

IRM PROCEDURAL UPDATE

DATE: 05/26/2020

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SUBJECT: New Third Party Contact Requirements

AFFECTED IRM(s)/SUBSECTION(s): 5.9.3.12.1

IRM 5.9.3.12.1 Updated to reflect new Third Party Contact Requirements.

1. **RRA 98.** To provide protection to the taxpayer regarding IRS's collection and examination activities, legislation was enacted that requires the Service to notify the taxpayer of certain contacts the IRS makes with third parties. (See IRC § 7602(c) and Treas. Reg. § 301.7602-2.)
2. **IRS Third Party Contact Requirements.** For certain third party contacts made for the purpose of collecting or determining a tax liability, as of August 15, 2019 IRC § 7602(c) requires the IRS to:
 - a. Provide notice to the taxpayer at least 45 days prior to contacting a third party.
 - b. State that the IRS intends to contact third parties.
 - c. Specify in the notice the time period, not to exceed a year, in which IRS intends to make the third party contacts. This time period may begin on the 46th day after the date of the notice.
 - d. Provide a list of third-party contacts to the taxpayer "upon request."
3. **A Third Party Contact.** A third party contact has been made when an IRS employee discloses his/her association with the IRS and initiates contact with a person other than the taxpayer and asks questions about a specific taxpayer with respect to the determination or collection of that taxpayer's federal tax liability.

CAUTION: *Unless an adversary proceeding or contested matter exists, contacts made by Insolvency might be considered third-party contacts.*

4. **Exceptions.** IRM 25.27.1.3.2, *Exceptions to IRC 7602(c) Notification Requirements*, through IRM 25.27.1.3.7, *Jeopardy Situations*, list exceptions to the requirement for completing Form 12175, *Third Party Contact Report Form*. Contacts made during litigation, including bankruptcy proceedings, relating to a matter being litigated are not third party contacts and do not require completion of Form 12175. Counsel should be contacted with questions regarding the litigation exception and bankruptcy.

NOTE: Contacts made during a criminal investigation generally are not subject to IRC § 7602(c). A criminal investigation is initiated when an administrative referral based on a firm indication of fraud or other criminal

conduct is made to Criminal Investigation (CI).

CAUTION: *Third party contacts to develop cases for referral to CI are contacts under IRC § 7602(c) and must be reported.*

5. **Third Party Summonses.** A summons issued for an examination (or collection) purpose to a third party with respect to an identified taxpayer is considered a third party contact that must be preceded by advance notice to the taxpayer that third party contacts may be made. IRM 5.17.6.6, *Third Party Summonses Subject to IRC § 7609*. If the third party summons is subject to the notice requirement of IRC 7609(a), such as a summons served on a bank to determine whether a person may be liable for the TFRP, then a post contact record of that third party contact is not required. Treas. Reg. 301.7602-2(e)(4) Example 4.

NOTE: Summonses to determine equity during an exempt, abandoned, or excluded property (EAEP) investigation is considered a third party contact.

6. **Release of Levy.** A release of levy *is considered a third party contact* and, unless approved by the debtor, must be recorded by Insolvency. IRM 5.9.5.8(6) covers third party contacts and release of a levy.

NOTE: Levies should be released immediately, even if no advance third-party contact notice has been given, to avoid violation of the automatic stay.

7. **Attorneys and Trustees.** IRM 5.9.19.3, *CIO Telephone Procedures*, gives details on disclosure to attorneys of record and bankruptcy trustees.
8. **Form 12175 Requirements.** A third party contact must be recorded the date the contact is made (or as soon as possible thereafter) on Form 12175, *Third Party Contact Report Form*. Multiple contacts with the same third party on different dates require a separate Form 12175 for *each contact*. When Form 12175 is completed (instructions are on the reverse of the form), it is forwarded to the Third Party Contact Coordinator at the address found at <http://mysbse.web.irs.gov/Collection/toolsprocesses/3rdParty/contacts/default.aspx>. (See IRM 25.27.1.4, *Recording and Reporting TPCs*, for additional information.)

NOTE: A copy of Form 12175 need not be retained at the local level. The form is retained by the input unit for a year. The form is then forwarded to the records center for retention for ten years.

9. **Third Party Contact Notification to Taxpayers.** The caseworker must send Letter 3164-B, *Third Party Contact Letter*, to the taxpayer before a third party contact is made to collect an assessed tax. Contact cannot be made until the 46th day after the letter has been sent. The notice is valid for one year from the 46th day after sending the notice.

NOTE: If a taxpayer was issued a version of Letter 3164-B that was updated July 2019 or later and the contact will take place within the time period specified in the letter, a new notice is not required.

When the caseworker issues Letter 3164-B, *Third Party Contact Letter*, a TC 971 AC 611 must be input on each tax period included on the letter. See IRM 25.27.1.3, *Notification Requirements* and IRM 5.1.1.12.1, *TPC Advance Notification Procedures*, for more information.

NOTE: As of August 15, 2019, Publication 1, *Your Rights as a Taxpayer*, no longer satisfies the advance notice requirement of IRC Section 7602(c)(1). *Issue Letter 3164, Third Party Contact Letter*, (revised July 2019 or later) to satisfy IRC 7602(c)(1).

10. **AIS Recordation of Contact.** In addition to completing Form 12175 to report third party contacts, Insolvency caseworkers must document third-party contacts and all resulting actions taken in the AIS history. The caseworker must include the name(s) and title(s) of the person(s) contacted, the date of contact, business entity information, if applicable, and the purpose of the contact.
11. **Assistance.** The local Third Party Contact Coordinator or local Counsel is available should additional guidance be needed by FI. CIO should contact the Campus Third Party Contact Coordinator or the Associate Area Counsel assigned to the CIO, if guidance is required.
12. **Taxpayer Authorization.** IRC § 7602(c) does not apply to any contacts the taxpayer has authorized. Form 12180, *Third Party Contact Authorization Form*, may be used to document the taxpayer's authorization. Although oral authorization is allowed, it is preferable to have Form 12180 completed and retained.

NOTE: The taxpayer may not prevent an IRS employee from contacting a third party by refusing to provide prior authorization. IRM 25.27.1, *Third Party Contact Program*, provides additional information.