



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

25.5.1

MARCH 17, 2021

## EFFECTIVE DATE

(03-17-2021)

## PURPOSE

- (1) This transmits a revision to IRM 25.5.1, Summons, Introduction.

## MATERIAL CHANGES

- (1) IRM 25.5.1.1: Subsection was renamed and expanded to provide internal controls information.
- (2) IRM 25.5.1.1.2(2): Moved the provisions of law applicable to IRS summons issuance and enforcement to IRM 25.5.1.1.2(2).
- (3) IRM 25.5.1.2: Subsection was renamed and a reference was added to IRM 1.2.2.14.1, Delegation Order 25-1, Summonses, Oaths, Certifications and Related Functions.
- (4) IRM 25.5.1.2.1: Revised to agree with IRM 25.5.7, Special Procedures for John Doe Summonses and lists many of the high ranking individuals authorized to issue John Doe Summonses. Notes were added to clarify that Delegation Order 25-1 should be reviewed for a list of other employees with this authority and that approval from a US District Court is required before a John Doe Summons can be served.
- (5) IRM 25.5.1.2.2(1): Added a reference to IRM 1.2.2.14.1 and a Note advising that Delegation Order 25-1 should be reviewed for a list of other employees with this authority.
- (6) IRM 25.5.1.2.3(1): Lists many of the IRS employees authorized to issue summonses requiring approval (except "John Doe" summonses) and added a reference to IRM 1.2.2.14.1. A Note advises that Delegation Order 25-1 should be reviewed for a list of other employees with this authority.
- (7) IRM 25.5.1.2.3(2): Clarified instructions for summons approval when the approving official signs the summons and when the approving official does not sign the summons.
- (8) IRM 25.5.1.2.4: Lists many of the IRS employees authorized to serve summonses and added a reference to IRM 1.2.2.14.1. A Note advises that Delegation Order 25-1 should be reviewed for a list of other employees with this authority.
- (9) IRM 25.5.1.2.5(1): Note refers to Delegation Order 25-1 with a link to IRM 1.2.2.14.1.
- (10) IRM 25.5.1.2.5(2): Lists many of the IRS employees who may be delegated to set the time and place of examination, to receive and examine summonsed information and to take the summonsed person's testimony under oath. A Note explains that Delegation Order 25-1 should be reviewed for a list of other employees with this authority.
- (11) IRM 25.5.1.2.6(1): Note refers to Delegation Order 25-1 with a link to IRM 1.2.2.14.1.
- (12) IRM 25.5.1.3.1(1): Note directs the reader to a discussion of IRC 7609(j), enacted by RRA 98.
- (13) IRM 25.5.1.3.1(3): Added references to IRC 7602, IRC 7609, Form 12470 and Letter 1040.
- (14) IRM 25.5.1.3.3(1): Added references to Form 12470 and Letter 1040.
- (15) Replaced "examiner" with "IRS employee" throughout this IRM.

- (16) Replaced “the Service” with “the IRS” throughout this IRM.
- (17) The revisions to this IRM section include editorial changes, formatting, and IRM reference corrections throughout.

#### **EFFECT ON OTHER DOCUMENTS**

IRM 25.5.1, dated September 10, 2014, is superseded.

#### **AUDIENCE**

All operating divisions and functions.

Kareem Williams  
Acting Director, Collection Policy  
Small Business Self Employed

---

25.5.1

Introduction

## Table of Contents

### 25.5.1.1 Program Scope and Objectives

#### 25.5.1.1.1 Background

#### 25.5.1.1.2 Authority

#### 25.5.1.1.3 Responsibilities

#### 25.5.1.1.4 Program Management

#### 25.5.1.1.5 Program Controls

#### 25.5.1.1.6 Definitions and Acronyms

#### 25.5.1.1.7 Related Resources

### 25.5.1.2 Summons Authority

#### 25.5.1.2.1 Authority to Issue “John Doe” Summonses

#### 25.5.1.2.2 Authority to Issue Summonses Except “John Doe” Summonses

#### 25.5.1.2.3 Authority to Issue Summonses Requiring Approval (Except “John Doe” Summonses)

#### 25.5.1.2.4 Authority to Serve Summonses

#### 25.5.1.2.5 Authority to Designate the Persons Who May Receive Summoned Testimony and Information

#### 25.5.1.2.6 Authority to Administer Oaths and Certifications

### 25.5.1.3 Factors to Consider Before Issuing a Summons

#### 25.5.1.3.1 Documents from Financial Institutions in the Tenth Circuit

#### 25.5.1.3.2 Documents from Financial Institutions Located in Circuits Other than the Tenth Circuit

#### 25.5.1.3.3 Considerations and Limitations on Issuance of a Summons

#### 25.5.1.3.4 Other Federal Statutes



25.5.1.1  
(03-17-2021)  
**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 information about summons authority and introductory summons topics to familiarize IRS employees with the summons process.
- (3) **Audience:** All IRS employees authorized to issue summonses.
- (4) **Policy Owner:** Director, Collection Policy, SB/SE.
- (5) **Program Owner:** Collection Policy Enforcement, SB/SE.
- (6) **Primary Stakeholders:** The primary stakeholders include Counsel, Collection, Examination and Criminal Investigation (CI).
- (7) **Program Goals:** When a taxpayer or third-party witness will not voluntarily provide information that may be relevant to an IRS investigation, a summons may be useful. By following this IRM section, IRS employees will understand the legal authorities associated with the various types of summonses and the factors to consider before issuing summonses.

25.5.1.1.1  
(03-17-2021)  
**Background**

- (1) The Internal Revenue Code (IRC) provides the IRS with summons authority and a mechanism to enforce compliance with summonses.
- (2) This IRM provides an introduction to the summons process by discussing:
  - The provisions of law
  - The authority associated with various summons activities
  - Factors to consider when issuing a summons

25.5.1.1.2  
(03-17-2021)  
**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 1.2.2.14.1, 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 7602, Examination of Books and Witnesses
  - IRC 7603, Service of Summons
  - IRC 7604, Enforcement of Summons
  - IRC 7605, Time and Place of Examination
  - IRC 7609, Special Procedures for Third-Party Summonses
  - IRC 7610, Fees and Costs for Witnesses
  - IRC 7612, Special Procedures for Summonses for Computer Software
  - IRC 7622, Authority to Administer Oaths and Certify
  - IRC 7402, Jurisdiction of District Courts
  - IRC 7210, Failure to Obey Summons
  - IRC 6420(e)(2), IRC 6421(g)(2) and IRC 6427(j)(2), (generally pertaining to the taxation of gasoline and fuel sales)
  - IRC 6503(j), Designated and Related Summonses

25.5.1.1.3  
(03-17-2021)  
**Responsibilities**

- (1) Paragraph (9) in Delegation Order 25-1 lists the employees authorized to issue, serve and enforce summonses except “John Doe” summonses. See IRM 1.2.2.14.1, Delegation Order 25-1, Summonses, Oaths, Certifications and Related Functions.
- (2) The approval of the issuing officer’s manager, or any supervisory official above that level is required on a summons to a third-party witness, except that such approval is not required for a third-party summons issued by a special agent. See paragraph (8) of Delegation Order 25-1 in IRM 1.2.2.14.1 and IRM 25.5.1.2.3, Authority to Issue Summonses Requiring Approval (Except “John Doe” Summonses).

25.5.1.1.4  
(03-17-2021)  
**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.

25.5.1.1.5  
(03-17-2021)  
**Program Controls**

- (1) The IRS employee who issued the summons keeps a copy of the original summons in the administrative case file; (Page 1 of the summons labeled “Original”). The original summons is needed when referring a summons for enforcement. See IRM 25.5.10, Enforcement of Summonses.
- (2) Counsel (and in some areas, Advisory) reviews requests to enforce summonses.
- (3) Certain summonses require approval. When approval is required, it is incumbent upon 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.

25.5.1.1.6  
(03-17-2021)  
**Definitions and Acronyms**

- (1) The table below lists commonly used acronyms and their definitions.

Acronyms	Definition
ACS LP	Letters sent by ACS to third-parties
CCDM	Chief Counsel Directives Manual
CI	Criminal Investigation
DOJ	Department of Justice
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB&I	Large Business & International
LLC	Limited Liability Company
RFPA	Right to Financial Privacy Act

Acronyms	Definition
RRA 98	Internal Revenue Service Restructuring and Reform Act of 1998
SB/SE	Small Business Self Employed
TBOR	Taxpayer Bill of Rights
TE/GE	Tax Exempt and Government Entities
W&I	Wage & Investment

- (2) Definitions pertaining to summonses served upon third-party witnesses are in IRM 25.5.6.3, Definitions.

25.5.1.1.7  
(03-17-2021)

#### Related Resources

- (1) IRM 25.5, Summons, provides guidelines for all IRS functions in one multifunctional handbook. The sections are:
- 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 Policy Statement 1-236 in IRM 1.2.1.2.36.
- (4) Additional summons guidance can be found on the *Summons Knowledge Base*.

25.5.1.2  
(03-17-2021)

#### Summons Authority

- (1) The Commissioner's authority to take summons related actions derives from the Internal Revenue Code (IRC) sections listed above in IRM 25.5.1.1.2 (2), and from *Treasury Order 150-10*.
- (2) Delegation Order 25-1, as set forth in IRM 1.2.2.14.1, defines and restricts the authority of specific IRS employees to issue summonses and to take other summons related actions. Before taking any action relating to a summons, IRS employees should check Delegation Order 25-1 to ensure that they have the necessary authority.

- (3) The following paragraphs describe many of the authorized actions set forth in Delegation Order 25-1 and list many (but not all) of the IRS employees authorized to take these actions. The purpose of these paragraphs is not to provide an exhaustive description of Delegation Order 25-1, but rather to identify the actions most commonly associated with summonses and the IRS employees who are authorized to take those actions.

25.5.1.2.1  
(03-17-2021)

**Authority to Issue “John Doe” Summonses**

- (1) A John Doe summons is issued to obtain the identity of a taxpayer or group of taxpayers being investigated. They are used when the name of a taxpayer, or group of taxpayers, is unknown and not readily available from other sources. IRC 7609(f) authorizes the IRS to issue a John Doe summons pursuant to an investigation of a specific, unidentified person or an ascertainable group or class of persons.
- (2) John Doe summonses can only be issued by high ranking individuals who are specifically authorized to do so in Delegation Order 25-1, (see IRM 1.2.2.14.1). Special agents, revenue agents and revenue officers are not authorized to issue these summonses. When considering a John Doe summons, refer to IRM 25.5.7, Special Procedures for John Doe Summonses.
- (3) The high ranking individuals authorized to issue a John Doe summons include the following:
- a. Area directors
  - b. Deputy commissioner (International)
  - c. Director (International Compliance Strategy & Policy)
  - d. Commissioners of operating divisions (SB/SE, LB&I, W&I, TE/GE)
  - e. Chief criminal investigation
  - f. Directors and directors of field operations (SB/SE, LB&I, W&I, CI)
  - g. Directors (TE/GE)
  - h. Field operation managers and area managers in TE/GE (Federal, State and Local Governments (FSLG), Indian Tribal Governments)
  - i. Territory managers (LB&I and SB/SE)

**Note:** The foregoing list sets forth those IRS employees who usually issue these summonses. For a list of other IRS employees having this delegated authority, see Delegation Order 25-1 in IRM 1.2.2.14.1.

**Note:** Approval from a US District Court is required before a John Doe summons can be served. Refer to IRM 25.5.7, Special Procedures for John Doe Summonses for guidance.

25.5.1.2.2  
(03-17-2021)

**Authority to Issue Summonses Except “John Doe” Summonses**

- (1) The following IRS employees have the authority to issue any summons other than a John Doe summons:
- a. Special agents and special agents in charge
  - b. Supervisory special agents
  - c. Team managers and group managers responsible for LB&I, SB/SE, W&I, TE/GE and CI.

**Note:** The foregoing list sets forth those IRS employees who usually issue these summonses. For a list of other IRS employees having this delegated authority, see Delegation Order 25-1 in IRM 1.2.2.14.1.



(2) These IRS employees also have the authority to:

- Serve and enforce summonses,
- Set the time and place for appearance,
- Take the summoned person's testimony under oath,
- Receive and examine data produced in compliance with the summons, and
- Perform other related duties described in section IRC 7609(i)(2) .

25.5.1.2.3  
(03-17-2021)

**Authority to Issue  
Summonses Requiring  
Approval (Except "John  
Doe" Summonses)**

(1) The following IRS employees have the authority to issue summonses to the taxpayers under investigation. They also have the authority to issue summonses to third-party witnesses when their manager, or any supervisory official above that level, has given prior approval.

- a. Internal revenue agents
- b. Estate tax attorneys
- c. Estate tax examiners
- d. Revenue service and assistant revenue service representatives
- e. Tax auditors
- f. Tax compliance officers
- g. Revenue officers, GS-09 and above
- h. Tax law specialists
- i. Compliance officers
- j. Tax resolution representatives, GS-12 and above
- k. Property appraisal and liquidation specialists
- l. Bankruptcy specialists GS-09 and above (only for pre-assessment Trust Fund Recovery Penalty (TFRP) determinations)

**Note:** The foregoing list sets forth those IRS employees who usually issue these summonses. For a list of other IRS employees having this delegated authority, see Delegation Order 25-1 in IRM 1.2.2.14.1.

(2) Generally, the supervisor provides approval for the issuance of a third-party summons by signing the summons as the approving officer. Official electronic signatures are permitted. Alternatively, the issuing employee may write and sign a statement on the summons indicating:

- That prior authorization to issue the summons has been received, and provides,
- The name and title of the approving supervisor, and
- The date of the approval

This statement may be written manually or electronically in the "Signature of Approving Officer" blank space on the front of the original summons and all copies.

(3) The IRS employees listed above in (1), a through l, are also authorized to:

- Serve and enforce summonses,
- Set the time and place for appearance,
- Take the summoned person's testimony under oath,
- Receive and examine data produced in compliance with the summons, and
- Perform other related duties described in section IRC 7609(i)(2)

25.5.1.2.4  
(03-17-2021)

**Authority to Serve  
Summonses**

- (1) The following IRS employees have the authority to serve summonses:
- a. Revenue agents
  - b. Revenue officers
  - c. Estate tax attorneys and estate tax examiners
  - d. Estate and gift tax paralegals
  - e. Revenue service and assistant revenue service representatives
  - f. Tax auditors
  - g. Tax compliance officers
  - h. Tax law specialists
  - i. Compliance officers
  - j. Tax resolution representatives, GS-12 and above
  - k. Tax examiners, GS-05 and above (whose duties include contacting taxpayers in person)
  - l. Investigative analysts and tax fraud investigative aides, GS-05 and above
  - m. Property appraisal and liquidation specialists
  - n. Bankruptcy specialists GS-05 and above

**Note:** The foregoing list sets forth those IRS employees who usually serve summonses. For a list of other IRS employees having this delegated authority, see Delegation Order 25-1 in IRM 1.2.2.14.1.

25.5.1.2.5  
(03-17-2021)

**Authority to Designate  
the Persons Who May  
Receive Summoned  
Testimony and  
Information**

- (1) The following IRS employees are authorized to designate certain other IRS employees as the individuals who will set the time and place of examination, receive and examine summoned information and take the summoned person's testimony under oath. The persons authorized to designate are:
- a. All IRS employees listed in IRM 25.5.1.2.1, Authority to Issue "John Doe" Summonses.
  - b. All IRS employees listed in IRM 25.5.1.2.2, Authority to Issue Summonses Except "John Doe" Summonses.
  - c. All IRS employees listed in IRM 25.5.1.2.3, Authority to Issue Summonses Requiring Approval (Except "John Doe" Summonses) as having authorization to issue summonses to taxpayers under investigation and issue summonses to third-party witnesses with supervisory approval.

**Note:** Refer to Delegation Order 25-1 in IRM 1.2.2.14.1 for details on the delegation of this authority.

- (2) The following IRS employees may be designated to set the time and place of examination, to receive and examine summoned information, and to take the summoned person's testimony under oath:
- a. Chief counsel attorneys
  - b. Special agents
  - c. Supervisory special agents
  - d. Group managers
  - e. Internal revenue agents
  - f. Economists
  - g. Engineers
  - h. Appraisers
  - i. Business appraisers
  - j. Estate tax attorneys
  - k. Estate tax law clerks

- l. Estate tax examiners
- m. Revenue service and assistant revenue service representatives
- n. Tax auditors
- o. Tax compliance officers
- p. Revenue officers
- q. Compliance officers
- r. Tax examiners whose duties include contacting taxpayers in person
- s. Tax law specialists
- t. Service center tax examiners in the correspondence examination function
- u. Property appraisal liquidation specialists
- v. Bankruptcy specialists (only for pre-assessment TFRP determinations)

**Note:** The foregoing list sets forth those IRS employees who are usually designated to perform these tasks. For a list of other IRS employees having this delegated authority, see Delegation Order 25-1 in IRM 1.2.2.14.1.

25.5.1.2.6  
(03-17-2021)

#### **Authority to Administer Oaths and Certifications**

- (1) The following IRS employees are authorized to administer oaths and affirmations and to certify to those papers when necessary except that the authority to certify shall not apply to papers or documents whose certification is authorized by separate order or directive:
  - a. All IRS employees listed in IRM 25.5.1.2.1, Authority to Issue "John Doe" Summonses.
  - b. All IRS employees listed in IRM 25.5.1.2.2, Authority to Issue Summonses Except "John Doe" Summonses.
  - c. All IRS employees listed in IRM 25.5.1.2.3, Authority to Issue Summonses Requiring Approval (Except "John Doe" Summonses), as having authorization to issue summonses to taxpayers under investigation and issue summonses to third-party witnesses with supervisory approval.

**Note:** Tax Examiners and Tax Fraud Investigative Aides are not authorized to administer oaths or to certify papers or documents, except they may certify the method and manner of giving notice after serving a summons.

**Note:** Refer to Delegation Order 25-1 in IRM 1.2.2.14.1 for details on the delegation of this authority.

25.5.1.3  
(03-17-2021)  
**Factors to Consider  
Before Issuing a  
Summons**

- (1) Attempt to obtain information voluntarily from taxpayers and witnesses prior to issuing a summons. You may achieve voluntary cooperation by acquainting the taxpayer or witness with the provisions of the IRC. See the reverse side of Form 2039, Summons, Part A.
- (2) Consider all relevant circumstances before issuing a summons. Analyze each situation in the light of its particular facts. Weigh the importance of the desired information against the following:
  - Tax liability involved,
  - Time and expense of obtaining the records,
  - Probability of having to institute court action,
  - Adverse effect on voluntary compliance by others if the enforcement efforts are not successful,
  - Status of the case with respect to any pending criminal investigations
- (3) Consider serving a summons in the following situations:

- The taxpayer has been requested to provide records that may be relevant to the investigation and has failed or refused to produce them within a reasonable period of time.
- No records are made available to permit an adequate examination within a reasonable period of time.
- Submitted records are known or suspected to be altered or incomplete. Additional records are presumed to be in the possession of the taxpayer or a third-party that may disclose material matters not reflected in the submitted records (i.e. broker statements, contracts, and bills for legal expenses).
- Taxpayers or their representatives will not seriously attempt to provide documentation for substantiation to the IRS employee because they intend to offer records and explanations at another level or after a notice of deficiency has been issued.
- The existence and location of records are in doubt. A summons may be issued to require testimony, under oath, as to what records exist and the location of such records. A subsequent summons may be issued describing the records. If the records are in the possession or custody or subject to the control of the person who has testified, it may be served at the time of the testimony or thereafter.

25.5.1.3.1  
(03-17-2021)

**Documents from  
Financial Institutions in  
the Tenth Circuit**

- (1) As discussed in IRM 25.5.1.3(1), Factors to Consider Before Issuing a Summons, IRS employees should attempt to obtain information informally from third-party sources. If the third party voluntarily provides the information a summons is not required. This approach also applies when seeking financial records from financial institutions, except in cases governed by the Tenth Circuit's interpretation of the Right to Financial Privacy Act (RFPA). The RFPA requires that account owners be given notice of, and an opportunity to challenge, a government agency's intent to obtain records of their finances from a financial institution. However, the RFPA also provides an exception to these requirements as they apply to the IRS. Specifically, 12 USC 3413(c) states: "Nothing in [the RFPA] prohibits the disclosure of financial records in accordance with procedures authorized by the [IRC]." In all circuits other than the Tenth, the IRS takes the position that an informal request for records is a procedure authorized under IRC 7602. The Tenth Circuit reached the opposite conclusion in *Neece v. Internal Revenue Service*, 922 F.2d 572 (10th Cir. 1990) and ruled that a bank's voluntary disclosure of a customer's financial records to the IRS, without prior notice to the customer, violated the RFPA. The Tenth Circuit reasoned that IRC 7609, not IRC 7602, contained the procedures for obtaining records concerning a taxpayer from a financial institution.

**Note:** The RFPA only applies to a financial institution's records for customers who are individuals or are partnerships of five or fewer individuals, so financial records of customers who are corporations, LLCs, partnerships with non-individual partners, or partnerships with six or more partners are not covered by the RFPA, 12 USC 3401(4) & (5), and may be sought informally within the Tenth Circuit.

**Note:** See IRM 25.5.1.3.1(6) below for a discussion of IRC 7609(j), enacted in RRA 1998, as it affects the IRS's reasoning regarding documents from financial institutions in the Tenth Circuit.

- (2) The Tenth Circuit states are Kansas, Oklahoma, Wyoming, Utah, Colorado, and New Mexico.

- (3) When issuing a summons, follow the procedures of IRC 7609 when applicable and refrain from seeking financial information from financial institutions by using only credentials or circular forms and letters; such as, Form 12470, Letter 1040 and ACS LP Letter 62 or any other non-summons method if the following conditions exist:
  - The financial institution is located in the Tenth Circuit.
  - The information sought concerns taxpayers residing in the Tenth Circuit, regardless of the location of the financial institution; or
  - The IRS office is located in the Tenth Circuit, regardless of the location of the financial institution or the residence of the taxpayer.
- (4) Seek the advice of Associate Area Counsel if there is any doubt as to whether *Neece* applies.
- (5) Do not attempt to obtain financial information voluntarily from financial institutions if the above conditions exist. To do otherwise could result in actual and punitive damages awarded in suits against the IRS, and the expenditure of valuable resources in defending such damage suits.
- (6) In RRA 1998, Congress enacted IRC 7609(j), which provides that nothing in IRC 7609 shall be construed to limit the IRS's ability to obtain information, other than by summons, through formal or informal procedures authorized by IRC 7601 and IRC 7602. This section indicates that the IRS's ability to informally seek the voluntary exchange of records (i.e., without a summons) constitutes a procedure authorized by the Code. Nevertheless, the IRS will follow the *Neece* ruling in cases described in IRM 25.5.1.3.1(3).

25.5.1.3.2  
(09-10-2014)  
**Documents from  
Financial Institutions  
Located in Circuits  
Other than the Tenth  
Circuit**

- (1) The IRS does not follow the *Neece* rationale in other circuits; therefore, information may continue to be obtained voluntarily from financial institutions in other circuits using credentials or voluntary methods.

25.5.1.3.3  
(03-17-2021)  
**Considerations and  
Limitations on Issuance  
of a Summons**

- (1) Use credentials or circular forms and letters; such as, Form 12470, Letter 1040 and ACS LP Letter 62 to obtain information when possible.

**Note:** Special Agents, Criminal Investigation, should ensure that the requirements stated in IRM 9.3.1.3.3, Multiple Letters to Third Parties, are met when using circular letters.

- (2) Obtain clearance from CI and/or Area Counsel before issuing a summons in connection with a pending criminal case intended to do the following:
  - a. Obtain more information from the taxpayer or a witness.
  - b. Uncover assets to apply against assessed liabilities.

**Note:** Collection personnel can issue a summons if firm indications of fraud have not been developed.

- (3) As required by IRC 7602(d), do not issue a summons to investigate a taxable year (or period) where the IRS has referred the same taxpayer's case for the same type of tax and the same taxable year (or period) to the Department of

Justice for criminal prosecution. IRC 7602(d) generally does not prohibit a summons issued regarding a different type of tax (e.g. income, employment, or excise tax) or a different year or taxable period. However, coordination with Counsel may be necessary. See IRM 5.1.5.11, Administrative Summons and IRM 5.1.5.12, Cases Under Jurisdiction of the Department of Justice.

- (4) Do not issue a summons to request proof of filing, copies of returns, or proof of payment if the desired documents are available from IRS records.
- (5) Employment and excise tax returns can be processed under IRC 6020(b).
- (6) **IRC 6331(g) forbids the levy or seizure of property of the taxpayer on the day that the taxpayer, or officer or employee of the taxpayer, appears in response to a summons issued for the purpose of collecting any underpayment of tax.**

**Note:** Exception: In a jeopardy situation, a levy or seizure of property may be appropriate even though the taxpayer is appearing in response to a summons.

#### 25.5.1.3.4 (03-17-2021)

#### Other Federal Statutes

- (1) Congress has created privacy rights in several industry and sector-specific federal statutes other than Title 26. These statutes include:
  - Cable Communications Policy Act (1984)
  - Communications Assistance for Law Enforcement Act (1994)
  - Driver's Privacy Protection Act (1994)
  - Electronic Communications Privacy Act (1986)
  - Employee Polygraph Protection Act (1988)
  - Fair Credit Reporting Act (1970). See IRM 25.5.4.5.6, Statutory Limitations on Acquiring Credit Reports from a Consumer Reporting Agency.
  - Family Education Rights and Privacy Act (1974). See IRM 25.5.6.11, Summonses Served on an Educational Institution.
  - Gramm-Leach-Bliley Act (1999)
  - Health Insurance Portability and Accountability Act (1996)
  - Privacy Protection Act (1980)
  - Right to Financial Privacy Act (1978). See IRM 25.5.1.4.1, Documents from Financial Institutions in the Tenth Circuit and IRM 25.5.6.7, Banks.
  - Social Security Act -- Family Child Support (Title IV-D)
  - Video Privacy Protection Act (1988)
- (2) Consult Associate Area Counsel with any questions concerning these statutes and the IRS's summons authority.