

IRM PROCEDURAL UPDATE

DATE: 08/09/2023

NUMBER: sbse-05-0823-0877

SUBJECT: Modifications to Letter 3164 Needed While the Automatic Stay is in Effect

AFFECTED IRM(s)/SUBSECTION(s): 5.9.3

IRM 5.9.3.5.1.1(1) Added Tennessee to states that can elect to be a community property state.

(1) **Background.** Community property is a form of marital property rights recognized in nine states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin, as well as Puerto Rico. In California, Nevada, New Mexico and Washington, community property laws also apply to registered domestic partners. Spouses in Alaska, South Dakota, and Tennessee may elect to have community property rules apply to some or all of their property. All property acquired during marriage is presumed to be community property. Generally, property acquired as a gift, as an inheritance, or before marriage is considered separate property. However, the specific rules concerning what constitutes community or separate property are governed by state law and vary among jurisdictions. (See IRM 5.9.18.6.8, Community Property, and IRM 25.18, Community Property, for additional information.)

IRM 5.9.3.1.4(1) Added reference to IG SBSE-01-0223-0007 on report guidance and link to job aid.

(1) IRM 1.4.51.8.3, Case Management Tools, IRM 5.9.12, Insolvency Automated Processes, and IRM 5.9.16, Insolvency Case Monitoring, contain a list of required reports for caseworkers and managers to utilize for inventory management and review of case inventories. These sections also include the frequency and purpose of each report.

Note: On February 22, 2023, IG SBSE-01-0223-0007 was issued to provide SCI Temporary Guidance Related to the Generation, Use and Retention of Business Object Reports (BOE). Additionally, a Report Job Aid was created for FI caseworkers and managers. The Job Aid is available at the Insolvency Knowledge Management Base at <https://portal.ds.irsnet.gov/sites/vl114/pages/default.aspx>.

IRM 5.9.3.12.1(9) Added note stating modifications to Letter 3164 are needed when issuing the letter while the automatic stay is in effect. Counsel should always be consulted.

(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.

Caution: 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).

Note: If after conferring with the Department of Justice or Counsel, the employee determines it is appropriate to contact third parties while the automatic stay is in effect, revise Letter 3164-B to make clear that the IRS is not attempting to collect a pre-petition debt and explain why the intended contact is not a stay violation, such as "we are determining how much you owe rather than how to collect it." Counsel should approve the content of the letter before it is sent to the taxpayer.