



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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MEMORANDUM FOR DISTRICT COUNSEL,

FROM: Lawrence H. Schattner
Chief, Branch 3 (General Litigation)

SUBJECT:

We have reviewed your proposed advice to the Chief, Examination Division, , and we have the following comments. We concur with the proposed consent directives as drafted. Per our e-mail messages, the proposed summonses should be redrafted to request documents for the period January 1, 1996, through December 31, 1997, since the 1996 and 1997 tax years are being examined, and it does not appear from the information that you have provided that documents for prior and subsequent periods are relevant to the examination.

You recommend against issuing a Formal Document Request pursuant to I.R.C. § 982 at the present time. However, you recommend that a summons be issued to the taxpayers for the information, and if the taxpayers fail to provide the requested information, that the district consider issuing a Formal Document Request. If a summons is issued and the taxpayers do not provide the requested information, the district should seek enforcement of the summons. IRM (42)220 provides that the procedures under section 982 may be used as an alternative to issuing a summons under section 7602 where service of the summons cannot be made. However, the IRM instructs that the Formal Document Request is not an attractive alternative to the summons where the records are needed to determine liability. Apparently, the district will not have a problem serving the summons in this case. Therefore, we advise that a summons be issued as opposed to a Formal Document Request.

Under section 982 (e), the statute of limitations on assessment will be suspended if the taxpayers file a motion to quash the Formal Document Request.

With regard to the summonses, you propose that two summonses be issued to the taxpayers. One summons will request production of documents not expressly related to offshore bank accounts. The other summons will request production of documents specifically related to offshore bank accounts, brokerage accounts, trust accounts, etc. You recommend that if the taxpayers fail to comply with the first summons that the second summons be issued. We do not fully understand the strategy for issuing two summonses, although we admit that there may be practical reasons for doing so. The taxpayers have maintained that some or all of the non-bank information is located abroad and that it is difficult for them to retrieve the information. If the taxpayers start to produce some documents, a court considering enforcement may well be inclined to give the taxpayers more time to produce given the foreign location of the records. Whereas, no such defenses would be available with respect to the bank records.

If the taxpayers refuse to comply with the summonses, the district should seek enforcement of the summonses under section 7402(b). At the enforcement proceeding, the government will request the court to order the taxpayers to sign the consent directive pursuant to section 7402(a) if the requested documents cannot be obtained through the summons enforcement process.

We agree with you that summonses should not be issued to United States branch banks whose headquarters are located in Taiwan. Based on the information that you have provided we do not believe that the branch banks have custody or control over the documents that are located in Taiwan, and they could defend their noncompliance on that basis. You should advise the district not to issue summonses to the branch banks, not because of the separate entity rule, but because the district determined that the branch banks do not have custody or control of the Taiwan based documents.

We have two other suggestions regarding the wording of the summons attachment. The use of the term "gift(s)" may be detrimental to the case since the term could be interpreted in a technical sense. We suggest that the summons refer to "gift(s) or transfer(s)." Finally, item 3 (Attachment A) or item 4 (Attachment C), should be eliminated. We should not use the summons to draw legal conclusions, only to request production of documents and/or testimony.

In conclusion, we recommend the following:

1. Issue one summons to the taxpayers requesting off-shore bank account information and one summons for non-bank account information, or issue one summons for off-shore bank account information as well as non-bank account information.

2. If the taxpayers fails to comply with the summonses, or to the extent that the taxpayers refuse to turn over the requested information, the district should be advised to seek enforcement of the summonses.

3. The district should be advised that at the summons enforcement proceeding, the government will request the court to order the taxpayers to sign the consent directive.



If you have any questions, please call me at (202) 622-3630.