fact that a creditor reimburses the expense does not make any difference. A § 506(c) expense should be categorized the same as any other expense on Form 4. This may be “Other Expenses” much of the time, but if the expense is for professionals, it should be classified under the appropriate category.

13) What is the difference between “Trustee Expenses” and “Other Expenses”?

“Trustee Expenses” consists of expenses originally incurred out-of-pocket by the trustee for which the trustee received reimbursement under § 330(a).

“Other Expenses” covers allowed expenses not otherwise included in the other categories on Form 4. It includes the cost of storage, insurance, locks, etc., paid directly to the provider by the estate. It specifically excludes fees and expenses paid to the trustee pursuant to § 330(a), attorney and professional fees and expenses, expenses of operating a business in a chapter 7 case, taxes, court costs, and United States Trustee fees.

The UTC’s help clarify how to properly classify administrative expenses. For examples, see the following Q’s and A’s.

14) I currently code Bond Premiums under Trustee Expenses or Other Expenses. Is either one still acceptable?

No. The correct UTC is 2300-000 (Bond Payments), unless the circumstances described in Q and A #15 apply to the payment.

Assigning Multiple Codes to a Single Receipt or Payment

- 15) **Can a *de minimis* bond payment, paid directly by the trustee, be included in trustee expenses (UTC 2200)?**

Yes, if the amount is \$1,000 or less, and the trustee is seeking reimbursement as part of trustee expenses.

- 16) **Please provide further guidance on how bond payments should be coded.**

When the estate pays the bond premium directly to the bonding company, UTC 2300-000 is always used. If the trustee pays the bond premium and then writes checks from each estate to reimburse himself, UTC 2300-000 is used for each check. But when the trustee pays the bond premium and then includes the amount in the application for reimbursement of trustee expenses, UTC 2200-000 is used, unless the bond premium exceeds \$1,000. In this event, the payment for trustee expenses must be divided between UTC 2200-000 and UTC 2300-000.

For example, assume a trustee pays herself court-approved fees of \$3,000 and expenses of \$900 (including a \$50 bond premium). This payment is coded to Trustee Fees–UTC 2100-000 (\$3,000) and Trustee Expenses–UTC 2200-000 (\$900).

- 17) **Auctioneers sometimes pay for securing property (e.g., locksmiths) and for storing the items to be auctioned. The auctioneers then include these costs in their application for reimbursement of expenses. In such circumstances, more than one UTC appears to apply: 3620-000 (auctioneer for trustee expenses), 2420-xx0 (costs to secure/maintain property), and 2410-000 (admin. rent for post-petition storage, leases, etc.). Please explain how these expenses should be coded.**

Occasionally, auctioneer expenses will include some items for which there are separate UTCs. For example, the auctioneer may pay for securing (UTC 2420-xx0) and storing (UTC 2410-000) the property prior to auction. If the amount of total auctioneer expenses is \$1,000 or less, it is not necessary to divide the payment for auctioneer expenses among these various UTCs.

For example, assume that the auctioneer is seeking reimbursement for \$900 in auctioneer expenses, including \$500 in storage fees. The UTC for this payment is 3620-000. On the other hand, if auctioneer expenses total \$1,500, including \$500 in storage fees, the payment would be divided between UTC 3620-000 (\$1,000) and UTC 2410-000 (\$500).

- 18) With respect to sales of real estate and other transactions where a “net” check is remitted to the trustee, how are the gross receipts and deductions (e.g., constructive disbursements) to be reported on Form 4?**

The gross proceeds from the sale (e.g., real estate sale, auction) are to be reported under Gross Receipts, regardless of the amount actually remitted to the trustee. The deductions (e.g., payments to secured creditors, commissions, closing costs) are to be reported in the applicable claims or administrative expense categories. See also the Form 4 Instructions at page Forms - 16.

For examples of how to apply the UTCs to the gross sale amount and the individual deductions, review the Sample Case and Illustrative Forms 1, 2, and 3 in the next section of the Handbook.

- 19) Trustees sometimes sell or auction estate assets as a group (also called a “bulk” sale). The sale price is not always separately stated for each asset. How should the trustee divide the gross sale proceeds among the various assets?**

The trustee may use any reasonable allocation method. One method is to make a pro-rata distribution based on the initial estimated fair market values. This method is illustrated in the Sample Case in the next section of the Handbook.

- 20) Auctioneers sometimes pay property taxes from the auction proceeds and remit the “net” amount to the trustee. How should the trustee record this “net” check?**

The trustee records this receipt in the same manner as any other type of “net” check – see Q and A #18, for example. The gross auction proceeds are divided and coded according to the asset(s) sold. The property taxes are coded with the UTCs for pre- and post-petition real property taxes, as applicable – see Q and A #6.

Chapter 7 Operating Cases

- 21) How do the UTCs apply to operating cases that are accounted for outside my case management system?**

When operating cases are accounted for outside of the trustee’s case management system, the trustee usually reports the financial data in monthly operating reports rather than on Form 2. Nonetheless, the data must eventually be entered onto Form 2 to produce a Form 4 at the end of the case.

There are several options for capturing the operating activity for UTC and Form 4 purposes, and the method is best left to the region on a case-by-case basis. The bottom line is that the activity should be recorded on Form 2 on some periodic basis (daily, weekly, monthly, or when the operation ceases). All operating case receipts must be

coded with 1130-000 (if scheduled) or 1230-000 (if not originally scheduled). Operating case expenses must be coded with 2690-000 (and/or with the applicable sub-codes).

One method for recording the activity after the operation ceases is to record it when the operating account is closed and the funds are transferred to the estate account. The entry on Form 2 would be “gross” rather than “net,” and consist of two codes: 1130-000/1230-000 for the receipts and 2690-000 for the disbursements. The difference is shown as a deposit on Form 2.

Professionals

- 22) An attorney is alleging a claim on all funds pursuant to an attorney’s charging lien. If the attorney is successful, he will never have formally filed a claim and yet will have funds disbursed to him. How is this situation reported on Form 4?**

The distribution to the attorney should be reported as though the attorney had filed a claim. The amount allowed is included under “Claims” and the amount distributed is included under “\$ Amount Paid.”

- 23) Our region currently does not utilize the categories of “arbitrator/mediator” (3721-00x/3722-00x) and “consultant” (3731-00x/3732-00x) in any of our reports. Since these categories have “primary” codes, not sub-codes, must trustees use them, rather than 3700-00x?**

Yes. Since these professional categories are specifically broken out as part of the primary UTCs, the trustees need to use them, rather than the catch-all “other professionals” (3991-00x/3992-00x). Please also note that 3700-00x is not a UTC.

- 24) Please describe what type of professionals would be classified as personal property brokers (3991-50x/3991-51x)?**

This sub-code category, if chosen, would include, but not be limited to, stockbrokers, consigners (e.g., Court-appointed jewelers who sell antique jewelry on a consignment basis), and wholesalers (e.g., in a furniture store or car dealer case).

- 25) Please define the term “liquidator.” Is a liquidator a professional?**

The liquidator is a professional who may be hired to settle the affairs of a business by selling its assets to pay creditors. These professionals may advertise their services as “auctioneers/liquidators.” In a bankruptcy case, the liquidator essentially performs the same functions as an auctioneer and should be treated as such for purposes of the UTCs and reporting on Form 4.

26) Is an “agent” or “administrative assistant” hired by the trustee to sell an asset a “liquidator?”

Such a person could be a liquidator. It depends on the tasks assigned. If the person is an employee of the trustee’s office, full or part-time, payment for duties performed which are not overhead will be a trustee expense and, if allowed, reimbursed to the trustee. If the agent or administrative assistant is hired pursuant to court order and will be paid pursuant to court order from assets of the estate, such payments should be reported as “Other Expenses” using the UTC that is applicable based on the services performed (2990-xxx, for example). If the person falls within the definition of liquidator, the payments should be classified as Auctioneer/Liquidator Fees and Expenses (3610-000, 3620-000, 3630-000, and 3640-000). If the person falls within the definition of a “field representative” or “adjuster,” they are usually considered to be a professional and the payments are classified under 3991-xxx and 3992-xxx.

Electronic Form 4 File

27) With respect to submission of the electronic Form 4, we understand that trustees may submit the data files on diskette or by e-mail. Does there need to be a separate data file for each Form 4, or may the trustee combine several Form 4s in a single data file? (Because trustees sometimes submit Trustee Distribution Reports (TDRs) in batches, it would be helpful if a single data file could contain the Form 4 that goes with each TDR included in the batch.)

United States Trustees accept either situation. Trustees have the choice of submitting a separate electronic file for each Form 4, or they may include several Form 4s in one electronic file.

28) Please clarify how the trustee’s name must appear in the electronically transmitted Form 4.

Field #5 (Last Name)	WARD
Field #6 (First Initial, with period)	J.

29) Please clarify how the Version Number must appear in the electronically transmitted Form 4.

This is a text field, with a length of 3 spaces. The version number should be a left-justified single digit within the field. Version 2 of the Form 4 becomes effective starting with the implementation of the UTCs on December 1, 2001, and should be fully implemented not later than July 1, 2002.

Miscellaneous

30) Please indicate the Form 4 classification and UTCs for the following types of distributions:

Accountant for the Debtor Prior Ch. Admin: 6410-xxx for fees and 6420-xxx for expenses.

Chapter 11 Wage Claims Prior Ch. Admin/Other Operating Expenses: 6950-xxx.

Subordinated General Unsecured & Late Filed Claims Subordinated General Unsecured: 7400-00x
Tardy General Unsecured: 7200-00x

Chapter 7 Wage Claims Wages 507(a)(3) if pre-petition wages: 5300-00x
Expenses of Operating Business in Chapter 7 if post-petition wages: 2690-xxx.

31) How will my software handle transactions that need to be split among two or more codes?

Trustees should consult with their chapter 7 computer software provider.

32) Why are some checks recorded as negative deposits (or deposit reversals) and some receipts recorded as negative disbursements?

This convention was established to be consistent with the design and use of Form 2, and to facilitate the review of Form 2. Negative deposits/deposit reversals, for example, result from the reversal of NSF checks and when a check is written to transfer mis-deposited funds to the correct account. Negative disbursements result from voiding an estate check, as well as when the trustee receives a refund of funds previously paid out (e.g., a bond premium refund). As a result of this convention, the totals at the bottom of Form 2 provide the starting point for the computation of trustee compensation.

33) Do elected trustees need to use transaction codes?

Yes. Elected trustees are required to comply with the requirements of the United States Trustee. Handbook, p. 4-2.

- 34) **The definitions of “scheduled” and “unscheduled” assets have been clarified. “Scheduled” now means assets listed on the original schedule and statements. “Unscheduled” means assets added by the debtor on amended schedules and assets discovered by the trustee.**

If the debtor files amended schedules with a change in the value of an originally scheduled asset, does the asset become “unscheduled” under this new definition?

No. The trustee would adjust the petition value of the scheduled asset to match the amended schedules.

- 35) **How should bank service charges and their reversals be recorded?**

Use 2990-000 to record both the assessment and the reversal of bank service charges. The reversal is akin to a refund of an amount previously paid by the trustee and should be reflected on Form 2 as a negative disbursement.

- 36) **Please indicate the UTCs for the following items:**

Utility refunds	1129-000 (Liquidation of Other Schedule B Personal Property) or 1229-000 (Liquidation of Other Personal Property)
Utility payments	2690-000 (Expenses of Operating Ch. 7), if operating case 2420-000 (Costs to Secure/Maintain Property), otherwise
UCC-1 filing fees	2420-000 (Costs to Secure/Maintain Property)
Costs to maintain property while rented or held for sale	2690-000 (Expenses of Operating Ch. 7), if operating case 2420-000 (Costs to Secure/Maintain Property), otherwise
Costs to prepare property for sale	2500-000 (Costs re Sale of Property) – one-time costs only. Use 2420-000 for regular, ongoing maintenance such as mowing the lawn or employing security guards.

- 37) **Does 2420-000 (Costs to Secure/Maintain Property) apply to expenditures to secure and maintain both real and personal property?**

Yes.

38) How should earnest monies or bid deposits be handled?

Earnest monies and bid deposits are received by a trustee in connection with the sale of estate assets. They are not considered to be estate funds until the sale is approved by the Court and consummated. Initially, the earnest monies or bid deposits should be coded to 1180-00x/1280-00x.

Applying the earnest money to the sale can be accomplished in one of two ways. Assume a scheduled painting is sold for \$5,000 and the trustee received a \$1,000 earnest money deposit:

- a) Record the sale in two steps. First, change the UTC for the \$1,000 in earnest money from 1180-00x to 1129-000. Then, record the balance of the sale proceeds (\$4,000.00) as a simple deposit with 1129-000.
- b) Record the sale as a split transaction, as follows:

Gross proceeds	5,000.00	1129-000
Apply earnest money	<u>-1,000.00</u>	1180-000
Net deposit	4,000.00	

With this option, the escrow deposit and the application of the deposit to the sale will net to zero in 1180-000.

If earnest monies need to be returned to unsuccessful bidders, the refund checks are coded with 8500-00x.

39) A scheduled automobile, subject to a \$1,000 exemption, is sold for \$2,500. Since \$1,000 of the sale price is not compensable, is it necessary to divide the deposit between 1129-000 (\$1,500) and 1129-002 (\$1,000)?

No. UTC 1129-000 is used for the full sale price of \$2,500. Wildcard 2 comes into play with the check to the debtor for the exemption. This check is coded with UTC 8100-002.