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Tax Regs in Plain English

# IRS Restructuring and Reform Act of 1998

## 3415 - Taxpayers Allowed Motion to Quash 3rd Party Summons

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### Section 3415

**A. Provision covered:** RRA § 3415 "Taxpayers Allowed motion to Quash All Third-Party Summonses." (IRC Provisions Affected: § 7609)

**B. Background:** Prior law defined certain persons other than the taxpayer under investigation as "third-party recordkeepers." These included banks, attorneys, accountants, and other enumerated persons who kept records of transactions in a capacity as a recordkeeper. Under prior law, whenever the Service served a summons on these third-party recordkeepers, both the taxpayer and any other person named in the description of records sought by the summons were entitled to be notified about the summons. The notices had the right to intervene in any enforcement proceeding regarding that summons as well as the right to bring a motion to quash the summons within 20 days of notification.

Certain types of summonses were exempt under prior law, including collection summonses. For example, a summons issued as part of an investigation of a person for the Trust Fund Recovery Penalty was treated as a summons in aid of collecting the trust fund liability of the unpaid employment taxes and thus not subject to the notice requirements. Summonses to third-party recordkeepers issued by special agents in aid of criminal investigation were not exempt from the notice requirements.

**C. Changes:** The bill contains four noteworthy features. First, the bill now applies the notice requirement to any summons issued to any third party, not just third-party recordkeepers as previously defined in section 7609. Second, the bill clarifies that summonses issued to determine Trust Fund Recovery Penalty liability are not collection summonses exempt from the notice requirements. Third, the bill clarifies that information may be obtained through informal (non-summons) procedures under section 7601 and 7602. Finally, the bill ensures that the new notification requirements apply to summonses for testimony as well as records.

**D. Impact:** The former concept of third-party recordkeepers is now discarded for purposes of I.R.C. § 7609. Instead, the bill extends the requirements formerly followed only for third-party recordkeeper summonses to all summonses issued to third parties. Collection summonses which attempt to collect an assessed liability remain exempt from these requirements, but summonses issued to determine liabilities such as the Trust Fund Recovery Penalty or to work TDIs are subject to the requirements. The notice requirements for summonses issued by criminal investigators remain unchanged.

## **E. Necessary Actions**

### **1. Institutional Actions.**

- . Provide training on new requirements to all employees delegated the authority to issue and serve summonses, or review or approve summonses.
- b. Revise Form 2039 "Service of Summons, Notice and Recordkeeper Certificates" to reflect the new requirements and instruct the field to use it for all third-party summonses. Current Form 2039, however, may still be used by special agents.
- c. Until revised Form 2039 is issued, issue instructions to make necessary pen and ink changes to Form 2039.
- d. Update and revise regulations.
- e. Update and revise relevant IRM and CCDM provisions.

### **2. Things We Can Do**

When any summons (except those issued by a criminal investigator) is issued to any third party ( i.e. any person who is not the person in respect to whose liability the summons is issued), both the taxpayer under investigation and any other person identified in the description of the records to be produced must be given notice of the summons and the summons issuer must wait the appropriate time before receiving the records or testimony required by the summons.

When employees issue summonses to any third party in the course of performing a Trust Fund Recovery Penalty investigation, they must give notice to the taxpayer under investigation as well as any other person identified in the description of the records to be produced, and wait the appropriate time before receiving the records or testimony required by the summons.

No one issuing a summons, except for special agents conducting a criminal investigation, should use Form 2039 without making the appropriate pen and ink

changes to the form, which are to strike out the words "This certificate applies only to summonses served on third-party recordkeepers and not to summonses served on other third parties or" and substitute for it the words "This certificate does not apply to summonses served on" for the stricken language.

Revenue Officers may continue to issue "collection" summonses for investigations related to assessed liabilities as they do now, but must now follow section 7609 notice procedures when issuing summonses in the course of Tax Delinquency or Trust Fund Recovery Penalty investigations. Special Agents may continue to issue summonses as they do now and may continue to use Form 2039 as it is currently written.

**F. Other Special Comments:** New subsection (j) added to I.R.C. § 7609 by this provision clarifies that the Service may obtain information through non-compulsory procedures authorized by I.R.C. §§ 7601 and 7602. The new subsection makes clear that Title 26 authorizes procedures other than those set out in section 7609 to obtain information.

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