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- [e-file](#)
- [Forms and Publications](#)
- [Frequently Asked Questions](#)
- [Newsroom](#)
- [Taxpayer Advocate Service](#)
- [Where To File](#)

Part 25. Special Topics

Chapter 5. Summons Handbook

Section 3. Procedures

25.5.3 Procedures

- 25.5.3.1 [Overview](#)
- 25.5.3.2 [Service of Summons](#)
- 25.5.3.3 [Designated Summons](#)
- 25.5.3.4 [Time and Place of Examination Set by Summons](#)

25.5.3.1 (04-30-1999)

Overview

1. This section contains the following topics:

- Service of Summons
- Designated Summons
- Time and Place of Exam Set by Summons

25.5.3.2 (09-01-2006)

Service of Summons

1. Serve an attested copy of a summons in accordance with IRC 7603. The face of the summons given to the summoned person should bear a signed attestation statement. See Form 2039 (rev. 12-2001), Part A. Briefly, Form 2039, Part A, should be:
 - A. handed to the person to whom it is directed, or
 - B. left at his or her last and usual place of abode by leaving it with a person who is of suitable age and discretion, with instructions that the summons be given to the summoned individual, or by affixing the summons to the front door of the last and usual place of abode by a means that will not mar the finish.

Note:

Casual, on-the-spot preparation and service of the summons should be avoided since such might encourage defiance and noncompliance.
2. Serve a summons issued to a third-party recordkeeper by registered or certified mail, or personally deliver it to the person to whom it is directed. However, service by registered or certified mail is the preferred method of service for third-party recordkeepers. See IRM 25.5.6.3.2 for an explanation of third-party recordkeepers. Mail the summons to the last known address of the recordkeeper and document the case file by recording the method of service.
3. After completing the certificate of service, place Form 2039 in the administrative file in the office of the issuing division for use in enforcement litigation, if necessary.
4. If a witness requests that he or she be served with a summons as evidence of his or her legal duty to produce records, testify, or provide handwriting analysis, and indicates he or she will voluntarily comply, issue the summons for that purpose. This is commonly referred to as a "friendly summons." However, do not follow this procedure with a John Doe summons because such a summons can only be served after approval by a federal district court judge. Serving a John Doe summons without court approval violates the statute and may jeopardize the investigation.
5. If information requested by a summons is later determined to be unnecessary, compliance with the summons may be waived by the issuing official, provided the summons is not the subject of litigation. If it is, concurrence of the Counsel office handling the litigation must be obtained before compliance may be waived.
6. Witness fees and payments for mileage may be made to all summoned witnesses, whether a third-party witness, the taxpayer, or the taxpayer's representative.
7. Under IRC 7610(b)(2), if the summoned party is the taxpayer or the taxpayer's officer, employee, agent, accountant, or attorney who was acting in that capacity when the summons was served, then that person is not entitled to the reimbursement of costs incurred in searching for, reproducing, or transporting summoned records. Under IRC 7610(b)(1), only certain summoned third-party witnesses are eligible for reimbursement of those costs. Excluded from eligibility are third parties summoned to produce records in which the taxpayer has a proprietary interest. If the person summoned is a third party entitled to reimbursement, he or she will be given the notice explaining the payment procedures (Form 2039 Part B); otherwise, discard Form 2039 Part B. See IRM 25.5.9, Fees and Costs for Summoned Witnesses, for further information.
8. If the summons is served on a third party and the taxpayer (and any other person) is entitled to notice of its issuance, provide Part C of Form 2039 to the noticee along with Part D of Form 2039, which explains the right to contest the administrative summons. If more than one person is entitled to notice of the summons, Parts C and D may be reproduced to provide such notification. (See IRM 25.5.6.3.8 regarding who is entitled to notice.) This would occur, for example, in a situation where a bank account is listed in two names even if the

Cited in *Mollison v. United States*,
 No. 07-16035 archived on June 19, 2009

two persons reside at the same address.

Note:

The copy of the summons provided to the noticee, Form 2039 Part C, is not required to bear an original signature. However, the copy served on the summoned party, Form 2039 Part A, must bear an original signature of the official serving the summons.

9. If the summons is not served on a third-party witness and/or notice is not required because the summons fits into an exception to the notice requirements of IRC 7609, discard the second copy (Form 2039-C) and the notice (Form 2039-D).
10. When investigating the liability of a husband and wife who file a joint return, if it is necessary to obtain either records or testimony from both spouses, serve a separate summons on each spouse. However, if only one spouse has custody or control of all of the records that may be relevant to the investigation or if the Service needs the testimony of only one spouse, serve only the spouse from whom the records or testimony is sought.

Note:

These summonses are considered third-party summonses to which the notice requirement of section 7609(a) applies. If only one spouse is summoned, the other spouse is entitled to notice under section 7609(a) as a person identified in the summons. Even when both spouses are summoned (by issuing and serving separate summonses), each spouse is entitled to notice of the other spouse's summons. This procedure preserves each spouse's opportunity to move to quash the summons served on his or her spouse. See IRM 25.5.6.3.1.2

11. When issuing a summons to a person in his or her capacity as trustee, receiver, custodian, corporate or public official, the person's title or position and the name of the entity should be added. For example, a summons for the testimony of a corporate president would read, "Mr. S, as president of XYZ Corporation."
12. A summons may be issued to a corporation for the production of corporate records. If the summons is directed to the custodian of records, it must be served personally on the custodian. If the summons is directed solely to the corporation, it must be personally served on a corporate officer or a person authorized to accept service of the summons on behalf of the corporation. Although IRC 7603 provides that a summons may be served by leaving it at the summoned person's "last and usual place of abode," this rule does not apply when a corporation is the summoned person because a corporation has no abode. Consequently, do not serve a summons on a corporation by leaving it at the custodian's or the authorized person's place of abode. They are not the summoned corporation; they merely represent that entity.
13. Any copy of a summons given to the person summoned should contain the following statement of 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." The copy should also contain the original signature and title of the IRS official serving the summons. This statement of attestation can be found on the following summons forms:
 - A. Form 2039, Summons (Rev. 12-2001)
 - B. Form 6637, Collection Information Statement (Rev. 4-2005)
 - C. Form 6638, Income Tax Return (Rev. 4-2005)
 - D. Form 6639, Financial Records (Rev. 7-2000)
14. The back of the original summons must have a statement that the copy served contained the required attestation.
15. After the summons has been served, complete the certificate of service on the reverse side of the original summons and include the signature of the employee who served the summons.

Note:

If the summoned party fails to comply with the requirements of the summons, see IRM 25.5.10, Enforcement of Summons, for enforcement procedures.

25.5.3.2.1 (09-01-2006) Service of Summons in Other Areas

1. To serve a summons in another area:
 - A. Collection/Exam/TEGE should use Form 2209, Courtesy Investigation, to send the summons to the other area to request that it be served. Criminal Investigation should prepare a collateral request for this purpose.
 - B. It is the responsibility of the receiving area to complete the spaces on the summons indicating the name, address, and telephone number of the Service employee before whom the summoned party is required to appear, as well as the place and time for appearance.
2. Collection employees should contact the Technical Support function for guidance on serving a summons on an individual or entity located outside of the United States.

25.5.3.2.2 (09-01-2006) Issuing a Summons for Service in Another Area and Summoning Information From a Foreign Organization or Individual-Examination

1. Coordination and cooperation is necessary between the examining office and another area.
 - A. When conducting an IRC 482 examination, it may be necessary to summon a person living or doing business in another area. If so, obtain approval to issue the summons from the Area Director for the area in which the examination is taking place.
 - B. If the summons crosses area lines, the area will forward the summons to the area requested to cooperate.
 - C. The examining office will provide a completed summons (if possible), and a memorandum explaining the need for the summoned information, and the assistance needed from the cooperating office.

Cited in Mollison v. United States, June 19, 2009
No. 07-16035 archived on June 19, 2009

- D. The examining office has the basic authority and responsibility for issuing the summons and for its enforcement. The cooperating office acts solely as an agent of the examining office.
 - E. Forward judicial enforcement requests to Associate Area Counsel where the examining office is located.
2. Contact the Director, Compliance for advice and assistance before any contact with a foreign organization or before a summons or presummons letter is issued to obtain information from a foreign organization not doing business in the U.S. or an individual not physically present in the U.S.

25.5.3.3 (09-01-2006) Designated Summons

1. IRC 6503(j) was enacted as a means to counter taxpayers who:
 - A. refuse to extend the statute of limitations before the Service has fully developed a case, or
 - B. have resisted disclosure of necessary information and forced the examiners to issue notices of deficiency based on incomplete information.
2. A designated summons:
 - A. may only be issued to a corporation with respect to such corporation's tax return, or to any other person to whom the corporation has transferred records,
 - B. may be issued only to a corporation with respect to a return for which a corporation is being examined under the coordinated issue case (CIC) or any successor program (e.g., large case program examinations),
 - C. requires pre-issuance review by the Division Commissioner and the Division Counsel for the organizations that have jurisdiction over the corporation being examined,
 - D. must clearly state that it is a designated summons,
 - E. must refer to the year or years for which records or testimony are sought if a designated summons is issued for some of the years of examination. This is to avoid the statute of limitations on assessment from being tolled for all of the years.

The statute can be tolled if litigation results from a related summons issued to the same or another person on matters that apply to the same tax return as the designated summons. The related summons must be issued within a 30-day period following the issuance of the designated summons. There is no limitation on the number of related summonses that can be issued.
3. Designated and related summonses must be approved by a Field Territory Manager in the area which will issue the summons.
 - A. If approved, forward the summons to Associate Area Counsel for review and coordination at the area level.
 - B. A memorandum should accompany the summons explaining the reasons the taxpayer refused to extend the statute of limitations for assessment. In addition, the memorandum should have sufficient explanation to establish that all procedural requirements for issuance have been met, and if the summons will be issued near the end of the period permitted by IRC 6503(j), and the reason that the summons was not issued at an earlier date.
 - C. The running of the period of limitations will not be suspended if a designated summons is complied with and a suit is not filed to enforce a related summons.
 - D. Technically, the statute of limitations can be suspended by filing suit to enforce a related summons even where the taxpayer has complied with the designated summons.
 - E. Examiners should consult with Associate Area Counsel as to whether the Service should attempt to suspend the statute based solely upon a related summons.
4. Associate Area Counsel will notify Examination whether the summons should be issued after review and coordination.
5. Notify and send copies of any designated or related summons issued to the corporation under examination.
6. The statute of limitations will be suspended for the period beginning when a lawsuit is initiated in a court of law to either enforce or quash the summons and ending on the date that there is a final resolution regarding the summoned person's response to the summons. In the instance of a suspended statute of limitations:
 - A. Counsel will notify Examination of actions so that the statute can be updated accordingly.
 - B. The examiner responsible for the case will:
 1. Update the statute using the alpha code: "PP" to identify the irregular statute date.
 2. Remove the alpha code "PP" and the extended statute date when the summoned party complies with the designated summons
 3. Update the statute when the suspension period is ended.
 - C. If the court does not require additional compliance, the assessment period will not expire before 60 days after the close of the judicial enforcement period.
 - D. If the court requires any compliance with the summons, the statute date will expire 120 days from the date of final resolution.
7. If a designated summons is issued near the end of the statute of limitations (which is at least 60 days prior to expiration), give the summoned party only the minimum 10-days to appear as required by section 7605(a). Do not grant an extension of time to the summoned party for response to the summons.
8. A summons issued under IRC 6503(j) must clearly state that it is a designated summons. The following statement should be typed at the

Cited in *Mollison v. United States*,
No. 07-16005 archived on June 19, 2009

top of the first page of Form 2039, Summons, for a designated summons: "This is a designated summons pursuant to IRC 6503(j)."

9. Type the following at the top of the first page of Form 2039 if the summons is related to a designated summons: " The summons is related to a designated summons issued on (date) pursuant to IRC 6503(j)."
10. It is important that only the name of the taxpayer appears on the taxpayer identification portion of the summons identified by the phrase "In the matter of the tax liability of (_____)." "

25.5.3.4 (09-01-2006)

Time and Place of Examination Set by Summons

1. Generally, the following guidelines apply:
 - A. The time and place of examination must be reasonable.
 - B. The date for appearance should not be on a Saturday, Sunday, or a legal holiday.
 - C. If a prospective witness is cooperative, the summons should be made returnable, if feasible, at the place that suits the witness' convenience.
 - D. If the witness is uncooperative or attempts to hamper the investigation, it may be best to have him or her appear and produce his or her records at the agent's office.
 - E. In computing the time period for appearance or production of records, do not include the date of service or the date of appearance within the 10 or 23 day waiting periods.
2. If the summons is directed to a third party and is subject to the notice and waiting period requirements of IRC 7609:
 - A. Set the date for appearance at least 24 days after the date notice of the summons is given.
 - B. Do not accept records from the summoned third party prior to the date of appearance because noticees have the right during this time period to initiate proceedings to quash the summons.
 - C. If a proceeding to quash has properly been instituted, do not examine records unless the court so orders, unless the noticee who has instituted the proceeding consents.
3. If the summons is not subject to IRC 7609 requirements, the date for appearance must be not less than 10 full days after the date of service, but the summoned person may voluntarily comply at an earlier time.
4. A third-party witness may request service of a summons as evidence of a legal duty to testify or produce records. If the summons is not subject to IRC 7609 notice and waiting period requirements, the date for appearance is 10 or more days after service of the summons even if the person expects to respond on an earlier date. (See IRC 7609(c)(2) and IRM 25.5.6 for a discussion of third-party summonses not subject to the 23 day waiting period of IRC 7609.)

Note:

Do not use this procedure when the taxpayer or other person is entitled to a notice. Do not use this procedure for a John Doe summons, which may only be served after approval by a federal district court judge.

5. If a summoned witness for a valid reason (such as illness) cannot appear on the date fixed in the summons, the date may be continued by mutual agreement. To formally extend the compliance date of the summons:
 - A. Specify the new appearance date in writing. The letter should be signed by the Service employee who issued the original summons and approved by the Service employee who approved the issuance of the original summons. Mail the letter by certified mail or hand deliver it to the summoned party.
 - B. If the issuing Service employee has problems obtaining compliance on the extended appearance date, consult Associate Area Counsel for possible remedies.

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