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Receive An IRS Summons? Here's What To Do

The vast majority of IRS audits involve the big agency telling you what they want to see, and you handing it over. This is most frequently done with what the IRS calls Information Document Requests, IDRs for short. But sometimes matters escalate to an IRS summons. And sometimes the IRS issues a summons to a third party, trying to get information about someone else. If you are issued a summons, in many cases you probably will want to comply. If you don't, the government can actually sue you. In the vast majority of cases, the government wins these disputes. The government usually gets the data, and it does not like to have to sue to collect it. In that sense, fighting over the data is usually not where taxpayers (or third parties) want to spend their money. Eventually, the merits of the tax dispute must be addressed, and that is generally be the real fight, not the documentary preliminaries.

Many tax disputes end up getting compromised. Of course, there can be times when it is appropriate to clam up and stop cooperating. There may be privilege issues, for example. Third parties often must protect the privacy of their account holders, customers, etc. But for most taxpayers it can be worth considering voluntary compliance. Almost any IRS correspondence is stressful, but when a request for substantiation or documents looks like legal process, stress levels go higher. Usually, the IRS asks for information in an IDR, on [IRS Form 4564](#). You are under no legal obligation to respond, but you generally should. Otherwise, your case with the IRS will escalate. The first way an IRS probe usually escalates is from an IDR to a summons.



An IDR is informal, a list of items the IRS requests from you. The fact that you do not have all the items—or perhaps might not want to provide them all—does not mean you should not respond. If you respond to an IDR with 4 out of 6 requested items, maybe that will satisfy the IRS. Sometimes they may not keep asking, or may accept an explanation why the other items are not included. If you don't respond at all, you are almost guaranteed to provoke another IRS response. After one or more IDRs, next comes a summons, which the IRS has the power to issue.

When the IRS issues a summons, you can comply, refuse, or ignore it. Alternatively, you can go to court and attempt to quash it. That involves showing you have legitimate legal reasons not to disclose the information. If you refuse or ignore the summons, the Justice Department can get a court order to enforce it. If you still refuse, you could face sanctions for criminal or civil contempt. In all of these ways, a summons to hand over books, records or other data is more potent than an IDR, since it carries the threat of court enforcement. In fact, the mere fact that the IRS issues a summons rather than an IDR sends a stern message. A summons ups the ante, showing that the IRS is playing tough and is willing to go to court.

What grounds can you cite for not complying with an IRS summons? Common grounds are attorney-client privilege or work product protection, but the standards are high. The IRS uses its summons power frequently today, and court fights are becoming more common. Taxpayers generally lose these cases, which means the IRS generally gets the documents in the end. There are some sobering statistics. According to the U.S. Taxpayer Advocate Service, there

were only 44 such disputes in 2005. Then, by 2012, the number ballooned to 153. While the number of cases has decreased since 2012, summons enforcement continues to be a significant source of litigation.

The Taxpayer Advocate Service says that the IRS has won 96% of its summons cases during June 1, 2014 through May 31, 2015. With that many cases litigated, many more were probably resolved short of litigation. You should consider those odds when you decide whether and how to fight. With a normal summons, the IRS seeks information about a specific taxpayer whose identity it knows. But the IRS also has the power to issue a '[John Doe summons](#).' A John Doe summons allows the IRS to get the names of all taxpayers in a certain group. The IRS needs a judge to approve it, but recent IRS success that the IRS has had with offshore bank matters may lead to even more of these blanket IRS summonses in the future.

A John Doe summons is ideal for pursuing tax shelter investors, or account holders at a financial institution. The IRS can claim major successes on this front. The IRS was able to sniff out thousands of American taxpayers with Swiss accounts at UBS with a John Doe summons. The IRS has done the same with other banks (such as HSCB in India). Also, the IRS mostly won its [fight for Coinbase customer data](#). Crypto investors with more than \$20,000 generally had their data disclosed to the IRS.

Sometimes, big companies can and do play hardball with the IRS. But for most people, the IRS is eventually going to get the information, at least statistically speaking. As such, fighting over such issues can end up being unwise. It can sometimes even make an IRS dispute on the merits tougher when you get to it.

This is not legal advice. For tax alerts or tax advice, email me at Wood@WoodLLP.com.