

MLI
#5**Summons Enforcement Under IRC §§ 7602, 7604, and 7609****SUMMARY**

Pursuant to Internal Revenue Code (IRC) § 7602, the IRS may examine any books, records, or other data relevant to an investigation of a civil or criminal tax liability.¹ To obtain this information, the IRS may serve a summons directly on the subject of the investigation or any third party who may possess relevant information.² If a person summoned under IRC § 7602 neglects or refuses to obey the summons; to produce books, papers, records, or other data; or to give testimony as required by the summons, the IRS may seek enforcement of the summons in a U.S. District Court.³

TAS identified 60 federal cases decided between June 1, 2018, and May 31, 2019, involving IRS summons enforcement issues. The government was the initiating party in 35 cases, while the taxpayer was the initiating party in 25 cases. Overall, taxpayers fully prevailed in two cases, while two cases were split. The IRS prevailed in the remaining 56 cases.

TAXPAYER RIGHTS IMPACTED⁴

- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

PRESENT LAW

The IRS has broad authority under IRC § 7602 to issue a summons to examine a taxpayer's books and records or demand testimony under oath.⁵ Further, the IRS may obtain information related to an investigation from a third party if, subject to the exceptions of IRC § 7609(c), it provides notice to the taxpayer or other person identified in the summons.⁶ In limited circumstances, the IRS can issue a summons even if the name of the taxpayer under investigation is unknown, *i.e.*, a "John Doe" summons.⁷ Under the recent changes in the law, the IRS must narrowly tailor the information sought in a John Doe summons and give taxpayers 45 days advance notice if it intends to contact third

1 IRC § 7602(a)(1); Treas. Reg. § 301.7602-1.

2 IRC § 7602(a).

3 IRC § 7604(b). Summons enforcement cases are different from many other cases described in other Most Litigated Issues because often the government, rather than the taxpayer, initiates the litigation.

4 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

5 IRC § 7602(a). See also *LaMura v. United States*, 765 F.2d 974, 979 (11th Cir. 1985) (citing *United States v. Bisceglia*, 420 U.S. 141, 145-46 (1975)).

6 IRC § 7602(c). Those entitled to notice of a third-party summons (other than the person summoned) must be given notice of the summons within three days of the day on which the summons is served to the third party but no later than the 23rd day before the day fixed on the summons on which the records will be reviewed. IRC § 7609(a).

7 The court must approve a "John Doe" summons prior to issuance. In order for the court to approve the summons, the United States commences an *ex parte* proceeding. The United States must narrowly tailor the summons and establish during the proceeding that its investigation relates to an ascertainable class of persons; it has a reasonable basis for the belief that these unknown taxpayers may have failed to comply with the tax laws; and it cannot obtain the information from another source. IRC § 7609(f).

parties during a specified period.⁸ The new law also limits access of tax return information to non-IRS employees except for expert assistance and prohibits non-IRS employees from questioning witnesses under oath in summons hearings.⁹ The IRS cannot issue a summons after referring the matter to the Department of Justice (DOJ).¹⁰

If the recipient fails to comply with a summons, the United States may commence an action under IRC § 7604 in the appropriate U.S. District Court to compel document production or testimony.¹¹ If the United States files a petition to enforce the summons, the taxpayer may contest the validity of the summons in that proceeding.¹² Also, if the summons is served upon a third party, any person entitled to notice may petition to quash the summons in an appropriate district court, and may intervene in any proceeding regarding the enforceability of the summons.¹³

Generally, a taxpayer or other person named in a third-party summons is entitled to notice.¹⁴ However, the IRS does not have to provide notice in certain situations. For example, the IRS is not required to give notice if the summons is issued to aid in the collection of a liability or judgment¹⁵ or if it is attempting to determine assets owned by the taxpayer to pay an assessed tax because such notice might seriously impede the IRS's ability to collect the tax.¹⁶ Additionally, the IRS is not required to give notice when, in connection with a criminal investigation, an IRS criminal investigator serves a summons on any person who is not the third-party record-keeper.¹⁷

Whether the taxpayer contests the summons in a motion to quash or in response to the United States' petition to enforce, the legal standard is the same.¹⁸ In *United States v. Powell*, the Supreme Court set

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- 8 Taxpayer First Act (TFA), Pub. L. No. 116-25, §§ 1204 and 1206, 133 Stat. 981 (2019). (Adding new subsection (f) to IRC § 7609 and amending section 7602(c)(1)). See also *United States v. Coinbase*, 120 A. F.T.R.2d (RIA) 5239 (N.D. Cal. 2017); National Taxpayer Advocate 2018 Annual Report to Congress 469 (Most Litigated Issue: *Summons Enforcement Under IRC §§ 7602, 7604, and 7609*).
- 9 TFA, Pub. L. No. 116-25, §1208, 133 Stat. 981 (2019). (Adding new subsection (f) to IRC § 7602). See also National Taxpayer Advocate 2015 Annual Report to Congress 467 (Most Litigated Issue: *Summons Enforcement Under IRC §§ 7602, 7604, and 7609*); National Taxpayer Advocate 2016 Annual Report to Congress 455 (Most Litigated Issue: *Summons Enforcement Under IRC §§ 7602, 7604, and 7609*).
- 10 IRC § 7602(d). This restriction applies to “any summons, with respect to any person if a [DOJ] referral is in effect with respect to such person.” IRC § 7602(d)(1).
- 11 IRC § 7604.
- 12 *United States v. Powell*, 379 U.S. 48, 58 (1964).
- 13 IRC § 7609(b). The petition to quash must be filed not later than the 20th day after the date on which the notice was served. IRC § 7609(b)(2)(A).
- 14 IRC § 7609(a)(1); Treas. Reg. § 301.7609-1(a)(1). See, e.g., *Cephas v. United States*, 112 A.F.T.R.2d (RIA) 6483 (D. Md. 2013).
- 15 IRC § 7609(c)(2)(D)(i). The exception also applies to the collection of a liability of “any transferee or fiduciary of any person referred to in clause (i).” IRC § 7609(c)(2)(D)(ii). Congress created this exception because it recognized a difference between a summons issued to compute the taxpayer’s taxable income and a summons issued after the IRS has assessed tax or obtained a judgment.
- 16 H.R. REP. No. 94-658 at 310, reprinted in 1976 U.S.C.C.A.N. at 3206. See also S. REP. No. 94-938, pt. 1, at 371, reprinted in 1976 U.S.C.C.A.N. at 3800-01 (containing essentially the same language). The “aid in collection” exception applies only if the taxpayer owns a legally identifiable interest in the account or other property for which records are summoned. *Ip v. United States*, 205 F.3d 1168, 1172-76 (9th Cir. 2000).
- 17 IRC § 7609(c)(2)(E). A third-party record-keeper is broadly defined and includes banks, consumer reporting agencies, persons extending credit by credit cards, brokers, attorneys, accountants, enrolled agents, and owners or developers of computer source code but only when the summons “seeks the production of the source or the program or the data to which the source relates.” IRC § 7603(b)(2).
- 18 *Kamp v. United States*, 112 A.F.T.R.2d (RIA) 6630 (E.D. Cal. 2013).

forth four threshold requirements (referred to as the *Powell* requirements) that must be satisfied to enforce an IRS summons:

1. The investigation must be conducted for a legitimate purpose;
2. The information sought must be relevant to that purpose;
3. The IRS must not already possess the information; and
4. All required administrative steps must have been taken.¹⁹

The IRS bears the initial burden of establishing that these requirements have been satisfied.²⁰ The government meets its burden by providing a sworn affidavit of the IRS agent who issued the summons declaring that each of the *Powell* requirements has been satisfied.²¹ The burden then shifts to the person contesting the summons to demonstrate that the IRS did not meet the requirements or that enforcement of the summons would be an abuse of process.²² Generally, the burden on the taxpayer to establish the illegality of the summons is heavy.²³

The taxpayer can show that enforcement of the summons would be an abuse of process if he or she can prove that the IRS issued the summons in bad faith.²⁴ In *United States v. Clarke*, the Supreme Court held that during a summons enforcement proceeding, a taxpayer has a right to conduct an examination of the responsible IRS officials about whether a summons was issued for an improper purpose only when the taxpayer “can point to specific facts or circumstances plausibly raising an inference of bad faith.”²⁵ Blanket claims of improper purpose are not sufficient, but circumstantial evidence can be.²⁶

A taxpayer may also allege that the information requested is protected by a constitutional, statutory, or common-law privilege, such as the:

- Fifth Amendment privilege against self-incrimination;
- Attorney-client privilege;²⁷
- Tax practitioner privilege;²⁸ or

19 *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

20 *Fortney v. United States*, 59 F.3d 117, 119-20 (9th Cir. 1995).

21 *United States v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993).

22 *Id.*

23 *United States v. LaSalle Nat’l Bank*, 437 U.S. 298, 316 (1978).

24 *United States v. Powell*, 379 U.S. 48, 58 (1964).

25 *United States v. Clarke*, 134 S. Ct. 2361, 2367 (2014), *vacating* 517 F. App’x 689 (11th Cir. 2013), *rev’g* 2012-2 U.S. Tax Cas. (CCH) ¶ 50,732 (S.D. Fla. 2012).

26 *Id.*

27 The attorney-client privilege provides protection from discovery of information where: (1) legal advice is sought, (2) from a professional legal advisor in his or her capacity as such, (3) the communication is related to this purpose, (4) made in confidence, (5) by the client, (6) and at the client’s insistence protected, (7) from disclosure by the client or the legal advisor, (8) except where the privilege is waived. *United States v. Evans*, 113 F.3d 1457, 1461 (7th Cir. 1997) (citing 8 John Henry Wigmore, EVIDENCE IN TRIALS AT COMMON LAW § 2292 (John T. McNaughten rev. 1961)). The attorney-client privilege protects “tax advice,” but not tax return preparation materials. *United States v. Frederick*, 182 F.3d 496, 500 (7th Cir. 1999).

28 IRC § 7525 extends the protection of the common law attorney-client privilege to federally authorized tax practitioners in federal tax matters. Criminal tax matters and communications regarding tax shelters are exceptions to the privilege. IRC § 7525(a)(2), (b). *Valero Energy Corp. v. United States*, 569 F.3d 626 (7th Cir. 2009). The interpretation of the tax practitioner privilege is based on the common law rules of attorney-client privilege. *United States v. BDO Seidman, LLP*, 337 F.3d 802, 810-12 (7th Cir. 2003).

- Work product privilege.²⁹

However, these privileges are limited. For example, courts reject blanket assertions of the Fifth Amendment,³⁰ but note that taxpayers may have valid Fifth Amendment claims regarding specific documents or testimony.³¹

ANALYSIS OF LITIGATED CASES

Summons enforcement has been a Most Litigated Issue in the National Taxpayer Advocate's Annual Report to Congress every year since 2005, when TAS identified only 44 cases but predicted the number would rise as the IRS became more aggressive in its enforcement initiatives. The number of cases peaked at 158 for the reporting period ending on May 31, 2009, but has gradually declined each year, except for a one-year spike to 153 cases for the year ending May 31, 2012. By the year ending May 31, 2015, the number of cases fell to 84 and generally plateaued until a decline again this year. For the period ending May 31, 2019, TAS identified 60 cases, a 29 percent decrease from the 85 cases identified during last year's reporting period. A detailed list of these cases appears in Table 5 of Appendix 5.

Of the 60 cases TAS reviewed this year, the IRS prevailed in full in 56, a 93 percent success rate, which is one percent greater than the 2018 reporting period.³² Taxpayers had representation in 22 cases (37 percent) and appeared *pro se* (*i.e.*, on their own behalf) in 37 cases.³³ This is the second consecutive year of a notable increase in the percentage of represented taxpayers as only 28 percent of taxpayers were represented during the 2017 reporting period, but is still a decline from the percentage we observed in the 2016 reporting period, where 44 percent of taxpayers had presentation.³⁴ Forty-five cases involved individual taxpayers, while the remaining 15 involved business taxpayers, including sole proprietorships.³⁵ Cases generally involved one of the following themes:

29 The work product privilege protects against the discovery of materials prepared in anticipation of litigation. Fed. R. Civ. P. 26(b)(3); see also *Hickman v. Taylor*, 329 U.S. 495 (1947).

30 See, e.g., *United States v. McClintic*, 113 A.F.T.R.2d (RIA) 330 (D. Or. 2013).

31 See, e.g., *United States v. Lawrence*, 113 A.F.T.R.2d (RIA) 1933 (S.D. Fla. 2014). Individual taxpayers may claim the Fifth Amendment right against self-incrimination, but not on behalf of a business entity. *Braswell v. United States*, 487 U.S. 99 (1988). Additionally, taxpayers cannot withhold self-incriminatory evidence if the summoned documents fall within the "foregone conclusion" exception, which applies if the government establishes its independent knowledge of the document's existence, the document's authenticity, and the possession or control of the documents by the person to whom the summons was issued. *United States v. Bright*, 596 F.3d 683, 692 (9th Cir. 2010).

32 See National Taxpayer Advocate 2018 Annual Report to Congress 473 (Most Litigated Issue: *Summons Enforcement Under IRC §§ 7602, 7604, and 7609*).

33 One case was an *ex parte* proceeding to issue the John Doe Summons to unknown taxpayers.

34 See National Taxpayer Advocate 2017 Annual Report to Congress 390, 395 (Most Litigated Issue: *Summons Enforcement Under IRC §§ 7602, 7604, and 7609*); National Taxpayer Advocate 2016 Annual Report to Congress 455, 459 (Most Litigated Issue: *Summons Enforcement Under IRC §§ 7602, 7604, and 7609*).

35 There were cases in which the IRS issued summons for investigations into both the individual taxpayer and his or her business. For the purposes of this Most Litigated Issue, TAS placed these cases into the business taxpayer category.

Petitions to Enforce and Powell Requirements

The United States petitioned to enforce a summons in 30 cases and successfully met its burden under *Powell* in all cases.³⁶ In cases where taxpayers contested the summons, they generally argued that the IRS did not satisfy one or more of the *Powell* requirements, but these arguments were not successful. Taxpayers did not meet with much success because the government's burden of proving that the *Powell* requirements have been met is "slight or nominal."³⁷ Then, the burden shifts to the taxpayer to show that enforcement of the summons would be an abuse of the court's process, and that burden is heavy.³⁸

Petitions to Quash and Lack of Subject Matter Jurisdiction

Taxpayers petitioned to quash an IRS summons to a third party in 25 instances.³⁹ In six of these cases, courts dismissed the petitions for lack of jurisdiction on procedural or notice grounds.⁴⁰ One taxpayer was successful in quashing a summons after proving the IRS failed to follow all of the required administrative steps in issuing the summons. In *JB v. United States*,⁴¹ the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's finding that the IRS failed to give reasonable advance notice to the taxpayer before making a third-party contact, and therefore failed to satisfy the fourth element of the *Powell* requirements. The significant cases portion of this report provides a discussion of the case.⁴²

Although the Ninth Circuit in *JB* did not prescribe what would constitute reasonable advance notice in each case, it suggested, based on the legislative history of IRC § 7602(c), Treasury Regulations, and the exceptions to the advance notice requirement in IRC § 7602(c)(1), that the IRS provide taxpayers with a meaningful advance notice and opportunity to respond. Although the Taxpayer First Act (TFA) eliminated the requirement for notice to be "reasonable," it now requires that when the IRS has intent to contact third parties, notice be sent to the taxpayer at least 45 days before third-party contacts are made and specify the period (not to exceed one year) during which the IRS will make contacts.⁴³ The IRS began implementing the TFA on August 15, 2019, but its revised notices to taxpayers do not include the information the IRS is seeking to obtain or verify from third parties.⁴⁴ Although the Ninth Circuit in *JB* contemplated that the notice would occur either simultaneously with or after an information request to allow the taxpayer to provide the information without need for the IRS to contact the third

36 See, e.g., *United States v. Boyd*, 123 A.F.T.R.2d (RIA) 302 (W.D. Ky. 2018); *United States v. Brammer*, 122 A.F.T.R.2d (RIA) 6258 (S.D. Cal. 2018); *United States v. Castanhiero*, 122 A.F.T.R.2d (RIA) 6956 (M.D. Fla. 2018); *United States v. Fleishman*, 2018 WL 6303687 (M.D. Fla. 2018). As mentioned above, the government initiated summons litigation in 30 cases during the current reporting period. The government petitioned to enforce summons litigation in 29 cases. In one case, *In the Matter of the Tax and Liabilities of John Does*, 122 A.F.T.R.2d (RIA) 6306 (W.D. Tex. 2018), the government filed an *ex parte* petition with the court for leave to serve a "John Doe" summons.

37 *Mazurek v. United States*, 271 F.3d 226, 230 (5th Cir. 2001).

38 *United States v. Kris*, 658 F.2d 526 (7th Cir. 1981).

39 In some instances, the taxpayer made the motion to quash in its answer to the government's petition to enforce.

40 See, e.g., *Floyd v. United States*, 2018 WL 7199738 (E.D. Mo. 2018), *appeal dismissed*, 2019 WL 3731373 (8th Cir. Apr. 2, 2019); *Floyd v. United States*, 122 A.F.T.R.2d (RIA) 6894 (W.D. Tex. 2018), *appeal dismissed*, 2019 WL 3574245 (5th Cir. Apr. 9, 2019); *Floyd v. United States*, 123 A.F.T.R.2d (RIA) 1642 (D. Del. 2019), *appeal dismissed*, No. 19-02627 (3d Cir. Aug. 15, 2019); *Floyd v. United States*, 2019 WL 386385 (W.D. Mo. 2019), *appeal dismissed*, No. 19-01253 (8th Cir. Mar. 28, 2019); *Pelletier v. United States*, 123 A.F.T.R.2d (RIA) 1102 (S.D. Cal. 2019); *Speidell v. United States*, 123 A.F.T.R.2d (RIA) 1704 (D. Colo. 2019), *appeal docketed*, No. 19-01214 (10th Cir. June 18, 2019).

41 *JB v. United States*, 916 F.3d 1161 (9th Cir. 2019), *aff'g* 117 A.F.T.R.2d (RIA) 694 (N.D. Cal. 2016).

42 See Most Litigated Issues: *Significant Cases*, *supra*.

43 TFA, Pub. L. No. 116-25, § 1206, 133 Stat. 981 (2019).

44 IRS, Interim Guidance Memorandum (IGM) SBSE-04-0719-0034, Interim Guidance on Third-Party Contact Notification Procedures (July 26, 2019). Despite the holding in *JB*, if challenged in a case existing before TFA became effective, the IRS will defend its prior practice of satisfying the advance notice requirement as provided in the Internal Revenue Manual (IRM). See IRM 5.17.6.7, Third-Party Contact Requirements of IRC § 7602(c) (Aug. 1, 2019).

party, the IRS's new procedures seem to assume the TFA has eliminated any such requirement. Because there is no clear indication that Congress intended to remove the requirement by allowing the IRS to provide a boilerplate notice in advance that deprives taxpayers of any meaningful opportunity to respond, taxpayers may challenge its new procedures, particularly in the Ninth Circuit. Accordingly, we recommend the IRS include the information it is seeking to obtain from third parties in every taxpayer pre-contact notice. This practice might reduce litigation and would be consistent with the taxpayer's *rights to privacy and confidentiality*.

Finally, during this reporting period, four businesses involved in the marijuana industry unsuccessfully petitioned to quash summonses issued to a third parties.⁴⁵ In each case, the IRS was investigating the taxpayer on the basis of IRC § 280E, which prohibits deductions or credits for expenses paid or incurred in the trade or business of trafficking in controlled substances. Although the courts found that the IRS made a *prima facie* showing that the *Powell* requirements were met, the taxpayers generally argued that the IRS lacked good faith in issuing the summonses because they believed the IRS was instead issuing the summons to place them in criminal jeopardy. Each court, including the Tenth Circuit Court of Appeals, rejected the taxpayers' arguments finding that there was no basis to conclude the IRS was acting in bad faith or harassing the taxpayers.⁴⁶

The 2018 summons enforcement narrative discussed at length the *Rifle Remedies, LLC* case,⁴⁷ and this year summons suits related to the marijuana industry increased fourfold. As more states legalize or decriminalize the sale of marijuana and the industry grows, IRS examinations will also likely increase to ensure compliance with IRC § 280E. Thus, we anticipate that litigation in this area will continue to grow, despite the fact courts continue to find that the IRS is not acting in bad faith in issuing summonses to these taxpayers or third parties. To avoid litigation in this area, the IRS could try to educate this industry on the special compliance rules that apply.

Privileges

As in past years, taxpayers attempted to invoke various privileges, including the Fifth Amendment and attorney-client privileges in response to an IRS summons.⁴⁸ Taxpayers were partially successful in invoking privileges in two cases. In the *Durham* case, the court enforced the summons in part, concluding that the taxpayer properly invoked his Fifth Amendment right against self-incrimination with respect to some of the information requested by the IRS.⁴⁹ In the *Baldwin* case, the court found that the documentation requested by the IRS was subject to the attorney-client privilege and granted in part the taxpayer's motion to quash a third-party summons.⁵⁰ However, in *U.S. v. Sanmina Co. and Subsidiaries*, which was on remand from the Ninth Circuit Court of Appeals, the taxpayer was not successful in

45 *Green Sol., LLC v. United States*, 123 A.F.T.R.2d (RIA) 1711 (D. Colo. 2019), *appeal docketed*, No. 19-01214 (10th Cir. June 18, 2019); *High Desert Relief, Inc. v. United States*, 917 F.3d 1170 (10th Cir. 2019); *Medicinal Wellness Center, LLC v. United States*, 123 A.F.T.R.2d (RIA) 1714 (D. Colo. 2019), *appeal docketed*, No. 19-01217 (10th Cir. June 19, 2019); *Medicinal Wellness Center, LLC v. United States*, 123 A.F.T.R.2d (RIA) 1699 (D. Colo. 2019), *appeal docketed*, No. 19-01218 (10th Cir. June 18, 2019); *Standing Akimbo, LLC v. United States*, 2018 WL 6791071 (D. Colo. 2018), *appeal docketed*, No. 19-01049 (10th Cir. Feb. 8, 2019), *adopting* 2018 WL 6791104 (D. Colo. Oct. 6, 2018).

46 See, e.g., *High Desert Relief, Inc. v. United States*, 917 F.3d 1170 (10th Cir. 2019); *Green Sol., LLC v. United States*, 123 A.F.T.R.2d (RIA) 1711 (D. Colo. 2019), *appeal docketed*, No. 19-01214 (10th Cir. June 18, 2019).

47 *Rifle Remedies, LLC v. United States*, 120 A.F.T.R.2d (RIA) 6385 (D. Colo. 2017).

48 See *Belcik v. United States*, 123 A.F.T.R.2d (RIA) 5702 (N.D. Ala. 2018).

49 See *United States v. Durham*, 122 A.F.T.R.2d (RIA) 5100 (E.D. Mo. 2018).

50 See *Baldwin v. United States*, 2018 WL 4372553 (C.D. Cal. 2018).

invoking privileges. Although the district court determined that two documents were indeed privileged under the attorney work-product and attorney-client privilege, both grounds had been waived.⁵¹

Civil Contempt

A person who “neglects or refuses to obey” an IRS summons may be held in civil contempt.⁵² In four cases this year, taxpayers were held in civil contempt for failing to comply with a court order enforcing an IRS summons.⁵³ Overall, contempt proceedings accounted for approximately seven percent of all summons-related cases. Unless the taxpayer complied with the court order, the taxpayer was subject to arrest.⁵⁴

International Treaty Obligations

Courts denied three taxpayers’ motions to quash third-party summonses and granted the government’s motion to enforce a summons in one other case based on the government’s compliance with international agreements.⁵⁵ Taxpayers generally argued that the IRS summonses were not issued for a legitimate purpose as the foreign countries were requesting the information in bad faith. The courts applied the *Powell* requirements, citing Supreme Court precedent that as long as the IRS itself acts in good faith and complies with the applicable statutes, it is entitled to enforcement of its summons.⁵⁶

CONCLUSION

The IRS may issue a summons to obtain information to determine whether a tax return is correct or if a return should have been filed to ascertain a taxpayer’s tax liability or to collect a liability.⁵⁷ Accordingly, the IRS may request documents and testimony from taxpayers who have failed to provide that information voluntarily.

Summons enforcement continues to be a significant source of litigation. The IRS also continues to be successful in the vast majority of summons enforcement litigation. Taxpayers and third parties rarely succeed in contesting IRS summonses due to the significant burden of proof and strict procedural requirements. However, we anticipate that the TFA’s change to the requirements for John Doe summonses and advance notice before making third-party contacts should reduce summons litigation.

51 *United States v. Sanmina Co. and Subsidiaries*, 122 A.F.T.R.2d (RIA) 6232 (N.D. Cal. 2018), *appeal docketed*, No. 18-17036 (9th Cir., Oct. 19, 2018), 707 F. App’x 865 (9th Cir. 2017), *vacating and remanding* 115 A.F.T.R.2d (RIA) 1882 (N.D. Cal. 2015). We discussed the lower court’s decision in the 2015 and 2018 Annual Reports. See National Taxpayer Advocate 2018 Annual Report to Congress 469, 476-477 (Most Litigated Issue: *Summons Enforcement Under IRC §§ 7602, 7604, and 7609*); National Taxpayer Advocate 2015 Annual Report to Congress 467, 473-474 (Most Litigated Issue: *Summons Enforcement Under IRC §§ 7602, 7604, and 7609*).

52 IRC § 7604(b).

53 See *United States v. Edwards*, 122 A.F.T.R.2d (RIA) 7035 (W.D. Tenn. 2018); *United States v. Gonzalez*, 122 A.F.T.R.2d (RIA) 5352 (M.D. Fla. 2018); *United States v. Heist*, 123 A.F.T.R.2d (RIA) 1493 (W.D. Wis. 2019), *appeal dismissed*, 2019 WL 4464233 (7th Cir. May 2, 2019); *United States v. Higgins*, 122 A.F.T.R.2d (RIA) 5705 (D. Ariz. 2018).

54 See *United States v. Edwards*, 122 A.F.T.R.2d (RIA) 7035 (W.D. Tenn. 2018); *United States v. Gonzalez*, 122 A.F.T.R.2d (RIA) 5352 (M.D. Fla. 2018); *United States v. Heist*, 123 A.F.T.R.2d (RIA) 1493 (W.D. Wis. 2019), *appeal dismissed*, 2019 WL 4464233 (7th Cir. May 2, 2019).

55 See *GA2.com SP. ZO. O. (LTD) v. United States*, 123 A.F.T.R.2d (RIA) 5759 (D. Del. 2018); *Verges v. United States*, 121 A.F.T.R.2d (RIA) 2287 (S.D. Fla. 2018); *Vistadis, LLC v. United States*, 123 A.F.T.R.2d (RIA) 1353 (E.D. Pa. 2019); *United States v. Thielemann*, 123 A.F.T.R.2d (RIA) 665 (S.D. Cal. 2019).

56 *Vistadis, LLC v. United States*, 123 A.F.T.R.2d (RIA) 1353 (E.D. Pa. 2019) (citing *United States v. Stuart*, 409 U.S. 353 (1989)).

57 IRC § 7602(a).

RECOMMENDATIONS TO MITIGATE DISPUTES

The National Taxpayer Advocate recommends that Congress:

- Amend IRC § 7602(c)(1) to clarify that the IRS must tell the taxpayer what information it needs (or needs to verify) and to give the taxpayer a reasonable opportunity to provide the information (or verification of it) before contacting a third party, unless doing so would be pointless or an exception applies.

The National Taxpayer Advocate recommends that the IRS:

- Revise its letters and internal guidance to inform the taxpayer of what information it needs (or needs to verify) and to give the taxpayer a reasonable opportunity to provide the information (or verification of it) before contacting the third parties.
- Educate industries involved in the sale of controlled substances about the prohibition on claiming any deduction or credit under IRC § 280E.