

IRS Serves Summons on Wells Fargo

By Robert W. Wood

A federal district court in San Francisco has authorized the IRS to serve a John Doe summons on Wells Fargo Bank. The order was approved by Judge Thelton E. Henderson and represents yet another huge victory for the IRS. See Order Granting *Ex Parte* Petition for Leave to Serve “John Doe” Summons, Case 3:13-cv-01938-TEH, Northern District of California San Francisco Division, Apr. 29, 2013. Mind you, it’s not the names and addresses of Wells Fargo account holders that the IRS is after. But the development is still momentous.

This summons is part of the IRS’s endless quest for secret foreign bank accounts and income. The IRS used one of the most effective weapons in its arsenal: the John Doe summons. This summons requires Wells Fargo to hand over data on U.S. taxpayers with accounts at Canadian Imperial Bank of Commerce First Caribbean International Bank (FCIB). With 18 branches in the Cayman Islands and throughout the Caribbean, it could be a treasure trove.

If you have an account with this offshore bank, how could Wells Fargo have your name and details, you might wonder? It turns out that FCIB has a correspondent account at Wells Fargo, and that’s the way in for the IRS. Increasingly, if you bank in one place, there is also data about you in other institutions. But first let’s look at the rise of the John Doe summons as a prosecutorial tool.

With a normal summons, the IRS seeks information about a specific taxpayer whose identity it knows. A John Doe summons allows the IRS to get the names of all taxpayers in a certain group. It’s like fishing with a net and the IRS needs a judge to approve it.

It was a John Doe summons that quite literally blew the lid off Swiss banking in 2008. A judge allowed the IRS to issue a John Doe summons to UBS for information about U.S. taxpayers using Swiss accounts. The world looked on with surprise given that Swiss bank secrecy laws prohibited UBS from naming names.

But UBS was able to produce the names and satisfy the IRS and U.S. courts and still take the view that it had not violated Swiss law by doing so. Of course, UBS also paid over \$700 million in penalties to the IRS to settle the issues and avoid prosecution. A lot has happened since 2008. In fact, it is not hyperbole to say that in banking, the world has changed. What’s more, the IRS has raked in more than \$5 billion in taxes and penalties on foreign accounts.

And it isn’t finished, not by a long shot. This latest John Doe summons directs Wells Fargo to produce records identifying U.S. taxpayers with accounts at FCIB and other banks using the correspondent account. Based in Barbados with branches in 18 Caribbean countries, FCIB does not have any U.S. branches. That might make U.S. account holders feel safe from prying IRS eyes.

But like many other foreign banks, FCIB maintains a correspondent account in the U.S., and that’s where Wells Fargo comes in. Foreign banks that do not have an office in the U.S. open a correspondent account at a U.S. bank. That enables them to handle transactions in U.S. dollars, something that’s essential for foreign banks.

Through a John Doe summons issued to the U.S. bank holding the correspondent account, the IRS can view records of deposits and payments by check and wire.

Although it is not the only weapon the IRS has, the John Doe Summons has helped the IRS enormously. After sniffing out American taxpayers with UBS accounts and starting an avalanche of “voluntary disclosures” by U.S. taxpayers hoping for amnesty, the IRS used a John Doe Summons again with HSBC in India.

More recently, the U.S. government indicted the oldest Swiss bank, Wegelin & Co. With branches only in Switzerland, Wegelin claimed to be bound only by Swiss banking laws, brazenly scooping up deposits after UBS jettisoned Americans. Yet under pressure, Wegelin capitulated and pleaded guilty, making it the first foreign bank to plead guilty to U.S. tax charges. It agreed to close and its assets were sold.

But that does not mean the pressure is off. Negotiations between the U.S. and Switzerland industry-wide are said to be continuing. Institution-by-institution deals are also being discussed. Banks in Switzerland, Lichtenstein and other traditional tax havens are being pursued. Indeed, the IRS has continued to use the John Doe summons after Wegelin’s guilty plea, issuing one to UBS for records of Wegelin’s correspondent account at UBS.

The John Doe summons issued to Wells Fargo is a perfect example of the multi-source detective work the IRS is doing. Information gathered in one place and in one way can be used to advantage somewhere else. When it applied for approval of the summons to Wells Fargo, the IRS claimed that U.S. taxpayers have used the Caribbean-based FCIB to keep offshore accounts undetected, thus skirting taxes and disclosure rules.

But since the IRS doesn’t have those FCIB bank records yet, where’s the proof? It turns out that over 120 FCIB account holders stepped forward under the IRS voluntary disclosure program. That was good enough for the court to approve issuing the summons. Those 120 taxpayers are safe but the account holders who stayed mum are probably trying to assess what data the IRS will get and whether they should step forward quickly before it is too late.

After all, the government is taking a hard line in prosecuting many cases. The IRS has made clear that the time to step forward and avoid prosecution is growing short. Although the IRS voluntary disclosure program is still viewed by most tax practitioners as the most foolproof and least expensive way of resolving these concerns, there have been a few recent hiccups causing some to rethink it.

Some taxpayers with accounts at Israel’s Bank Leumi who were already cleared to make voluntary disclosures were told that it was too late for them to participate in IRS amnesty and they were being rejected after all. Reports suggest that only a handful of U.S. taxpayers were directly impacted. It remains uncertain whether they will just be subject to harsh civil penalties or be prosecuted.

Yet understandably, some claim that this kind of gotcha undermines taxpayer confidence in the IRS amnesty program and the general IRS mantra that taxpayers will not be prosecuted as long as they step forward before they are discovered. Meanwhile, the Acting Commissioner of the IRS, Steven T. Miller, noted that the Wells Fargo John Doe Summons is “another milestone in international tax enforcement.” The IRS pursues cases “regardless of whether the person hiding money overseas chooses a bank with no offices on U.S. soil.”



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