



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ERIC JOHNSON, ATTORNEY, LARGE AND MID-SIZE
BUSINESS
CC:LM:RFP:STP

FROM: Joseph W. Clark, Chief, Branch 3
(Collection, Bankruptcy and Summonses)
CC:PA:CBS:Br3

SUBJECT: Summoning Access to a Taxpayer's Website

This Chief Counsel Advice responds to your January 8, 2002, Field Service Advice request regarding an examination team that wants to access the restricted portions of a taxpayer's Internet website. We believe that a summons—and not entering into contract and waiver negotiations—is the appropriate vehicle to obtain access to the restricted information. This document is not to be relied upon or otherwise cited as precedent.

DISCUSSION:

A summoned taxpayer may be required "to produce such books, papers, records, or other data ... as may be relevant or material" to the Service's inquiry. I.R.C. § 7602(a)(2). I.R.C. § 7602 endows the Service with expansive information-gathering authority to encourage effective tax investigations. See United States v. Arthur Young & Co., 465 U.S. 805, 813-15 (1984). Although there are no reported cases specifically holding that access to a website may be summoned, there is a strong argument that a taxpayer's website constitutes "records, or other data" within the meaning of I.R.C. § 7602(a)(2). See United States v. Davey, 543 F.2d 996 (2d Cir. 1976) (summons of computer tapes comprising part of a corporate taxpayer's record keeping system enforced); see also United States v. Norwest Corp., 116 F.3d 1227 (8th Cir. 1997) (summons of tax preparation software enforced).

Under Powell v. United States, 379 U.S. 48, 57-58 (1964), a summons will be judicially enforced if the Government makes a showing that (1) the summons

is issued for a proper purpose, (2) that the information sought may be relevant to that purpose, (3) that the information sought is not already within the Commissioner's possession, and (4) that the administrative steps required by the Internal Revenue Code have been followed. A summons in the instant case must be narrowly tailored to meet these requirements.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

[REDACTED]

First, a summons seeking unfettered access to the taxpayer's website may be attacked as seeking irrelevant information. The courts are quite lenient in applying the relevancy standard. See, e.g., Barquero v. United States, 18 F.3d 1311, 1318 (5th Cir. 1994).

[REDACTED]

Second, a summons seeking unfettered access to the taxpayer's website may be attacked as overbroad and unreasonable. The Service's "license to fish" is not unlimited. See, e.g., Dauphin Deposit Trust Co., 385 F.2d 129, 131 (3d Cir. 1967). Summonses generally should be definite in nature and finite in scope. See, e.g., United States v. Reis, 765 F.2d 1094, 1096 n.2 (11th Cir. 1985).

[REDACTED]

Finally, a summons faces a serious overbreadth challenge if it is not limited in time. The right to access the restricted material on the website may not be enforceable for the entire time of the examination.

[REDACTED]

In sum, the broad language of the statute and the case law strongly suggest that a summons for the right to access a website will be upheld as a summons for records or other data within the meaning of I.R.C. § 7602(a)(2). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The National Office will work together with field counsel and the examination team to draft a summons that will provide all necessary access to relevant information, but is narrowly tailored to ensure that it meets the requirements for enforceability under Powell.

Please call (202) 622-3630 if you have any questions.

cc: Associate Area Counsel, Large and Mid-Size Business
Associate Chief Counsel (Procedure and Administration)
Assistant Chief Counsel (Collection, Bankruptcy and Summonses)