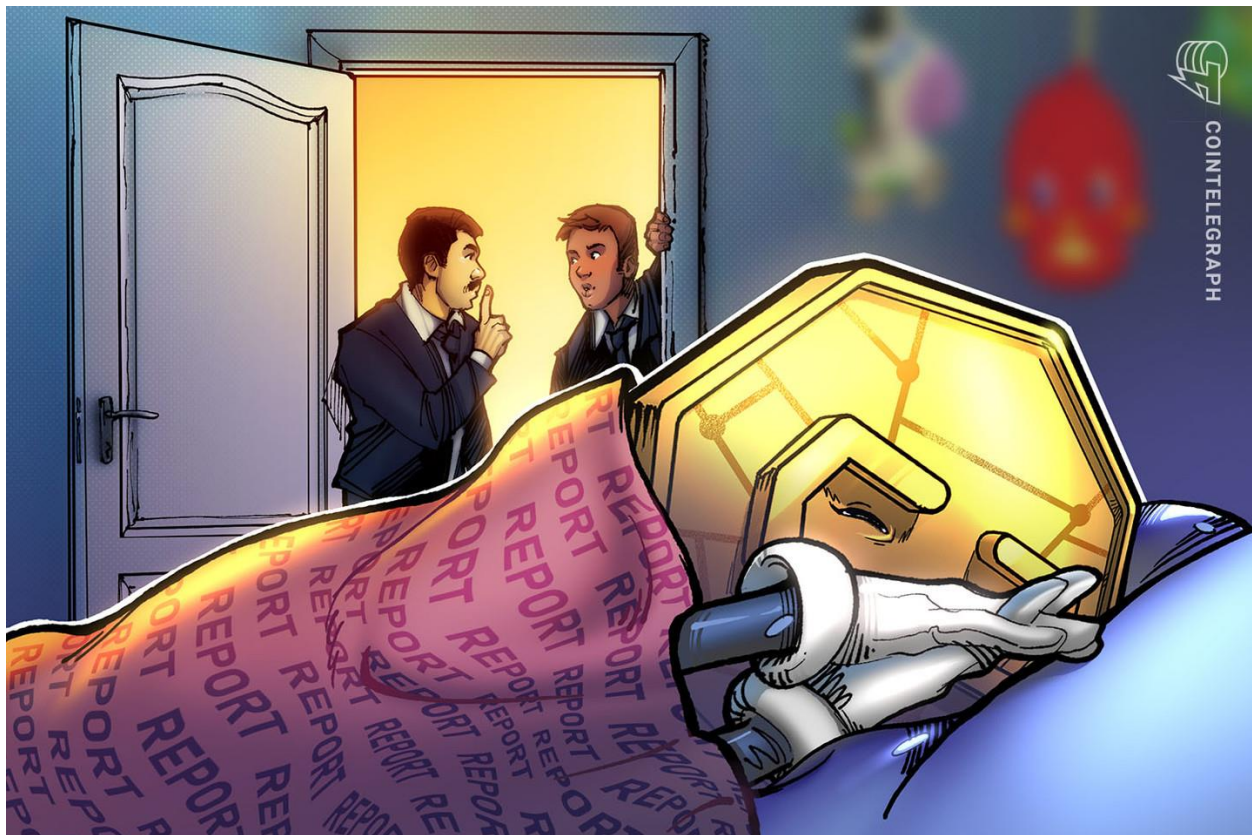


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By Robert W. Wood

## More IRS summonses for crypto exchange account holders

The recent John Doe summons developments indicate that the IRS is seriously interested in crypto — better to report than to be audited.



The United States Internal Revenue Service has been hunting crypto vigorously for more than five years now, and the pace is getting faster. A couple of decades ago, the IRS was after offshore accounts, and that effort was among the most successful in the IRS' history. Now, it's crypto the IRS is after, and there's no suggestion that the IRS intends to fail. The IRS wants crypto tax data in a big way, from [asking about crypto on each tax return](#) to its latest Hidden Treasure [initiative](#) and more.

The collective efforts of the IRS are impressive, and it is unlikely that the IRS will stop anytime soon. They are going to court as well, going after the exchanges that have customer data. First, there was Coinbase, and now, a federal court in Massachusetts has [entered](#) an order authorizing the IRS to serve a “John Doe summons” on Circle Internet Financial Inc. Notably, the summons effort also goes after Circle’s predecessors, subsidiaries, divisions and affiliates, including Poloniex LLC, which Circle purchased in 2018. The pattern is similar to what occurred with Coinbase. The IRS’ goal is to obtain information about U.S. taxpayers who managed at least \$20,000 worth of transactions in cryptocurrency between 2016 and 2020. IRS Commissioner Chuck Rettig said:

**“The John Doe summons is a step to enable the IRS to uncover those who are failing to properly report their virtual currency transactions.”**

U.S. District Court Judge Richard Stearns seems to agree with the IRS and Justice Department that taxpayers could be hiding taxable income from the IRS using crypto.

He found that “There is a reasonable basis for believing that cryptocurrency users may have failed to comply with federal tax laws.” There may well be more litigation, but for now, the judge’s order grants the IRS permission to serve a John Doe summons on Circle. According to the court’s order, the summons seeks information related to the IRS’s “investigation of an ascertainable group or class of persons” that the IRS has a reasonable basis to believe “may have failed to comply with any provision of any internal revenue laws.”

This isn’t the IRS’s first John Doe summons, or even the first one for crypto. The IRS summons efforts for crypto customer data started with Coinbase, leading to a federal court in California [entering](#) an order authorizing the IRS to serve a John Doe summons on Coinbase Inc. Apart from Circle, another IRS summons [dispute](#) is now underway in California with Kraken (Payward Ventures Inc).

The scope of the Kraken summons request is similar. That is, it is seeking information on users who reached \$20,000 in transactions from 2016 to 2020. The court has already responded, saying the government’s request is “overbroad” and that it will have to refile the request with a narrowed scope. But if history is any guide, the IRS may end up getting some information. Just look what happened with Coinbase, where court battles over the summons ended up compromised. Coinbase litigated the case for a while, but Coinbase and the government eventually reached a deal for a more limited class of information that Coinbase would’ve had to turn over.

### **The IRS, John Doe summons and privacy**

Any summons from the IRS should be taken seriously. However, a John Doe summons might seem more like a fishing expedition that could easily be seen as overbroad. With a normal summons, the IRS seeks information about a specific taxpayer, a person whose

identity the IRS knows. In contrast, a John Doe summons is about getting names and details of people from only a description. It allows the IRS to get the names of all taxpayers in a certain group. A [John Doe summons](#) is ideal for pursuing account holders at a financial institution. Notably, it was a John Doe summons that literally blew the lid off the hushed world of Swiss banking in 2008. That was when a judge [allowed](#) the IRS to issue a John Doe summons to the Union Bank of Switzerland, or UBS, for information about U.S. taxpayers using Swiss accounts.

Swiss law prohibits banks from revealing the identity of account holders, but the rest is history. More than a few observers have noted that the IRS launched its over \$50 billion offshore sweep with that summons. The IRS tells its own examiners to use a John Doe summons only after trying other routes. [According](#) to the IRS Manual, "It may be possible to obtain taxpayer identities without using a John Doe summons, but success can breed success."

After sniffing out American taxpayers with UBS accounts, the IRS did the [same](#) with HSBC in India and Citibank and Bank of America in Belize. And while it will take the IRS time to collate and process any information it is able to get, you can bet that the IRS will put the information it acquires to good use. Remember, digital currency is an ongoing focus area for an IRS criminal investigation.

## **The IRS and cryptocurrency**

Just in 2018, the IRS [announced](#) a digital currency compliance campaign to address tax noncompliance, related to the use of digital currency, through outreach and examinations of taxpayers. The IRS says it will remain actively engaged in addressing noncompliance-related and digital currency transactions through a variety of efforts, ranging from taxpayer education to audits to criminal investigations. For some time now, the IRS has also been hunting user identities with software.

It has been a long seven years since the IRS announced in Notice [2014-21](#) that digital currency is property for federal tax purposes. That early notice provides guidance on how general federal tax principles apply to digital currency transactions. Taxpayers who do not properly report the income tax of digital currency transactions are, when appropriate, liable for tax, penalties and interest. And in some cases, taxpayers could be subject to criminal prosecution.

As with the [10,000 warning letters](#) the IRS issued to crypto holders some time ago, these recent John Doe summons developments should be a wake-up call, even for people who've never dealt with any of these exchanges. If you are not trying to report taxes the way the IRS wants, not using one of these targeted exchanges does not mean you are in the clear. Besides, basic reporting isn't that hard. Amending tax returns to ask for big tax refunds is a well-known audit trigger, but amending to report extra income and pay extra tax is usually much less so.

Moreover, it can head off much bigger problems. When amending returns, be careful. All returns must be signed under penalties of perjury. If you know you have some reporting errors or omissions, consider making corrective filings for past years, as well as paying taxes without being asked. The IRS is generally much more forgiving if a taxpayer makes corrective filings before being audited or investigated.

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**Robert W. Wood** is a tax lawyer representing clients worldwide from the office of Wood LLP in San Francisco, where he is a managing partner. He is the author of numerous tax books and writes frequently about taxes for Forbes, Tax Notes and other publications.