



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.17.6

MAY 29, 2025

EFFECTIVE DATE

(05-29-2025)

PURPOSE

- (1) This transmits revised IRM 5.17.6, Legal Reference Guide for Revenue Officers, Summonses.

MATERIAL CHANGES

- (1) IRM 5.17.6.1: Editorial update to the Internal Controls section Program Scope and Objectives removing unnecessary information.
- (2) IRM 5.17.6.1.3: Editorial updates to clarify the Internal Controls section Roles and Responsibilities.
- (3) IRM 5.17.6.1.6: Editorial update adding CEASO to the Internal Controls Acronyms list.
- (4) IRM 5.17.6.4.1: Editorial update moving previously existing information from (12) to a note.
- (5) IRM 5.17.6.4(4): Editorial update to correct a link to the Fraud Development Knowledge Base.
- (6) Exhibit 5.17.6-1: Editorial update to correct a link to the Summons Knowledge Base.
- (7) Throughout: Editorial updates to meet current guidelines, as well as, formatting, IRM and IRC references.
- (8) This IMD has been updated to comply with January 2025 Executive Orders and OPM guidance.

EFFECT ON OTHER DOCUMENTS

IRM 5.17.6, Summonses, dated November 28, 2023, is superseded.

AUDIENCE

SB/SE Revenue Officers

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5.17.6

Summonses

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5.17.6.1
(11-28-2023)
**Program Scope and
Objectives**

- (1) **Purpose:** Acquaint revenue officers with the basic legal concepts governing the use and enforcement of administrative summonses. For more detailed guidance, refer to the Summons Handbook at IRM 25.5.
- (2) **Audience:** Revenue Officers.
- (3) **Policy Owner:** Director, Collection Policy, SB/SE.
- (4) **Program Owner:** Collection Policy Enforcement, SB/SE.
- (5) **Primary Stakeholders:** Field Collection, CEASO, SB/SE Counsel.
- (6) **Program Goals:** Summonses are used to secure desired records, testimony, or other information when the taxpayer or other witness will not produce them voluntarily. By following the procedures provided in this IRM, a revenue officer will be able to properly prepare and serve a summons to secure information and/or testimony that may be enforced by court order when necessary.

5.17.6.1.1
(11-28-2023)
Background

- (1) This section provides basic legal concepts governing the use and enforcement of administrative summonses.
- (2) In general, the IRS should issue summonses only when the taxpayer (or other witness) will not produce the desired records or information voluntarily. When a taxpayer or third party is willing to testify and produce documents voluntarily, a summons may not be required. In such cases, revenue officers may only need to produce their credentials.

Caution: Refer to IRM 5.17.6.5.2(7), Notice and Waiting Period Requirements, regarding the requirement to serve a summons on a bank in the Tenth Circuit.

- (3) Before issuing any summons, the IRS should consider:
 - The possibility that judicial enforcement will be required, and
 - The adverse effect on future voluntary compliance if enforcement is abandoned.

Note: The IRS should only issue a summons when it is prepared to seek judicial enforcement if the summoned party fails to fully comply.

- (4) The summons should not require the witness to do anything other than appear on a given date to give testimony or produce existing books, papers, records, or other data. A summons cannot require a witness to prepare or create documents, including tax returns, that do not currently exist. However, a taxpayer may be required by a summons to appear and give testimony, or produce records that would allow the IRS to complete a tax return for that taxpayer.

Note: Pursuant to IRC 6331(g), the IRS may not levy on a person's property on the day that person (or that person's officer or employee) is required to appear in response to a summons issued by the IRS for the purpose of collecting any tax.

5.17.6.1.2
(11-28-2023)
Authority

- (1) IRC 7601(a) authorizes the IRS to inquire about any person who may be liable to pay any internal revenue tax. The authority under IRC 7601(a) to inquire does not include the authority to summon.
- (2) IRC 7602(a) provides the IRS with summons authority. It authorizes the IRS to summon a witness to testify and to produce books, papers, records, or other data that may be relevant or material to an investigation. See *United States v. Powell*, 379 U.S. 48, 57-58 (1964) in IRM 5.17.6.1.2.1, Case Law.
- (3) IRC 7602(a), IRC 7602(b) and the corresponding regulations, 26 CFR 301.7602-1, also identify the purposes for which the IRS may issue summonses. The purposes are:
 - To ascertain the correctness of any return.
 - To prepare a return where none has been made.
 - To determine the liability of a person for any internal revenue tax.
 - To determine the liability at law or in equity of a transferee or fiduciary of a person in respect of any internal revenue tax.
 - To collect any internal revenue tax liability, or
 - To inquire into any offense (civil or criminal) connected with the administration or enforcement of the internal revenue laws.

Note: IRS right to examine records provided by IRC 7602 includes the right to photocopy such records.

- (4) The following persons may be summoned under the authority of IRC 7602(a)(2):
 - The person liable for the tax or required to perform the act (prepare a return).
 - Any officer or employee of such person who has information that may be relevant to the investigation.
 - Any person having possession, custody, or care of books, papers, records, or other data that may be relevant to the investigation, and
 - Any other person the Secretary deems proper.
- (5) IRC 7602(d)(1) prohibits a summons from being issued or enforced with respect to any person if a Justice Department referral is in effect with respect to such person. Under IRC 7602(d)(2), a “referral” is in effect with respect to a person when either:
 - The IRS has recommended to the Justice Department a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of internal revenue laws, or
 - The Justice Department requests, pursuant to IRC 6103(h)(3)(B), the disclosure of a return or return information relating to such person, as when the Justice Department requests IRS criminal investigators to join an ongoing federal grand jury investigation of the person for non-tax crimes, such as narcotic trafficking or racketeering, to investigate potential tax charges.

Note: The limitation of IRC 7602(d)(1) applies only when the IRS has referred to the Justice Department the taxpayer whose liabilities are at issue. The IRS is not barred from summoning a third-party witness when the IRS has referred the third-party witness to the Justice Department. *Khan v. United States*, 548 F.3d 549 (7th Cir. 2008), 26 CFR 301.7602-1(c)(1).

- (6) Other IRC sections concerning the proper use and enforcement of a summons are:

IRC Section	Title
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 7611	Restrictions on Church Tax Inquiries and Examinations
IRC 7612	Special Procedures for Summonses for Computer Software
IRC 7622	Authority to Administrate Oaths and Certify
IRC 7402	Jurisdiction of District Courts
IRC 7210	Failure to Obey Summons
IRC 7521	Procedures Involving Taxpayer Interviews
IRC 6420(e)(2), IRC 6421(g)(2), IRC 6427(j)(2)	Generally pertaining to the taxation of gasoline and fuel sales
IRC 6503(j)	Designated and Related Summons

5.17.6.1.2.1
(11-28-2023)
Case Law

- (1) Case law clarifies statutory authority and provides standards that the IRS must meet to have its summons enforced.
- (2) In *United States v. Powell*, 379 U.S. 48, 57-58 (1964), the Supreme Court set forth the standards the IRS must meet to have its summons enforced. The IRS must show that:
 - The investigation will be conducted pursuant to a legitimate purpose.
 - The inquiry may be relevant to the purpose.
 - The information sought is not already within possession of the IRS, and
 - All administrative steps required by the Code have been followed.
- (3) Powell also held that a summons cannot be issued for an “improper purpose.” This includes using a summons:
 - To harass the taxpayer
 - To pressure the taxpayer into settling a collateral dispute, or

- For any other purpose adversely reflecting on the “good faith” of the investigation.
- (4) In *United States v. Clarke*, 573 U.S. 248, 254-255 (2014), the Supreme Court described procedures and standards for the IRS to establish its proper purpose for issuing a summons, saying that:
- Summons enforcement procedures are meant to be summary in nature.
 - Absent contrary evidence, the IRS can establish its satisfaction of the Powell standard, including its good faith, by submitting a simple affidavit (Declaration) from the investigating agent, and
 - The taxpayer is only entitled to question the investigating agent in a summons enforcement case when the taxpayer has presented credible evidence that plausibly raises an inference of bad faith by the IRS.

5.17.6.1.3
(11-28-2023)
**Roles and
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.

5.17.6.1.4
(11-28-2023)
**Program Management
and Review**

- (1) 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.

5.17.6.1.5
(11-28-2023)
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) Keep all documents related to the issuance of Form 6639, Financial Records Summons, in the trust fund recovery penalty (TFRP) case file. A copy of the summons can be maintained in the administrative case file.
- (3) Counsel (and in some areas, CEASO) reviews requests to enforce summonses. When sending a summons referral to counsel or CEASO, include the original summons and the certificate of service of the summons (Page 2 of

the summons). A copy of the summons and certificate of service are retained in the administrative case file. See IRM 25.5.10, Enforcement of Summons.

5.17.6.1.6
(11-28-2023)

Terms and Acronyms

- (1) The table below lists commonly used terms relating to a third-party summons.

Terms

Term	Definition
Taxpayer	The person with respect to whose liability the summons is issued.
Third-Party	Any person served with a summons other than the taxpayer being examined or investigated or an officer, employee, agent, accountant, or attorney of a taxpayer who, at the time the summons is served, is acting as such officer, employee, agent, accountant, or attorney.
Third-Party Records	Books, papers, records, or other data in which the taxpayer does not have a proprietary interest at the time the summons is served.
Third-Party Recordkeeper	Third-party recordkeepers are defined in IRC 7603(b)(2). See IRM 5.17.6.5.1.
Noticee	The persons entitled to notice of a third-party summons. These persons are (1) the taxpayer identified by proper name in the heading of the summons and (2) every person identified by proper name in the description of summoned records (other than the person summoned). See IRM 5.17.6.5.2.

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

Acronyms

Acronym	Definition
Bal Due	Balance Due Account
CEASO	Civil Enforcement Advice & Support Operations
CFR	U S Code of Federal Regulations
Del Ret	Delinquent Return Account

Acronym	Definition
ICS	Integrated Collection System
FCRA	Fair Credit Reporting Act
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ISP	Internet Service Provider
ITG	Indian Tribal Government
RFPA	Right to Financial Privacy Act
RRA	Restructuring and Reform Act
SB/SE	Small Business Self Employed
SCA	Stored Communications Act
SEC	Securities and Exchange Commission
TBOR	Taxpayer Bill of Rights
TDA	Taxpayer Delinquency Account
TDI	Taxpayer Delinquency Investigation
TE/GE	Tax Exempt and Government Entities
TFRP	Trust Fund Recovery Penalty
TPC	Third-Party Contact
USC	United States Code

5.17.6.1.7
(11-28-2023)

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 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 accord

with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see *Taxpayer Bill of Rights*, and Policy Statement 1-236 in IRM 1.2.1.2.36, Servicewide Policy Statements.

- (3) Refer to the *Summons Knowledge Base* for more information on summonses and eSummons.

5.17.6.2
(11-28-2023)
**Relevance and
Materiality**

- (1) IRC 7602(a) authorizes the IRS to issue a summons to any person to produce for examination by the IRS any books, papers, records, or other data, and to require such person to give such testimony, under oath, as may be relevant or material to the determination or collection of any internal revenue tax.
- (2) The question of what “may be relevant or material” depends on the facts and circumstances of each case. The Supreme Court has construed the words “may be relevant” as reflecting an express intent by Congress to allow the IRS to obtain items of even “potential relevance” to an ongoing investigation. *United States v. Arthur Young & Co.*, 465 U.S. 805, 814 (1984). At the same time, courts generally will not allow the IRS to use a summons as a mere fishing expedition. The test is whether the summoned documents or testimony “might have thrown light upon” the subject under legitimate inquiry.
- (3) When information or documents are sought from the taxpayer, all records of financial transactions, all books and records showing the receipt or expenditure of money by the taxpayer, and all financial transactions of the taxpayer with other persons and the names of such other persons to verify such transactions generally satisfy the relevance test of IRC 7602.
- (4) Where information or documents are requested from third persons, all records or information of the taxpayer’s financial transactions with such third persons or other persons generally satisfy the relevance test of IRC 7602.

5.17.6.3
(11-28-2023)
**Summons Authority of
Collection Personnel**

- (1) Delegation Order 25-1 (Rev. 1) provides detailed instructions concerning the levels of authority delegated to various IRS officials to approve and perform activities concerning summonses. See IRM 1.2.2.15.1, Delegation Order 25-1 (Rev. 1), Summonses, Oaths, Certifications and Related Functions. Revenue officers should refer directly to the most current revision of Delegation Order 25-1 whenever an issue arises about their authority to take any of these actions:
 - Authorize, issue, and serve summonses.
 - Set the time and place for examination.
 - Administer oaths to witnesses.
 - Take testimony under oath.
 - Certify the manner of serving or giving notice of a summons, and
 - Receive and examine summoned materials.

5.17.6.4
(11-28-2023)
**Proper Description of
Documents**

- (1) IRC 7603(a) provides that books and records sought must be described with reasonable certainty. Include the periods for which the records are sought. In general, the meaning of the phrase “reasonable certainty” is a factual matter that will depend on all the circumstances involved.
- (2) A demand for documents required to be produced for examination cannot be so general and vague that it would be unreasonable to expect the summoned

party to comply. The rule established by the courts is that the IRS employee issuing the summons need not describe in minute detail every document and paper to be produced but must describe the documents with reasonable certainty so the person summoned will have sufficient information to inform them of what is required to be produced. *Adamowicz v. United States*, 531 F.3d 151, 157-58 (2d Cir. 2008); *United States v. Medlin*, 986 F.2d 463, 467 (11th Cir. 1993).

- (3) In *United States v. Calhoun County Hospital, Inc.*, 35 AFTR2d 75-1097 (N.D. Miss. 1974), the typed-in body of the summons did not specify for what years the records were sought. The court rejected the petitioner's argument that the summons was facially invalid by looking at the "four corners" of the summons, and thereby construed the summons to encompass records for the tax years at issue.
- (4) If it is not known what records are in the summoned party's possession, a summons can be served identifying only the taxpayer, the tax period under investigation, and the type of tax involved.

- Upon appearance, the witness can be asked whether or not certain records exist.
- Then a second summons can be issued describing the particular records with reasonable certainty.
- Such a **preliminary** summons is specifically exempt from the notice provisions of IRC 7609, but the notice exemption applies only to inquiries about whether or not records of the taxpayer's business transactions or affairs have been made or kept. See IRC 7609(c)(2)(B).

Example: This type of summons is also called a **discovery summons**. An example of a *discovery summons* attachment is found in the *Fraud Development Knowledge Base*.

- If a taxpayer is being uncooperative, consider issuing a preliminary or discovery summons to an exchange when you believe the taxpayer owns digital assets.
- (5) See IRM 25.5.2.4, Description of Information Requested, for examples.

5.17.6.4.1 (11-28-2023)

Proper Service - IRC 7603

- (1) IRC 7603 provides that service of the summons shall be made by delivery in hand of an attested copy to the person to whom it is directed, or by leaving the summons at the person's last and usual place of abode. Third-party recordkeepers may also be served by certified or registered mail. See IRM 5.17.6.5.1, Third-Party Recordkeepers. Corporations do not have a "last and usual place of abode" within the meaning of IRC 7603(a); therefore a summons may not be served on a corporation by affixing it to the door of the corporate building or by leaving the summons with the secretary of any individual (named or unnamed) on whom the summons is to be served or with another employee. See IRM 5.17.6.4.1(6) below for summons service to a corporation.

Reminder: If service of a summons requires an unannounced field call, revenue officers should pair with a manager or fellow revenue officer.

- (2) The Summons Handbook at IRM 25.5.3.2, Service of Summons, outlines the procedures for serving summonses. This section identifies three options for serving a summons upon an individual who is not a third-party recordkeeper:

- Hand the summons to the person to whom it is directed.
 - Leave the summons at the individual's last and usual place of abode with a person of suitable age and discretion, and provide instructions that the summons be given to the summoned individual, or
 - Enclose the summons in an envelope bearing the summoned person's name, and affix the summons to the front door of the individual's last and usual place of abode by a means that will not mar the finish.
- (3) In *United States v. Bichara*, 826 F.2d 1037 (11th Cir. 1987), the Eleventh Circuit held that IRC 7603 allows service by merely leaving the summons at the last and usual place of abode. The circuit court vacated the decision of the district court, which had denied enforcement on the grounds that merely leaving the summons was insufficient, and that due process required the summons be left with some person of suitable age and discretion. See also *United States v. Gilleran*, 992 F.2d 232 (9th Cir. 1993) wherein the appellate court reversed the district court that had required the IRS to mail the summons in addition to leaving the summons at the last and usual place of abode. Leaving the summons with a person of appropriate age and discretion may be a good practice in certain circumstances, but it is not required by law, and a summons is validly served if affixed to the door.
- (4) A summons should be issued only to one summoned party meaning that only one party's name should appear on the "To" line of a summons. For a summons to a corporation or to an officer of a corporation, see IRM 5.17.6.4.1(6) and (7).
- (5) A summons can be personally served on a person at that person's business address, but if the person being summoned is not present, the summons may **not** be left at that address. See *United States v. Myslajek*, 568 F.2d 55 (8th Cir. 1977), cert. denied, 438 U.S. 905 (1978) wherein a summons left with taxpayer's adult child at taxpayer's place of business held defective for purposes of service, although the summons was ordered enforced because the defect in service was not timely raised. The Code authorizes leaving the summons only at the last and usual abode of the person. The fact that an improperly served summons is actually received by the summoned party will not cure the defective service.
- (6) A summons issued to a corporation that does not identify a specific person may be served on any officer or employee of the corporation authorized to receive process by either state law or the corporate by-laws. For example, if the "To" line of the summons identifies "X Corporation" as the witness, the summons should only be served on a person authorized to receive process for "X Corporation". The summons cannot be left at the corporate office or left with the corporate officer's secretary. The summons should not be left at a last and usual place of abode of the person (or persons) authorized to receive process. Therefore, the summons must be served in person on an authorized person unless the witness is summoned in the capacity of a third-party recordkeeper described in IRC 7603(b). See IRM 25.5.3.2(14) for summons service to a corporation. Refer to IRM 5.17.6.5.1, Third-Party Recordkeepers, for guidance on serving a summons to a third-party recordkeeper.
- (7) When the summons seeks records or testimony from a specific corporate officer (John Smith, President), the summons should be issued to that officer by name and official designation. For example, the "In the matter of" line of the summons should read "Corporation X,"(as the taxpayer) and the "To" line of the summons should read "John Smith, President," with John Smith's last

known address on the "At" line of the summons. Because this summons is issued to an individual, the summons may be served either personally upon John Smith or left at John Smith's "last and usual place of abode." The fact that John Smith is being summoned to provide testimony or records in the capacity as President of Corporation X does not affect John Smith's treatment as an individual for purposes of service of the summons.

- (8) The summons certificate is found on the second page of the original summons, Service of Summons, Notice and Recordkeeper Certificates. The certificate records how the summons was served, how notice was given, and that a proceeding to quash the summons was not instituted. Once executed, a certificate is evidence of the facts it states at a hearing for enforcement when applicable. See IRC 7603(a).
- (9) In accordance with IRC 7603(a), the copy of the summons given to the summoned person must contain a signed certification or affirmation that it is a true and correct copy of the original. On the current pre-printed summons forms, the attestation clause reads as follows: "I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original."
- (10) Improper service of a summons cannot be cured. But as noted above, the taxpayer may waive defective service of a summons by failing to object to the defective service in a timely fashion. In *United States v. Myslajek*, 568 F.2d 55 (8th Cir. 1977), although summonses were served on an accountant's adult child at the accountant's business office, the taxpayer waived strict compliance with the requirement that a summons be served on the person to whom it is directed or left at the person's last and usual place of abode. The accountant received actual notice of the summonses on the date they were served but did not object to defective service until almost three months later. In *United States v. Payne*, 648 F.2d 361 (5th Cir. 1981) the taxpayer waived strict compliance with the statute governing service of IRS summonses where the taxpayer appeared at the time and place set forth in the summons but failed to object to improper service at such time. If the IRS improperly served a summons, but acted in "good faith" in doing so and there also was no prejudice to the taxpayer (such as, the taxpayer filed a timely petition to quash the summons), then some courts may find that the error in serving the summons was "harmless." See, e.g. *United States v. Richey*, 632 F.3d 559, 564-65 (9th Cir. 2011). "Harmless error" findings may not be reliably forecast, so the IRS should ordinarily re-serve a new summons properly in place of an improperly served summons if the IRS will be seeking summons enforcement.
- (11) Field collection employees will use the Integrated Collection System (ICS) Summons tool to document the method of service. The ICS summons tool systematically generates an ICS history entry. Document any additional information regarding the service of the summons in ICS history.
- (12) If the summons was NOT served, field collection employees will use the ICS Summons tool to delete the summons.

Note: Do not delete the summons if the summons was served. Use the ICS Summons tool to close the summons using the appropriate type of closure.

5.17.6.4.2
(11-28-2023)
**Time and Place of
Appearance - IRC 7605**

- (1) In the case of all first-party summonses (those served on the taxpayer or upon any officer or employee of an entity taxpayer or of a taxpayer with a sole proprietorship) subject to IRC 7605, the time and place for appearance and examination must be reasonable. See IRM 25.5.3.4, Time and Place of Examination Set by Summons and IRC 7605(a). The date for appearance shall not:

- Be on a Saturday, Sunday, or legal holiday, and
- Be less than 10 full days from service with the date of service excluded from the 10-day waiting period

Reminder: It is legally sufficient to require the summoned person to appear on the 10th day. However, it may be preferable to set the date of appearance on a later date, such as the 11th day, to avoid any question regarding timeliness.

Note: For a discussion of notice and waiting period requirements in the case of all third-party summonses subject to the notice requirements of IRC 7609, see IRM 5.17.6.5.2, Notice and Waiting Period Requirements.

- (2) Unless collection of the tax is in jeopardy, no levy can be made on the property of a summoned person on the date the person is required to appear in response to a summons issued for the purpose of collecting an underpayment of tax. See IRC 6331(g).
- (3) Any agreement with a summoned party that alters the party's circumstances of appearance may result in a waiver of IRS summons rights. In *United States v. Malnik*, 489 F.2d 682 (5th Cir. 1974), the summoned taxpayer entered into an agreement with the IRS not to appear based in part on a claim of constitutional privileges. Even though the privileges were infirm, the court held that the IRS waived its right to have the taxpayer appear. If a valid reason exists (such as illness) for why a witness cannot appear on the date fixed in the summons, the date may be continued by mutual agreement. Review IRM 25.5.3.4(5), Time and Place of Examination Set by Summons, for actions needed to formally extend the date of appearance.
- (4) Per 26 CFR 301.7605-1, the place of appearance for a summons generally is where the taxpayer's books and records are maintained, or at the IRS office located nearest the summoned person. The Treasury Regulation also describes the general criteria for determining whether the place for an examination is reasonable under the circumstances. The examination can be an office examination (at an IRS office) or a field examination (at the location where the taxpayer's books, records, and source documents are maintained). Through a written request, the taxpayer can request to change the place of the examination, and the IRS will consider the written request on a case-by-case basis.

5.17.6.5
(11-28-2023)
**Third-Party Summonses
Subject to IRC 7609**

- (1) IRC 7609 contains notice and waiting period requirements which apply to all third-party summonses, except for certain limited categories discussed herein. See IRM 5.17.6.5.2, Notice and Waiting Period Requirements, for a discussion of these notice and waiting periods.

Note: A third-party summons is a summons directed to a person other than the person with respect to whose liability or return the summons is issued, or any officer or employee of such person. A third-party summons is a summons not excepted from notice by IRC 7609(c)(2)(A).

- (2) When a third-party summons is issued, section 7609(a) requires notice be given to the taxpayer identified in the heading of the summons and any other person (whether an individual or an entity) identified in the description of summoned records. The term “identified” means identified by proper name (including an acronym derived from the proper name).
- (3) The notice and waiting period requirements of IRC 7609(a) apply to third-party summonses that seek the production of any type of records or giving of testimony regarding the person(s) identified in the summons.
- (4) Any noticee may intervene in any proceeding brought by the Government to enforce the summons. See IRC 7609(b)(1). Any notice may bring a proceeding to quash per IRC 7609(b)(2)(A). The summoned third-party has the right to intervene in any proceeding brought by a noticee to quash the summons. See IRC 7609(b)(2)(C).
- (5) The notice procedures apply to almost all third-party summonses issued for examination purposes. Therefore, the IRS must accurately distinguish between third-party summonses and summonses served on the taxpayer under investigation. The IRS must also determine if the summons is excepted from notice under IRC 7609(c)(2). IRM 5.17.6.5(2), Third-Party Summonses Subject to IRC 7609, discusses the exceptions to notice requirements.
- (6) When a third party indicates a desire to voluntarily provide information but requests the service of a summons as evidence of a legal duty to testify or produce records, revenue officers should follow the notice and waiting period requirements of IRC 7609 when issuing the summons unless the summons is a collection summons and therefore excepted from these requirements by IRC 7609(c)(2). Revenue officers should not accept the voluntary production of records before the waiting period expires.
- (7) In most situations, the distinction between a third-party summons and a first-party summons, served on the taxpayer, is obvious. However, it is less obvious in at least three scenarios.

Scenario 1

Summons to a married couple who filed joint returns and who are jointly and severally liable for payment.
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<p>If a summons is served in aid of the collection of an assessment, two separate summonses (issued to each spouse) should be served. The In the matter of line of each summons should list both spouses’ names (as the taxpayers). The To line of the first summons will contain the name of Spouse A and the To line of the second summons will contain the name Spouse B.</p>
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<p>Reminder: Each spouse is a separate taxpayer. Therefore, a summons served upon an opposite spouse is a third-party summons.</p>

<p>These are collection summonses excepted from notice under IRC 7609(c)(2)(D).</p>

Scenario 2

Summons to a married couple with no return filed or assessment made.

If a summons is issued for a period where a married couple failed to file a return, the spouses should be treated individually regardless of their past filing status. These summonses should be issued to each spouse separately. The first summons should be captioned **In the matter of Spouse A** and the second summons captioned **In the matter of Spouse B**.

Notice is not required, unless one spouse is summoned in the matter of the other. Such as **Spouse A** is summoned **in the matter of Spouse B** or visa versa.

A third party summons issued in connection with the examination of a return or a Del Ret investigation is not a collection summons and notice requirements apply. If **Spouse A** is summoned **In the matter of Spouse B**, then **Spouse A** is entitled to notice under IRC 7609(a) as a person identified in the summons.

Note: When either spouse is summoned in the matter of the other spouse (by issuing and serving separate summonses), both spouses are entitled to notice of the other spouse's summons. This procedure preserves each spouses' opportunity to move to quash the summons served on the other spouse.

Scenario 3

Summons to officers or employees of taxpayer businesses, such as corporations and sole proprietorships.

When these persons are summoned in their capacity as officers or employees, the summons is a first-party (taxpayer) summons that is excepted by IRC 7609(c)(2)(A) from the notice requirements of IRC 7609(a).

Note: Summonses served to establish liability for the Trust Fund Recovery Penalty are subject to the notice requirements of IRC 7609(a). See IRM 25.5.6.4.1, Procedures for Summonses Issued to Investigate Liabilities for the Trust Fund Recovery Penalty.

- (8) The notice and waiting period requirements of IRC 7609 apply to all summonses except:
- A summons served on a person with respect to whose liability the summons is issued, or any officer, or employee of that person (such as a first-party summons). See IRC 7609(c)(2)(A).

- A summons served to determine whether or not records of the business transactions or affairs of an identified person have been made or kept. See IRC 7609(c)(2)(B) and IRM 5.17.6.4(4), Proper Description of Documents, regarding discovery summonses.
- A summons served to determine the identity of holders of numbered bank accounts (such as accounts which are identified by a number or code rather than by name). See IRC 7609(c)(2)(C). 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. See *Charles v. United States*, 112 AFTR2d 2013-6652 (W.D. Mich. 2013).
- A summons served in aid of the collection of an assessment made or judgment rendered against the person with respect to whose liability the summons is issued, or the liability at law or in equity of any transferee or fiduciary of that person. See IRC 7609(c)(2)(D) and IRM 5.17.6.6, The Collection Summons Exception of IRC 7609(c)(2)(D).
- A summons issued by a criminal investigator of the IRS to a third party who is not a third-party recordkeeper. See IRC 7609(c)(2)(E).
- A “John Doe” summons (one that does not identify the person with respect to whose liability the summons is issued). See IRC 7609(c)(3) and IRC 7609(f).

Note: A “John Doe” summons may only be served after approval by a US district court. See IRM 25.5.7, Special Procedures for John Doe Summonses.

- A summons issued under the provisions of IRC 7609(g) where a court determines there is reasonable cause to believe that giving notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.
- (9) Field collection employees will use the ICS Summons tool to document how and when the notice was given. The ICS summons tool systemically generates an ICS history entry. Document any additional information regarding the summons notice in ICS history.

5.17.6.5.1
(09-18-2017)
**Third-Party
Recordkeepers**

- (1) A summons to a third-party recordkeeper may be served by certified or registered mail to the last known address of such recordkeeper per IRC 7603(b). The summons may also be served in the traditional means of hand delivery per IRC 7603(a).
- (2) See IRM 25.5.6.3.2, Third-Party Recordkeeper, for the list of third-party recordkeepers as defined in IRC 7603(b)(2). The most commonly summoned third-party recordkeepers are savings institutions such as banks, credit unions and savings and loans.
- (3) The third-party recordkeepers are only considered to be third-party recordkeepers when they are summoned to produce records that they made or kept (or give testimony about such records) of another person’s business transactions or affairs. Owners or developers of computer software source codes are third-party recordkeepers even though they may not make or keep records of another person’s business transactions or affairs.

5.17.6.5.2
(11-28-2023)
**Notice and Waiting
Period Requirements**

- (1) In the case of all third-party summonses subject to IRC 7609(a), the following notice and waiting period requirements apply:
 - **Time** - notice, along with a copy of the summons and an explanation of the noticee's right to bring a proceeding to quash, has to be given within three days of the date on which the summons was served, but no later than the 23rd day before the appearance date fixed in the summons as the date of production. See IRC 7609(a)(1).
 - **Service of Notice** - by the same manner as provided in IRC 7603 (relating to service of summons), or by certified or registered mail to the last known address of the noticee, or in the absence of a last known address, left with the person summoned. See IRC 7609(a)(2).
- (2) A noticee is any person (other than the summoned third party) who is identified by proper name in a summons served on a third-party witness for the production of records or testimony relating to the person so identified. The taxpayer identified by proper name in the caption of the summons is always a noticee, even though the taxpayer's name may not appear in the description of summoned records. Any individual or entity identified by proper name in the description of summoned records or testimony is also a noticee. A noticee under IRC 7609(a) has the right to be given notice of the summons, to intervene in a summons enforcement proceeding, and to bring a proceeding to quash the summons.
- (3) In the case of bank records concerning a corporation solely owned by the taxpayer named in the summons, the corporation is a separate noticee from the taxpayer.
- (4) A summons may involve the records of multiple noticees. Where there are multiple noticees who reside at the same address, separate notices are required to be sent to each individual at that address. In situations involving a married couple, each spouse is sent a separate notice.
- (5) If the IRS fails to give notice and receives the summoned information, it is possible for a court to order that the IRS return or destroy the summoned evidence. *Church of Scientology v. United States*, 506 U.S. 9 (1992); see also *United States v. Powell*, 379 U.S. 48, 57-58(1964), requiring that in order to judicially enforce a summons, the IRS must demonstrate that it followed all administrative steps regarding said summons imposed under the Internal Revenue Code.
- (6) IRC 7609(j) provides that nothing in IRC 7609 shall be construed to limit IRS ability to obtain information, other than by summons, through formal or informal procedures authorized by IRC 7601 and IRC 7602. This section indicates that IRS ability to seek informally the voluntary production of records (without a summons) constitutes a procedure authorized by the Code.
- (7) The IRS is permitted to seek financial records from financial institutions informally **except in the Tenth Circuit** because of that court's interpretation of a portion of the Right to Financial Privacy Act (RFPA), 12 USC 3413(c). Even in the Tenth Circuit, the RFPA only applies to a financial institution's records for customers who are individuals or are partnerships of five or fewer individuals. Financial records of customers who are corporations, limited liability companies, partnerships with non-individual partners, and 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. See *Hohman v. Eadie*, 894 F.3d 776 (6th Cir. 2018).

- (8) In general, the RFPA requires that covered 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. The RFPA also provides a long-standing exception to these requirements as they apply to the IRS. Section 3413(c) states: **Nothing in [the RFPA] prohibits the disclosure of financial records in accordance with procedures authorized by the [IRC].** See 12 USC 3413(c). Additionally, a more recent exception to RFPA requirements exists for the IRS and other government agencies which have disbursed payments (such as tax refunds) and need to investigate or recover (through collection efforts) an improper federal payment (such as an erroneous refund). See 12 USC 3413(k)(2).
- (9) In *Neece v. Internal Revenue Service*, 922 F.2d 573 (10th Cir. 1990), the Tenth Circuit 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 court reasoned that IRC 7609, not IRC 7602, contained the procedures for obtaining records concerning a taxpayer from a financial institution.

Note: In all circuits other than the Tenth, the IRS takes the position that an informal request for records is a procedure authorized under IRC 7601. Within the Tenth Circuit, *Neece* should not constrain the IRS from informally requesting financial records of customers who are not at all covered by the RFPA (such as, corporations, limited liability companies, and some partnerships) or of any customers who received improper federal payments from the government (such as erroneous tax refunds).

- (10) Given the Tenth Circuit's holding in *Neece*, revenue officers should follow IRC 7609 procedures when seeking covered financial information from financial institutions governed by the Tenth Circuit's precedents. **The Tenth Circuit encompasses Kansas, Oklahoma, Wyoming, Utah, Colorado, and New Mexico.** Covered information from financial institutions should not be sought by informal means, such as by producing credentials, letters of circularization, or by any other non-summons method if any of the following conditions exist:

- The financial institution branch from which the information is sought is located in the Tenth Circuit.
- The information concerns taxpayers residing in the Tenth Circuit, regardless of the location of the financial institution, or
- The requesting IRS office is located in the Tenth Circuit, regardless of the location of the financial institution or the residence of the taxpayer.

Note: Revenue officers should not attempt to obtain financial information voluntarily from financial institutions if the above conditions exist. To do otherwise could result in damages awarded against the IRS and the expenditure of valuable resources in defending such damage suits. Revenue officers should seek Area Counsel's advice if there is any doubt regarding whether *Neece* applies.

5.17.6.5.3
(11-28-2023)
**Petition to Quash the
Summons**

- (1) A noticee who wishes to prevent compliance with the summons by the party summoned must begin a civil action in the appropriate U.S. district court to quash the summons no later than twenty days after the day notice of the summons is given. See IRC 7609(b)(2).
- (2) The noticee must mail (by registered or certified mail) copies of the petition to quash the summons to the summoned person and to the IRS employee who issued the summons. This must be done within the twenty-day period, and is a jurisdictional prerequisite to the court hearing the complaint. *Yocum v. United States*, 586 F. Supp. 317 (N.D. Ind. 1984); *Franklin v. United States*, 581 F. Supp. 38 (E.D. Mich. 1984).
- (3) The summoned party has the right to intervene in this proceeding and is bound by the decision in the quash proceeding whether the summoned party intervenes or not.
- (4) If the noticee files a petition to quash the summons, then the IRS cannot examine the records until the court issues an appropriate order. The IRS may only examine the records prior to the issuance of a court order if the person bringing the petition consents to the examination.
- (5) The date set for appearance cannot be sooner than the 23rd day after notice is given. See IRC 7609(d)(1). As a rule of thumb, the 26th day is used.
- (6) IRC 7609(d)(1) prohibits the premature examination of the records at issue, not physical acceptance. In *Conner v. United States*, 434 F.3d 676 (4th Cir. 2006), the taxpayer appealed the district court's finding with respect to the fourth prong of the Powell standard, asserting that by accepting records from a third party prior to expiration of the twenty-three days in which the affected taxpayer could seek to quash the third-party summonses, the revenue agent did not follow IRC 7609(d)(1) nor the IRM. The Fourth Circuit held the taxpayer's argument was without merit. Although the IRM directed the revenue agent not to physically accept records in response to a third-party summons prior to expiration of the twenty-three day period in which the affected taxpayer could seek to quash the summons, such violation, while relevant to the bad faith inquiry presented in this case, did not constitute proof by itself of the IRS's bad faith in issuing the challenged summonses.
- (7) If the IRS receives records from a third party before the expiration of the twenty-third day after notice is given:
 - a. Immediately seal the records in an appropriate container.
 - b. Mark the container with the date and time sealed, and
 - c. Secure the records until (1) the 23-day period following the date of giving notice has expired and no noticee filed a petition to quash, or (2) any court proceeding (including appeals periods) brought to quash the summons has concluded.

Note: The 23-day waiting period may expire before the IRS employee receives notice that the taxpayer or other noticee has filed a timely petition to quash the third-party summonses. If the IRS employee has already begun reviewing the summoned records and notification of a timely filed quash petition is received, the employee should stop the review immediately and seal the summoned records, noting the date and time on which the seal occurred. The records should not be accessed until the summons litigation process is concluded.

- (8) A petition to quash brought by the taxpayer suspends the period of limitations for assessment under IRC 6501 and criminal prosecutions under IRC 6531. IRC 7609(e)(1) only tolls the statute of limitations for a taxpayer who petitions to quash the summons. If only one of the potentially responsible persons (regarding whose liabilities the IRS issued separate summonses) files a petition to quash the summons, only that petitioner's assessment statute is suspended. The statute is suspended for the period in which the proceeding and any appeals are pending.
- (9) If a summoned party's response to a third-party exam summons (such as to determine TFRP liability) has not been resolved, the period of limitations for assessment under IRC 6501, with respect to the taxpayer whose liability the summons is issued, is suspended beginning on the date which is 6 months after the service of the third-party summons. See IRC 7609(e)(2). The suspension ends upon final resolution of the summoned party's response. Final resolution occurs when:
 - The summons or any order enforcing all or part of the summons is fully complied with, and
 - All appeals or requests for further review are disposed of, or the period in which an appeal can be taken, or further review can be requested, has expired. See 26 CFR 301.7609-5(e)(3)

5.17.6.5.4
(08-01-2019)

**Duty of Third Party on
Receipt of the Summons**

- (1) The third party is required to assemble the records and prepare to produce them on the date specified in the summons, whether or not a petition to quash has been or will be filed. See IRC 7609(i)(1).
- (2) The third party or that person's agent or employee who makes a disclosure to the IRS pursuant to a court order for compliance with the summons or upon reliance on an IRS certificate stating that no timely proceeding to quash the summons has been commenced or that the noticee has consented to the examination will not be liable to any customer or other person for such disclosure. See IRC 7609(i)(3).
- (3) **Certificate** - On the second page of the original summons, Service of Summons, Notice and Recordkeeper Certificates, is an unexecuted certification stating that the period for beginning a proceeding to quash a summons has expired and no such proceeding was begun within such period, or that the noticee consented to the examination. If the noticee consents to the examination or the period to quash has expired, the authorized IRS employee may complete the certification on the second page of the summons. Upon request of the summoned third party, the issuing officer should furnish a photocopy of the certificate to the third party. See IRC 7609(i)(2).

5.17.6.6
(11-28-2023)

**The Collection
Summons Exception of
IRC 7609(c)(2)(D)**

- (1) The procedural rules applicable to third-party summonses issued under IRC 7609(a) do not apply to collection summonses that pertain to an assessed liability, transferee liability, or a liability reduced to judgment. See IRC 7609(c)(2)(D); *Ginsburg v. United States*, 90 AFTR 2d 2002-6555 (D. Conn. 2002) and *Polselli v. Internal Revenue Service*, 598 U.S. 432 (2023).
- (2) Third-party summonses issued as part of a DEL RET investigation, for trust fund recovery penalties (TFRP - pre-assessment investigations) or any other investigation where no liability has been assessed are not considered collection summonses under IRC 7609(c)(2)(D). Accordingly, IRS must follow the notice and waiting period requirements of IRC 7609(a) for these summonses.

Caution: A collection summons that pertains to an assessed liability cannot be combined with a summons to obtain information related to a TFRP investigation without giving notice under IRC 7609(a).

- (3) If the IRS summons an entity's bank account for evidence in support of a trust fund recovery penalty (TFRP) determination, the IRS must issue a separate summons for each known person who is potentially liable for a TFRP. The IRS should not issue a summons that lists the names of all potentially responsible persons for the TFRP in the heading of one summons and provide redacted notice copies to the noticees.

Example: TFRP Investigation - Corporation X example.

TFRP Investigation - Corporation X
Two potentially responsible persons (John Smith, President and Mary Smith, an employee) have been identified for potential TFRP assessments. Two summonses would be issued to a witness who may have evidence regarding both of the two persons potentially responsible for the TFRP.
Summons One - A summons captioned John Smith, President of Corporation X would be issued for records and time periods that may be relevant to the liability of John Smith. If the summons is directed to a third party other than Corporation X (such as a bank), noticee copies (Parts C and D of the summons) would be addressed to John Smith and sent to John Smith's last known address and noticee copies (Parts C and D) would be addressed and sent to Corporation X at the corporation's last known address.
Summons Two - A separate summons captioned Mary Smith, Employee of Corporation X would be issued for records and time periods that may be relevant to the liability of Mary Smith. Again, if the summons is directed to a third party, noticee copies (Parts C and D) would be addressed and sent to Mary Smith at Mary Smith's known address, and noticee copies (Parts C and D) would be addressed and sent to Corporation X at the corporation's last known address.
Exhibit IRM 25.5.6-1, Sample Language for a TFRP Multiple Potentially Responsible Person Letter, can be used to notify the bank or other summoned party that only one copy of the information is needed.

- (4) Notification is not required for third-party summonses issued for BAL DUE accounts, or any other investigation where an assessed liability exists for each of the periods at issue, **and the summons is issued in aid of collection of those assessments.**

Note: A witness may not know that a summons is issued in aid of the collection of an assessment. To help avoid confusion, the revenue officer can include the following statement in the body of a collection summons: "Under I.R.C. 7609(c)(2)(D), this summons is excepted from the notice requirements pertaining to third-party summonses." Or, the revenue officer can attach a Notice Exception Letter with the collection summons. See Exhibit 5.17.6-1.

5.17.6.7
(11-28-2023)**Third-Party Contact
Requirements of IRC
7602(c)**

- (5) Notice is required for third-party summonses issued for a Del Ret investigation where no liability is assessed.
- (1) IRC 7602(c)(1), Notice of Contact of Third Parties – General Notice, was significantly modified by section 1206 of the Taxpayer First Act of 2019, P.L. 116-25, effective August 16, 2019. Before an IRS employee initiates contact with third parties for the determination or collection of a taxpayer's tax liabilities, the IRS must provide the taxpayer, at least 45 days before the third-party contact, with advance notice which informs the taxpayer that the IRS intends to make third-party contacts within a specified time period not to exceed one year. Such advance notice of third-party contacts may be renewed by the IRS, again by notice given 45 days in advance of the new specified period in which the IRS continues to intend to make third-party contacts. IRC 7602(c) also requires the IRS to make a record of persons contacted and provide that record to the taxpayer upon the taxpayer's request.
- (2) Absent jeopardy circumstances, a revenue officer may not contact any third party without the IRS having first provided the taxpayer with the advance notice described in the preceding paragraph, at least 45 days before an IRS intended third party contact. There are several versions of Letter 3164 that can be used to advise a taxpayer in advance that the IRS intends to contact a third party within a specified period, not to exceed one year at a time. The most common versions of Letter 3164 used by revenue officers are
- Letter 3164-B, (Bal Due)
 - Letter 3164-X, (Del Ret)
 - Letter 3164-A, (TFRP)

Note: See the *Letter 3164* section of the publishing catalog for all available versions of *Letter 3164*.

Note: In most cases between 2005 and the enactment of the Taxpayer First Act of 2019, advance third-party contact notice had been addressed in collection cases by the IRS providing the taxpayer with Pub 1, Your Rights as a Taxpayer. In a case decided shortly before the Taxpayer First Act of 2019 was enacted, the Ninth Circuit questioned the adequacy of Pub 1 alone for this purpose. See *J.B. v. United States*, 916 F.3d 1161 (9th Cir. 2019). At the same time, the Ninth Circuit supported the rationale in a Second Circuit case where the IRS gave the taxpayer a second form of advance notice that was closer in time to the intended third-party contact. If challenged, the IRS intends to defend third-party contacts that its employees previously made (before the effective date of section 1206 of the Taxpayer First Act of 2019), in accordance with then-existing instructions in the Internal Revenue Manual for ways to give a taxpayer the then-required advance notice that the IRS may be contacting third parties.

- (3) Refer to IRM 25.27.1, Third-Party Contact Program, for detailed guidance on third-party contacts.

Note: Serving a summons to a third party is contact with a third party. Under 26 CFR 301.7602-2(e)(4), Example 4, giving the taxpayer a notice copy of the summons satisfies the post-contact recording and reporting requirements of IRC 7602(c) for this contact. The taxpayer should have been provided, however, with the advance general third party notice as discussed in IRM

5.17.6.7 (1) & (2) prior to the issuance of the summons. Before serving the summons, the IRS should verify that the advance general notice of third party contact has been provided to the taxpayer. See IRM 25.27.1, Third-Party Contact Program. Additionally, after making the contact when notice (quash notice) of the summons was not provided to the taxpayer (such as for a collection purpose summons), the IRS must record the contact on Form 12175, Third Party Contact Report Form and forward the form to the IRC 7602(c) Third-Party Contact Coordinator. Summonses generated through the ICS summons tool will automatically record the third-party contact and completion of a Form 12175 will not be required.

5.17.6.8
(08-01-2019)
**Unnecessary
Examinations and
Barred Years**

- (1) IRC 7605(b) prohibits unnecessary examinations or investigations of a taxpayer and limits the IRS to one inspection of a taxpayer's books of account for each taxable year unless the taxpayer requests otherwise, or unless the Secretary or the Secretary's delegate, after investigation, determines that further inspection is necessary and notifies the taxpayer in writing of this determination.
- (2) An examination of the taxpayer's books for the purpose of collecting the tax after an examination to determine the liability is considered to be a new investigation not subject to the restrictions of IRC 7605(b).

5.17.6.9
(11-28-2023)
**Fair Credit Reporting
Act**

- (1) Banks and other financial institutions have sometimes argued that producing records of a taxpayer's financial transactions pursuant to a summons would violate the Fair Credit Reporting Act (FCRA), 15 USC 1681 et seq. (1970). To protect consumers' interests, the FCRA restricts the circumstances under which a "consumer reporting agency" may furnish a "consumer report" to third parties, including the IRS.
- (2) A "consumer reporting agency" is defined as "any person which for monetary fees or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." See 15 USC 1681a(f). A bank may be considered a "consumer reporting agency" if it meets the above definition.
- (3) The FCRA specifically excludes from its definition of a "consumer report" any report containing information solely as to transactions or experiences between the consumer and the person making the report. See 15 USC 1681a(d)(2)(A)(i). Thus, information relating only to the bank and its customer (which is generally what the IRS seeks) is not covered by the Act, and the bank can produce this summoned information without violating the FCRA. *United States v. Lake County National Bank*, 35 AFTR2d 75-1428 (N.D. Ohio 1975); *United States v. Bremicker*, 365 F. Supp. 701 (D. Minn. 1973).
- (4) The IRS can obtain a full credit report pursuant to 31 USC 3711(h)(2) without issuing a summons when the IRS has:
 - An assessment lien against the taxpayer
 - Reduced a taxpayer's liability to judgement
 - Entered into an offer in compromise or settlement agreement with the taxpayer

- (5) Some cases handled by revenue officers begin as tax delinquency investigations (Del Ret), such as when the investigation begins before there is an assessed tax liability, usually because the taxpayer failed to file a tax return. In these cases, the IRS must issue a summons to obtain a credit report and cannot lawfully request a credit report informally. See 31 USC 3711(h) and the FCRA 15 USC 1681b. The IRS can receive a full credit report by obtaining the consumer's written permission or by issuing a summons. A summons satisfies the permissible circumstance requirement of 15 USC 1681b(a)(1), which provides that a consumer reporting agency may furnish a full credit report "[i]n response to the order of a court having jurisdiction to issue such an order". The IRS takes the position that a third-party recordkeeper summons satisfies the court order requirement in 15 USC 1681b(a)(1) because IRC 7603(b)(2)(B) specifically contemplates the IRS issuing a third-party summons to a consumer reporting agency under the FCRA. IRC 7609(i) protects a third party that responds to a summons if the person entitled to notice of the summons does not file a timely petition to quash with the district court. 15 USC 1681b(a)(1) does not require the IRS to be a creditor of the taxpayer before acquiring a full credit report by summons.
- (6) Any question concerning the scope of the Fair Credit Reporting Act or its application to specific situations should be referred to Area Counsel. See also IRM 5.1.18.19, Consumer Credit Reports, for additional information on obtaining credit reports.

5.17.6.10
(12-11-2007)
Constitutional Defenses

- (1) The First Amendment to the Constitution guarantees the right of free expression; this includes the right to assemble freely; freedom of the press; freedom of religion; and freedom of speech.
- (2) The Fourth Amendment protects against unreasonable searches and seizures. Unlike the Fifth Amendment, discussed below, corporations and other organizations are entitled to the protection afforded by the Fourth Amendment.
- (3) The Fifth Amendment affords a person a privilege against self-incrimination. It applies to both documentary requests and requests for oral testimony. There are different analyses for each type of request.
- (4) Area Counsel should be contacted in any case where the taxpayer raises a constitutional defense to summons enforcement, or for any question concerning the application of a constitutional argument to a specific situation.

5.17.6.11
(12-11-2007)
**Notification to Witness
of Constitutional Rights**

- (1) The type of information sought by a revenue officer through the issuance of a summons generally does not tend to develop criminal potential of a case. Therefore, it is not mandatory that the person summoned be informed of a constitutional privilege against self-incrimination. In any case in which the revenue officer believes the criminal potential is so manifest that a warning may be appropriate, Area Counsel should be contacted.

5.17.6.12
(08-01-2019)
**Privileges Based on
Confidential
Relationships**

- (1) Certain confidential relationships between a taxpayer and a witness or another person may give rise to a claim of a privilege from testifying or providing information pursuant to a summons. In the context of IRS summonses, federal law governs the determination of whether a particular matter is privileged. Questions concerning the validity of a privilege or its applicability to a particular situation should be referred to Area Counsel.

- (2) A person cannot successfully refuse to testify or provide information solely on the basis that the person stands in a confidential relationship with another person. The burden is on the witness first to establish the facts on which the asserted privilege is based and then to demonstrate how, and the extent to which, the requested information is covered by the privilege. See *United States v. Kovel*, 296 F.2d 918 (2d Cir. 1961).
- (3) The holder of a privilege may forfeit a privilege by failing to assert it or by expressly (or implicitly) waiving it. See Fed.R. Evid. 502; *Hunt v. Blackburn*, 128 U.S. 464 (1888); *Cotton v. United States*, 306 F.2d 633, 637 (2d Cir. 1962), citing *United States v. United Shoe Mach. Corp.*, 89 F. Supp. 357, 358-59 (D. Mass. 1950).

5.17.6.13
(11-28-2023)

Attorney-Client Privilege

- (1) In general, communications from a taxpayer to an attorney made in confidence for the purpose of obtaining legal advice are privileged, and the attorney cannot be compelled to disclose that information to the IRS. See 8 Wigmore, Evidence 2291 (McNaughton rev. 1961); *United States v. United Shoe Mach. Corp.*, 89 F. Supp. 357, 358-59 (D. Mass.1950). Also, if the taxpayer creates records to facilitate the exchange of privileged communications with the attorney, those records are privileged. *United States v. Davis*, 636 F.2d 1028, 1041 (5th Cir. 1981); *United States v. Bartlett*, 449 F.2d 700, 703 (8th Cir. 1971). However, if a taxpayer turns over pre-existing records to an attorney, the IRS can obtain those records by summons, unless the records were otherwise privileged from production while in the taxpayer's possession. *Id.*
- (2) As the foregoing information suggests, the attorney-client privilege is not all-inclusive and does not protect everything an attorney may do for a client. The privilege is confined to communications made in confidence by the client for the purpose of obtaining legal advice from an attorney. *United States v. Rockwell International*, 897 F.2d 1255 (3d Cir. 1990). The client in a corporate setting may be any officer or employee of the corporation. *Upjohn v. United States*, 449 U.S. 383 (1981). Also, underlying factual information can be obtained from the employees whether or not this same information has been communicated to the corporation's attorney. Books and records of a taxpayer are not privileged merely because they are in the hands of the corporation's attorney. If the records were compellable from the taxpayer, the taxpayer cannot cloak them with the privilege by transferring them to an attorney. *Fisher v. United States*, 425 U.S. 391 (1976).
- (3) Ministerial or clerical services are not within the attorney-client privilege. Records of financial transactions involving monies paid by or on behalf of a client to an attorney are not covered by the privilege. When an attorney acts as the client's business advisor, or agent for the receipt or disbursement of money or property to or from third parties, the attorney is not acting in a legal capacity and records of such transactions are not privileged. *United States v. Davis*, 636 F.2d 1028 (5th Cir.), cert. denied, 454 U.S. 862 (1981). The identity of a client or the fact that a given individual has become a client are matters which are not usually within the privilege in the absence of special circumstances. *United States v. BDO Seidman*, 337 F.3d 802 (7th Cir. 2003); *United States v. Sidley Austin Brown & Wood LLP*, 2004-2 USTC 50,289 (N.D. Ill. 2004).
- (4) The preparation of a tax return is primarily an accounting service. When an attorney prepares a client's tax returns, the workpapers produced by the attorney while preparing the returns and the tax records on which they are

based are not shielded by the attorney-client privilege. *Colton v. United States*, 306 F.2d 633, 638 (2d Cir. 1962); *United States v. Under Seal*, 748 F.2d 871, 877 n8 (4th Cir. 1984); *United States v. Lawless*, 709 F.2d 485, 487 (7th Cir. 1983) (“When information is transmitted to an attorney with the intent that the information will be transmitted to a third party (in this case on a tax return), such information is not confidential.”); *United States v. Frederick*, 182 F.3d 496 (7th Cir. 1999); *United States v. Pipkins*, 528 F.2d 559, 563 (5th Cir. 1976) (“[C]ourts have refused to apply the privilege to information that the client intends his attorney to impart to others.”). The same is true of the communications between the client and the attorney about the return being prepared. *Id.*

5.17.6.14
(10-15-2010)

Attorney Work-Product Doctrine

- (1) The work-product doctrine protects documents prepared by attorneys acting for their client in anticipation of or for use in litigation. *Hickman v. Taylor*, 329 U.S. 495 (1947); *United States v. Textron, Inc.*, 577 F.3d 21 (1st Cir. 2009); *United States v. Davis*, 636 F.2d 1028 (5th Cir. 1981); *Hodges, Grant & Kaufmann v. United States*, 768 F.2d 719 (5th Cir. 1985); Fed.R.Civ.P. 26(b)(3) (protecting against disclosure the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation).
- (2) This doctrine applies to IRS summonses. *Upjohn Co. v. United States*, 449 U.S. 383 (1981); *Borstein v. United States*, 977 F.2d 112 (4th Cir 1992).
- (3) The obligation imposed by a tax summons remains subject to traditional privileges and limitations, *United States v. Euge*, 444 U.S. 707 (1980). Nothing in the language or legislative history of the IRS summons provisions suggests an intent on the part of Congress to preclude application of the doctrine to tangible things constituting attorney work product, absent a showing by the IRS of substantial need and inability to obtain the equivalent without undue hardship.
- (4) In *United States v. Adlman*, 134 F.3d 1194 (2d Cir. 1998), the Second Circuit held that work product protection should be granted if the document could fairly be said to have been prepared “because of” anticipated litigation. In order to determine whether a document was prepared because of anticipated litigation, a court should look to the purpose or function for which a document was prepared, rather than to the content of the document. *United States v. Textron, Inc.*, 577 F.3d 21 (1st Cir. 2009); *United States v. Roxworthy*, 457 F.3d 590 (6th Cir. 2006).

5.17.6.15
(11-28-2023)

Federally Authorized Tax Practitioner-Taxpayer Privilege

- (1) Prior to the IRS Restructuring and Reform Act of 1998 (“RRA 1998”), the accountant-client privilege was only provided by law in some states; it was not recognized in federal law. *Couch v. United States*, 409 U.S. 322 (1973); *United States v. Arthur Young*, 465 U.S. 805 (1984). With the enactment of IRC 7525 by RRA 1998, the attorney-client privilege was extended to include communications between a taxpayer and a federally authorized tax practitioner, including a certified public accountant, to the extent that such communications would be considered privileged communications if they were between a taxpayer and an attorney.
- (2) IRC 7525 extends the application of the attorney-client privilege to communications between a taxpayer and any **federally authorized tax practitioner** with respect to **tax advice** to the extent the communication would be considered a

privileged communication if it were between a taxpayer and an attorney. The law merely extends the application of the attorney-client privilege to other individuals; it does not modify the attorney-client privilege of confidentiality. Thus, as with the attorney-client privilege, information disclosed to an authorized practitioner acting beyond the capacity of providing confidential federal tax law advice will not be privileged. *United States v. KPMG, LLP*, 316 F. Supp. 2d 30 (D.D.C. 2004).

- (3) The American Jobs Creation Act of 2004 amended IRC 7525(b) by providing that the tax practitioner privilege does not apply to written communications in connection with the promotion of the direct or indirect participation of any person in any tax shelter. Prior to this amendment, the exception to the privilege was limited to written communications of this type regarding **corporate** tax shelters. The Government has the burden to prove preliminary facts in support of the IRC 7525(b) exception to the privilege. *United States v. BDO Seidman, LLP*, 492 F.3d 806 (7th Cir. 2007). **Promotion** of a taxpayer's participation in a tax shelter means simply **furtherance** or **encouragement**, and is not limited to the marketing of a pre-packaged, one-size-fits-all tax shelter product. *Valero Energy Corp. v. United States*, 569 F.3d 626 (7th Cir. 2009). However, there is no necessary **written communication** when a participant in an oral conversation merely prepares personal notes of the conversation. *Countryside Limited Partnership v. Commissioner*, 132 T.C. 347 (2009).
- (4) The privilege may be waived by any disclosure of the privileged information to a third party not sharing a common legal interest with the client or not necessary to the tax practitioner-client consultation.
- (5) **Federally authorized tax practitioner** means any individual who is authorized under federal law to practice before the IRS. See Circular 230. The term includes attorneys, certified public accountants, enrolled agents, and enrolled actuaries. The term **tax advice** means advice given by an individual with respect to matters within the scope of that individual's authority to practice before the IRS. IRC 7525(a)(3).
- (6) The privilege may only be asserted in:
 - Any noncriminal tax matter before the IRS, IRC 7525(a)(2)(A), and
 - Any noncriminal tax proceeding in federal court brought by or against the United States, IRC 7525(a)(2)(B).
- (7) The privilege may not be asserted to prevent the disclosure of information to any regulatory body other than the IRS, such as the Securities and Exchange Commission (SEC), including in an administrative or a court proceeding.

5.17.6.16
(12-11-2007)
**Physician-Patient
Privilege**

- (1) In general, there is no federally recognized privilege as to communications between a taxpayer and a physician. *United States v. Moore*, 970 F.2d 48, 50 (5th Cir. 1992).
- (2) The Health Insurance Portability and Accountability Act, (Pub. L. 104-191, enacted August 21, 1996), now provides privacy rights for individuals whose health care records are maintained by "covered entities." When seeking documents from health care providers, consult with Area Counsel.

Note: In *Jaffee v. Redmond*, 518 U.S. 1 (1996), the Supreme Court ruled that communications between a psychotherapist and a patient are protected from

compelled disclosure under Rule 501 of the Federal Rules of Evidence. This privilege includes communications made by patients to psychiatrists, psychologists, and licensed social workers.

5.17.6.17
(09-26-2014)

**Non-IRC Limitations on
IRS Summons Authority**

- (1) The authority of the IRS to issue and enforce summonses is governed by IRC 7602, which gives the IRS broad powers to summon any information that may be relevant to the investigation of a person's tax liability. IRS summons powers should not be limited except by clearly expressed Congressional intent or clearly recognized privileges and immunities. In *United States v. Arthur Young & Co.*, 465 U.S. 805, 816 (1984), the Supreme Court, citing *United States v. Bisceglia*, 420 U.S. 141 (1975), stated that except for traditional privileges and limitations, "other restrictions upon the [IRS's] summons power should be avoided absent unambiguous directions from Congress."
- (2) Although courts have been reluctant to circumscribe IRS summons power as granted to it by Congress, privacy rights have developed in the form of a patchwork of industry and sector-specific statutes that can be found in statutes other than the Code. When Congress has intended to exclude the IRS from general restrictions placed on government investigatory powers contained in statutes other than the Code, it has done so explicitly. For example, Congress provided an exception for the IRS from the strictures contained in the Right to Financial Privacy Act, 12 USC 3401 et seq., so long as the IRS followed Code procedures. See 12 USC 3413; *Neece v. United States*, 922 F.2d 573 (10th Cir. 1990).
- (3) Certain federal privacy statutes were designed to protect the right to privacy from private and government sector infringement by imposing limitations on IRS summons authority. These limitations must be complied with before a party may disclose information to the IRS pursuant to a summons. Examples of these statutes include the following:
 - The Health Insurance Portability and Accountability Act, (Pub. L. 104-191, enacted August 21, 1996);
 - The Family Educational Rights and Privacy Act, 20 USC 1232g (FERPA);
 - The Employee Polygraph Protection Act, 29 USC 2001–2009 (EPPA);
 - The Cable Communications Policy Act, 47 USC 551 et seq. (CCPA);
 - The Video Privacy Protection Act, 18 USC 2710 (VPPA);
 - The Communications Assistance for Law Enforcement Act, Pub. L. 103-414, Oct. 25, 1994 (CALEA);
 - The Stored Communications Act (SCA), 18 USC 2701-2712, enacted as Title II of the Electronic Communications Privacy Act of 1986 (ECPA), 18 USC 2510 et seq.; and
 - Part D of the Social Security Act, 42 USC 651-669.
- (4) With respect to the SCA, the IRS has adopted a policy that it will obtain a search warrant (not use a summons) in all cases when it seeks from an internet service provider (ISP) the content of email communications stored by the ISP. Accordingly, the IRS will not seek the content of email communications from an ISP in any civil administrative proceeding. See IRM 1.2.1.5.37, Policy Statement 4-120 (May 3, 2013), Policy Regarding Requests for the Content of Email Communications under the Electronic Communications Privacy Act and Stored Communications.

- (5) When these statutes or others emerge in your cases, contact Area Counsel for advice as to their impact.

5.17.6.18
(10-15-2010)
**Rights Claimed by
Summoned Persons**

- (1) A witness appearing in response to an administrative summons will frequently claim other rights. Two frequently encountered are the rights to be represented by counsel and to make an audio recording of the summoned interview.

5.17.6.18.1
(12-11-2007)
Right to Counsel

- (1) A witness appearing in response to a summons is clearly entitled to be represented by that person's choice of counsel. See 5 USC 555(b).
- (2) Whether the witness may be entitled to *any* chosen counsel has been the subject of some controversy. If a taxpayer's counsel appears to represent persons with conflicting interests, such as representing both the taxpayer and a summoned third-party witness, consult the Summons Handbook at IRM 25.5.5.5, Dual Representation, and Area Counsel.

5.17.6.18.2
(09-18-2017)
**Right to Make Audio
Recording of the
Proceeding**

- (1) The taxpayer has the right under IRC 7521 to make an audio recording of an "in-person" interview. Follow the guidance in IRM 5.1.12.3, Recording Taxpayer Interviews, when the taxpayer requests to record a summons proceeding.

5.17.6.19
(11-28-2023)
Witness Fees

- (1) IRC 7610(a)(1) provides that persons who are summoned are entitled to receive witness fees and travel expenses. Such persons may be taxpayers or third parties, and they may obtain payment upon request. It should be noted that the conditions under which a summoned person may obtain payment for witness fees and travel expenses are separate and distinct from those under which payment for other costs associated with summons compliance may be authorized.
- (2) IRC 7610(a)(2) provides that the IRS will pay certain third parties for the direct costs incurred in locating, reproducing or transporting records in compliance with a summons.
- (3) The costs for which such third parties may claim payment are in addition to, and not a substitute for, witness fees and travel expenses.
- (4) Refer to 26 CFR 301.7610-1(c)(2) for specific payment rates for search, reproduction, and transportation costs.
- (5) See IRM 25.5.9, Fees and Costs for Summoned Witnesses, for more information.

Note: Revenue officers use ICS to transmit Form 6863, Invoice and Authorization for Payment of Administrative Summons Expenses, to CFO electronically. Refer to IRM 25.5.9.8.6, ICS Form 6863, for details.

5.17.6.20
(12-11-2007)
Injunctive Relief

- (1) In general, neither the witness, nor a third party, including the taxpayer, is entitled to declaratory or injunctive relief through a suit brought to quash a summons. Such persons have an adequate remedy at law by a challenge to the summons before the examining agent and before the district court at the summons enforcement proceeding. *Reisman v. Caplin*, 375 U.S. 440 (1964).

5.17.6.21
(11-28-2023)

Criminal Proceedings

- (1) IRC 7210 makes it a crime for a person to refuse or fail to testify or appear when summoned. That section provides for a fine of not more than a thousand dollars, or imprisonment for not more than one year, or both, together with costs of prosecution, upon conviction.
- (2) The possibility of criminal prosecution under this section is, of course, a powerful tool at the disposal of the IRS to compel compliance with the administrative summons. However, a conviction under IRC 7210 does not accomplish the primary purpose of the summons, namely, obtaining the needed information, because any proceedings to enforce the summons would be held in abeyance pending the outcome of the criminal proceedings.
- (3) Criminal proceedings may be effective when, for example, the person summoned falsely claims the documents have been destroyed.
- (4) See IRM 25.5.10, Enforcement of Summons, for more information.

5.17.6.22
(11-28-2023)

Civil Enforcement

- (1) The judicial device for enforcing the administrative summons is provided by IRC 7402(b) and IRC 7604. These sections provide a means of requiring the person summoned to comply.
- (2) IRC 7402(b) and IRC 7604(a) provide that jurisdiction to compel summons compliance is in the United States district court for the district in which the summoned person resides or is found. The effect of a proceeding under IRC 7604 is to obtain the assistance of the court in forcing the summoned person to give the desired information to the IRS by having the court issue an order to that effect. Disobedience of such an order would be a civil contempt punishable by the court.
- (3) Disobeying a court's summons enforcement order can be addressed by both civil and criminal contempt proceedings.
 - Civil contempt is designed to coerce compliance.
 - Criminal contempt is designed to punish disobedience.
- (4) See IRM 25.5.10, Enforcement of Summons, for more information.

5.17.6.23
(11-28-2023)

Summonses Issued to Debtors in Bankruptcy

- (1) The automatic stay provisions of 11 USC 362(a)(6) prohibit "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title."
- (2) The Office of Chief Counsel has determined that service of a collection summons is an "act to collect" and should not be issued while the automatic stay is in effect. IRM 5.17.8.10(2), Automatic Stay - 11 USC 362.
- (3) Summonses issued as part of DEL RET, or any other investigation where the liability at issue has not been assessed or determined through a court judgment, are not considered collection summonses. Accordingly, these summonses would not violate the automatic stay provision of 11 USC 362(a).
- (4) The automatic stay provisions of 11 USC 362(a) do not bar the issuance of exam purpose summonses, such as to determine a debtor's or a debtor officer's liability for the TFRP.

5.17.6.24
(09-26-2014)
**Indian Tribal
Government**

- (1) Indian Tribal Governments shall be treated as states for certain purposes per IRC 7871. Therefore, a unique relationship exists between Indian tribal governments and the United States government. This relationship requires a heightened level of sensitivity with respect to compliance efforts.
- (2) Do not serve a summons on a tribal government or a third party for information concerning a tribal government without coordinating with the IRS Indian Tribal Government (ITG) office in TE/GE. This coordination includes any summons issued by the IRS, including those summonses issued to investigate the TFRP for the responsible persons of a tribal entity. A summons initiated by Criminal Investigation is excepted from this requirement. See IRM 25.5.6.6.7.2, Indian Tribal Government, for additional information.

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Exhibit 5.17.6-1 (11-28-2023)**Collection Summons Notice Exception Letter**

Pursuant to IRC 7609(c)(2)(D), a summons in aid of collection is excepted from quash notice requirements. See IRM 25.5.6.5, Exemptions to Notice Requirements. In this instance a revenue officer may provide the following statement to the witness in order to avoid confusion, **Under I.R.C. 7609(c)(2)(D), this summons is excepted from the notice requirements pertaining to third-party summonses.** This statement may be placed in the body of the summons or provided by a *Collection Summons Notice Exception Letter*.

