



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.5.10

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EFFECTIVE DATE

(05-13-2024)

PURPOSE

- (1) This transmits a revision to IRM 25.5.10, Summons, Enforcement of Summons.

MATERIAL CHANGES

- (1) IRM 25.5.10.1.7: Editorial correction to the SharePoint Knowledge Base link.
- (2) IRM 25.5.10.3(8) Note: Editorial correction to the SharePoint Knowledge Base link.
- (3) Exhibit 25.5.10-3: Editorial correction to the SharePoint Knowledge Base links.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes 25.5.10 dated March 31, 2023.

AUDIENCE

All operating Divisions and Functions.

Signed by
Rocco A. Steco
Director, Collection Policy
Small Business / Self Employed

25.5.10

Enforcement of Summons

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25.5.10.1
(03-31-2023)
Program Scope and Objectives

- (1) The Summons Handbook provides guidelines for all IRS functions in one multi-functional handbook.
- (2) **Purpose:** This IRM section provides instructional procedures for the enforcement of summonses.
- (3) **Audience:** IRS employees authorized to issue and enforce a summons.
- (4) **Policy Owner:** Director, Collection Policy, SB/SE.
- (5) **Program Owner:** Collection Policy Enforcement, SB/SE.
- (6) **Primary Stakeholders:** IRS employees who require summons enforcement for the production of records and/or testimony, such as; SB/SE Collection, CEASO, SB/SE Exam, LB&I, TEGE and Criminal Investigation
- (7) **Program Goals:** There are times when the IRS will issue a summons requesting that a taxpayer, or a third party possessing records or information pertaining to a taxpayer, provide records or testimony. The Internal Revenue Code (IRC) provides the IRS with summons authority, and there is a mechanism to enforce compliance with summonses. By following the guidance in this IRM section, IRS employees will be able to request that a court enforce a summons in compliance with law, procedure and taxpayer rights.

25.5.10.1.1
(03-31-2023)
Background

- (1) This section contains summons enforcement guidelines on the following topics:
 - Appearance, Compliance or Noncompliance with a Summons
 - General Enforcement Procedures
 - Civil Enforcement of Summons
 - Criminal Enforcement of Summons
 - Protest Procedures in Civil Enforcement Cases
 - Protest Procedures in Criminal Enforcement Cases
 - Reports on Adverse Decisions in Civil Proceedings to Enforce Compliance With Summons

25.5.10.1.2
(03-31-2023)
Authority

- (1) Delegation Order 25-1, provides the levels of authority delegated to various IRS employees to approve and perform activities concerning summonses. See IRM 1.2.2.15.1, Delegation Order 25-1, Summonses, Oaths, Certifications and Related Functions.
- (2) The provisions of law applicable to IRS summons issuance and enforcement are contained in the following sections of the Internal Revenue Code (IRC):
 - IRC 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 Administrate Oaths and Certify
 - IRC 7402, Jurisdiction of District Courts
 - IRC 7210, Failure to Obey Summons
 - 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

25.5.10.1.3
(03-31-2023)
Responsibilities

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

25.5.10.1.4
(03-31-2023)
Program Management

- (1) There are no servicewide program reports tracking summons issuance. 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.
- (2) Periodic program reviews are conducted by Field Exam Special Processes to assess the effectiveness of the summons program for Examination, determine if procedures are being followed, validate policies and procedures, and to identify and share best/proven practices.

25.5.10.1.5
(03-31-2023)
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) Counsel (and in some areas, CEASO) review requests to enforce summonses.
- (3) Certain summonses require managerial approval. See IRM 1.2.2.15.1, Delegation Order 25-1, Summonses, Oaths, Certifications, and Related Functions, for summons authorities. When summons approval is required, it is necessary for the IRS employee who issued the summons to maintain the proper approval records associated with each summons. All approved summonses, approval memoranda and counsel review documents, where applicable, should be maintained with the summons in the administrative case file.

25.5.10.1.6
(03-31-2023)

Terms and Acronyms

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

Acronym	Definition
CEASO	Civil Enforcement Advice & Support Operations
CI	Criminal Investigation
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB&I	Large Business and International
SB/SE	Small Business/Self Employed
TBOR	Taxpayer Bill of Rights
TE/GE	Tax Exempt and Government Entities
W&I	Wage & Investment

25.5.10.1.7
(03-31-2023)

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 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 existed in the tax code, putting them in simple language and grouping them into 10 broad categories. IRS 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, Service-wide Policy Statements.
- (4) Additional summons guidance can be found on the *Summons Knowledge Base*.

25.5.10.2
(03-31-2023)

**Appearance, Compliance
or Noncompliance with a
Summons**

- (1) Anytime a summons is issued, inform the witness or the witness' representative that:
 - The witness must appear in person with the records and either comply or refuse to comply, stating reasons for any such refusal.
 - Failure to comply with the summons may result in judicial remedies.
 - A representative of the witness cannot appear in lieu of the witness on the appearance date set in the summons.
 - (2) If the witness presents a valid reason (such as illness) for not appearing on the day fixed in the summons, that date may be continued by mutual agreement to another date. To formally extend the compliance date of the summons:
 - a. Prepare a letter to the summoned party that includes the date of the original summons, the new compliance date, and the name of the summoned party.
 - b. Mail the letter by certified mail or hand deliver it to the summoned party.
 - (3) If a taxpayer or witness appears in response to a summons and claims the Fifth Amendment or another privilege, continue with the examination or interview. Ask the summoned person all questions necessary so the person asserting the privilege responds to each inquiry by either answering the questions and/or producing the documents, or asserting the claimed privilege. Make a record of the interview listing each question asked and the privilege asserted in response to each question. Another IRS employee should attend the interview or examination as a witness. Information about a witnesses' rights and privileges are discussed in IRM 25.5.5.4, Rights and Privileges of Person Summoned. Associate Area Counsel should be contacted in any case in which the taxpayer raises a constitutional defense to a summons. Refer to IRM 25.5.5.4.7, Noncompliance by the Witness or a Representative, for more information.
- Note:** If the person summoned refuses to submit to questioning and the request for records, do not continue the interview. Document the interaction with the witness and consider summons enforcement. Refer to IRM 25.5.10.3, General Enforcement Procedures
- (4) Privileged communications generally may not be obtained by a summons. When a privilege is claimed in response to a summons, the IRS employee should request a privilege log from the person summoned to support the claim. Contact Associate Area Counsel for assistance with a privilege log request. See IRM 25.5.5.4.3, Privileged Communication and Summons.
 - (5) The above procedures are important in the event enforcement of the summons is sought to establish the facts and circumstances of noncompliance. The procedures respecting claims of privileges are primarily applicable when only the witness and the witness' representative appear in response to the summons. If the taxpayer or another person attempts to be present during the questioning of a summoned third-party witness, and the IRS employee does not desire to disclose the course of the investigation or examination to the taxpayer or other person, the IRS employee should consult with their manager. Associate Area Counsel may also be consulted. See IRM 25.5.5.4.8, Disclosure Issues, for more information.

Note: The taxpayer has no right to be present or to have the taxpayer's counsel present during the questioning of a third-party witness. See IRM 25.5.5.5.7, Third-Party Witness's Choice of Representative.

25.5.10.3
(03-31-2023)
**General Enforcement
Procedures**

- (1) A summoned party who fails to comply with a summons may be subject to:
 - Criminal proceedings under IRC 7210, Failure to Obey Summons.
 - Civil proceedings to enforce compliance under IRC 7604, Enforcement of Summons.
- (2) When a person (or noticee) entitled to notice of a summons under IRC 7609(a) has exercised their right to bring a proceeding to quash a summons, the IRS employee receiving a petition to quash should notify Associate Area Counsel by telephone that same day. Make every effort to obtain copies of the documents involved so that they can be forwarded to Associate Area Counsel.
 - The noticee must begin a civil action to quash the summons in the appropriate U.S. district court no later than 20 days after the day notice of the summons is given.
 - Within the 20 day period, the noticee must mail (by registered or certified mail) a copy of the petition to quash the summons to the summoned witness and a copy to the IRS employee who issued the summons.
- (3) Consider recommending civil enforcement action or criminal action when the person summoned neglects or refuses to comply.
- (4) Do not refer a summons for enforcement in situations potentially involving an abuse of process, such as the following:
 - The summoned party or their representative has contacted the IRS and indicated a willingness to comply with the summons and/or has requested a reasonable extension of time within which to comply.
 - The summoned party has appeared and denied under oath the possession or control of the documents called for in the summons, unless there is a good reason to believe the contrary.
 - The IRS has had possession of the documents **for a sufficient period of time** within which to examine and copy them. See IRM 25.5.4.4, Withdrawal of Consent to the Use of Records.

Note: This provision does not include cases which involve a withdrawal of consent to the use of records by an owner of records where the IRS has **not had sufficient time** to examine and copy them. Refer to IRM 25.5.4.4 in this situation.

- Records are demanded before the summoned party could reasonably be expected to produce them.
- More than one examination of the same records for the same purpose is sought under circumstances that might suggest harassment. See IRC 7605(b).

Note: IRC 7605(b) does not apply when the already-inspected records are for an audit of a different tax year.

- The summons was not issued by a proper, delegated official. See IRM 1.2.2.15.1 , Delegation Order 25-1, paragraph 9.

- The summons was not properly served under IRC 7603. See IRM 25.5.3.2, Service of Summons. For example, when issuing a summons to a third party not listed among the categories of third party record-keepers in IRC 7603(b)(2), a summons must be delivered in hand to the person it is directed, or left at the person's last and usual place of abode.
 - The summons does not comply with the time requirements for production of documents under IRC 7605(a) and IRC 7609(a)(1). See IRM 25.5.2-1, General Instructions for Preparation of a Summons.
 - The summons to a third party does not comply with the notice requirements under IRC 7609(a). See IRM 25.5.6.4, Statutory Requirements for Third-Party Summonses.
- (5) A summons is enforceable against individuals or entities who possess or control the summoned documents and fall within the jurisdiction of U.S. district court.
- (6) The U.S. District Court for the district in which the person summoned resides or is found has jurisdiction to compel the person to appear, testify, or produce the records. IRC 7604(a).
- (7) The Supreme Court's opinion in *United States v. Powell*, 379 U.S. 48, 57-58 (1964) sets the standard for summons enforcement. Under *Powell* the IRS must establish 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 in the possession of the IRS, and
 - All administrative steps required by the Internal Revenue Code have been followed.
- (8) The *Powell* standard compelling IRS to follow all administrative steps required by the Internal Revenue Code is usually understood to refer to the issuance and service requirements of IRC 7602 and IRC 7603. At least one district court refused to enforce a summons because it found the IRS had failed to comply with the notice of third-party contact rules under IRC 7602(c). *J.B. v. United States*, 916 F.3d 1161 (9th Cir. 2019)

Note: The following link provides additional information about the *Powell* standards..

25.5.10.4
(03-31-2023)
**Civil Enforcement of
Summons**

- (1) IRC 7604 provides for the civil enforcement of a summons.
- (2) In petitioning the district court for an order to enforce the summons under section IRC 7604(b), the United States is seeking the assistance of the district court in requiring the person summoned to provide the requested information to the IRS. When the person is brought before the district judge or magistrate judge, the judge will issue whatever order is deemed proper to enforce compliance with the summons and to punish such person for default or disobedience. When a petition for attachment is filed, the court may choose to proceed by issuing an order to show cause why the summons should not be obeyed. It may also modify the summons if compliance would be unreasonable or oppressive.

- (3) Enforcement proceedings are usually commenced by filing a petition for a court order directing compliance with the summons. The original summons and the certificate of summons service (found on page 2 of the summons and entitled **Service of Summons, Notice and Recordkeeper Certificates**), or copies, should be attached to the petition or offered in evidence. Failure to provide the completed certificate of summons service may result in the court ruling against enforcement of the summons. Based upon the allegations, the court may issue either an order to show cause, or an ex parte (only one party represented) order directing compliance with the summons. The use of procedures other than attachment is authorized by IRC 7604(a) which grants district courts jurisdiction to enforce compliance by appropriate process.
- (4) The IRS employee who issued the summons is responsible for the preparation of all requests for civil enforcement of summonses. Use either the memorandum report format or Form 4443, Summons Referral, depending upon procedures used by your BOD.

Include the following information in all requests for civil enforcement:

The taxpayer's name, full address, and taxpayer identification number.
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A brief summary of the pertinent facts.

The documents and/or testimony the IRS employee seeks to obtain by the summons.

Explain the relevancy of the records sought where the relevancy is not obvious. For example, if records pertaining to years other than those under investigation are sought, the relevancy should be explained. When records pertaining to a third party are requested (such as for a nominee or alter ego investigation) explain the relevancy of records pertaining to third parties.

Explain the need or importance of such evidence in relation to the success or completion of the investigation or examination.

For third party summonses, a statement that IRC 7609(a) notice has been served on persons or entities identified in the description of records or, if not, why it is believed notice is not necessary. See IRM 25.5.6.5, Exemptions to Notice Requirements, for a list of such exemptions.
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If a corporation is the party summoned, a statement of whether service of the summons has been made on an officer, registered agent or employee of the corporation authorized to receive process of the summons by either state law or the corporate by-laws, and if not, why not.
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Explain the circumstances surrounding any contacts with the person summoned that speaks to any defense(s) claimed by the witness for refusing to comply with the summons and the circumstances under which the person summoned claimed the defense(s).
--

A transcript (if recorded) of the questions put forward to the person summoned and the person's answers.
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<p>Include the following information in all requests for civil enforcement:</p>
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<p>The name or pseudonym of the IRS employee referring the summons for enforcement. See Exhibit 25.5.10-3, Sample of a Declaration, for an example of how an employee using a pseudonym should prepare the summons referral declaration.</p>
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<p>Describe any problems involving the imminent expiration of the statute of limitations with respect to either the criminal or the civil liability.</p>
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<p>A statement as to the existence of any known criminal investigations of the taxpayer by other federal agencies and, in the instance of a corporate taxpayer, corporate officers or employees.</p>
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<p>A statement as to any disclosures made pursuant to IRC 6103(i) concerning possible violations of criminal laws not within IRS jurisdiction.</p>
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<p>A statement as to any other known requests for summons or subpoena enforcement against the witness or related parties.</p>

<p>If a pen register was used in the investigation prior to the issuance of the summons, a statement to that effect and the reason the pen register was used.</p>

25.5.10.4.1
(03-31-2023)

Collection Review

- (1) Collection areas may decide whether CEASO or group managers will review summonses before they are referred to Associate Area Counsel. If group managers are authorized to review summons referrals, the collection area must establish a system to allow Associate Area Counsel to report any decrease of quality in the referrals.

25.5.10.4.1.1
(03-31-2023)

Referral

- (1) After a person neglects or refuses to comply with a summons, decide if summons enforcement is appropriate. Review the case file to ensure that all standards for preparation, issuance, and service of the summons were met.
- (2) Within 14 days following the appearance date (or the date of withdrawal of consent), prepare and send the summons referral to CEASO (or group manager if a direct referral).
- (3) Document the case file with an explanation if the:
 - Decision is made not to enforce the summons, or
 - Summons is not referred within the time period described in (2) above.

25.5.10.4.1.2
(03-31-2023)

Preparation of Summons Referral

- (1) Prepare Form 4443, Summons Referral, to refer the summons for enforcement.
- (2) The group manager must approve Form 4443 prepared by revenue officers below grade 9.
- (3) A summons referral for withdrawal of consent by an owner of records will include the following:

- In the heading block of the Form 4443 (which contains the words **Summons Referral**), include in red capital letters **WITHDRAWAL OF CONSENT TO USE RECORDS**.
 - Describe the records in your possession. State whether the records are originals or copies. Examples are bank statements, contracts, check books, or financial statements.
 - State whether the owner of the records retained copies of the records.
 - State the date the IRS received the records.
 - State the date, time, and method used by the owner of the records to withdraw consent to the use of the records.
 - State the date and time the records were secured and where they are located.
 - State whether the owner of the records claimed reimbursement for search, reproduction, and transportation costs. Attach a copy of the invoice or Form 6863, Invoice and Authorization for Payment of Administrative Summons Expenses, if costs were claimed.
 - Include a copy of the letter if the owner of the records withdraws consent in writing.
- (4) Include the following in a summons referral requesting Forms W2 or 1099:
- Check the **Yes** block in item 7 on Form 4443. Explain in space C why it is impossible or impractical for the IRS to produce the Forms W2 or 1099 from its own records.

Note: Since Forms W2 and 1099 are customarily possessed by the IRS in the normal course of business, the summoned party may defend against enforcement of the summons on the grounds that these documents are already in the IRS' possession unless the IRS provides good reason for its inability to produce the documents.
 - Research IDRS Command Code IRPTR for all tax periods covered by the summons.
 - Document Form 4443, Section C with the results of any Forms W2 or 1099 obtained from a search of IDRS Command Code IRPTR for all periods covered by the summons.
- (5) If a search of IDRS IRPTR provides complete Forms W2 and/or 1099 information for the years in question, do not refer the summons for enforcement.
- (6) Notify CEASO (or Counsel if a direct referral) of any developments affecting the summons enforcement proceeding. CEASO must in turn notify Associate Area Counsel if the summons has been referred to that office. Examples of the type of information which must be reported are:
- The evidence sought is no longer needed.
 - The person summoned voluntarily complied with the summons.
 - The tax liability was paid, became unenforceable due to expiration of the statute for collection, or was otherwise satisfied.
- (7) Include the "last chance" date and time in Section C of Form 4443.

25.5.10.4.1.3
(03-31-2023)

**Referral of Collection
Summons to Associate
Area Counsel**

- (1) CEASO (or group manager if direct referral) will:
- Review the case to ensure the summons is proper in all respects.
 - Review the referral report to ensure it contains all necessary information.
 - Contact the referring Collection employee about any deficiencies with the summons referral so that corrective action can be taken.

- (2) If the summons and the referral report are satisfactory, CEASO (or referring employee and group manager if direct referral) will prepare a “last chance” letter and three copies, to the summoned person, for the signature of Associate Area Counsel. This letter is known as the **last chance** letter. See IRM Exhibit 25.5.10-2 , Letter to Summoned Person from Associate Area Counsel, for an example to aid in the preparation of the **last chance** letter.

Note: Refer the case directly to Associate Area Counsel without the “last chance” letter when a noticee has petitioned to quash the summons under IRC 7609.

- (3) Set the appointment date on the **last chance** letter for the summoned person to appear before the Collection employee at least 15 days from the date that the case was referred to Associate Area Counsel. This is known as the “last chance” date. The appointment date reflected on the **last chance** letter is typically at least two weeks from the date of the letter itself. Counsel sends the “last chance” letter to the summoned person to provide a final opportunity to comply with the summons before litigation is instituted. This is often effective in achieving compliance, thus dispensing the need to seek enforcement of the summons through the court.

- (4) CEASO will transmit the following documents to Associate Area Counsel within seven days of receipt of the case:

- Original and two copies of Form 4443
- Original and three copies of the “last chance” letter for Associate Area Counsel’s signature (unless an IRC 7609 quash case is involved), and
- The original summons and the certificate of service of summons.

Note: Documents for withdrawal of consent cases will be transmitted to Associate Area Counsel as soon as possible but no later than 14 days (including the date of receipt) from the date of receipt of the case.

- (5) Associate Area Counsel will consider the summons enforcement request.

If	Then
Associate Area Counsel believes the summons can be enforced	They will sign and mail the last chance letter to the summoned person
Associate Area Counsel believes the summons cannot be enforced	They will inform CEASO (or group manager if direct referral) so the referring employee can be notified

- (6) After Associate Area Counsel sends the “last chance” letter to the summoned person, they will retain a copy and provide two signed copies of the letter to CEASO, (or group manager if direct referral). CEASO will:
 - Retain one copy for the case file, and
 - Forward the other copy to the referring employee.
- (7) If the summoned person fails to comply with the “last chance” letter issued by Associate Area Counsel, prepare a summons declaration and three copies per IRM Exhibit 25.5.10-3, Sample of a Declaration within three days after the date set for appearance in the “last chance” letter.

Note: If necessary, modify the declaration to meet the requirements of local law. Seek guidance in this regard from CEASO and/or Associate Area Counsel.

- (8) Immediately notify CEASO when the person summoned is given more time to comply with the summons. CEASO will notify Associate Area Counsel of the newly established date for appearance. Where the direct referral method is used, the collection employee and/or group manager must notify Associate Area Counsel when the appearance date changes.
- (9) CEASO (or group manager if direct referral) will review and forward the original and two copies of the summons declaration to Associate Area Counsel. Associate Area Counsel must receive these documents within 21 days after the date set for appearance. If necessary, inform Associate Area Counsel by telephone that a civil action to enforce the summons is, or is not, being recommended and when the necessary documents will be forwarded.
- (10) Associate Area Counsel will notify CEASO (or group manager if direct referral) if the summons will not be enforced for withdrawal of consent cases. CEASO (or group manager if direct referral) will immediately notify the referring employee who will immediately arrange to return the records to their owner.

25.5.10.4.1.4
(03-31-2023)
**Criminal Referral of
Collection Summons**

- (1) If a referral to Criminal Investigation is warranted for a case, prepare Form 2797, Referral Report of Potential Criminal Fraud Cases.
- (2) While the case is under consideration for criminal action, do not attempt to enforce obedience with the provisions of the summons. If not accepted for criminal investigation, the matter may be referred to the respective civil Counsel for civil enforcement action.

25.5.10.4.2
(03-31-2023)
Criminal Investigation

- (1) Any summons issued as part of a criminal investigation that has not been complied with within six workdays following the date set for compliance, where enforcement action is appropriate, will be referred to Criminal Tax (CT) Counsel for initiation of enforcement proceedings.
- (2) The CI Special Agent In Charge (SAC) will indicate approval of the referral by endorsement on the signature page of the summons enforcement request. Transmit the original and four copies of the summons to CT Counsel, through the Director, Field Operations or designee. If the matter relates to a strike force (see IRM 9.4.13.6, Organized Crime (OC) and Strike Force), the SAC will forward an extra copy of the request through CT Counsel to the Criminal Division of DOJ provided that such disclosure is authorized under section 6103(i) as a disclosure not related to tax administration. See IRM 9.4.13.6.2,

Disclosure Procedures in Strike Force Investigation and IRM 11.3.28, Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws.

- (3) For a parallel investigation, the replying area will provide a memorandum to the requestor in support of a referral for civil enforcement of the summons. The requesting area will then process the referral through the CT Counsel servicing their area.
- (4) Requests for summons enforcement generally are approved by CT Counsel. However, in certain cases (such as “John Doe” Summonses and requests for tax-accrual workpapers) requests must be approved by Associate Chief Counsel (Procedure & Administration).
- (5) After referring a summons to CT Counsel for civil enforcement, keep Counsel informed of all circumstances affecting the summons enforcement proceeding by memorandum. In instances where time is of the essence, immediately advise CT Counsel about the pertinent facts by telephone. Follow such verbal communication with a confirmation by memorandum. Examples of the type of information to report are:
 - Evidence sought is no longer needed.
 - The witness has voluntarily complied with the summons.
 - The tax liability is paid or otherwise satisfied.
 - The principal is about to be offered a CI conference.
 - The special agent has submitted a report recommending prosecution of the principal.

Note: Prepare the memorandum as soon as the information is received. Distribute the same number of copies and in the same manner as the original referral to Counsel. Forward copies of any legal documents involved in the action with the memorandum.

- (6) Inform CT Counsel by memorandum of compliance of any summons which is referred to DOJ for enforcement, or of an initial decision by a federal district court or magistrate that the summons is unenforceable. Include in the memorandum:
 - The names of the taxpayer and witness.
 - The appearance date set in the summons.
 - The date the summoned person complied with the summons or the date of the adverse decision.
 - Whether compliance was satisfactory, and
 - Whether compliance was pursuant to a court order.

Note: Prepare the memorandum as soon as practicable after compliance or the adverse decision. Distribute in the same manner as the original referral to CT Counsel.

- (7) After the referral for summons enforcement, inform CT Counsel by memorandum of any:
 - **Ex parte** orders under IRC 6103(i) that may be sought or granted
 - Head of agency requests received or granted.

Note: Notify CT Counsel if the witness becomes the subject of a grand jury inquiry before the enforcement of the summons has been granted.

- (8) If there is a pending summons enforcement action related to an investigation when the special agent's report recommending prosecution is forwarded to CT Counsel, include in the memorandum a statement to that effect. Also, identify the party involved in the summons enforcement action and the CT Counsel office handling the matter.

25.5.10.4.3
(03-31-2023)
Examination

- (1) Include in the referral memorandum whether:
- The examination is a reexamination within the meaning of IRC 7605(b).
 - Approval has been obtained from another IRS function or DOJ. If so, provide the necessary documentation.
- (2) Forward the referral memorandum to Associate Area Counsel within six working days following noncompliance.
- (3) If the examination employee is not in favor of summons enforcement, the employee must provide a memorandum explaining their reasoning to the Field Territory Manager within six working days following noncompliance.
- Retain a copy of this memorandum in the administrative files.
 - Upon approval from the Field Territory Manager, if Field Counsel pre-reviewed the summons, then submit a copy of this memorandum to Associate Area Counsel.
- (4) An affidavit should be prepared by the examination employee(s) who issued the summons, served the summons, and examined the summoned person. Set forth all the facts pertinent to the issuance and service of the summons and the summoned person's noncompliance. A single affidavit is required if the same examiner performed all three functions. Transmit the affidavit plus any memorandum to Associate Area Counsel.

Note: Do not prepare an affidavit in cases involving "John Doe" summonses, Special Enforcement summonses, or summonses to financial institutions. These affidavits will be prepared by or under the supervision of DOJ.

- (5) If Associate Area Counsel has approved civil enforcement of a summons, it will forward the request to the U.S. Attorney for the area where the person resides or is found. Associate Area Counsel will provide a copy of the transmittal memorandum with copies of all attachments to the Tax Division of DOJ.

25.5.10.4.3.1
(03-31-2023)
**Inform Associate Area
Counsel of Subsequent
Development**

- (1) A memorandum will be provided by the Field Territory Manager, to Associate Area Counsel relating to any subsequent developments concerning the summons enforcement proceeding. The following are examples of information that should be provided to Associate Area Counsel:
- Evidence sought is no longer needed
 - Witness has voluntarily complied with the provisions of the summons
 - Tax liability is paid or otherwise satisfied
 - Case has gone to court for enforcement
 - Date set for appearance pursuant to the summons
 - Date of compliance
 - Adverse decision
 - Whether compliance was satisfactory
 - Whether compliance was pursuant to a court order

Note: This memorandum should be prepared as soon as the information is received and copies of all pertinent documents should be attached. The memorandum and any attachments should be distributed in the same manner as the memorandum that was referred to Associate Area Counsel.

- (2) In time sensitive situations, Associate Area Counsel should be immediately advised by telephone of the facts. When this occurs, a memorandum can be subsequently provided.

25.5.10.4.4
(04-30-1999)

**Civil and Criminal
Contempt Regarding
Summons**

- (1) A person refusing to obey a court order to comply with a summons (civil enforcement) may be held in contempt of court. The contempt proceedings may be civil or criminal, or both. A defendant may be purged of civil contempt by complying with the court order, but punishment for criminal contempt is usually not conditional. Use of civil or criminal contempt, as with civil or criminal enforcement, depends on whether the purpose is to compel compliance with the summons or to punish disobedience and protect the authority of the court.
- (2) A civil contempt proceeding may be commenced by a motion requesting that the person summoned be adjudged in contempt and punished. The recalcitrant party may then be committed to jail until the person complies with the court order.
- (3) A criminal contempt proceeding can be undertaken only on notice given by the judge in open court in the presence of the defendant, by an order to show cause, or by an order of arrest, unless the contempt was committed in the presence of the court. The notice must state essential facts, which constitute criminal contempt and describe the criminal contempt as such.
- (4) For criminal contempt, the government must prove beyond a reasonable doubt that the defendant willfully failed to comply with a lawful court order and show that summoned records are presently within the defendant's power and control. Presumption of continued possession and existence is not enough to shift the burden of proof to the defendant unless the time span is short and there is no outside motivation for destruction of the particular records.

25.5.10.4.5
(03-31-2023)

**Use of Declarations in
Summons Proceedings**

- (1) To support applications for court orders directing compliance with a summons, prepare a declaration detailing the nature and purposes of the examination, the testimony and records desired, and their relevancy. See IRM Exhibit 25.5.10-3, Sample of a Declaration.
- (2) Enforcement proceedings are usually held solely upon declarations and oral argument. The declaration must show the person summoned has possession, care, or custody of the desired records and the records are material and relevant to the tax liability of the person being investigated. If the summons pertains to a year previously examined, attach a copy of the Area Director's reopening letter. Some courts may require an affidavit under oath with the same basic information.
- (3) If the declarations sharply dispute whether the records are subject to the control of the summoned person, the court will usually resolve the issue in the summons enforcement proceeding. When a petition for enforcement is filed, the court may choose to proceed by issuing an order to show cause why the summons should not be obeyed. It may also modify the summons if compliance would be unreasonable or oppressive.

25.5.10.5

(03-31-2023)

Criminal Enforcement of Summons

- (1) A person who neglects to appear or to produce records pursuant to a summons may be criminally prosecuted under IRC 7210. The government must be able to prove that:
 - The defendant was duly summoned to appear to testify or to appear and produce certain records.
 - The defendant did not appear or produce such records.
 - At least some of the records called for by summons were in existence and in the defendant's control.
 - The defendant willfully and knowingly neglected to appear and produce them.
- (2) It has been held that neglect as used in IRC 7210 means more than mere inadvertence. To make a criminal offense of neglect in this situation would imply that the person summoned must have:
 - Willfully failed to comply with the summons; and
 - Knowledge that the person failed to do what was required by the summons.
- (3) Refusal to obey a summons could lead to a prosecution under IRC 7203 for willful failure to supply information required by the law.
- (4) Requests for criminal action for failure to obey summonses issued by the civil functions will be referred by the appropriate Field Territory Manager to CI for evaluation. No attempt should be made to enforce obedience with the summons while criminal action is being considered. If CI does not initiate an investigation, CI will notify the Field Territory Manager of the referring function, and thereafter the referring function may then make a referral to the respective civil Counsel for civil enforcement action.
- (5) If CI determines that criminal action for failure to obey a summons will be undertaken (rather than enforced obedience), the matter will be assigned for criminal investigation. No attempt should be made to enforce obedience with the summons while considering criminal action.
- (6) Prepare final reports that recommend or do not recommend criminal action for failure to obey summonses in accordance with the discontinued report guidelines. When a discontinued recommendation is approved by the Special Agent in Charge (SAC) or Assistant Special Agent in Charge (ASAC), CI, in a case referred by a civil function for criminal action for failure to obey a summons, the Field Territory Manager of the referring function will be advised in writing by the SAC, CI. The Field Territory Manager of the referring function may then forward the matter to the respective civil Counsel for civil enforcement action.

25.5.10.6

(03-31-2023)

Protest Procedures in Civil Enforcement Cases

- (1) If the Associate Area Counsel contemplates disapproving a request for civil enforcement of any summons, an informal conference may be arranged between the Field Territory Manager and the Associate Area Counsel for the purpose of clarifying the available evidence or for discussing the merits of the proposed legal action.
- (2) If the Associate Area Counsel still disapproves or no agreement is reached, Counsel will prepare a memorandum for the Field Territory Manager, setting forth the reasons for concluding that legal action should not be instituted. A

copy will also be sent to the Director, Field Operations (CI or LB&I), or the Area Director (SB/SE Collection, SB/SE Exam or TE/GE), as appropriate.

- (3) Upon receipt of the Associate Area Counsel's memorandum, the Field Territory Manager may choose to prepare a report setting forth their views. The Field Territory Manager's memorandum will be forwarded to the Director, Field Operations (CI and LB&I), or the Area Director (SB/SE Collection, SB/SE Exam or TE/GE), within 14 days of receipt of Counsel's memorandum. A copy of the memorandum will be forwarded to Associate Area Counsel, or the appropriate CT Counsel office.
- (4) Within 30 days from the receipt of the Field Territory Manager's memorandum, the Director, Field Operations (CI or LB&I), or the Area Director, (SB/SE Collection, SB/SE Exam or TE/GE), will inform the appropriate Division Counsel and the Associate Chief Counsel (Procedure & Administration), in writing of their disagreement with the Associate Area Counsel. A copy of the Field Territory Manager's report should be forwarded with this memorandum. If a disagreement then exists between Division Counsel and Associate Chief Counsel (Procedure & Administration), the disputing offices should resolve their dispute by observing the directives in *CCDM 31.1.4.6*, Reconciliation of Disputes.
- (5) In the case of a third party summons where the noticee has filed a petition to quash the summons and Associate Area Counsel determines that the summons should not be defended, arrange an informal conference with the Field Territory Manager as quickly as possible. If no agreement is reached, the above protest procedures will be followed telephonically, as quickly as possible. Petition to quash cases must be handled as expeditiously as possible since an answer must be timely filed in response to the petition to quash.

25.5.10.7
(04-30-1999)

**Protest Procedures in
Criminal Enforcement
Cases**

- (1) The processing and protest procedure as set out in CI IRM 9.5, Investigative Process, with respect to other prosecution cases will be followed in summons cases involving requests for criminal action.

25.5.10.8
(03-31-2023)

**Reports on Adverse
Decisions in Civil
Proceedings to Enforce
Compliance with
Summons**

- (1) If the IRS receives an adverse decision in any civil summons enforcement proceeding, the Field Territory Manager of the function that issued the summons will promptly send a brief report of the proceeding to the Area Director (SB/SE Collection, SB/SE Exam or TE/GE), or to the Director, Field Operations (CI or LB&I). Copies of the report must be immediately sent to the Associate Area Counsel office serving that area and to the Associate Chief Counsel (Procedure & Administration CC:PA:BR6&7) to enable these offices to consider pursuing a timely appeal.
- (2) When the Government appeals an adverse summons enforcement decision, the BOD that issued the summons must promptly inform Associate Chief Counsel (Procedure & Administration) of any developments affecting the summons enforcement proceeding. Examples of information which must be reported are set forth above in IRM 25.5.10.4.1.2(6), Preparation of Summons Referral and IRM 25.5.10.4.2(5), Criminal Investigation.

25.5.10.8.1
(05-12-2016)
**Attempts to Quash
Summons**

- (1) Except as provided by IRC 7609(b)(2) (right to proceeding to quash), no party has a right to enjoin or quash a summons. Any such attempt to quash a summons through injunction proceedings or other court action before the date fixed for compliance should be immediately reported through normal channels to the Associate Area Counsel. Make every effort to obtain copies of the pleadings involved so they can be forwarded with the notification memorandum.
- (2) Notwithstanding any other law, any person who is entitled to notice of a summons shall have the right to begin a proceeding to quash such summons. The proceeding to quash the summons must begin no later than the 20th day after the day proper notice is given to the noticee.
- (3) Neither the witness nor the taxpayer has a right to enjoin or quash a third-party summons not subject to the notice requirements. *Reisman v. Caplin*, 375 U.S. 440 (1964).

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Exhibit 25.5.10-1 (03-31-2023)

Form 4443, Summons Referral

Form 4443, Summons Referral, is an internal IRS document used to create a summons referral. See IRM 25.5.10.4.1.2 , Preparation of Summons Referral.

Exhibit 25.5.10-2 (03-31-2023)**Letter to Summoned Person from Associate Area Counsel**

USE ASSOCIATE AREA COUNSEL LETTERHEAD
Person to Contact: (Name of IRS employee and title)
Telephone Number
Date
Date summons served
Appearance date as specified in summons
Taxpayer's name: (if not person summoned)
The Area Director of (your Internal Revenue Service area) has notified me that you did not provide the documents or testimony required by the summons identified above. Legal proceedings may be brought against you in the United States District Court for not complying with the summons. To avoid such proceedings, you should keep the appointment we have arranged for you with (insert title and name) on the date and at the time and address shown below. Please be sure you bring with you all records and documents specified in the summons. If you have any questions, please contact the person named above at the address or telephone number shown.
Sincerely yours,
Associate Area Counsel
Date of your appointment
Time
Address

Exhibit 25.5.10-3 (03-31-2023)
Sample of a Declaration

A sample declaration is available on the Summons Knowledge Base.

