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IRS Makes Swiss Cheese Of Swiss Banks

About 30,000 taxpayers came forward over the last 2 years to disclose Swiss and other accounts. See [What's Next for Offshore Accounts?](#) The IRS knows there's a much larger number who haven't. And the IRS is doing something about it.



There was one amnesty program in 2009 and another in 2011. The IRS has said it is unlikely to offer another. See [IRS Amnesty Leaves Some Offshore Deadbeats Taking Their Chances](#). Still, the IRS isn't unforgiving and is still accepting voluntary disclosures. See [It's Not Too Late To Disclose Foreign Accounts](#).

As reported [here](#), the IRS has multiple avenues for finding you, and the stakes are getting higher. See [New U.S. tactic for suspected Swiss bank tax cheats](#). The more traditional route to getting details would be to make the bank disclose. That's what the IRS and DOJ did with UBS and with HSBC. See [IRS Will Find Your Offshore Account](#). It puts institutions in a tough spot to be presented with a John Doe summons or subpoena. See [IRS Summons? Meet John Doe](#).

Controversial Technique? New subpoenas may put you between a rock and a hard place. A debated legal move is a grand jury subpoena to produce your *own* bank records. A grand jury subpoena is issued to an individual suspected of overseas banking. It requires turning over the

suspect's **own** bank account details, including statements with the highest annual balances.

Can you refuse and say you are entitled not to incriminate yourself? You can take the [Fifth](#), right? Maybe, but you risk being found in contempt of court, facing fines and even jail time.

A dozen or more of these subpoenas have reportedly been issued, and that could embolden prosecutors. The bigger question is whether they can find you in contempt of court if you refuse to cough up the records. The unattractive alternative is to disclose potentially incriminating evidence against yourself.

Sure, the [Fifth Amendment](#) says you cannot be forced to incriminate yourself, but there's an exception for "required records." Some courts are considering whether offshore private banking falls within it. In [In re Grand Jury Investigation M.H.](#)—involving a California taxpayer known only as M.H.—the Ninth Circuit allowed prosecutors to compel an offshore account holder to produce account data even if it was self-incriminating.

However, a judge in Texas ruled a different taxpayer did not have to comply with a similar subpoena. The government is appealing. All of this is occurring as criminal investigations of 11 Swiss banks continue.

The banks are suspected of enabling tens of thousands of wealthy Americans to evade U.S. taxes. Banks in the crosshairs include Credit Suisse AG ([CSGN.VX](#)), HSBC Holdings plc ([HSBA.L](#)), and Basler Kantonalbank. More will come out. This epic battle isn't over.

For more, see:

[Be Careful Taking Five in the Ninth](#)

[Amnesty Program Yields Millions More in Back Taxes](#)

[Should You File FBAR For The First Time?](#)

[IRS Voluntary Disclosure A Mistake For Some](#)

["Quiet" Foreign Account Disclosure Not Enough](#)

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