



Office of Chief Counsel

Summonses

Fall 2024





Front Matter Items

- ❖ The IRS Mission Statement
- ❖ 14 General Principles of Ethical Conduct for Federal Employees
- ❖ Your Rights as a Taxpayer



Objectives

❖ *At the end of this session, you will be able to:*

- Identify different types of summonses
- Describe the purpose of a summons
- Identify the five parts of a summons
- Describe how to properly serve a summons
- Describe the summons enforcement process



❖ Summons Authority

- The Secretary is authorized under Internal Revenue Code (IRC) § 7602
 - To summon
 - A person liable for tax
 - A person required to perform an act
 - A person who has possession, custody, or care of books of account
 - Any other person
 - To appear at a time and place named in the summons
 - To give testimony
 - To produce books, papers, records, or other data



Types of Summonses

- ❖ First Party Summons (to taxpayers)
- ❖ Third Party Summons
- ❖ Collection Summons
- ❖ John Doe Summons
- ❖ Designated Summons
- ❖ Section 6038A Summons



What are the Requirements?

- ❖ The summons must be:
- ❖ Enforceable — correctly issued and served
- ❖ Effective — so you get the documents and information you need



❖ Legitimate Purpose

- The IRS can issue a summons to investigate merely on suspicion that the law is being violated or even just because it wants assurance that the law is not being violated
 - Purposes
 - Ascertaining the correctness of a return
 - Making a return where no return has been made
 - Determining any person's tax liability (including the liability of a transferee or fiduciary)
 - Collecting any person's tax liability
 - Inquiring into any offense connected with the administration or enforcement of the internal revenue laws
 - The purpose is determined as of the date the summons is issued, so the subsequent issuance of a statutory notice of deficiency or commencement of Tax Court proceedings will not cause a summons to become unenforceable.



❖ Relevant Information

- The IRS is allowed to obtain items of potential relevance
 - Documents that “may be” relevant are ones that “might throw light” on the correctness of a return
 - The government is not required to show that documents are admissible evidence
 - Government should be able to show a logical connection between the information sought and the purpose of the exam
 - Examples
 - Records of a taxpayer’s savings accounts, checking accounts, etc.
 - Records from time-barred years



❖ Not in Possession of IRS

- A declaration of an IRS agent that the summoned information is not in the possession of the IRS is sufficient to shift the burden to the party opposing enforcement to present contrary evidence
 - Examples
 - Difficult to retrieve
 - Different versions
 - Second look



❖ Administrative Requirement

- The IRS may remedy a failure to comply with administrative requirements set forth in the Code by withdrawing a summons and re-issuing it
 - Service
 - Notice



❖ No Justice Department Referral

- The IRS may not issue a summons if a Justice Department referral is in effect for the taxpayer for the same taxable period(s)
 - Grand jury investigation
 - Criminal prosecution
 - Each taxable period and each tax imposed by a separate chapter of the Code are treated separately



When to Issue a Summons?

- ❖ Consider issuing summons if:
 - Information is not otherwise available from the taxpayer
 - The records given to you appear to be incomplete
 - Taxpayer is uncooperative or refuses to provide records
 - You are unable to obtain or locate records and need testimony under oath as to what records exist



Should I Issue a Summons?

- ❖ Always try to get information voluntarily from taxpayers by issuing an Information Document Request (IDR)
- ❖ Some considerations before issuing a summons:
 - ❖ Tax liability involved
 - ❖ Time and expense of getting the records
 - ❖ Likelihood of having to enforce the summons and whether there is time to wait for the court action



Preparing the Summons



Form 2039 (1 of 3)

Statement of Liability
Taxpayer

Witness
Summoned

Tax Period

Information
Sought



Summons

In the matter of _____
Internal Revenue Service (Division): _____
Industry/Area (name or number): _____
Periods: _____

The Commissioner of Internal Revenue

To: _____
At: _____

You are hereby summoned and required to appear before _____, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

Required, Recommended & Sample
Wording for Summons Available in the
Internal Revenue Manual (IRM). See
IRM [25.5.2](#) & [25.5.6](#)

Do not write in this space

Place, Date &
Time

Issuing Officer's
Signature

Business address and telephone number of IRS officer before whom you are to appear:

Place and time for appearance at _____

on the _____ day of _____, _____ at _____ o'clock _____ m.
Issued under authority of the Internal Revenue Code this _____ day of _____, _____ (year)

**IRS**
Department of the Treasury
Internal Revenue Service
www.irs.gov
Form 2039 (Rev. 10-2010)
Catalog Number 21405J

Signature of issuing officer

Signature of approving officer (if applicable)

Title

Title

Original — to be kept by IRS



Form 2039 (2 of 3)

- ❖ The Summons Form 2039 has five parts:
- ❖ Original - Summons & Service of Summons, Notice & Recordkeeper Certificates
- ❖ Keep this with your file
- ❖ Part A – Summons with Attestation Clause and Provisions of the Internal Revenue Code
- ❖ Serve this copy on the person summonsed
- ❖ Part B – Notice to Third-Party Recipient of IRS Summons and IRC § 7609 -Special procedures for third-party summons
- ❖ Serve this on the recipient of a third-party summons (along with Part A)



- ❖ Part C – Summons and Provisions of the Internal Revenue Code
 - This is the Notice copy to given to the taxpayer as notice of a Third-Party Summons
- ❖ Part D – Instructions to the Notice on how to File a Motion to Quash a Third-Party Summons and IRC § 7609. Special procedures for third-party summons.
 - This also goes to person given notice of a third-party summons.



Summons – In the Matter of:

Summons

In the matter of

Internal Revenue Service *(division)*

Industry/Area *(name or number)*

Periods

❖ “In the matter of:”

- Name of taxpayer under examination
- Address of taxpayer
- Do not include SSN or EIN here
 - If a third-party needs the taxpayer’s social security number to identify the correct summoned records, you may disclose the social security number in a separate letter addressed to the summoned party



Summons – Periods

Summons

In the matter of

Internal Revenue Service *(division)*

Industry/Area *(name or number)*

Periods

❖ “Periods:”

- Use Plain English
- “Taxable years 2012, 2013, and 2014”
 - Not 201212 - 201312
- “Fiscal Year ended June 30, 2017”
 - Not PYE 201706 or PYE 6/30/2017
- “Quarterly period ended June 30, 2017”
 - Not 201706 or 6/30/2017



Summons – To:

The Commissioner of Internal Revenue

To

At

You are hereby summoned and required to appear before _____
an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books,

❖ “To:”

- IRC § 7602 permits the issuance of a summons to:
 - Person liable for the tax or required to perform the act (such as prepare a return)
 - Officer or employee of such person
 - Person having possession, custody or care of records relating to the business of the person liable for the tax or required to perform the act
 - Any other person the Secretary deems proper



Summons – At:

The Commissioner of Internal Revenue

To

At

You are hereby summoned and required to appear before _____
an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books,

❖ “At:”

- Insert correct address of person summoned
 - The street and number of the place of business (if an entity or business)
 - The place of residence (if individual)
 - Third-party: List the address of the third-party



Summons – Appear Before

The Commissioner of Internal Revenue

To

At

You are hereby summoned and required to appear before
an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books,

- ❖ “You are hereby summoned and required to appear before:”
 - Enter name and title of the Service employee who is to
 - Take the summoned person’s testimony, and
 - Who is to examine the books and records
 - This may or may not be the agent working the case
 - Example: You are hereby summoned and required to appear before Agent Smith, Badge No. 12345 (LB&I), or designee.



Summons – Place and Time (1 of 2)

❖ “Place and time for appearance at:”

- Insert complete address, including room number, where the person is required to appear (IRS Office usually)

Business address and telephone number of IRS officer before whom you are to appear

Place and time for appearance at

on the day of , at o'clock .m.
(year)

Issued under authority of the Internal Revenue Code this day of ,
(year)

Signature of issuing officer

Title



Summons – Place and Time (2 of 2)

- ❖ Appearance Date
- ❖ When choosing a date:
- ❖ Count from summons service date
- ❖ First-party summons – Date cannot be less than 11 days from date of service
- ❖ Third-party summons – Date cannot be less than 26 days from date of service
- ❖ Response dates should not be a Saturday, Sunday, or a legal holiday



Drafting an Effective Document Request

- ❖ In general, summonses can be:
 - More restrictive than IDR:
 - No written questions
 - Only pre-existing documents
 - Not a request; not conversational
 - Broader than IDR:
 - Can summon oral testimony
 - Can summon a third-party (with extra steps)



Drafting an Effective Document Request

DO

- ❖ Define repeating terms and details, ex: “taxpayer” or “you”
- ❖ Be clear and use catch-alls
- ❖ Include timeframes
- ❖ Keep requests organized and numbered
- ❖ Consult [IRM 25.5.2.4.1](#) or [IRM Exhibit 25.5.2-1](#)
- ❖ Ask Counsel for Assistance

DON'T

- ❖ Ask them to create a document
- ❖ Ask questions that require a written answer
- ❖ Ask for more than you need
- ❖ Attach the IDR that led to the summons
- ❖ Be vague or ambiguous



Form 2039 – PART A Certification Section

Attestation

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.

Signature of IRS officer serving the summons

Title

Business address and telephone number of IRS officer before whom you are to appear

- ❖ Signed by the authorized issuing officer
- ❖ Delegation Order No. 4 provides detailed instructions on who can issue a summons
 - Must be a Revenue Agent or Revenue Officer grade 9 or higher
 - To approve the issuance of a third-party summons, the supervisor must sign the summons as the approving officer
- ❖ Electronic signatures permitted



Serving the Summons



Summons – Proper Service

- ❖ IRC 7603 provides the rules governing the proper service of summons



Service of Summons – Why is it Important

- ❖ Improperly served summonses may be unenforceable
- ❖ If service is not waived, summons must be re-issued and re-served
- ❖ First-party summons vs. third-party summons
- ❖ It is easy to mess up this administrative step



First Party Summons – Individuals (1 of 2)

- ❖ A first party summons must be served either by
 - hand delivery or
 - being left at the summoned party's "last and usual place of abode"
- ❖ Hand delivery is always preferable to leaving the summons at the summoned party's home



First Party Summons – Individuals (2 of 2)

- ❖ Leave with an adult who understands, or
- ❖ Alternative method:
 - Use a pink envelope, marked with person's name and "confidential"
 - Secured to front door
 - Where the person will see
 - Write service details on Certificate of Service



First Party Summons – Corporation

- ❖ Serving a corporation (records or testimony).
- ❖ If the summons "to" portion identifies the corporate representative who is to be served, serve that person.
- ❖ If the summons "to" portion names the corporation but does not identify the corporate representative who is to be served, serve any Officer, Director, or other person authorized to accept service on behalf of the corporation.



Third Party Summons (1 of 2)

- ❖ Third-party summons is EVERY Summons, except those identified in IRC § 7609(c)(2). For example:
 - Issued to taxpayer whose liability you are examining, including an officer or employee of such taxpayer.
 - Issued only to determine if records exist.



Third Party Summons (2 of 2)

- ❖ Summonses issued to third parties have special requirements under IRC § 7609.
- ❖ There are special requirements for notice but there are some exceptions.
- ❖ Reach out to Counsel.



Taxpayer First Act (TFA)

- ❖ A third-party contact letter must be sent out if the IRS has actual intent to make a third-party contact (Letter 3164)
- ❖ The IRS must wait 45 days after notice is sent to make any third-party contact
- ❖ The notice is only good for 1 year
- ❖ Section 1206 of the TFA amended IRC § 7602(c) relating to third-party contacts (July 2019)
- ❖ See [IRM 4.11.57](#) for more information



Giving Notice of Third-Party Summonses

- ❖ Taxpayer and any person identified in the summons gets notice and the right to bring a proceeding to quash the summons
- ❖ Within 3 days of service of summons
- ❖ Notice must include a copy of summons and an explanation of the right to bring a proceeding to quash the summons



Third Party Summonses Notice Road-Map

- ❖ WHEN: Within 3 days of Summons service
 - ❖ WHERE: Send Parts C & D to the last known address
 - No last known address? Leave a notice copy with the person summoned
 - ❖ HOW: Send copy of Summons by certified or registered mail
 - Include information on motion to quash (Part D)
- REMEMBER:** Complete third-party notice part on Summons back (Original)



Giving Notice of Third-Party Summonses

- ❖ Noticee of third-party summons can petition to quash
- ❖ Petition to Quash
- ❖ Must be filed within 20 days of the date notice is given
- ❖ Petitions are filed in U.S. District Court where summoned party resides or is found
- ❖ Taxpayer cannot quash first-party summons or collection summons



Documents Received Early

- ❖ Remember: If documents received before quash period expires (or while quash proceeding pending).
 - Documents are not to be reviewed
 - Seal them in a box or envelope – mark with date and time sealed



Service Form – Certificate of Service

 Service of Summons, Notice and Recordkeeper Certificates (Pursuant to section 7603, Internal Revenue Code)	
I certify that I served the summons shown on the front of this form on:	
Date _____	Time _____
How Summons Was Served	1. ☐ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.
	2. ☐ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any): _____
	3. ☐ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: _____
Signature _____	Title _____
4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.	
I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.	
Date of giving Notice: _____ Time: _____	
Name of Noticee: _____	
Address of Noticee (if mailed): _____	
How Notice Was Given	☐ I gave notice by certified or registered mail to the last known address of the noticee.
	☐ I gave notice by handing it to the noticee.
☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any): _____	☐ In the absence of a last known address of the noticee, I left the notice with the person summoned.
	☐ No notice is required.
Signature _____	Title _____
I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the noticee consents to the examination.	
Signature _____	Title _____
Form 2039 (Rev. 10-2010)	



Summons Interview

- ❖ Issuance of a summons to the taxpayer under exam or investigation entitles an agent to speak directly with the taxpayer
- ❖ Recommend Interviews be conducted under oath
- ❖ Objections based on claims of privilege or Fifth Amendment must be made on a question-by-question basis.
- ❖ Recommend hiring a court reporter especially if those objections are anticipated because transcript will be needed for court to rule.
- ❖ IRS may record in-person interviews if
 - Informs the taxpayer of the recording prior to the interview; and
 - Provides the taxpayer with a transcript of the recording upon the taxpayer's request



Interview: Who Can Be Present?

- ❖ IRS Agent
- ❖ IRS Counsel
- ❖ Interview of taxpayer: taxpayer and their counsel
- ❖ Interview of third-party: witness and their counsel
 - May be same counsel as taxpayers, but consider whether conflict of interest exists
 - Taxpayer or their counsel does not have a right to be present
 - [IRM 25.5.5.5.7](#)



Enforcing the Summons



❖ Enforcement

- An IRS administrative summons is not self-enforcing
 - The U.S. district court for the district where the person resides or is found has jurisdiction to compel compliance with the summons
 - Attendance
 - Testimony
 - Production of books, papers, or other data



Challenging a Summons

Person Summoned

- ❖ If the person summoned does not want to comply with a summons, the person's **ONLY** remedy is to wait for the United States to bring an enforcement action and defend that action
- ❖ The person summoned may **NOT** bring a proceeding to quash the summons

Taxpayer

- ❖ If a summons to a third-party requires notice to the taxpayer, the taxpayer who receives notice may bring a proceeding to quash the summons



Summons Enforcement (3 of 3)

❖ Review by a Court

- *United States v. Powell*, 379 U.S. 48 (1964)
 - A court will not enforce a summons if enforcement would be an abuse of the court's process
 - The IRS does not need probable cause to issue a summons
 - The government must show that the summons meets these 4 Powell factors:
 1. Is issued for a legitimate purpose
 2. Seeks information that may be relevant to that purpose
 3. Seeks information that the IRS does not already possess and
 4. Satisfies all the administrative requirements required by the Internal Revenue Code



Summons Enforcement – Forward to Counsel – Form 4443 (1 of 2)

- ❖ Summons Referral – Form 4443
- ❖ POA/Form 2848 if any
- ❖ Original summons, including certificate of notice and service
- ❖ The IRS copy of the summons showing the attestation



Summons Enforcement – Forward to Counsel – Form 4443 (2 of 2)

- ❖ Any information that you think is relevant and would like Counsel to consider
- ❖ A preferred date, time, and address for the last chance appointment - generally, about three weeks from when you submit the summons enforcement package



Summons Enforcement – What Counsel Will Do

- ❖ Associate Area Counsel sends a last chance letter
- ❖ Coordinates with you to set “last chance” date and time
- ❖ If still no compliance:
 - Drafts a declaration for you to review, edit as needed, and sign (the equivalent of your legal testimony)
 - Drafts a referral for summons enforcement to the U.S. Attorney/Department of Justice (DOJ)



Summons Enforcement – What a DOJ Attorney Will Do (USAO or Tax Division)

- ❖ U.S. Attorney files a lawsuit in District Court against the summoned party (Petition and Revenue Agent's Declaration)
- ❖ The Court will order the summoned party to “show cause” why it did not comply with the summons
 - Written response and government reply
 - Argument at show cause hearing
- ❖ Court will issue a written ruling; the losing party may appeal
- ❖ If the summons is enforced and the Party does not comply, may be held in contempt
- ❖ Track the progress on the case on PACER



Defenses

- ❖ Non-existence or lack of possession of records
- ❖ Powell Factors Not Met (most common)
- ❖ 1st Amendment
- ❖ 4th Amendment
- ❖ 5th Amendment
- ❖ Attorney-Client Privilege & or Work Product*
- ❖ Tax Practitioner-Client Privilege*
- ❖ HIPAA
 - * Privilege claims should be supported by a privilege log, and may be reviewed by the court on “in camera”



Summons Resources



IRC Sections

- ❖ [7402](#) – Jurisdiction of District Court to Enforce Summons
- ❖ [7210](#) – Criminal Failure to Obey Summons
- ❖ [7602](#) – Authority to Issue Summons
- ❖ [7603](#) – Service of Summons
- ❖ [7604](#) – Enforcement of Summons
- ❖ [7605](#) – Time and Place of Examination
- ❖ [7609](#) – Special Procedures for Third-Party Summons
- ❖ [7610](#) – Fees and Costs for Witnesses
- ❖ [7611](#) – Restrictions on Church Tax Inquiries and Exams
- ❖ [7612](#) – Special Procedures for Summons of Computer Software



Summons Handbook – IRM 25.5

- ❖ [IRM 25.5.2.2](#) – Preparation and Use
- ❖ [IRM 25.5.3.4](#) – Time and Place of Examination Set by Summons
- ❖ [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 25.5.10](#) – Enforcement of Summons



Summons Knowledge Base Homepage

- ❖ [Summons Knowledge Base Homepage - Home](#)



Summary

❖ You are now able to:

- Identify the different types of summonses
- Describe the purpose of a summons
- Identify the five parts of a summons
- Describe how to properly serve a summons
- Describe the summons enforcement process



Questions

