



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

December 7, 2015

Control Number: SBSE-05-1215-0077
Expiration Date: December 4, 2016
Impacted IRMs: 5.9.18.2

MEMORANDUM FOR: DIRECTOR, SPECIALTY COLLECTION INSOLVENCY

FROM: Kristen E. Bailey */s/ Kristen E. Bailey*
Director, Collection Policy

SUBJECT: Reissuance of Procedures for Processing Bankruptcy Cases When
the IRS Receives No Notice or Late Notice

The purpose of this memorandum is to reissue interim guidance SBSE-05-1214-0084, Procedures for Processing Bankruptcy Cases When the IRS Receives No Notice or Late Notice, dated December 08, 2014. Please disseminate this information to all affected personnel within your organization.

This memorandum provides interim guidance for processing cases in which the Internal Revenue Service does not receive notice of the bankruptcy filing with sufficient time to file a timely proof of claim before the bar date expires. If late notice is received in a case filed by an individual debtor, the debtor does not receive a discharge of the debt in question. Guidance is given on what constitutes late notice, and the procedures to close these cases so the taxes are not discharged are clarified below. Please disseminate this information to all affected personnel within your organization. These procedures were incorporated into Internal Revenue Manual (IRM) 5.9.5.2.1, 5.9.5.4(6), 5.9.13.7, 5.9.17.7.9 and will be incorporated into IRM 5.9.18.2.

Background

Bankruptcy Code § 523(a)(3) provides that an individual debtor is not discharged of a debt if the creditor does not receive notice in time to file a timely proof of claim because the debtor failed to include the creditor on the schedules and statements. This provision does not apply if the creditor otherwise has timely notice or actual knowledge of the case. This provision applies to Chapter 7 asset, Chapter 11, Chapter 12 and Chapter 13 cases. It does not apply to Chapter 7 no asset cases, as no proof of claim is filed.

The Bankruptcy Code does not give a minimum time period by which a debtor must give notice of the bankruptcy filing to a creditor in order for the notice to be timely. The cases in which the courts have addressed this issue have used varying time periods, with court decisions stating that 30 days is enough time for a creditor to file a proof of claim, but 12 days is not enough. Based on the procedures used by the Internal Revenue Service to create and file a proof of claim, notice received 18 calendar days or more before the latest bar date will be considered to be timely for purposes of determining dischargeability, absent exceptional circumstances. Notice received 30 calendar days or more before the bar date will always be considered to be timely.

Procedural Changes

Before following the procedures below, Field Insolvency employees should first check the creditor mailing matrix, the original Schedules D, E and F, any amendments to Schedules D, E or F, any documents stating an amendment has been made to the creditor mailing matrix, and any other pertinent documents on PACER to determine if the Internal Revenue Service was listed as a creditor prior to receipt of the current notice.

NOTE: When the creditor mailing matrix is amended to add additional creditors, the creditors are added to the matrix but there is no indication to show when they were added. However, any amendments made to the creditor mailing matrix will be shown on the PACER docket report. The method of reflecting these amendments varies between courts. If the Internal Revenue Service is shown on the creditor mailing matrix but the Service did not receive notice, it will be necessary to review the PACER docket report for any docket entries showing amendments to Schedules D, E or F, or showing that amendments were made to the creditor mailing matrix.

If notice was previously given to the correct address at least 30 calendar days before the expiration of the bar date, the notice should be treated as timely even if the Internal Revenue Service did not receive this notice. In this situation, caseworkers should note the details of the prior notice in the history and process the case without following the procedures in this memorandum.

Determining if a Timely Proof of Claim Can be Filed

When notice of a bankruptcy case is received in a Chapter 7 asset, Chapter 11, Chapter 12 or Chapter 13 case filed by an individual when the bar date has expired or is imminent, caseworkers must determine if a proof of claim can still be filed which will either be timely or will still allow the Internal Revenue Service to receive payment in the bankruptcy case. Procedures in this memorandum should be followed for all cases in which notice is received less than 30 calendar days before expiration of the bar date or is received after the bar date has expired.

If the bar date has not expired when notice is received, caseworkers should make every effort to file a proof of claim before the bar date passes. Caseworkers should not refrain from filing a proof of claim in order to have the taxes treated as nondischargeable because the notice was not received timely.

CAUTION: The bar date field in AIS is generally computed as being 90 days from the first date set from the first meeting of creditors. Caseworkers should not rely on this as being the bar date,

but should also compute whether the governmental bar date has not expired using the period of 180 days from the filing of the petition. Additionally, if the bar date has not expired because of some other procedure, such as when a new bar date is set after a case is converted, the bar date should also be considered to be open even if AIS shows it as expired.

If the bar date has expired, but the proof of claim will still be allowed under the provisions of the Bankruptcy Code or under local procedures, the proof of claim should be filed.

Example: The Internal Revenue Service can still receive payment for priority taxes on a proof of claim filed after the bar date in a Chapter 7 asset case if the proof of claim is filed on or before the earlier of: (1) the date that is 10 days after the mailing of the summary of the trustee's final report; or (2) the date on which the trustee commences final distribution of the estate.

Example: In some jurisdictions, a proof of claim is considered to be timely in a Chapter 13 case even when filed after the bar date if the debtor failed to give timely notice of the bankruptcy to the affected creditor.

If notice is received less than 18 calendar days before the bar date or after the bar date has expired, and a late proof of claim will not be allowed under the Bankruptcy Code or local procedures, no proof of claim is required to be filed where the caseworker determines such claim cannot be timely filed. The caseworker should obtain managerial approval for any decision not to file a proof of claim. The caseworker should document the history as to when and how the notice was received, and why it was not possible to file a timely proof of claim. The manager should document the history with a concurrence that a claim should not be filed. The case should then be processed as nondischargeable as set out below.

NOTE: If the notice was received 18 calendar days or more, but less than 30 calendar days before the bar date, the caseworker should consider consulting Area Counsel on whether the courts in the jurisdiction where the case is pending have established a firm date by which notice will be considered to be untimely. The caseworker may also want to consult Counsel if notice was received during this time period and exceptional circumstances, such as a system outage, prevented the caseworker from filing a proof of claim before the expiration of the bar date. When notice is received less than 30 days before the bar date or after the bar date expiration and the caseworker has determined that a proof of claim could not be timely filed, the caseworker should consider whether a suit referral should be made to Counsel. A referral should be made for a suit to determine dischargeability when it is questionable if the notice was untimely before treating the taxes as nondischargeable. Caseworkers should apply the tolerance amounts for referrals, absent exceptional circumstances.

Adding a “NoNotice” Classification to the AIS Case Classification Screen

A new case classification of “NoNotice” has been created on AIS for use in cases in which the debtor did not give timely notice of the bankruptcy case. This classification should only be used for

- Cases filed by individuals under Chapter 7 asset, Chapter 11, Chapter 12 or Chapter 13;

- Notice was given after the bar date or less than 18 calendar days or less before the bar date, or it was determined by Counsel or through litigation that the notice was untimely; and
- No proof of claim was filed.

The “NoNotice” classification will prevent the case from being closed while the classification is still open.

At the time the caseworker determines that a timely proof of claim cannot be filed, the “NoNotice” classification should be added to the case classification screen. Caseworkers should follow the procedures in 5.9.5.4(6) for AIS history documentation.

The history should be documented to include:

- Date notice was received;
- When the bar date expired;
- If notice was received prior to the expiration of the bar date, a detailed explanation as to why a proof of claim could not be timely filed;
- Concurrence by the manager in any decision not to file a proof of claim when notice was received prior to the expiration of the bar date;
- Every opinion received from Counsel; and
- Statement that the liabilities are nondischargeable for lack of timely notice.

Closing Cases in Which Notice was not Given Timely

A new case closure method of “NoNotice” has also been created on AIS. When the “NoNotice” case classification is present, the case should be closed using the “NoNotice” case closure method below.

The procedures for closing Chapter 7 No Asset cases are outlined in IRM 5.9.17.9(4).

Field Insolvency Procedures

For Chapter 11 and Chapter 12 cases, when the discharge is entered in a case with a “NoNotice” classification, Field Insolvency employees should input the discharge date, but should take any closure actions necessary as if the case were dismissed.

Example: The Field Insolvency caseworker may need to arrange for MFT 31 mirroring pursuant to IRM 5.9.17.21, or for reinstatement of an installment agreement.

Field Insolvency caseworkers should take the following actions to close out these cases:

- Input the date the discharge was entered by the court;
- Input the date notice of the discharge was received by the Internal Revenue Service;

- Close the “NoNotice” classification on the classification screen;
- Select the “NoNotice” case closure method;
- Request TC 521 through IIP (Process J); and
- Reinstate any installment agreement(s) if the criteria for reinstatement are met.

CIO Procedures

When Chapter 7 asset and Chapter 13 cases are received for discharge processing and there is a case classification of “NoNotice,” the caseworker should review the history to verify that timely notice was not received by the Internal Revenue Service and that a determination was made that the taxes are nondischargeable. Caseworkers should then follow the instructions in IRM 5.9.18.2 and treat the case as if it were dismissed. The actions to be taken include:

- Inputting the date the discharge was entered by the court, if no notice of the discharge was previously received;
- Inputting the date notice of the discharge was received by the Internal Revenue Service, if it was not previously received;
- Closing the “NoNotice” classification on the classification screen;
- Selecting the “NoNotice” case closure method;
- Requesting TC 521 through IIP (Process J); and
- Reinstating any installment agreement(s).

IRM 5.9.18.2 will be updated in the next revision to include these instructions and to reflect the use of the “NoNotice” case classification and the “NoNotice” closure method.

If you have questions, please contact me, or members of your staff should contact Laura Rau.

cc: Director, Field Collection
www.irs.gov