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**Dave DuVal** • Oct. 04, 2019



Just about everyone can relate to that childhood feeling of when your stomach felt like it dropped past the center of the Earth and landed in China when your parent called for you by your full name. That's the feeling many taxpayers experience when the IRS issues a Notice of Summons to review their bank account statements or other financial information.

The IRS has the authority through IRC Section 7602(a) to review documentation that may assist them in confirming the accuracy of a filed return. Most taxpayers provide this documentation when being audited. However, when a taxpayer is

unwilling or unable to produce records for an IRS investigation, the IRS has been

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other persons such as the taxpayer's employees, corporate officers, bookkeepers, etc. The testimony is given under oath. A summons can be used in either a civil or criminal investigation, but it cannot be issued after a case has been referred to the Department of Justice or a grand jury. The IRS uses Form 2039 to issue a summons.

Through a legal procedure, taxpayers can "quash" or cancel a formal summons; however, informal information requests cannot be quashed. Quashing a summons refers to a legal appeal of the summons which is decided by a judge. When the IRS summons is issued to a third party, a copy is provided to the taxpayer and the taxpayer has 20 days from the date of the notice of issuance to "quash" or suppress the summons through a court petition. In order to effectively quash a summons, the taxpayer generally must prove that they have cooperated with the IRS in previous requests, and that the information requested in the summons is either nonexistent or has been previously submitted to the examiner.

It is important to be aware that a summons issued by the IRS is enforceable even if it seeks information that cannot otherwise be disclosed under other laws, such as a doctor's patient list or an investment advisor's client roster. One of the most common forms of documentation the IRS summons is bank records. Bank records are commonly summonsed when an examiner has determined there are strong indications of unreported income, and the taxpayer has refused to provide the relevant bank statements. When bank records are summonsed, the IRS typically requests copies not only of the bank statements and associated cancelled checks, but also copies of deposited items such as deposit slips and checks. This permits the IRS to determine if the deposits are from taxable or potentially nontaxable sources.

**Example:** John's 2017 Form 1040 is under examination by the IRS. The revenue agent assigned to his audit requested copies of John's bank statements for December 2016 through January 2018. John provided the bank statements to the revenue agent, and

during her review of the statements, the revenue agent asked about the multiple

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enforceable, it must meet the qualifications set forth in the Powell Test, which got its name from the Supreme Court decision in *United States v. Max Powell*. Under this test, the summons must show that:

1. The investigation will be conducted pursuant to a legitimate purpose;
2. The inquiry may be relevant to that purpose;
3. The information sought is not already within the IRS's possession; and
4. The administrative steps required by the Code have been followed.

The IRS has the burden of proof to verify all four qualifications have been met when issuing a summons. Generally, the IRS satisfies the Powell Test by furnishing a sworn affidavit from the IRS agent who issued the summons to the court. Once the IRS has made a successful *prima facie* case, the burden of proof reverts to the taxpayer contesting the issuance of the summons to demonstrate that at least one of the four qualifications of the Powell Test was not met by the IRS.

There are provisions in place that provide certain rights to a taxpayer who is subject to a summons. Section 7521 provides that a taxpayer has the right to receive an explanation of the process and obtain representation by a professional. The taxpayer also has the right to record the interview as long as the taxpayer makes the request for recording in advance of the interview. If the IRS interviews a third-party, the taxpayer may have a representative present at the third-party interview, but only if the third-party agrees to it.

The issuance of a notice of summons suspends the statute of limitations on assessment of tax liabilities and criminal prosecution of the taxpayer. These assessments will be suspended during the time the summons is pending, which includes any quash proceedings. If the summoned person does not fully respond and comply with the summons for six months after the date it is served, the statute of

limitations on assessment of liability and criminal prosecution will be suspended

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when girded with the knowledge of what a summons is, what the IRS is looking for, and how to quash it, you can navigate your client through their concerns and provide the support they need.

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