



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.5.4

JANUARY 18, 2024

EFFECTIVE DATE

(01-18-2024)

PURPOSE

- (1) This transmits a revision to IRM 25.5.4, *Summons, Examination of Books and Witnesses*.

MATERIAL CHANGES

- (1) Material Changes are reflected by the following table.

Subsection:	Change(s) made:
IRM 25.5.4.1.2	Revised to reflect IRC sections relevant to the summons program.
IRM 25.5.4.1.3	Revised to reflect current responsibilities for the summons program.
IRM 25.5.4.1.4	Added information pertaining to periodic summons program reviews.
IRM 25.5.4.1.5	Clarified program controls and added a reference to counsel and CEASO reviews of summons enforcement referrals.
IRM 25.5.4.1.6	Revised table of acronyms.
IRM 25.5.4.2(1)	Added bullets to improve clarity.
IRM 25.5.4.2(3)	Added bullets and Notes to improve clarity.
IRM 25.5.4.2.1	Added bullets to improve clarity.
IRM 25.5.4.3(2)	Added bullets to improve clarity.
IRM 25.5.4.4	Added bullets for clarity where applicable.
IRM 25.5.4.5	Added bullets to improve clarity.
IRM 25.5.4.5.1	Removed alpha lists and placed information about John Doe and dual summonses into (4) (5) & (6) with Caution and Example tags for clarity.
IRM 25.5.4.5.4	Added bullets to improve clarity.

Subsection:	Change(s) made:
IRM 25.5.4.5.8	Added (4) (5) providing information about post SND summonses and added an Example tag to improve clarity.
IRM 25.5.4.5.9	Moved the Note on the use of a consent directive to (4) and added link to IRM 34.6.3.7.
IRM 25.5.4.6(1)	Added bullets for clarity.
IRM 25.5.4.6(4)	Clarified language explaining the use of Form 12175, added a Note for further clarity and added a link to Form 12175.
Throughout	Links to Knowledge Management updated to SharePoint.
Throughout	Replaced references to the Service to IRS .
Throughout	Replaced he/she pronoun usage with neutral terms.
Throughout	Editorial changes, grammatical changes and organizational structure updates were made throughout this section.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 25.5.4, dated January 13, 2020.

AUDIENCE

All operating divisions and functions.

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Small Business/Self-Employed

25.5.4

Examination of Books and Witnesses

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25.5.4.1
(01-13-2020)
Program Scope and Objectives

- (1) The Summons Handbook provides guidelines for all Internal Revenue Service (IRS) functions in one multifunctional handbook.
- (2) **Purpose:** This IRM provides instructional procedures for the Examination of Books and Witnesses, as well as, related procedures for third party contacts.
- (3) **Audience:** All employees authorized to issue or approve summonses.
- (4) **Policy Owner:** Director, Collection Policy, SB/SE.
- (5) **Program Owner:** Collection Policy Enforcement, SB/SE.
- (6) **Primary Stakeholders:** Employees who must examine summoned books and records or who must take summoned testimony, such as; SB/SE Collection, CEASO, SB/SE Exam, LB&I, TE/GE and Criminal Investigation.
- (7) **Program Goals:** Provide guidance and procedures relating to the review of summoned books and records, obtaining testimony and making third party contacts.

25.5.4.1.1
(01-13-2020)
Background

- (1) This section contains guidance regarding the examination of books and records received via summons, the withdrawal of consent to use such records, limitations on summons authority and notice of third party contacts.

25.5.4.1.2
(01-18-2024)
Authority

- (1) Delegation Order 25-1, provides the levels of authority delegated to various IRS employees to approve and perform activities concerning summonses. See IRM 1.2.2.15.1, *Delegation Order 25-1, Summonses, Oaths, Certifications and Related Functions*.
- (2) The provisions of law applicable to IRS summons issuance and enforcement are contained in the following sections of the Internal Revenue Code (IRC):

IRC Sections

Code Section:	Description:
IRC 7602	<i>Examination of Books and Witnesses</i>
IRC 7603	<i>Service of Summons</i>
IRC 7604	<i>Enforcement of Summons</i>
IRC 7605	<i>Time and Place of Examination</i>
IRC 7609	<i>Special Procedures for Third-Party Summonses</i>
IRC 7610	<i>Fees and Costs for Witnesses</i>
IRC 7612	<i>Special Procedures for Summonses for Computer Software</i>
IRC 7622	<i>Authority to Administrate Oaths and Certify</i>
IRC 7402	<i>Jurisdiction of District Courts</i>

Code Section:	Description:
IRC 7210	<i>Failure to Obey Summons</i>
IRC 6420(e)(2); IRC 6421(g)(2); and IRC 6427(j)(2)	<i>Generally pertaining to the taxation of gasoline and fuel sales</i>
IRC 6503(j)	<i>Designated and Related Summons</i>

25.5.4.1.3
(01-18-2024)
Responsibilities

- (1) The Director Headquarters Collection is the executive responsible for providing policy and guidance for IRS employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayer rights. See IRM 1.1.16.3.3, *Headquarters Collection*, for additional information.
- (2) The Director Collection Policy reports to the Director Headquarters Collection, and is responsible for the delivery of policy and guidance that impacts the summons program. See IRM 1.1.16.3.3.1, *Collection Policy*, for additional information.
- (3) The Program Manager Enforcement reports to the Director, Collection Policy and is responsible for providing policy and procedural guidance on specialized processes to IRS employees. See IRM 1.1.16.3.3.1.2, *Enforcement*, for additional guidance.
- (4) Paragraph (9) of Delegation Order 25-1, lists the IRS employees delegated to issue and serve summonses except John Doe summonses. See IRM 1.2.2.15.1, *Delegation Order 25-1, Summonses, Oaths, Certifications, and Related Functions*.

25.5.4.1.4
(01-18-2024)
Program Management

- (1) In general, the IRS should issue summonses only when the information is not already in the IRS's possession, and the taxpayer (or other witness) will not produce the desired records or other information voluntarily. A summons is specific to each case. There are no program reports that track summonses. Group Manager approval is required for third party summonses, providing case by case oversight. See IRM 1.2.2 *Service-wide Delegations of Authority*.
- (2) Program Analysts in Collection Policy Enforcement will periodically review summonses issued by revenue officers to ensure taxpayer rights were protected during the summons process and to determine that all standards for preparation, issuance and service of the summonses were met.
- (3) Periodic program reviews are conducted by Field Exam Special Processes to assess the effectiveness of the summons program for Examination, determine if procedures are being followed, validate policies and procedures, and to identify and share best/proven practices.

25.5.4.1.5
(01-18-2024)
Program Controls

- (1) The IRS employee who issued the summons keeps a copy of the original summons, Page 1 of the summons labeled **Original**. The original summons is needed when referring a summons for enforcement. All summonses and related documents (such as, records received or interview notes) should be maintained in the administrative case file.
- (2) Certain summonses require managerial approval. See IRM 1.2.2.15.1, *Delegation Order 25-1, Summonses, Oaths, Certifications, and Related Functions*, for summons authorities. When summons approval is required, it is necessary for the IRS employee who issued the summons to maintain the proper approval records associated with each summons. All approved summonses, approval memoranda and counsel review documents, where applicable, should be maintained with the summons in the administrative case file.
- (3) Counsel (and in some areas, CEASO) review requests to enforce summonses.

25.5.4.1.6
(01-18-2024)
Definitions and Acronyms

- (1) Definitions pertaining to summonses served on third party witnesses can be found in IRM 25.5.6.3, *Definitions*. The table below lists commonly used acronyms and their definitions.

Acronyms

Acronym	Definition
CI	Criminal Investigation
CEASO	Civil Enforcement Advice & Support Operations
DOJ	Department of Justice
ICS	Integrated Collection System
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB&I	Large Business and International
RRA 98	Restructuring and Reform Act of 1998
SB/SE	Small Business/Self Employed
SND	Statutory Notice of Deficiency
TBOR	Taxpayer Bill of Rights
TE/GE	Tax Exempt and Government Entities
TPC	Third Party Contact
U.S.C	United States Code
W & I	Wage and Investment

25.5.4.1.7
(01-13-2020)

Related Resources

- (1) IRM 25.5, *Summons*, provides guidelines for all IRS functions in one multifunctional handbook. The sections are:
 - IRM 25.5.1, *Introduction*.
 - IRM 25.5.2, *Preparation*.
 - IRM 25.5.3, *Procedures*.
 - IRM 25.5.4, *Examination of Books and Witnesses*.
 - IRM 25.5.5, *Summons for Taxpayer Records and Testimony*.
 - IRM 25.5.6, *Summonses on Third Party Witnesses*.
 - IRM 25.5.7, *Special Procedures for John Doe Summonses*.
 - IRM 25.5.8, *Use of Summons Special Applications*.
 - IRM 25.5.9, *Fees and Costs for Summoned Witnesses*.
 - IRM 25.5.10, *Enforcement of Summons*.
- (2) The basic legal concepts governing the use and enforcement of administrative summonses can be found in IRM 5.17.6, *Legal Reference Guide for Revenue Officers, Summonses*.
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already exist in the tax code, putting them in simple language and grouping them into 10 broad categories. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), *Execution of Duties in Accord with Taxpayer Rights*. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights> and IRM 1.2.1.2.36, *Policy Statement 1-236, Fairness and Integrity in Enforcement Selection*.
- (4) Additional summons guidance can be found on the *Summons Knowledge Base*.

25.5.4.2
(01-18-2024)

Purpose of Examination of Books and Witnesses

- (1) A summons may only be issued to examine books, papers, records or other data of taxpayers and third parties and to obtain testimony under oath that may be relevant or material in:
 - Ascertaining the correctness of any return.
 - Making a return where none has been made.
 - Determining a tax liability.
 - Collecting such liability.
 - Inquiring into any offense connected with the administration or enforcement of the Internal Revenue laws (IRC 7602).
- (2) Any person having knowledge relating generally to a tax investigation may be required to testify and produce records that may be relevant to the investigation. Information may be obtained by a summons to identify records a witness possesses by interviewing the witness under oath. A subsequent summons may then be issued to compel the production of records. The summons requiring production of records should not be oppressive or unreasonable, for a summons may be held to be so onerous as to constitute an unreasonable search.
- (3) IRC 7609 does not restrict the authority of the IRS to examine any books or witnesses without issuing a summons, nor does it require the IRS to give notice in the case of an examination without a summons. IRC 7609(j) expressly provides that nothing in IRC 7609 shall be interpreted as limiting the IRS's ability to obtain information, other than by summons, through formal or

informal procedures authorized by IRC 7601 and IRC 7602. Credentials or circular letters citing IRC 7602 authority may be used to obtain records from financial institutions except when:

- The financial institution is located in the Tenth Circuit (for a list of Tenth Circuit states, see IRM 25.5.1.3.1(2), *Documents from Financial Institutions in the Tenth Circuit*),
- The information sought concerns taxpayers residing in the Tenth Circuit (regardless of where the financial institution is located), or
- The IRS office is located in the Tenth Circuit (regardless of where the financial institution is located or where the taxpayer resides). Refer to IRM 25.5.1.3.1, *Documents from Financial Institutions in the Tenth Circuit*

Note: In these circumstances the IRS must issue a third-party summons and follow IRC 7609 procedures.

Reminder: Circular letters may not disclose that the taxpayer is under criminal investigation.

- (4) Apart from payments made for public records, payments for expenses incurred in providing information are authorized under IRC 7610 when issuing a summons or when receiving information informally under IRC 7609(j).
- (5) A summons can only require a witness to appear on a given date to give testimony and to bring existing books, papers, and records. A summons cannot require a witness to prepare or create documents, including tax returns, that are not currently in existence.

25.5.4.2.1
(01-18-2024)
Collection

- (1) By issuing an administrative summons, the IRS cannot force a taxpayer to create a document, including a Collection Information Statement or a delinquent tax return. However, if a summoned taxpayer is willing to do so, collection personnel are authorized to:
 - Prepare or assist the taxpayer in preparing such statements or returns based on the records produced, and
 - Prepare summaries or lists from books, papers, records, and testimony obtained at the time of examination.

25.5.4.2.2
(10-04-2006)
Criminal Investigation

- (1) A summons may not be used in aid of a grand jury investigation but may be used in an administrative investigation.

25.5.4.2.3
(10-04-2006)
Examination

- (1) Consult Associate Area Counsel for alternatives if serving a summons is not feasible.

25.5.4.3
(01-18-2024)
Administering an Oath

- (1) Depending on the facts of the case, an examiner may decide to administer an oath to the taxpayer and/or witness at the beginning of the interview. Review IRM 25.5.1.2.6, *Authority to Administer Oaths and Certifications*, to determine who has the authority to administer an oath.

- (2) The oath can be administered in the form of a question or statement. The examiner will have the witness stand and have the witness raise their right hand. The examiner can:
 - Ask the witness to repeat the following statement, "I solemnly swear or affirm that the evidence that I shall give, shall be the truth, the whole truth, and nothing but the truth." or
 - Ask the witness, "Do you solemnly swear or affirm that the evidence that you shall give shall be the truth, the whole truth, and nothing but the truth?"

25.5.4.4
(01-18-2024)

**Withdrawal of Consent
to the Use of Records**

- (1) An owner of records, who produces summoned records to the IRS without being ordered to do so by a court, may at any time request their return. Such a request constitutes a withdrawal or revocation of consent to the use of records. The request may be formal or informal, written or oral, regardless of phrasing.

Note: If a court order is issued for the enforcement of the summons, the owner of the records cannot withdraw consent to the use of the records.

- (2) Promptly photocopy records after their receipt and return them to the owner of record in the following circumstances:
 - If there is reason to believe that consent will be withdrawn, or
 - When an owner of records provides the sole set (whether originals or copies) of records.
- (3) The IRS is entitled to retain copies that are made before a summoned owner of records withdraws consent to the use of records.
- (4) Honor a withdrawal of consent even if the owner of the summoned records retained copies of the records provided to the IRS.
- (5) When consent is withdrawn, use of the records, including photocopying, should cease.
- (6) If consent is withdrawn and the records are no longer needed, return the records to the summoned owner of records.
- (7) If consent is withdrawn and the records are still needed:
 - a. Immediately seal them in an appropriate container.
 - b. Mark the container with the date and time sealed.
 - c. Secure the records according to area guidelines. This should occur on the date that consent to use of the records is withdrawn.
- (8) Within two workdays of the withdrawal of consent, advise the summoned owner of records in writing:
 - That the records have been sealed and secured.
 - The records will not be used effective from the date and time the request was received.
 - The IRS will seek to enforce the summons.
 - The records will not be returned pending the enforcement of the summons.
- (9) Retain copies of the letter to the summoned owner of records for the case file and for the summons referral.

- (10) Within three workdays from the date of receiving the withdrawal of consent, refer the summons to the appropriate function. The three workdays include the date of receipt of the withdrawal of the consent. See IRM 25.5.10, *Enforcement of Summons*.
- (11) If notified that the summons will not be enforced, immediately arrange to return the records to their owner.

25.5.4.5

(01-18-2024)

Limitations on Authority to Summon

- (1) To be valid and enforceable, a summons must:
 - Seek information that may be relevant to the investigation.
 - Be issued pursuant to a proper purpose.
 - Seek information the IRS does not already possess.
 - The IRS must have followed all of the administrative steps required by the Internal Revenue Code.
- (2) These requirements apply to all summonses, whether served on a taxpayer or a third-party witness. The IRS should never serve a summons that makes arbitrary, irrelevant, unreasonable, or oppressive demands. Other limitations on information that can be summoned are discussed in the following subsections.

25.5.4.5.1

(01-18-2024)

Relevancy and Materiality of Summoned Information

- (1) As required by IRC 7602(a)(2), all summoned information must be of a type that “may be relevant or material” to the IRS’s investigation.
- (2) The “may be relevant” standard of IRC 7602 means any information that “might shed light” on the correctness of the taxpayer’s return (or any other proper issue in a legitimate investigation, such as the location of collectible assets). The word “might” in this standard means that the IRS has a realistic expectation, rather than an idle hope, that something useful may be discovered.
- (3) It is important to note that when seeking records of a third party, the standard of relevancy is slightly higher. The IRS must show a transactional connection between the third-party’s records and the taxpayer’s activities that are being investigated.
- (4) A summons cannot be issued for an improper or ulterior purpose. For example, a summons cannot be issued to harass the taxpayer, to pressure the taxpayer into settling collateral disputes, or for any other purpose adversely reflecting on the good faith of the investigation.
- (5) Special John Doe procedures must be used when the sole purpose of a summons is to investigate the tax liabilities of unknown and unidentified persons. See IRM 25.5.7, *Special Procedures for John Doe Summonses*.
- (6) The Supreme Court has ruled that the IRS is not required to serve a John Doe summons when, during an investigation of a known taxpayer’s liability, it serves one summons to obtain information that may be relevant to the known taxpayer’s liability and to obtain the names of other taxpayers that the IRS wishes to investigate. This is known as a dual-purpose summons. However, the IRS must show that the identities of the unknown taxpayers may be relevant to the investigation of the known taxpayer.

Caution: Counsel should be consulted for advice before the issuance of a dual purpose summons.

Example: The IRS is investigating a tax shelter promoter's potential liability under IRC 6700. As part of this investigation, the IRS issues a summons requiring the promoter to produce records identifying those persons to whom they sold partnership interests. The summons is enforceable because the summoned records are relevant to the investigation and calculation of the promoter's liability. This is true even though the summons serves the dual purpose of identifying unknown taxpayers that the IRS wishes to investigate.

- (7) Books and records sought by the summons must be of a type that may be relevant to the tax investigation and must be described with reasonable detail in the summons, including the periods relating to the investigation. Clearly explain the relevance of records requested for periods outside of the investigation time frame. This explanation should appear in the agent's declaration.

25.5.4.5.2
(10-04-2006)

**Examinations Barred by
Statute of Limitations**

- (1) The statute does not require the IRS to show probable cause to suspect fraud. Where a summons has been served covering a closed year, the government need only show that the summons meets the requirements for validity described above in IRM 25.5.4.5, *Limitations on Authority to Summon*. However, if the taxpayer's books of account have already been inspected, and the IRS has determined that a second inspection is necessary, the IRS must give notice under IRC 7605(b) as discussed below in IRM 25.5.4.5.3, *Statutory Restrictions on Unnecessary Examinations*.
- (2) A taxpayer seeking to prevent enforcement of a summons because it covers closed years has the burden of showing it would be an abuse of court process. The taxpayer does not satisfy that burden by merely showing the statute of limitations has expired or the records have already been examined.

25.5.4.5.3
(07-14-2015)

**Statutory Restrictions
on Unnecessary
Examinations**

- (1) IRC 7605(b) provides that no taxpayer shall be subjected to unnecessary examinations or investigations of their tax liability and that only one inspection shall be made of a taxpayer's books of account for each taxable year except upon notice from the Commissioner or upon the taxpayer's request.
- (2) Review IRM 1.2.2.5.7, *Delegation Order 4-7, Notice of Additional Inspection of Books of Account*, to determine who can sign the notice to the taxpayer stating an additional inspection is necessary.
- (3) The taxpayer may refuse access to their records until they have been given notice in writing.
- (4) The limitations imposed by IRC 7605(b) apply only to the taxpayer under investigation and not to a third party.
- (5) The facts of each investigation will determine whether enforcement of a summons to examine records will be prohibited as unnecessary. While the IRS can summon persons having information or documents that may be relevant to the investigation, the IRS should never issue a summons to pursue a "fishing expedition" for information unrelated to the taxpayer's liability. Such a summons will not meet the requirements of *United States v. Powell*, 379 U.S. 48 (1964).

- (6) Once an examination is open, the examination continues until the Area closes the investigation. Therefore, a subsequent review of the taxpayer's books and records is not considered a second examination when performed pursuant to a continuing investigation.

25.5.4.5.4
(01-18-2024)
**Statutory Limitations on
Issuing a Summons
After a DOJ Referral**

- (1) No summons may be issued nor summons litigation commenced if a DOJ referral is in effect with respect to the taxpayer pursuant to IRC 7602(d). A DOJ referral is in effect if:
- The IRS recommends to the Attorney General that a grand jury investigation of, or a criminal prosecution of, such person be commenced for any offense connected with the Internal Revenue laws, or
 - The Attorney General (or Deputy Attorney General or Assistant Attorney General) makes a written request to the IRS for any return or return information relating to a taxpayer which sets forth the need for disclosure for tax administration purposes.
- (2) A DOJ referral ceases to exist when the Attorney General notifies the IRS, in writing, that:
- The taxpayer will not be prosecuted for any offense connected with the administration or enforcement of the Internal Revenue laws.
 - A grand jury investigation will not be authorized with respect to such offense.
 - Any such grand jury investigation will be discontinued.
 - A final disposition has been reached in a criminal proceeding, instituted by the Department of Justice against the taxpayer, relating to the enforcement of the Internal Revenue laws (this notification does not have to be in writing).
 - The Department of Justice will not prosecute such person for any offense connected with the administration or enforcement of the Internal Revenue laws relating to any written request for any return or return information. This notice could be from the Attorney General, Deputy Attorney General or Assistant Attorney General.
- (3) A DOJ referral remains in effect until it is terminated in accordance with the preceding section. Summonses may not be issued to obtain information in response to a DOJ request for supplemental investigation. Consult Associate Area Counsel before serving a summons where CI and Associate Area Counsel are considering whether the case should be resubmitted to DOJ under protest procedures.
- (4) Treat each taxable period (or, in the instance of excise taxes, each taxable event) separately. The IRS may issue a summons for one taxable year even if a DOJ referral is in effect for another taxable year. Consult Associate Area Counsel before issuing a summons if any tax year or event has a current DOJ referral in effect.
- (5) If CI decides to refer a recommendation of criminal prosecution or grand jury investigation to DOJ, seek the advice of Associate Area Counsel about issuing or seeking enforcement of any additional summonses.

- 25.5.4.5.5
(08-16-2011)
Statutory Limitations of IRC 7609 on Summoning Information from a Third Party
- (1) The IRS must meet the procedural requirements of IRC 7609 when summoning a third party to produce a taxpayer's records or to give testimony. All parties not exempt from notice under IRC 7609(c)(2) must be given no less than 23 full days after the date notice is given to file a petition to quash the summons. Therefore, set the appearance date no earlier than the 24th day after giving notice. These requirements are discussed in detail in IRM 25.5.6, *Summonses on Third-Party Witnesses*.
- 25.5.4.5.6
(07-14-2015)
Statutory limitations on Acquiring Credit Reports From a Consumer Reporting Agency-Summons Required
- (1) The Fair Credit Reporting Act (FCRA) restricts the means by which the IRS can obtain a taxpayer's credit report from a consumer reporting agency. The IRS must not try to obtain a credit report by informal means. Where the IRS has an assessment lien against the taxpayer, has reduced a taxpayer's liability to judgment, or has entered into an offer in compromise or settlement agreement with the taxpayer (i.e. the credit report is used to collect an assessed tax), the IRS can obtain a full credit report pursuant to 31 USC 3711(h)(2) without issuing a summons.
- (2) The IRS must serve an IRC 7609 third-party summons on the consumer reporting agency when the purpose of the summons is not to assist in collecting an assessed tax. The consumer reporting agency must produce the summoned materials unless a noticee files a timely petition to quash. It is not necessary for the IRS to obtain a district court order enforcing the summons before the consumer reporting agency is allowed to produce the summoned documents. The consumer reporting agency may rely on the IRS's certificate stating that the consumer has not filed a timely petition to quash. This certificate is found on the reverse of the summons form and is titled "Service of Summons, Notice and Recordkeeper Certificates."
- (3) The Fair Credit Reporting Act allows a consumer reporting agency to provide government agencies with a consumer's name, address, former addresses, places of employment, or former places of employment. The IRS can obtain this information without issuing a summons. As indicated above, the IRS can also obtain a credit report without a summons if the sole purpose of securing the report is to collect an assessed tax.
- 25.5.4.5.7
(10-04-2006)
Limitations on Summoning Tax Accrual Workpapers
- (1) See IRM 4.10.20 , *Requesting Audit, Tax Accrual, or Tax Reconciliation Workpapers*, for detailed procedures for requesting audit, tax accrual, or tax reconciliation workpapers.
- 25.5.4.5.8
(01-18-2024)
Effect of a Statutory Notice of Deficiency Or a Tax Court Proceeding On a Summons
- (1) The Tax Court has established a framework for determining when it is appropriate to prevent summoned information from being entered into evidence if the IRS's use of a summons conflicts with the court's interest in administering its discovery rules.
- (2) If a summons is issued after a Tax Court petition is filed and that summons pertains to the same taxpayers and same taxable years as those before the court, the court will exercise its supervisory power and exclude the information, unless the IRS can show the summons was issued for sufficient reason, independent of that litigation. If the post-petition summons pertains to different taxpayers or different taxable years as those before the court, the court will not normally exercise its supervisory power unless the taxpayer can show a lack of an independent and sufficient reason for the summons.

- (3) In all but extraordinarily rare cases, the IRS must not issue a summons after a Statutory Notice of Deficiency (SND) is mailed to the taxpayer to continue the investigation of the same taxable periods and liabilities covered by the SND. After an SND is mailed, the IRS should no longer be in the process of gathering the data to support a determination because the SND represents the IRS's presumptively correct determination and indicates the examination has been concluded. If the IRS issues a summons after mailing the SND, this could be perceived as an effort to circumvent the Tax Court's discovery processes, which might lead the court to exclude the summoned evidence.
- (4) It may be appropriate to issue a summons after an SND has been mailed **but before a Tax Court petition has been filed** in rare situations in which an **independent and sufficient reason exists to justify this action**.

Example: An example of an independent and sufficient reason is when the IRS is approached by a confidential informant after an SND is mailed. The informant identifies an issue that was not found during the examination, such as a hidden source of unreported income, and the IRS needs to obtain evidence to prove the existence and amount of this income.

- (5) In any case where the IRS seeks to issue a summons after an SND is mailed, the IRS should obtain Associate Area Counsel's approval before issuing the summons. If Field Counsel approves the summons, the IRS should make a record for its administrative file of the circumstances that gave rise to the post SND summons and why Field Counsel concluded the circumstances justified the summons. This information may be necessary if the taxpayer seeks to exclude the summoned information from the Tax Court record.

25.5.4.5.9
(01-18-2024)
**Compelling a Taxpayer
To Sign a Consent
Directive To Obtain
Foreign Records**

- (1) During an investigation, the IRS may need access to books and records outside the United States, such as a taxpayer's foreign bank account records. Foreign entities or individuals may refuse to release the records without the taxpayer's consent, which they can give by signing a consent directive. A consent directive, sometimes known as a disclosure directive, is a document signed by a taxpayer that authorizes and directs a specific foreign person (a bank, trustee, or other entity or individual) who possesses documents belonging to or controlled by the taxpayer, to disclose those documents to the IRS.

Example: A situation where a consent directive is useful is when the IRS summonses a U.S. branch of a foreign bank or a U.S. bank with a foreign subsidiary. The bank will claim that it cannot produce records without violating the bank secrecy laws of the foreign jurisdiction. The consent directive, when signed by the taxpayer, gives the bank assurance to comply with the summons without violating the bank secrecy laws of the foreign jurisdiction.

- (2) In some cases, a consent directive can be obtained voluntarily from the taxpayer. When a consent directive is obtained voluntarily, some foreign countries will view this favorably and will allow compliance with the consent directive.
- (3) A summons cannot be used to directly compel a taxpayer to sign a consent directive. However, if a summons for the foreign records is served on the taxpayer while in the United States, a federal district court can enforce the

summons by directly ordering the taxpayer to produce the documents in their custody or control. Moreover, the IRS can seek an order under IRC 7402(b) compelling a taxpayer to sign a consent directive authorizing the foreign institution to produce its records. Some countries may not honor a consent directive that was compelled by court order.

- (4) Consult with Area Counsel prior to considering a Consent Directive. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel (International). See *CCDM 34.6.3.7, Chief Counsel Directives Manual - Issuance of Summons for Books and Records Abroad*, for guidance. Any summons drafted for this purpose must receive pre-issuance review by the appropriate Associate Area Counsel office.

Note: Do not use a consent directive to acquire records from a domestic financial institution.

25.5.4.6 (01-18-2024)

Notice of Contact With Third Parties

- (1) IRC 7602(c) requires that the IRS:
 - Issue advance notice of third-party contacts.
 - Intend to contact third parties at the time notice is issued.
 - Specify the time period, not to exceed one year, which the IRS intends to make third-party contact(s).
 - Send the notice at least 45 days before the first contact with a third-party.
 - Record the third-party contact.
 - Provide a list of third-party contacts to the taxpayer upon request.
- (2) The Taxpayer First Act amended IRC 7602(c)(1) and revised the requirements for providing advance Third Party Contact (TPC) notice after August 16, 2019. Advance notice stating the IRS's intent to contact third parties within a specified time period, not to exceed one year, must be issued at least 45 days before contact with a third party. Before issuing a third-party summons, IRS employees must ensure that the required advance notice has been provided and should not issue the third-party summons until the 46th day following the date that advance notice of third-party contacts was provided as is required by IRC 7602(c). For further guidance, see IRM 25.27.1.3.1, *TPC Notification Procedures*.
- (3) IRC 7602(c), **Notice of contact of third-parties**, does **not** apply when:
 - The taxpayer has authorized contact,
 - A notification would jeopardize collection of any tax,
 - A notification would result in reprisal against any person, or
 - There is a pending criminal investigation.
- (4) If a third-party contact is made, complete Form 12175, *Third-Party Contact Report Form*, for each contact made. A copy of Form 12175 will be retained in the case file and a copy will be faxed to the third-party contact coordinator (for the IRS employee's state). The third-party contact coordinator will provide the record of contacts to the taxpayer upon request. A listing of *third-party contact coordinators* is available on IRS SharePoint.

Note: When revenue officers use the Integrated Collection System (ICS) to generate a third party summons or to document a third party contact, ICS captures the TPC record electronically. As a result, Form 12175 does not need to be

completed. However, if the revenue officer generates a third-party summons or contact manually, outside of ICS, the Form 12175 must be completed and faxed pursuant to these procedures.

- (5) Serving a third-party summons is a third-party contact. However, third-party summonses subject to the notice requirement under IRC 7609(a) do not require a third-party contact record (Form 12175 or electronic processing through ICS) be made or provided to the taxpayer because the taxpayer has been given a similar record pursuant to another statute (the 7609(a) notice).
- (6) The following third-party summonses are excepted from the IRC 7609 notice requirements under IRC 7609(c)(2) and therefore a third-party contact record Form 12175 (or electronic processing through ICS) must be completed for:
 - Summonses issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.
 - Summonses issued solely to determine the identity of any person having a numbered account with a bank. In general, numbered bank accounts should no longer exist with legitimate U.S. financial institutions so this exception is very limited in its present scope. Consult with Area Counsel if you are dealing with a third-party summons for which a court, pursuant to IRC 7609(g), has authorized service without giving notice under IRC 7609(a).
 - Summonses issued in aid of collection.
- (7) For further guidance, see IRM 4.10.1.2.1.14, *Notification of Potential Third Party Contacts*, IRM 4.11.57, *Third Party Contacts*, and IRM 25.27.1, *Third Party Contact Program*.

