

NOMINATION OF VALERIE LAU

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS
SECOND SESSION
ON THE
NOMINATION OF
VALERIE LAU TO BE INSPECTOR GENERAL OF THE
DEPARTMENT OF THE TREASURY

JUNE 15, 1994



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CONTENTS

OPENING STATEMENT

| | Page |
|--|------|
| Moynihan, Hon. Daniel Patrick, a U.S. Senator from New York, chairman, Committee on Finance | 1 |

ADMINISTRATION NOMINEE

| | |
|---|---|
| Lau, Valerie, nominee to be Inspector General, Department of the Treasury ... | 1 |
|---|---|

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

| | |
|--|----|
| Lau, Valerie: | |
| Testimony | 1 |
| Prepared statement | 5 |
| Biographical | 7 |
| Responses to questions submitted by Senator Grassley | 10 |
| Moynihan, Hon. Daniel Patrick: | |
| Opening statement | 1 |
| Mineta, Hon. Norman Y.: | |
| Prepared statement | 60 |

NOMINATION OF VALERIE LAU TO BE INSPECTOR GENERAL OF THE DEPARTMENT OF THE TREASURY

WEDNESDAY, JUNE 15, 1994

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 12:26 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan (chairman of the committee) presiding.

Present: Senators Pryor and Packwood.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will come to order. We have the great pleasure of hearing from Ms. Valerie Lau, who is nominated to be Inspector General of the Department of the Treasury. I would ask the committee room to be in order.

Ms. Lau is a Certified Public Accountant, a graduate of Berkeley and she has been the Director of Policy at the Office of Personnel Management and many other qualifications. We should say she was a consultant with the Democratic National Committee and was an auditor with the General Accounting Office from 1980 to 1989.

Good morning, Ms. Lau. If you have a statement, we would be happy to hear it.

STATEMENT OF VALERIE LAU, NOMINEE TO BE INSPECTOR GENERAL, DEPARTMENT OF THE TREASURY

Ms. LAU. Mr. Chairman, if I might, I would like to submit my full statement for the record.

The CHAIRMAN. Without objection of course.

Ms. LAU. Thank you.

[The prepared statement of Ms. Lau appears in the appendix.]

Ms. LAU. I would also like to take this opportunity to acknowledge my family and friends who have come here in support of my nomination.

The CHAIRMAN. Will you do?

Ms. LAU. The people that are still here.

The CHAIRMAN. Because they are there. Hello, Laus, all.

Ms. LAU. There are Laus.

The CHAIRMAN. Why do you not stand up?

Ms. LAU. Fiskes, Balderstons and many good friends.

The CHAIRMAN. It sounds very much like Berkeley. We welcome you. Good morning.

Ms. LAU. Mr. Chairman, members of the committee, I am very honored to appear before you today as the President's nominee for Inspector General of the U.S. Department of the Treasury. As you know, I am Valerie Lau.

As a third generation Californian, I am honored to have this opportunity to continue a family tradition of public service. When I speak of tradition, I also refer to the high standards established by pioneers of the first Inspector General Community, such as Frank Sato and June Gibbs Brown.

These leaders brought to life the principals embodied in the Inspector General Act of 1978. They provided both Congress and their agency heads with timely, objective and independent reports on government programs and operations.

They sought to serve the government in general and their agencies in particular by identifying more efficient and effective ways to get things done, and by working to prevent and detect fraud, abuse and error. They fulfilled the mandate of the law to the best of their ability. To the best of my ability, I will seek to continue in that tradition.

The CHAIRMAN. I cannot think of a more concise and admirable statement. I would simply restate what you have said about your predecessors and it is very nice of you to think—because this is a new institution in our government, the Inspector General.

Ms. LAU. It is.

The CHAIRMAN. That they provided both Congress and their Agency heads with timely, objective and independent reports on government programs and operations. That is all we ask of you—timely and objective reports.

Ms. LAU. Yes, sir.

The CHAIRMAN. And you remember that you are an independent officer within your Department. I see that you understand that and I could ask no more.

Senator Packwood?

Senator PACKWOOD. I would only ask her to be timely if we wish it to be timely. There are occasions when we do not wish it to be timely.

The CHAIRMAN. I think on that note of ambiguity, I am asked to place in the record remarks that would have been given by our good friend, Representative Norman Mineta, who is chairman of the congressional Asian-Pacific-American Caucus. That will be placed in the record.

[The prepared statement of Mr. Mineta appears in the appendix.]

The CHAIRMAN. Is your mother, Ms. Lau, here?

Ms. LAU. Yes, my mother, Norma Ng-Lau is here in the audience.

The CHAIRMAN. There you are. And you are the City Auditor of Oakland, CA.

Mrs. LAU. Yes, I am.

The CHAIRMAN. And that is also a non-partisan office?

Mrs. LAU. Yes, it is.

The CHAIRMAN. Is there a non-partisan gene in the Lau family?
[Laughter.]

Right out there. Well, we welcome you, madame.

With that we will have to close the hearing. I am sorry to report that we did not in the course of the morning get a sufficient attendance that we had a quorum. So we will have to adjourn without reporting these candidates out. But the first time we have a quorum, which will be soon now, we will do.

We look forward to you assuming your new duties. We congratulate you on your past performances and look forward to the future ones.

Ms. LAU. Thank you very much.

The CHAIRMAN. With that, we close the morning.

[Whereupon, at 12:31 p.m., the meeting was adjourned.]



APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF VALERIE LAU

Mr. Chairman and members of the Finance Committee, I am honored to appear before you today as the President's nominee for inspector general (IG) of the U.S. Department of the Treasury. I am Valerie Lau.

As a third generation Californian, I am honored to have this opportunity to continue a family tradition of public service. My late father, Christopher Lau, was a civil engineer for the state of California. My mother, Norma Ng Lau, once managed my grandparents' corner grocery store. Sometime later, she decided to seek public office. She is now running for her fifth term as the elected city auditor of Oakland, California—a nonpartisan office. My husband, David Fiske, is an evaluator for the U.S. General Accounting Office (GAO) and has worked on Social Security issues for this Committee.

When I speak of tradition, I refer also to the high standards established by pioneers of the first inspector general community, such as Frank Sato and June Gibbs Brown. These leaders brought to life the principles embodied in the Inspector General Act of 1978.¹ They provided both Congress and their agency heads with timely, objective, and independent reports on government programs and operations. They sought to serve the Government in general and their agencies in particular by identifying more efficient and effective ways to get things done and by working to prevent and detect fraud, abuse, and error. They fulfilled the mandate of the act to the best of their ability. To the best of my ability, I will seek to continue in that tradition.

If confirmed, I will start by focusing on specific ways to support two major initiatives of the Treasury Department. First, Secretary Bentsen has committed to make Treasury a model of good financial management within Government. Second, the Department is continually seeking ways to streamline its organizations and provide more effective programs for the American public.

I believe these two objectives work together. For example, the Chief Financial Officers' Act requires financial audits of certain major departmental components, specifically the Customs Service and the Internal Revenue Service (IRS). I intend for the Office of Inspector General to continue working collaboratively with the GAO and the IRS Inspections Service to conduct these audits. The results of this work will serve as a framework to identify needed changes in information systems and management controls. Once implemented, these changes should result in improved accountability and meaningful information on which managers, Congress, and the public can rely and use to measure both performance and results.

I recognize the responsibility and obligations of an inspector general are unique and demanding. An inspector general must assist management and work together for a common goal of good management. Yet, she must also be able to voice honest differences objectively and in a responsible way. She has an obligation to see that audits and investigations are performed in a timely manner and adhere to the highest professional standards. In addition, she must keep both the Congress and the Secretary informed about progress in improving government operations as well as areas requiring further improvements. I believe that the Inspector General at Treasury can work towards positive changes that serve the public interest. If confirmed, I look forward to working closely with this Committee to ensure that result.

¹The statutory Office of Inspector General at the U.S. Department of the Treasury was established by the 1988 Amendments to this Act.

P/1 12 76

*The White House.**April 12, 1994**To the**Senate of the United States.**I nominate*

Valerie Lau, of California, to be

Inspector General, Department of the Treasury, vice Donald E.

Kirkendall, resigned.

William B. Clinton

RESPONSE TO INFORMATION REQUESTED OF NOMINEES
by
UNITED STATES SENATE
COMMITTEE ON FINANCE

NOMINEE: VALERIE LAU

NOMINATED FOR: INSPECTOR GENERAL, TREASURY DEPARTMENT

A. BIOGRAPHICAL DATA

1. Valerie Lau
2. 106 Stonegate Drive, Silver Spring, MD 20905
3. Born January 14, 1955 in Oakland, California
4. Married to David F. Fiske
5. Two stepsons: George E. Fiske, age 19
Peter N. Fiske, age 17
6. Education:

University of California at Berkeley, 3/73 to 3/77
Awarded a Bachelor of Science in Business Administration, 1977

John F. Kennedy University, School of Management, 4/89 to 9/91
Awarded a Masters of Arts in Career Development, 1991

Also attended University of Hawaii, Summer 1975 and
California State University at Hayward, 1982.
No degrees awarded.

7. Employment Record:

| | |
|-----------------|---|
| 7/93 to Present | Director of Policy U.S. Office of Personnel Management Washington D.C. |
| 5/93 to 6/93 | Career Consultant Drake Bean Morin, Inc. McLean, Virginia |
| 2/93 to 5/93 | Career Consultant Democratic National Committee Washington, DC |
| Fall 89 - 6/93 | Adjunct Faculty USDA Graduate School Washington, DC |
| 1/90 to 10/90 | Job Placement Specialist Ford and Company Oakland, California |
| 5/80 to 11/89 | Senior Evaluator U.S. General Accounting Office San Francisco, California |
| | Executive Director, 1985-1989 Western Intergovernmental Audit Forum |
| 5/77 to 5/80 | Contract Auditor U.S. Defense Contract Audit Agency Palo Alto, California |

6/76 to 5/77 Taxpayer Service Representative
Internal Revenue Service
Oakland, California

8. Government Experience:

7/93 to Present Director of Policy
U.S. Office of Personnel Management

5/80 to 11/89 Senior Evaluator
U.S. General Accounting Office

Executive Director, 1985-1989
Western Intergovernmental Audit Forum

5/77 to 5/80 Contract Auditor
U.S. Defense Contract Audit Agency

6/76 to 5/77 Taxpayer Service Representative
Internal Revenue Service

9. Memberships:

American Institute of Certified Public Accountants
Institute of Internal Auditors
Association of Government Accountants
Organization of Chinese Americans
Metropolitan Career Life Planning Network
American Federation of Government Employees, Local 32
As; in Hill Tennis Club, Silver Spring, Maryland
No offices currently held.

10. Political Affiliations

Registered Democrat since age 21.
Consultant, Democratic National Committee, Job Counseling Center 2-5/93

11. Honors and Awards:

1990 Leadership Award, Western Intergovernmental Audit Forum.
1988 Achievement Award, National Intergovernmental Audit Forum.
1984, 1985 Outstanding Achievement Awards, U.S. General Accounting
Office.

12. Published Writings:

Author, An Orientation to Internal Auditing for New Internal Auditors, a
workbook for the Institute of Internal Auditors, 1991.

Co-author, A Consolidated Financial Statement for the Federal
Government, an article for the GAO Review, Winter 1985.

Author, Exploring the Job Market, a workbook for Square One Career
Services, 1990.

Author, several articles on resume writing, Damn Good Resume Writer
Newsletter, 1990-1993.

Contributing Editor, two chapters on business matters for resume writers,
Resume Pro by Yana Parker, Ten Speed Press, 1993.

13. Speeches - None.

14. Qualifications

I am a Certified Public Accountant whose professional experience includes
over 12 years of federal government audit experience. This experience includes
financial, contract, performance and program audits. As an auditor, I have
worked with program managers and auditors to identify opportunities for

improved operations. At the U.S. General Accounting Office, I participated in reviews of audit quality and organizational effectiveness, including the first peer review of an office of inspector general. I have also participated in similar reviews on behalf of the Institute of Internal Auditors.

I have served as Executive Director of the Western Intergovernmental Audit Forum, a joint organization of audit executives in the western states. There I worked with inspectors general and other audit executives to identify and address issues facing auditors (both public and private) who work in the government environment. The forums were founded to encourage auditor communication, cooperation, and coordination.

I believe I possess the kinds of management and communication skills necessary to lead Treasury's Office of Inspector General. In addition to my technical background, I have acquired a graduate degree in Career Development. This training has enhanced my ability to communicate with people and to motivate them. In my work as a consultant, I have specialized in auditor training and professional career development.

Currently, I am the Director of Policy at the Office of Personnel Management, a senior executive position. Among other responsibilities, I serve as OPM's Liaison to the Vice President's National Performance Review.

June 23, 1994

The Honorable Charles E. Grassley
United States Senate
Room 135, Hart Building
Washington, D.C. 20510

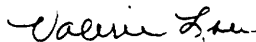
Dear Senator Grassley:

Thank you for your interest in the work of the Department of Treasury's Office of Inspector General. Today I received your second set of questions.

Enclosed are my responses to those questions. As I mentioned in my letter dated June 22, 1994, pending confirmation I have not joined the Treasury Department nor its Office of Inspector General (OIG). Consequently, I have not been involved in nor do I have knowledge of the details of any Treasury OIG or IRS reviews. However, I have attempted to respond as fully as possible to your questions.

Again, I appreciate your interest in the Treasury OIG. I look forward to working with you in the future.

Sincerely,



Valerie Lau
Inspector General Designate

enclosure

RESPONSES TO QUESTIONS ASKED BY SENATOR GRASSLEY
respectfully submitted by
Valerie Lau, Inspector General Designate
U.S. Department of the Treasury

1. What work did you perform on the National Performance Review?

As the U.S. Office of Personnel Management's (OPM) director of policy, I served as the agency's liaison to the National Performance Review (NPR). As OPM's liaison, I was the principal contact for questions regarding the NPR's recommendations and their implementation status.

I was not a member of the NPR review team, rather I was OPM's focal point in working with that team during the course of their study of OPM and federal human resource management issues. After the NPR report and recommendations were issued, I was the point of contact for NPR staff and other parties interested in OPM's progress in implementing the report's recommendations.

2. What are your priorities for the IRS as IG for Treasury?

By way of background, the statutory Department of Treasury's Office of Inspector General was established in accordance with the 1988 amendment to the Inspector General Act. Consequently, when the Office was formed, the Treasury IG was given oversight responsibility for internal audit and investigations performed by the Office of the Chief Inspector of the Internal Revenue Service. Thus, oversight of IRS' programs and operations is performed with and through the IRS Inspection Service.

As mentioned in my written statement, my first priority, if confirmed, is the CFO audit of the Internal Revenue Service. As the GAO's initial audits have shown, these audits offer a broad systemic evaluation of the IRS' information systems and program and management controls. Once in place, I also intend to assess the issue of IRS oversight within the broader context of the entire Department's programs.

3. What percentage of the IG's work is devoted to reviewing the IRS?

As I have mentioned, pending confirmation I have not assumed a role at the Treasury Department or within its Office of Inspector General (OIG). Consequently, I do not know how much of the OIG's resources have been devoted specifically to oversight of the IRS. I am aware that the CFO audit of the Internal Revenue Service will require significant audit resources. And if confirmed, as mentioned in response to Question 2 above, I intend to assess the issue of IRS oversight within the broader context of the entire Department's programs.

Questions 4 through 11. A series of questions involving the Internal Revenue Service.

As these questions appear to relate to IRS internal policy and operational matters, I have consulted the Department of Treasury's Office of Legislative Affairs. With their help, I have referred your questions to the Internal Revenue Service.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220



July 8, 1994

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

Enclosed are the responses, prepared by IRS officials, to the additional set of questions you posed for Inspector General Designate Valerie Lau subsequent to her confirmation hearing. Ms. Lau responded directly to you on questions 1 through 3 on June 23, 1994.

As noted in the enclosed response, the information concerning the summons question is still being compiled by IRS. We will provide you with that information as soon as it is available.

If we can be of further assistance, please feel free to contact me at 202-622-1090, or Gary L. Whittington, Assistant Inspector General, Office of Oversight and Quality Assurance, at 202-273-3030.

Sincerely,


Robert P. Cesca
Deputy Inspector General

Enclosure

Questions of Senator Grassley for Valerie Lau -- Inspector General Designate

7. What are the number of unannounced visits conducted by the IRS with a summons regarding a civil case per year? In Tennessee? In how many of these cases had the IRS already been in contact with the taxpayer? How many of these cases did not involve drug dealers or members of organized crime? How does this compare by percentage to all audits? Was a jeopardy assessment made prior to the unannounced visit and for the summons? What were the assessment's findings?

IRS does not maintain on either the national or local level statistics on the number of unannounced visits conducted by its personnel with a summons in connection with civil tax cases. IRS does not have any figures showing instances of previous contact with taxpayers in such cases. IRS does not have figures or percentages showing how many of these cases did not involve drug dealers or members of organized crime.

Additional Questions of Senator Grassley for Valerie Lau -- Inspector General Designate

4. What will be the retirement costs of the 5,078 new IRS employees that will be hired under the IRS' 1995 compliance initiative?

If the hiring initiative approved by the Senate is part of the final appropriations bill, the IRS will hire approximately 2,000 new employees. The rest of the initiative staffing will come from internal transfers. Retirement costs for FY 1995 total \$28.6 million: \$23.4 million for Federal Employees Retirement System contributions; \$1.6 million for Thrift Savings Plan matching contributions, and \$3.6 million for TSP mandatory contributions.

5. Given the increase in IRS personnel of 5,078, what specific agencies will see what specific staff reduction to meet the goal of a reduction of federal staff of 272,000 over five years?

We continue to manage our overall operation consistent with the executive orders and OMB guidance on span of control and reducing overhead. The compliance initiative of 5,078 FTEs was envisioned in the Administration's Executive Order 12839 of February 10, 1993, which called for reducing federal positions by 100,000 by the end of FY 1995. We do not know what the employment targets are for other federal agencies and how they may be impacted by this initiative.

6. Please provide a year-by-year breakdown of all costs for the FY 1995 compliance initiative.

At the direction of Congress and the GAO, we are reevaluating the staffing mix of the initiative to put more employees in our telephone operations. We have not completed costing out the revised mix, but we will be happy to forward it to you as soon as it is available. Attached is a breakout of 1995 costs based on the originally requested initiative staffing.

7. The GAO April 1994 report: "Tax Administration: Analysis of IRS' Budget Request for Fiscal Year 1995." states:

The budget resolution would provide funding of \$2.025 billion over 5 years. IRS' estimates of 8,136 additional FTEs and \$9.2 billion of additional revenue were based on funding of \$2.5 billion over that period. With the decreased funding, IRS will have to revise its estimates.

Please provide the revised estimate.

We have not yet completed the revised estimate of revenue to be collected as a result of the compliance initiative staffing. We believe that the revised estimate will still be around \$9.0 billion in revenue over the five year period.

8. The IRS received \$115 million for a compliance initiative in FY 1994. Please provide a complete breakdown of what these funds were spent on.

Congress reduced the President's requested funding of \$150 million by \$35 million. Additionally, the Congressional mandate that locality pay adjustments be funded from existing funds cost the IRS another \$105 million. Additional funding priorities precluded more extensive funding of the compliance initiatives. Those priorities included locality pay and implementation costs associated with diesel fuel tax enforcement and earned income credit provisions of the Omnibus Budget Reconciliation Act of 1993.

As a result, only \$8.6 million was allocated to two initiatives -- International Compliance and Electronic Filing Fraud.

9. Please provide copies of all material Commissioner Richardson provided to Senator Pryor regarding the Taxpayer Bill of Rights mentioned in her letter of April 22, 1994.
10. Please provide copies of the curriculum and all materials used in training and education courses regarding the Taxpayer Bill of Rights. In addition, how many hours of training and education are provided to each employee?

By letter dated June 21, 1994, the Commissioner of Internal Revenue provided the material requested in these questions to Senator Grassley in response to a June 17 request. The material was hand-delivered to the Senator's office. A copy of the transmittal letter is attached.

11. During Senate debate on June 22, 1994, Senator Simon claimed that the Treasury Department said "they are going to implement" the Taxpayer Bill of Rights II even if it was not enacted into law. Is this accurate? If so, please provide details.

IRS has already taken action administratively concerning many of the provisions proposed in the Taxpayer Bill of Rights II:

- A formal reporting system for taxpayer advocacy issues and recommendations has been established.
- The Ombudsman's authority to issue Taxpayer Assistance Orders has been expanded.
- Uniform procedures for terminating installment agreements, including a 30-day notice, have been established.
- The offers-in-compromise program has been greatly expanded.
- The issuance of a designated summons is preceded by regional counsel review and taxpayer-corporations are notified in writing.
- Revenue Agents must now corroborate the accuracy of information returns in accordance with Internal Revenue Manual revised instructions.
- Federal Tax Deposit Coupons have been revised to warn taxpayers about the Trust Fund Recovery Penalty. Also, the instructions to the Form 990 have been revised to alert organization officials and volunteers that they may be liable for the Trust Fund Recovery Penalty.
- A Notice Clarity Team is systematically reviewing forms for clarity.
- The availability of offers-in-compromise and installment agreements have received extensive publicity through radio spots, newspaper articles and all tax packages.
- A pilot program for the appeal of enforcement actions has been completed and a report of findings is due by June 30, 1994.

- The special needs of the diverse taxpaying public are being addressed through various programs.
- After passage of the original Taxpayer Bill of Rights, all employees received taxpayer rights training. All employees who interact with taxpayers continue to receive taxpayer rights training.

SENATOR GRASSLEY'S QUESTIONS

SUBMITTED TO VALERIE LAU - TREASURY INSPECTOR GENERAL DESIGNATE

QUESTION 1 A GAO working paper on "Travelgate" dated March 7, 1994, by Kay Lambert, a GAO employee, states:

Summary and Conclusion: All of the testing showed that the White House Travel Office was charged for services rendered by UltraAir according to an informal understanding developed with B. Dale UltraAir's records indicate that all invoices sent to the White House Travel Office (WHTO) were appropriately charged to UltraAir's charter revenue account and WHTO's accounts receivable subsidiary ledger. Remittance to UltraAir were appropriately credited to the WHTO accounts receivable record and to cash. Reviews of several miscellaneous expense accounts and the cash account showed no payments to WHTO, or any of the WHTO employees. (emphasis added)

In that light, why is the IRS still conducting an audit of UltraAir, formerly in Tennessee and now located in Houston, Texas?

OIG RESPONSE: QUESTION 1

We are unable to provide a response to this question due to restrictions imposed by Internal Revenue Code Section 6103. Specifically, this section prohibits the disclosure of tax returns and return information because it is considered confidential. Section 6103 defines return information to include, among other things, a taxpayer's identity; tax payments; whether a taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or any other data received by, recorded by, prepared by, furnished to, or collected by the Secretary of the Treasury (or IRS) with respect to a return or with respect to the determination of the existence, or possible existence, of liability of any person for any tax, penalty, or interest. (A copy of relevant portions of Section 6103 is attached.)

Pursuant to Section 805 of Public Law 103-50, Congress tasked the General Accounting Office (GAO) to "conduct a review of the action taken with respect to the White House travel office...." Their review involved three broad areas of inquiry:

- (1) the past financial management and procurement practices and oversight of the Travel Office; an examination of a study conducted by a public accounting firm in May 1993 of the Travel Office; and the operation of the office after the Travel Office employees had been removed from their positions;
- (2) an evaluation of the current operations of the Travel Office; and

- (3) the events involved with the removal of the Travel Office employees including actions taken by officials of the White House, Federal Bureau of Investigations (FBI), and the Internal Revenue Service (IRS) during the few weeks leading up to and following the decision to remove the employees.

The results of GAO's review are contained in Report Number B-255157, issued May 1994, entitled: White House Travel Operations.

The cited GAO working paper involved a review of a company's files that was a supplier of services for the White House Travel Office. GAO's work was independent from any work that IRS may or may not have been doing concerning any taxpayer matters.

QUESTION 2 When will the IRS conclude its audit of UltraAir? How many staff hours has the IRS spent reviewing UltraAir?

OIG RESPONSE: QUESTION 2

Due to Section 6103 restrictions, we are unable to respond to this question.

QUESTION 3 Did the Treasury and IRS determine that the IRS agents responsible, especially the group chief, received no contact from any individuals (including IRS agents outside Tennessee) regarding UltraAir prior to May 21, 3:00 p.m.? Are there any IRS form 5346 Information Reports regarding UltraAir?

OIG RESPONSE: QUESTION 3

Due to Section 6103 restrictions, we are unable to respond to this question. However, in our report - Inquiry of Alleged Misuse of the IRS RE: The White House Travel Office - dated March 31, 1994, we indicated that we conducted a variety of interviews with IRS employees in Nashville, Tennessee and in Washington, D.C., concerning matters related to our inquiry. We stated that there was no evidence that IRS employees in the Nashville District or the IRS National Office violated any rules or regulations covering the duties they performed. There were no indications that any of the IRS employees involved in this matter abused their authority.

Three separate groups have looked into this matter: IRS Inspection; the Treasury Inspector General's Office; and the General Accounting Office. Although GAO did not conduct a direct inquiry, they were involved, informed, and concurred with our review.

Inspection's Report of Investigation, dated June 11, 1993, stated that their investigation "revealed no evidence of any attempts by anyone outside the IRS to influence the course of (IRS' actions)." In addition, "no evidence of any improper or irregular actions on the part of any IRS employee was uncovered. All actions taken in the course of (this matter) were in the context of the respective employee's official duties."

Our review was conducted independent of IRS Inspection's review; we derived the same conclusion as that of Inspection.

As stated in our report, a Nashville FBI Agent contacted four IRS Nashville employees - two criminal investigators, a public affairs officer, and a disclosure officer - concerning this matter. An FBI official in Washington, D.C. also contacted an IRS criminal investigator in the IRS National Office. The FBI agents made their inquiries, regarding whether a criminal investigation

was under way, based on information that appeared in press reports regarding IRS' actions. These inquiries were made after May 21, 1993. The FBI agents were not provided any material information by the IRS employees.

Additionally, GAO personnel interviewed 15 FBI employees, six former White House employees, and 22 current White House employees. Based on their interviews, as well as the many interviews we conducted with IRS employees and our review of pertinent documents, there was no evidence that anyone from the White House had contacts with any IRS employee concerning this matter.

QUESTION FOUR *Are newspaper reports accurate that IRS agents stated to UltraAir on May 21, 1993 that they were there in part due to newspaper accounts?*

OIG RESPONSE: QUESTION FOUR

In our report, we stated that IRS was prohibited from publicly addressing pertinent issues and information that were reported in the press due to 6103 restrictions. The restrictions apply to us likewise. IRS Officials, including the Commissioner, could not respond to questions from the media or various Congressional inquiries unless a disclosure waiver was obtained from the taxpayer involved or approval was granted from the Joint Committee on Taxation; neither occurred. The GAO also tried to obtain a waiver from the involved taxpayer to no avail.

QUESTION FIVE *If this is accurate, how often does the IRS take such actions in civil cases based on newspaper accounts? What guidelines does the IRS have on this matter?*

OIG RESPONSE: QUESTION FIVE

As noted in our response to Question Four, we cannot provide specific comments to this question. However, in general, a particular article appearing in a newspaper may contain information that could be a source of information to an IRS agent in determining whether a tax matter is involved and/or warrants action on the part of IRS. For example, news articles appearing in the Wall Street Journal about a particular company could contain relevant or useful information regarding an IRS corporate audit of the same company already in progress.

There are several ways in which an IRS examination can be initiated, e.g. a computer selects tax returns with the highest audit potential, or a call from an employer or a citizen could be made to the IRS to report a company or an individual of alleged tax irregularities. The IRS Internal Revenue Manual (IRM) contains substantial policies and procedures that address the initiation and conduct of an audit.

QUESTION SIX *Under what basis is an IRS summons (as the one served on UltraAir) issued? Who approves the issuance of a summons? How long does it take to issue a summons? Why was a summons issued? Was UltraAir being uncooperative? Were all the proper steps for summons done in the case of UltraAir?*

OIG RESPONSE: QUESTION SIX

Due to Section 6103 restrictions, we cannot provide comments concerning any particular taxpayer. However, IRM Section 4022 (copy attached) contains the procedures covering the authority and usage of a summons.

We would like to reiterate that based on our review, IRS employees did not abuse their authority concerning this matter and conducted their duties in accordance with prescribed IRS regulations.

IRS Revenue Agents generally do not issue a summons during an unannounced visit in connection with an examination. Taxpayers are notified of an examination through correspondence or by telephone well before an agent arrives. However, there are certain circumstances or situations whereby a summons is warranted; for example, where there is reason to believe that records or assets may be moved beyond the reach of the Service.

QUESTION 7 *What are the number of unannounced visits conducted by the IRS with a summons regarding a civil case per year? In Tennessee? In how many of these cases had the IRS already been in contact with the taxpayer? How many of these cases did not involve drug dealers or members of organized crime? How does this compare by percentage to all audits? Was a jeopardy assessment made prior to the unannounced visit and for the summons? What were the assessment's findings?*

OIG RESPONSE: QUESTION 7

With regard to the last two parts of this question, we are unable to provide responses due to Section 6103 restrictions.

At this time, we are unable to provide you with information concerning the remaining questions. However, we are coordinating our efforts with IRS to determine if a response can be provided.

As soon as we have an answer, we will respond accordingly.

QUESTION 8 *How was the audit of UltraAir initiated and who is in charge of the ongoing audit?*

OIG RESPONSE: QUESTION 8

Due to Section 6103 restrictions, we are unable to respond to this question.

QUESTION 9 *Is it accurate that IRS Agent Anita Hill was contacted by UltraAir prior to May 21st 1993 to resolve tax issues? When were these contacts initiated and how many contacts were there?*

OIG RESPONSE: QUESTION 9

Due to Section 6103 restrictions, we are unable to respond to this question.

QUESTION 10 *Other than Ms. Hill, had the IRS any written, oral, or in person communication with UltraAir prior to May 21st, 1993?*

OIG RESPONSE: QUESTION 10

Due to Section 6103 restrictions, we are unable to respond to this question.

QUESTION 11 *Who was William Kennedy's point of contact at the IRS in May 1993? Was this person interviewed by the IRS and Treasury regarding the "travelgate" issue? If not, why not?*

OIG RESPONSE: QUESTION 11

The Director, Office of Disclosure, at the IRS National Office was the point of contact for Mr. Kennedy in conducting tax checks on prospective Presidential appointees. The Director, Office of Disclosure was interviewed by IRS Inspection on June 3, 1993, and the Treasury OIG on September 27, 1993, concerning the "Travelgate" issue.

QUESTION 12 *In response to Congressman Wolf, the Treasury OIG stated that no material information concerning the taxpayer was provided to the IRS by the FBI. What information was provided? In addition, what information did the FBI provide to the IRS?*

OIG RESPONSE: QUESTION 12

Based on interviews conducted by GAO evaluators with two FBI agents (one in Nashville, TN - the other in Washington, D.C.), the FBI agents indicated that in response to press reports about IRS agents' actions, the FBI agents made inquiries to IRS to determine whether a criminal investigation was being conducted. It is customary in the law enforcement community for one agency to contact another to determine if an investigation is being conducted concerning parties of mutual interest. This is done to preclude a duplication of effort and/or to ensure that one agency does not compromise or jeopardize the other agency's investigation. Any information revealed by IRS regarding a particular taxpayer would be governed by 6103 restrictions on disclosure.

QUESTION 13 *Was the White House provided any tax related information directly or through the FBI about UltraAir?*

OIG RESPONSE: QUESTION 13

Due to Section 6103 restrictions, we are unable to provide a response to this question. However, as noted in our report (our findings of which were confirmed by GAO's report), there was no evidence that anyone from the White House had contacts with any IRS employee concerning this matter. Also stated in our report was that the only evidence of outside contacts were the two FBI agents, both of whom were not provided any material information by any IRS employee.

¶ 37,863 Elimination of Fractional Dollar in Computing Taxes

● ● CCH Explanation

.01 Code provisions.—The IRS is authorized by Code Sec. 6102 to permit, where the total amount shown on any line of a return is other than a whole dollar amount, either (1) elimination of the fractional dollar or (2) rounding out the fractional dollar to the nearest whole dollar. Under the second treatment, a fractional dollar is disregarded unless it amounts to 50 cents or more, in which case it would be increased to one dollar (Reg. § 301.6102-1(a)). In the determination of a fractional part of a dollar, Code Sec. 6313 provides that a fractional part of a cent is not to be taken into account unless it amounts to one-half of a cent or more, in which case it is to be increased to one cent.

If any taxpayer does not wish to use the whole dollar amounts, the exact cents may be used. The election must be made at the time of filing the return and is irrevocable. However, the election is binding only on that return. A new election may be made on any return filed for a subsequent tax year or period. An election by either a husband or wife not to report whole dollar amounts on a separate income tax return is binding on any subsequent joint return filed for that tax year under Code Sec. 6013(b) (¶ 36,460).

The Code and regulations specifically state that this treatment of fractional dollars applies only to amounts required to be reported on a return. It is not applicable to items which must be taken into account in making the computations necessary to determine such amounts.

What is said above applies not only to returns but also to statements or other documents that may be required in connection with internal revenue taxes.—CCH.

¶ 37,880 CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION

Sec. 6103 [1986 Code]. (a) GENERAL RULE.—Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local child support enforcement agency, or any local agency administering a program listed in subsection (1)(7)(D) who has or had access to returns or return information under this section, and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), (1)(12), paragraph (2) or (4)(B) of subsection (m) or subsection (n).

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

(b) DEFINITIONS.—For purposes of this section—

(1) RETURN.—The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) RETURN INFORMATION.—The term "return information" means—

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax

86 Code

liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

(3) **TAXPAYER RETURN INFORMATION.**—The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

(4) **TAX ADMINISTRATION.**—The term "tax administration"—

(A) means—

(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and

(ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and

(B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

(5) **STATE.**—The term "State" means—

(A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and

(B) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p) any municipality—

(i) with a population in excess of \$250,000 [250,000] (as determined under the most recent decennial United States census data available),

(ii) which imposes a tax on income or wages, and

(iii) with which the Secretary (in his sole discretion) has entered into an agreement regarding disclosure.

(6) **TAXPAYER IDENTITY.**—The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

(7) **INSPECTION.**—The terms "inspected" and "inspection" mean any examination of a return or return information.

(8) **DISCLOSURE.**—The term "disclosure" means the making known to any person in any manner whatever a return or return information.

(9) **FEDERAL AGENCY.**—The term "Federal agency" means an agency within the meaning of section 551(1) of title 5, United States Code.

(10) **CHIEF EXECUTIVE OFFICER.**—The term "chief executive officer" means, with respect to any municipality, any elected official and the chief official (even if not elected) of such municipality.

(c) **DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER.**—The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such

4020 (12-17-62)

Authority for Examinations

4021 (11-30-64)

Statutory Provisions

(1) The Code provisions relating to the use and enforcement of a summons are as follows:

(a) IRC 7602—Examination of Books and Witnesses also IRC 6420 6421 6424 and 6427

(b) IRC 7603—Service of Summons

(c) IRC 7604—Enforcement of Summons

(d) IRC 7605—Time and Place of Examination

(e) IRC 7609—Special Procedures for Third-Party Summonses

(f) IRC 7610—Fees and Costs for Witnesses

(g) IRC 7402—Jurisdiction of District Courts

(h) IRC 7210—Failure to Obey Summons

(2) Under IRC 7602 the Secretary or the Secretary's delegate is authorized to examine any books, papers, records or other data and to take such testimony, under oath, as may be relevant or material to such inquiry.

(3) Under IRC 7604(a) and 7402(b), the district courts of the United States have jurisdiction to compel attendance of any person summoned and to issue orders, processes, and judgments as may be necessary or appropriate for the enforcement of the internal revenue laws.

(4) If the testimony of any particular person is important and necessary to disclose facts to aid in determining the correct amount of tax, and such person refuses to give testimony, or to permit an inspection of records, or property, etc., his/her attention should be called to the appropriate sections of the law. If the person still refuses to grant the examiner's request, an immediate report should be made to the District Director for decision as to whether the matter should be placed in the hands of District Court for enforcement.

4021 (11-30-64) 4021

Summonses to Appear to Testify, Produce Books, etc.

4022.1 (3-29-77)

General

4022.11 (11-30-64)

Authority and Usage

(1) The statutory authorities for the issuance of a summons and to perform other functions are set forth in IRM 4021. The authority to administer oaths and affirmations, whether pursuant to the issuance of a summons or a re-

quest for information, is in IRC 7622. These authorities have been delegated by the Secretary of the Treasury to the Commissioner by Regulations 26 CFR 301.7602-1, 301.7603-1, 301.7604-1, 301.7605-1(a) and 301.7622-1.

(2) By Delegation Order No. 4, as revised, the Commissioner has authorized the following examiners of the District Examination functions to issue summonses except "John Doe" summonses and perform other functions, subject to the limitations stated in the Order: Internal Revenue Agents; Tax Auditors; Attorneys; Estate Tax; and Estate Tax Examiners. Each examiner should be thoroughly familiar with the provisions in the Delegation Order.

(3) Officers and employees authorized to issue summonses are authorized also to designate any other officer or employee of the IRS who has the authority under Delegation Order No. 4, as revised, to request and receive information under Regulations 26 CFR 301.7602-1(a) as the individual before whom a person summoned pursuant to Section 7602 shall appear. This includes all of the officers and employees who have the authority to issue summonses. Any officer of the IRS, when so designated in a summons, may take testimony of the person summoned and receive and examine books, papers, records or other data produced in compliance with the summons.

(4) The summons may be used to compel relevant or material testimony and/or the production of relevant or material books, papers, records, or other data for any of the following purposes:

(a) ascertaining the correctness of any return;

(b) making a return where none has been made;

(c) determining the liability of any person for any internal revenue tax;

(d) determining the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax;

(e) collecting any internal revenue tax liability; and

(f) inquiring into any offense connected with the administration or enforcement of the Internal Revenue Laws, including criminal investigations.

4022.12 (3-12-79)

Restrictions on Issuance of Third Party Summonses

(1) Commissioner's Delegation Order No. 4, as revised, places restrictions on examiners, i.e., Internal Revenue Agents; Tax Auditors; Attorneys; Estate Tax; and Estate Tax Examiners

4022.12

6-26-68

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of the District Examination function, to issue summonses to a third party witness. Advance personal authorization for a summons issued to a third party is required. Such authority shall be manifested by the signature of the authorizing officer (case manager, group manager, or any supervisory official above that level) on the face of the original and all copies of the summons or by a statement on the face of the original and all copies of the summons signed by the issuing officer that he/she had prior authorization to issue said summons and stating the name and title of the authorizing official and date of authorization. If oral authorization is given, a record of that authorization should be made at the time of the authorization or confirmed in writing by the authorizing manager.

(2) A summons to a financial institution without reference to the tax liability of that institution is one kind of a third party summons. A financial institution is a bank or trust company organized under the laws of any state or of the United States; a savings and loan association or building and loan association organized under the laws of any state or of the United States; a credit union organized under the laws of any state or of the United States; or any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

(3) If it is necessary to obtain information from the books of account of a church for the purpose of verifying payments made by the organization to another person in determining the tax liability of the recipient, the preexamination procedures as prescribed in IRC 7605 and the summons procedure as prescribed in IRC 7603 should be followed.

4022.13 (7-28-87)

Restriction on Issuance of "John Doe" Summonses

(1) A "John Doe" summons will be issued only by the officials authorized in Delegation Order No. 4 (as revised).

(2) A "John Doe" summons may be served only after a proceeding is held in the United States district court for the district where the person to be summoned resides or is found. The Service must establish that:

(a) the summons relates to the investigation of a particular person or ascertainable group or class of persons;

(b) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of the Internal Revenue law; and

(c) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources

(3) This procedure is inapplicable to summonses issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or similar financial institution.

(4) If pre-issuance legal review by Regional Counsel's office results in agreement that the summons should be issued, the concurrence of Regional Counsel or his/her delegate should be endorsed on the face of the summons (and all copies thereof) by the word "Reviewed" followed by the name and title of the individuals signing on behalf of the Regional Counsel's office.

(5) If Regional Counsel's delegate contemplates disapproval of issuing of the "John Doe" summons, a conference with the Chief of the Examination Division should be arranged for the purpose of discussing the merits of the case.

(6) If there is still disagreement with the proposed issuance of the "John Doe" summons after such conference, Regional Counsel's delegate should prepare and forward a memorandum to the District Director setting forth the reasons for disapproval.

(7) If the District Director does not agree with the conclusions reached in the memorandum, the District Director will forward the file to the Regional Commissioner, who will coordinate, where necessary, with Regional Counsel. Regional Counsel will be available to meet with the Regional Commissioner for the purpose of exploring all possible ways of reaching agreement on the action to be taken with regard to the "John Doe" summons.

(8) If disagreement still prevails, the Regional Commissioner will forward the matter to the appropriate Assistant Commissioner for discussion with the office of the Chief Counsel. Regional Counsel will advise the Chief Counsel. Attention: General Litigation Division, with respect to the disagreement with the Regional Commissioner.

4022.12

M-4000-230

(9) Procedures in (4), (5), (6), and (7) are applicable for Assistant Commissioner (International), Chief Counsel, Assistant Commissioner, and Associate Commissioner should be substituted for Regional Counsel, District Director, and Regional Commissioner, respectively.

(10) Counsel's review is advisory in nature, and Internal Revenue employees and attorneys of the Office of Chief Counsel are not authorized to commit the Service to refrain from exercising its investigative authority to require and receive information pursuant to 26 U.S.C. 7601 and 7602.

4022.14 (11-30-84)

Definitions

(1) **Summons**—an administrative summons which is issued under IRC 7602 or under IRC 6420(e)(2), IRC 6421(f)(2), IRC 6424(d)(2), or IRC 6427(e)(2); and is served on a third-party recordkeeper requiring the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person summoned) who is identified in the description of the records contained in the summons.

(2) **Third-party recordkeeper**—The term applies to any bank, savings and loan institution or credit union; any consumer reporting agency covered by the Fair Credit Reporting Act; anyone extending credit through the issuance of credit cards or similar devices; any broker included in the Securities Exchange Act of 1934; any attorney; any accountant; and any barter exchange. The procedures in IRC 7609 apply generally to situations in which the recordkeeper makes or keeps records of the business transactions or affairs of a person identified in the description of the records contained in the summons. All persons who extend "credit through the use of credit or similar devices" fall within the scope of these procedures notwithstanding the fact that the principal business of that person may be something other than the issuing of credit cards. For example, telephone companies and others such as retail stores and oil companies who extend credit through their own credit cards would be considered "third-party recordkeepers." Any retail establishment that does not extend credit through its own credit card or similar device (i.e., some physical object evidencing credit) will not be considered a "third-party recordkeeper." Thus, retail establishments that honor credit cards issued by other parties (e.g. Visa American Express

Master Charge) will not be considered as extending credit since the issuer of the credit card is actually the lender rather than the retail establishment. If an agent issues a summons to a retail establishment or similar business which has its own credit card, but also honors credit cards such as Visa, American Express or Master Charge, notice will be given under Section 7609. This is due to the fact that it would be unduly burdensome for an agent to issue one summons for records of Visa or American Express transactions and another for records of transactions involving the summoned witness's own credit card. Notice is only required in cases where the Service is summoning records of the extensions of credit "through the use of credit cards or similar devices" and not when it is summoning records of other transactions. For example, if employee X works for credit card company A and also has one of A's credit cards, then no notice would be required in connection with a summons issued to A for X's employment records. However, a notice would be required in connection with a summons issued to A for X's credit card records. In addition, if an independent contractor performed services for a retail establishment which issues its own credit card, no notice is required in connection with a summons issued to the retail establishment for the records relating to the services performed by the independent contractor.

(3) **Records**—This term includes books, papers, or other data; and a summons requiring the giving of testimony relative to the contents of records is to be treated as a summons requiring the production of records.

(4) **"John Doe" summons**—This is any summons which does not identify the person with respect to whose liability the summons is issued. IRM 4022.13 provides procedures required in the use of "John Doe" summons.

(5) **Numbered bank account**—An account with a bank or similar financial institution through which a person may authorize transactions solely through the use of a number, symbol, code name or similar arrangement not involving disclosure of the account owner's identity.

(6) **Proceeding To Quash**—A civil action commenced in the appropriate U.S. District Court for the purpose of preventing compliance by the third-party recordkeeper.

(7) **Intervention**—The act of a person, who is not originally a party to summons enforcement

court proceedings, becoming a party in order to protect his/her interests.

(8) Notice—A person who has the right to notice, and to file a petition to quash when a summons is served on a third-party recordkeeper to produce records or give testimony relative to the contents of records which pertain to that person. For example, if the Service serves a summons on a bank for an account in the name of the taxpayer, the taxpayer is the noticee. If, in the matter of the tax liability of the taxpayer, a summons is served on the bank for the account of a third-party, the third-party is the noticee. If the taxpayer (or other party) is clearly identified by name in the description of the records in the body of the summons, that person is entitled to notice of the summons having been issued. For example, when a summons is issued to X Bank for records in Y's account relative to Z, the taxpayer, notice will be given to both Y and Z. If the agent or officer knows prior to service of the summons that an account is styled in the names of more than one person then each person should be named in the body of the summons and should receive notice; for example, if the agent or officer knows that bank accounts are listed in the joint names of husband and wife then both the husband and wife should be identified in the description of the records sought and both should be given separate notice, even if they reside at the same address. In the case where records of a partnership are requested in the body of the summons, notice to one general partner is sufficient.

(9) Date of service of notice—The date on which the notice is placed in the mail or delivered personally.

4022.15 (11-30-84)

Exceptions to Notice Requirement

(1) There is no notice requirement in cases where:

- (a) a "John Doe" summons is issued;
- (b) the summoned witness is the taxpayer, officer or employee of the taxpayer;
- (c) a third-party witness is summoned to give testimony that is unrelated to records; or
- (d) the summoned witness is not considered to be a third-party recordkeeper as defined in IRM 4022.14.(2).

(2) Notice is also not required where the stated purpose of the summons is to:

4022.14

MT 4000-230

(a) determine whether records of the business transactions or affairs of an identified person have been made or kept or

(b) determine solely the identity of any person having a numbered account (or similar arrangement) with a bank, savings and loan institution or credit union.

(3) Summonses issued pursuant to a court order

(a) Notice shall not be required if, upon petition by the Service, prior to the issuance of the summons, the United States district court for the district within which the person to be summoned resides or is found, determines, on the basis of the facts and circumstances alleged that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying or production of records.

(b) in hearings covered below, as well as those referred to in IRM 4022.13.(2), "John Doe" Summons, the determination shall be made ex parte and shall be made solely upon the petition and supporting affidavits. An order denying the petition is deemed a final order which may be appealed.

(c) except for cases the court considers of greater importance, a proceeding to quash a summons, a proceeding brought for the enforcement of any summons, or a proceeding under this exception, and appeals, take precedence on the docket over all cases and are to be assigned for hearing and decided at the earliest practicable date.

(d) requests for court orders will be forwarded to District Counsel for processing. Included in the memorandum should be a request that the court order the person(s) to be summoned to refrain from notifying the taxpayer, or other person to whom the records or testimony pertain, of the service of the summons.

(e) the third-party recordkeeper will be advised that pursuant to a court order no notification will be given of the summons request and, if appropriate, that notification could subject the person summoned to a contempt citation.

- (b) an officer or employee of such person.
- (c) a person having possession, custody, or care of books or account containing entries relating to the business of the person liable for the tax or required to perform the act; and
- (d) any other person who may be deemed proper by the officer issuing the summons.

(2) When a witness requests that he/she be served with a summons as evidence of his/her legal duty to produce records to testify and indicates that he/she will voluntarily comply therewith, it should be issued for such purpose. The summons should be properly prepared and the required notice given. See IRM 4022.12 for restrictions on issuance of third party summonses.

4022.3 (7-28-87)

Factors to Consider Before Issuance of Summons

(1) Whenever a summons is issued, the issuer should be prepared to see the matter to a final conclusion, including a recommendation to enforce compliance with the summons, if necessary. Among the factors to consider before resorting to the issuance of a summons are the following:

(a) The securing of information desired through other means should be explored. For example, financial and other data may be secured from the tax return or the information desired may be secured from other parties, such as banks, employer, etc., without use of a summons.

(b) The importance or necessity of the information sought should be weighed against the action required to enforce compliance with the summons and the adverse effect on voluntary compliance if enforcement is abandoned.

(c) The tax liability involved and the importance of the information should be weighed. The importance of the case to voluntary compliance may necessitate issuance of a summons without respect to the amount of liability involved.

(d) Whether a criminal case is pending. See (2) below.

(2) No summons may be issued or enforced when a Justice Department referral is in effect with respect to the taxpayer. Each taxable period (or, in the case of excise taxes, each taxable event) must be treated separately. As a result, the Service may issue a summons for one taxable year even if a Department of Justice referral is in effect with respect to the taxpayer for another taxable year. A Justice Department referral is in effect when the Service recommends a grand jury investigation or criminal prosecution of the taxpayer, or the Attorney General (or Deputy Attorney General or Assistant Attorney General) makes a written request to the Service

for return or return information relating to the taxpayer. A Justice Department referral ends when

(a) the Justice Department notifies the Service, in writing, that it will not prosecute the taxpayer; it will not authorize a grand jury investigation of the taxpayer; or it will discontinue a grand jury investigation of the taxpayer;

(b) the Justice Department notifies the Service that a final disposition has been made of any criminal tax proceeding instituted by the Department against the taxpayer; or

(c) when the Attorney General (or Deputy Attorney General or Assistant Attorney General) notifies the Service, in writing, that he will not prosecute the taxpayer for any offense to which any written request for return or return information relates.

(3) If the examiner has knowledge that another activity of the Service or Chief Counsel or District Counsel has pending before it a matter involving a taxpayer whom the agent has under investigation, the examiner should consult through channels with the other activity or office to determine if coordination is desired, and if so on what subjects. For example, Regional Counsel may be defending a petition by the taxpayer to the Tax Court for the same or other years included in or relevant to the periods which the examiner has under investigation, or a statutory notice to the taxpayer under investigation may be in the process of being issued or has been issued. In the example the examiner should consult District Counsel before issuing a summons to the taxpayer or to a witness in the investigation of the taxpayer.

(4) No summons should be issued to Federal officials or employees for information they may possess or know in connection with their official responsibilities, if such information is vital to an examination and cannot be secured from other sources. The provisions of IRM 4083, should be followed. Whenever a summons is issued, the issuer should be prepared to see the matter to a final conclusion, including a recommendation to enforce compliance with the summons if necessary.

(5) A summons will not be used to obtain testimony or documents requiring a general disclosure of the finances of a political organization except as provided in (6) below. If the information sought by a summons would generally disclose the finances of a political organization, this restriction applies even though the testimony is to be obtained from, or the documents are owned or possessed by, a source that is not a political organization. For example, a summons to a bank for all of its records of the bank accounts of a political organization is within the coverage of this subsection. The term "political

organization" includes a political party, a National, State, or local committee of a political party, and campaign committees or other organizations that accept contributions or make expenditures or the purpose of influencing the selection, nomination, or election of any individual for elective public office. The term "political organization" does not include an organization to which the taxpayer is the only contributor. Information concerning the finances of a political organization includes testimony or documents that disclose the identity of contributors or recipients of expenditures.

(6) A summons may be used to obtain testimony or documents concerning the finances of a political organization provided that compliance with the summons would not require a general disclosure of the finances. Such a summons will be restricted to information relating to the tax liability of named taxpayers under examination or investigation. The summons must specifically identify the taxpayer's transactions with the political organization and will be so limited as to require only testimony or documents relating to those transactions or to other transactions of the same type. If, however, the taxpayer's transactions with the political organization are known to have occurred through the use of an intermediary person or organization, the summons may require testimony or documents relating to specifically identified transactions of the intermediary with the political organization.

(7) If an exception to the provisions of (4) is desired, or if issuance of a summons in conformity with (5) is desired, a memorandum request, explaining in detail the necessity for the issuance of such a summons, together with a copy of the proposed summons, will be submitted to the Assistant Commissioner (Examination) for prior written approval. If time is of the essence, a telephonic request will be made to the Assistant Commissioner (Examination) for prior approval. A memorandum setting forth the details will be prepared and forwarded immediately to the Assistant Commissioner (Examination) in all situations in which a telephonic request has been made under this procedure. If there is a question as to the legal sufficiency of the proposed summons, and time permits, it should be referred to District Counsel for a preliminary legal review, prior to referral of the request to the National Office for approval.

(8) Examiners should not issue summonses upon a church or a convention or association of

churches without consulting IRC 7605 and Reg. 301.7605-1. Instructions in the regulations must be adhered to and if appropriate, third party summons procedures should be followed. District Counsel may be contacted for assistance if necessary.

(9) A summons to a taxpayer or third party should be considered when:

(a) no records are made available to permit an adequate examination within a reasonable period of time.

(b) the submitted records are known or suspected to be incomplete, and additional records are presumed to be in the possession of the taxpayer or a third party that may disclose material matters not reflected in the submitted records: e.g., brokers' statements, contracts, bills for legal expenses.

(c) it appears that additional details are being withheld because they may disclose matters of tax consequence adverse to other taxpayers and relevant to the taxpayer under examination.

(d) disallowance of unsubstantiated costs will produce highly unrealistic results, i.e., causing net income to be equal to gross sales receipts.

(e) the taxpayer or the taxpayer's representatives indicate that he/she will not seriously attempt to substantiate items appearing on the return or explain transactions questioned by the examiner because he/she intends to offer records and explanations at another level or after a statutory notice has been issued.

(f) the availability of records disclosing the desired information is in doubt. A summons may be issued to require testimony, under oath, as to what records exist and their location. A subsequent summons describing the records may then be issued and, if they are in the possession of custody or subject to the control of the person who has testified, it may be served at the time of the testimony or thereafter.

(10) Before issuance of a summons for records known to be outside the United States, a determination shall be made whether special procedures for the issuance of such summonses are applicable to the specific type of investigation in which it is proposed to issue such a summons. In the event special procedures are applicable, they shall be followed. If there are no special procedures, a copy of the proposed summons for records known to be outside the United States should be submitted to the appropriate District Counsel for pre-issuance legal review in cases involving corporate stock

funds and improper payments. District Counsel will coordinate their review with Associate Chief Counsel (International), Washington, DC, which in turn, will coordinate the matter with the appropriate National Office function. The proposed summons will be accompanied by a statement describing the circumstances and efforts that have been made to secure the records and data from the taxpayer or other witness and why the taxpayer or other witness will not make the requested records available. However, in emergency situations, advice of District Counsel may be obtained by telephone. In no event will the summons be issued until advice has been received from District Counsel. Counsel's review is advisory in nature and Internal Revenue employees and attorneys in the Office of Chief Counsel are not authorized to commit the Service to refrain from exercising its investigative authority to request and receive information pursuant to 26 U.S.C. 7601 and 7602.

4022.4 (2-23-81) Rights and Privileges of Persons Summoned and Appearances Pursuant to Summons

4022.41 (2-23-81) General

(1) The type of information sought through the issuance of a summons generally does not tend to develop criminal potential of a case. Therefore, it is not mandatory that the person summoned be informed of his/her constitutional privilege against self-incrimination. (See IRM 4241.5)

(2) Notwithstanding the privilege against self-incrimination, information or evidence furnished voluntarily by a person summoned may be used even though of an incriminatory nature. The mere fact that the person would not have appeared had it not been for the summons does not mean that his/her testimony or evidence was given under compulsion and is therefore inadmissible. Although the summoned person is required to appear, the question is whether it can be shown that he/she was not thereafter compelled to testify as to incriminatory matters. A witness who contends that testimony or information was given involuntarily, under compulsion, has the burden of sustaining that contention. Examiners should not give assurance that use of information furnished by a witness or the taxpayer will be restricted.

(3) A taxpayer who has been served a summons must appear personally at the appropriate time and place, and has the right to be accompanied, represented, and advised by counsel. If the examiner considers it necessary or helpful, the summoned person may be put under oath. (See IRC 7602 and IRC 7622. See also Delegation Order No. 4, as revised). The witness should be required to stand and raise his/her right hand. An oath may then be given as follows:

"Do you solemnly swear (affirm) under the penalties of perjury that the testimony you are about to give in this matter is true and correct to the best of your knowledge and belief so help you God?" In the alternative the term "affirm" may be substituted and the phrase "so help you God" may be omitted. The witness should respond by saying "I do..."

(4) A third party witness in a tax examination should be accorded the right to be accompanied, represented and advised by counsel. The witness should be informed of this right he/she inquires regarding it. If the witness appears and is represented by the same counsel who represents the taxpayer, the examiner should bring this matter to the attention of his/her group manager, since dual representation might seriously prejudice the examination (See IRM 4022.42). Regional Counsel should be consulted, if necessary.

(5) If appropriate, the summons appearance date may be continued, to allow time for a resolution of the matter. The decision is whether under the circumstances, exclusion of the taxpayer's attorney who also represents and accompanies the third party witness appearing pursuant to the summons, is sustainable in the event the witness refuses to testify or produce documents unless he/she is represented and accompanied by that attorney.

(6) If advance information is received from the summoned witness or from the witness' representative that on the date set for appearance in the summons the witness will not comply with the summons, either by testifying or producing books, etc., or both, no indication or agreement, express or implied, shall be made on behalf of the Service that it is not necessary or required for the witness to appear and testify or produce summoned records on the date set for appearance. The witness or the witness' representative should be informed that the witness must appear in person with the records to

be produced pursuant to the summons and either comply or refuse to comply with the summons, stating reasons for any such refusal. The witness or the witness' representative should also be informed that in the event of refusal or failure to comply with the summons, consideration will be given to resorting to the judicial remedies provided by law. The representative of the witness cannot appear in lieu of the witness on the appearance date set in the summons. In the event the witness for a valid reason (such as illness) cannot appear on the date fixed in the summons, that date may be continued by mutual agreement to another date.

(7) If a taxpayer or witness appears in response to a summons and claims either the self-incrimination privilege of the fifth amendment or the attorney-client privilege, the examiner should continue with the examination even though it is clear that the questions will not be answered. It is important that the examiner should ask the summoned person all questions necessary to develop the required information and make requests for production of each of the documents desired so that the person asserting the privilege responds to each inquiry by either answering the question and producing the documents or asserting the claimed privilege. However, if the person summoned refuses to submit to questioning and the requests for documents, the examiner cannot compel the person to remain and continue with the examination. The examiner should not attempt to overcome a blanket claim of privilege or a refusal to submit to specific questioning. A memorandum should be prepared describing the facts and occurrences at the interview. If it is anticipated or known that the taxpayer or witness summoned intends to assert a privilege, another IRS employee should attend the interview as an observer and should join in preparing the memorandum of the facts and occurrences at the interview.

(8) The above procedures are important to the enforcement of a summons to establish the fact and circumstances of non-compliance. The procedures respecting claims of privileges are primarily applicable when only the witness and the witness' representative appear in response to the summons. There may be other situations in which the taxpayer or another person attempts to be present when a summoned third party witness is questioned and the examiner does not desire to disclose in their pres-

ence the course of the investigation by requesting the furnishing of each item of information, oral or documentary. In such event other considerations may be involved, and the examiner should consult with his/her superior, and Regional counsel may be consulted.

4022.42 (2-13-87)

Dual Representation

(1) Treasury Department Circular No. 230 (Rev. 6-79), which covers the practice of attorneys, certified public accountants, enrolled agents, and enrolled actuaries before the Internal Revenue Service, provides the following with respect to dual representation:

§ 10.29 Conflicting Interests

No attorney, certified public accountant, or enrolled agent shall represent conflicting interests in his practice before the Internal Revenue Service, except by express consent of all directly interested parties after full disclosure has been made.

(2) Dual representation exists when a summoned third-party witness is represented by an attorney, certified public accountant, enrolled agent, or other person who also represents the taxpayer or another interested party. It may also occur where an attorney under investigation represents a third-party witness in that investigation or where an attorney-witness seeks to represent another witness in the same investigation. An interested party is one who has a significant pecuniary interest in the testimony of the witness or who, by virtue of the nature of the investigation and the known fact, may be incriminated by the witness.

(3) Except as provided below, the mere existence of a dual representation situation which may potentially have an adverse impact on the investigation will not, without some action by the attorney to impede or obstruct the investigation, provide a sufficient basis for seeking a disqualification. However, where an attorney's representation has substantially prejudiced the questioning of a third-party witness and, as a result, has significantly impaired the progress of the investigation, the Service will request the Department of Justice to seek a court order, as part of the summons enforcement proceeding, to disqualify that attorney as counsel for the witness.

4022.(10)1

Background

(1) IRC 482 is one of the basic Code sections designed to insure that taxpayers subject to U.S. taxing jurisdiction report their true income. Its proper administration requires that the Service, represented first by the examiner, obtain and evaluate a good base of factual information. The kind of information required is discussed in Chapter 600, Audit Techniques—International Enforcement Program, Section 620, of IRM 4233, Tax Audit Guidelines—Individuals, Partnerships, Estates and Trusts, and Corporations. Most of the information required concerns the details of the transactions under examination and the operations of the taxpayer and of other members in the controlled group involved in the questioned transactions. Occasionally information required will involve transactions or operations of third parties, related or unrelated, which were not involved in the questioned transactions.

(2) To properly develop and document an IRC 482 adjustment, the examiner must obtain this information. It is anticipated that in the majority of the cases the required information will be supplied upon request voluntarily by the taxpayer or the other parties having such information. However, in some cases it may be necessary to issue a summons to secure compliance with such requests. Voluntary cooperation is greatly to be preferred, and every effort should be made to obtain this information in this manner before issuing a summons. Whenever a summons is issued, the Service must be prepared to proceed with enforcement procedures if the summoned party does not comply with the summons.

(3) It is recognized that the courts, in addition to granting certain privileges available to witnesses and individual taxpayers (for example, the Fifth Amendment privilege against self-incrimination), give strong consideration to the relevance and materiality the information may have, weighing the inconvenience that would be caused by the enforcement of the summons against the Government's need for such information.

(4) In view of this, different procedures are required dependent on the source of the required information and the weight to be given to the case against the relevance, materiality and materiality of the information. (See Section 6000, such information. IRM 4022.(10)2 (2) through

(5) below provide procedure for issuing a summons in the following situations.

- (a) summonses to taxpayers;
- (b) summonses within the controlled group to an organization a party to the questioned transaction;
- (c) summonses within the controlled group but to an organization not a party to the questioned transaction;
- (d) summonses to unrelated third parties.

(5) IRM 4022.(10)3 below provides special procedures where summonses cross district or regional lines or information is required from foreign parties located outside the United States.

4022.(10)2 (8-1-91)

Procedures**(1) Presummons Considerations**

(a) When a request for information is approved it is important that the examiner be able to certify responsibly be expected to obtain the required information voluntarily.

1 The examiner's actions in this regard shall include a written request to the party possessing the information describing the documents or information in sufficient detail to apprise such person of the nature and scope of such information or documents.

2 If the party refuses to comply, the examiner should obtain specific reasons therefor and adequately document the request and the specific reasons for the rejection.

3 If the group manager or the case manager, after reviewing such documentation, is satisfied that the information may be material and relevant to the examination and is not satisfied with the party's reasons for refusal to provide the information, he/she should consider whether to issue a summons in accordance with the procedures set forth in (2) through (5) below.

(b) A presummons letter should be sent to the party (when such party is the taxpayer, domestic organization, or a foreign organization doing business in the United States) if, in the opinion of the person who must approve the issuance of a summons:

1 the examiner has failed to adequately describe the documents or information in the request, or

2 it appears that after a reasonable period of time since the issuance of the request, it

party possessing the documents or information has failed to respond, or

3 has responded but refused to comply without furnishing reasons for the noncompliance.

(c) The presummons letter should describe the books, records, or other information sought, should encourage the party to cooperate, and state that if the party declines to furnish the information or supply adequate reasons why he/she should not be required to furnish it, it will be necessary for the Service to consider the issuance of a summons.

(d) A presummons letter should not be sent unless a decision has been made that a summons will probably be issued absent a satisfactory explanation from the addressee as to why the information cannot be supplied.

(e) The letter should be reviewed and signed by the Service representative who must approve the issuance of summons (see (2) through (5) below).

(f) Where the information is in the custody or possession of a member of the controlled group other than the taxpayer (and such other member is a domestic organization or a foreign organization doing business in the United States), the letter should be sent to such member and a copy sent to the taxpayer.

(g) Where the party with the information is an unrelated third party, no copy of the letter should be sent to the taxpayer.

(h) For procedures to be followed where the party with the information is a foreign organization not engaged in business in the United States (or any individual not physically present in the United States), see IRM 4022.(10)3:(2) below.

(2) Summons to Taxpayers

(a) The taxpayer is the party which is under examination and to which any necessary statutory notice of deficiency would be addressed.

(b) The type of information which may be relevant and material to an IRC 482 examination and which should be obtained from the taxpayer is discussed in Chapter 600, Audit Techniques—International Enforcement Program, of IRM 4233, Tax Audit Guidelines—Individuals, Partnerships, Estates and Trusts, and Corporations.

(c) Guidelines relative to summons and related problems in IRC 482 cases are discussed in Section 630 of the above cited document.

(d) The group manager or the case manager must approve the issuance of a summons to the taxpayer.

(3) Summonses Within the Controlled Group to an Organization a Party to the Questioned Transaction

(a) Apart from the taxpayer, the organization which generally has the greatest amount of relevant and material information is the other party to the questioned transaction. Necessarily, under IRC 482 the other party must be a member of the controlled group.

(b) The group manager or case manager must approve the issuance of the summons.

(c) Where the summons will cross distinct or regional lines or if the other party to the questioned transaction is a foreign corporation not engaged in business in the United States (or a sole proprietor or partnership not physically present in the United States), see special procedures in IRM 4022 (10)3 below.

(4) Summons Within the Controlled Group but to an Organization Not a Party to the Questioned Transaction

(a) Cases may arise in which an organization which is not a party to the questioned transaction but is a member of the controlled group may have information which is relevant and material to the taxpayer's examination. Normally, this would be information concerning comparable transactions between this other member of the group and some unrelated party, which could be used to give the terms of the arm's length dealings for the taxpayer's questioned transactions.

(b) Relevancy and materiality may be more difficult to demonstrate where a summons is issued to a related party in this category than where a summons is issued to the taxpayer or to a related organization which is a party to the questioned transaction. Accordingly, the examiner must be prepared to support any summons with a showing of why there is a reason to believe that the information requested of the other organization may aid in the proper resolution of the taxpayer's liability as regards to the questioned transactions.

(c) Before any summons is issued, the examiner should first request the taxpayer to obtain the desired information from the related organization.

(d) If the taxpayer refuses to cooperate and the related organization refuses without adequate reason to supply the information in answer to the presummons letter (IRM 4022 (10)2 (1)), a summons should be issued if approved by the Chief, Examination Division (or as designated by the District Director in districts where there are no division chiefs).

(e) Where the summons will cross district or regional lines or if the other party to the questioned transaction is a foreign organization located outside the United States, see IRM 4022 (10)3 below.

(5) Summonses to Unrelated Third Parties

(a) The relevant and material information which an unrelated third party might have will usually be data such as prices, fees, and profit margins from transactions comparable to the taxpayer's questioned transactions.

(b) The third party information would be used as comparable arm's length data to measure the terms at which the taxpayer's transactions should have occurred.

(c) An unrelated third party should be summoned only if it is reasonably clear:

1 that it may have relevant and material information,

2 that this information will be useable by the Service even if the third party is hostile and uncooperative in explaining its meaning; and

3 that the information is of sufficient importance to the Service that there is a strong reason to believe that it outweighs any injury which might result to the third party from its disclosure.

(d) Of course, before any unrelated third party is summoned, every effort should be made to obtain the information voluntarily.

(e) The issuance of a summons to an unrelated third party must be approved by the Chief, Examination Division (or as designated by the District Director in districts where there are no division chiefs).

(f) Where the summons will cross district or regional lines or the third party is a foreign organization not doing business in the United States, see IRM 4022.(10)3 below.

4022.(10)3 (7-26-87)

Summonses Crossing District or Regional Lines or Information from Organizations Outside U.S.

(1) Summonses Which Cross District or Regional Lines

(a) In some cases, the party to which the summons is issued will be located in a district or

region different from the district or region in which the taxpayer's examination is located. In these cases, appropriate coordination is necessary and the examining office will need the cooperation of the other district or region.

(b) Accordingly, whenever a summons in an IRC 482 case will cross district or regional lines, its issuance must be approved by the Assistant Regional Commissioner (Examination) of the region in which the examination of the taxpayer is taking place. In cases where the summons will cross regional lines, the region will forward the summons to the Assistant Regional Commissioner (Examination) of the region requested to cooperate.

(c) In all cases where a summons will cross district or regional lines, the examining office will forward with the summons having all indicated spaces filled out as far as possible (which should call for an appearance at the Internal Revenue office within which the summoned party is located), a brief memorandum explaining the relevance and materiality the summoned information may have and what assistance the examining office requires from the cooperating office.

(d) The basic authority and responsibility for issuing the summons and, if necessary, proceeding with its enforcement, rests with the examining office. The cooperating office acts solely as an agent of the examining office.

(e) Requests for judicial enforcement should be forwarded to Regional Counsel in whose area the examining office is located.

(2) Obtaining Information from Foreign Organizations Located Outside the United States

(a) In some cases, the organization having possession or custody of information which may be relevant and material to an IRC 482 examination may be a foreign organization not doing business or otherwise located in the United States. This could include a sole proprietor or partner not physically present in the United States. One example which may arise with some frequency is a foreign subsidiary located entirely outside the United States and engaged in a questioned transaction with a domestic parent corporation.

(b) There are difficult legal and practical problems in obtaining books, records, and other information in the possession of such a foreign organization where the domestic parent refuses to cooperate and obtain them for the examining agent.

(c) Before any contact with a foreign organization or before any summons or pres summons letter is issued to obtain information from a foreign organization which is not doing business in the United States, or from an individual not physically present in the United States, the matter must be referred to the Office of the Assistant Commissioner (International), OP:IT, for advice and assistance in accordance with IRM 42101(10)

4022.(10)4 (8-1-91) Assistance from District Counsel¹

(1) IRM 403(20) provides procedures for requesting the assistance of District Counsel in determining the taxpayer's correct liability

(2) IRM 4469 provides for review of proposed statutory notices by District Counsel.

(3) If the views of District Counsel have been requested they will be in a position to render advice as to the type of information necessary to defend the proposed IRC 482 allocations or in regard to the determination of the claimed setoffs if the case is litigated. The summons can then be directed toward information not only necessary for a statutory determination of the taxpayer's liability, but also for information needed in court to defend the determination. Such information is difficult, if not impossible, to obtain after the case is in litigation.

(4) A further problem may arise if it is anticipated that it will be necessary to seek judicial enforcement of such summons. In that event, it is important to secure the assistance of District Counsel to review the summons prior to its issuance to insure that the form and content of the summons will present no obstacle to its judicial enforcement.

(5) Generally, a summons should not be issued after a statutory notice has been sent out. If extraordinary circumstances should arise which would make it essential that a summons be issued after a statutory notice, the group manager or case manager should, with the consent of the Chief, Examination Division (or as designated by the District Director in districts where there are no division chiefs), consult with District Counsel as to the effect of such summons on litigation of the statutory notice determination. Various factors and considerations which demonstrate the need for obtaining the views of District Counsel in such instances are discussed below

4022.(10)3

MT 4000-245

(a) Difficulties arise if an enforcement action is initiated after the issuance of a statutory notice when the case has been docketed in the United States Tax Court. Since the Commissioner has already made his legal determination, it may be difficult to explain to the United States District Court the necessity of the government obtaining such information through the summons procedure when the subpoena procedures of the Tax Court are available

(b) Furthermore, to institute enforcement procedures for a summons after the issuance of the statutory notice may be viewed as an admission that the government did not have the necessary information to make a legal statutory determination for the deficiency. This may result in some cases in nullifying the presumptive correctness of the notice and placing upon the Service the burden of proof on the IRC 482 adjustment.

(c) The enforcement of a summons relating only to claimed setoffs, issued prior to the deficiency notice when enforcement action was also initiated prior to the issuance of the deficiency notice, may not be as damaging to the presumptive correctness of the deficiency notice as when similar action is taken with respect to a summons concerning the basic IRC 482 determination. The basis for this distinction is that in the former situation, it is the taxpayer's claim which is being investigated. When such claim is made just prior to the time it was necessary to issue the statutory notice, the Service necessarily rejected such claimed setoff for failure of the taxpayer to afford an opportunity for adequate investigation.

4023 (8-8-78)

Reopening of Closed Cases

4023.1 (8-1-91)

Reexamination Notice to Taxpayers

(1) IRC 7605(b) provides that "No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary or his/her delegate, after investigation, notifies the taxpayer in writing that an additional inspection is necessary."

4030 (6-6-78)
Conduct and Supervision of Audit Activity

4031 (6-10-80)
Rules in Furnishing Advice and Counsel to Taxpayers

(1) Erroneous oral advice given to a taxpayer does not constitute a basis for nonretroactive application of a correct determination that is subsequently made. Consequently, effort should be made to ensure that oral advice given to taxpayers correctly reflects the position of the Service.

(2) All employees who render advice and assistance to taxpayers will observe the following fundamental rules, which are inherent to the proper discharge of this responsibility:

(a) Make every effort to be certain that there is a clear and mutual understanding of the facts involved in the transaction under discussion, and the applicable principles of law have been definitely identified and explained with the objective of achieving an understanding by the taxpayer.

(b) Do not attempt to provide advice in technical matters until (a) above has been complied with. If there is no clear showing of facts, clarify and pinpoint the areas of doubt and request additional information, if necessary. If uncertain of the law, follow through and ascertain the correct answer before replying fully to the request.

(3) In furnishing advice to taxpayers on the filing of claims for refund and answering questions on the appeal rights of taxpayers, the employee should explain the Service's position and recite, to the degree appropriate, the law and regulations regarding the filing of a timely claim or an individual's appeal rights. In reciting the applicable law and regulations no attempt should be made to dissuade the taxpayer from submitting a claim. This will avoid subsequent assertions that, if the Service had not "refused to accept" the claim, the taxpayer's interest would have been protected and other similar assertions.

(4) Supervisory officials must ensure that all personnel who are called upon to render advice to taxpayers understand the foregoing and that they are equipped to carry out their responsibilities effectively.

4031.1 (6-1-86)
Prohibition on Use of Pseudonyms

Pseudonyms will not be used by Examination employees. The use of pseudonyms by Service employees is permitted only in qualifying

Criminal Investigation and Inspection actions. Manual provisions for those two functions will identify the specific circumstances under which pseudonyms may or may not be used.

4032 (6-4-78)
Conduct of Investigating Agents

(1) Alleged improper conduct or lack of propriety on the part of investigating agents has been used as a part of the defense strategy in a number of criminal tax evasion cases. In such cases the nature of the allegations makes it apparent that an effort is being made by defense counsel to divert attention from the principal issues involved.

(2) In order that no situation may arise or course of conduct be followed which may furnish a factual basis for such defense strategy, each agent must exercise particular care in every investigation. Examples of situations or conduct to be avoided are: situations which may result in the investigating agent becoming obligated in any way to the person under investigation; statements or questions which may be construed as offers of immunity or attempts to settle the civil liabilities in pending criminal cases; expressions of personal views as to the merits of the case; advising and counseling the person under investigation of possible defenses to a prosecution for the alleged crime; statements, remarks or the commission of acts that are subject to misinterpretation to the disadvantage of the Government; irregular arrangements for the examination of a taxpayer's books and records; and leading the person under investigation to believe that prosecution is not contemplated.

(3) Claims of misconduct and irregularities on the part of investigating agents may, of course, be made in any case. To make certain that any claim of misconduct is without foundation in fact, the investigating agent should exercise care and good judgment in all of his/her dealings with the person under investigation or with his/her representatives.

4033 (6-4-78)
Use of Revenue Agents' Credentials and Form 2246 in Contacting Taxpayers

(1) At the time initial contact is made, the internal revenue agent will in every instance properly identify himself/herself by producing his/her pocket commission for the taxpayer's inspection.

(2) Form 2246 (Field Contact Card) is to be used by internal revenue agents, special

4033

agents, and revenue officers as a means of putting taxpayers or third parties on notice as to the proper officer to contact regarding an official internal revenue matter. The data identifying the officer by name, title, office location, and phone number must be addressographed, stamped or typed on the card in the local office.

(3) Form 2246 is a dual-purpose card. In its entirety, it can be folded, sealed, and left at the business establishments or residences of the taxpayers or other persons who are not in when called upon. If contact with a person regarding an official internal revenue matter requires the person to contact the officer at a later time, the "Important Notice" portion of the form may be detached and destroyed and the right portion left with the taxpayer or third party so that future contact may be made with the proper officer.

(4) Form 2246 must be used in strict accordance with the following rules:

(a) Must not be used by any person who does not have a pocket commission.

(b) Must not, under any circumstances, be used as official Internal Revenue Service credentials or identification, in lieu of a pocket commission.

(c) Must be used only in connection with official Internal Revenue Service business and never as a means of personal identification or for other purposes.

(d) Every precaution must be taken to prevent use by unauthorized persons.

(e) Unused cards must be returned to the holder's immediate supervisor at the time of separation from the Service or upon transfer to other duties not involving the use of such cards. Such supervisors will immediately destroy the unused cards.

4034 (11-3-80) Package Audits

4034.1 (7-28-87) General

(1) Selection and examination of returns will be conducted separately for income, estate, gift, and excise taxes.

(2) During a field or office interview examination of any tax return, the examiner will ascertain whether the taxpayer is filing or has filed all other Federal tax returns he/she apparently is required to file. This responsibility also extends to various regulatory and occupational taxes under Examination's jurisdiction. In an office interview examination, this ascertainment can usually be accomplished by merely questioning

the taxpayer concerning other apparent tax liabilities.

(3) If an examiner finds that a required return has not been filed, he/she will endeavor to obtain a delinquent return (except as provided in IRM 4562.31 when fraud or willful failure to file is indicated). If the examiner secures a delinquent return, he/she will generally examine the taxpayer's records in regard to the tax delinquency unless:

(a) it is impracticable for him/her to do so (based on necessary time, research, etc. required);

(b) under package audit procedures he/she is not required to do so; or

(c) the delinquent return comes within the jurisdiction of the Assistant Commissioner (International), Office of Compliance, OP:I:C:E.

(4) If, for either reason "(a)" or "(b)" above, the examiner does not examine a delinquent return secured by him/her but believes such return warrants examination, he/she will securely staple a completed Form 5346 (Examination Information Report) to the back of the return, extending at least one inch above the top. The Form 5346 will request that the delinquent return be sent to Examination for classification after processing in the service center. The reasons why the return should be examined should be clearly indicated by the examiner and Form 5346 should be approved by the group manager before forwarding to the service center. Also, if the examiner determines that another return filed or to be filed by the same or another taxpayer should be examined, he/she will develop the necessary information and submit it on Form 5346.

(5) If a delinquent return secured comes within the jurisdiction of Assistant Commissioner (International), Office of Compliance, OP:I:C:E, the examiner will not examine such return, but will immediately forward it to the Philadelphia Service Center. If there are any circumstances present which the examiner believes should be brought to the attention of Assistant Commissioner (International) (e.g., recommendations for or against the application of the delinquency penalty), a memorandum covering these circumstances will be prepared and attached to the return.

(6) The examiner will make appropriate comments in Form 4318 (Examination Workpapers) or Form 4700 (Examination Planning and Workpaper) if he/she

(a) ascertains during an examination of any tax return that the taxpayer is filing a return he/she apparently is required to file and

(b) determines after inspecting retained copies of the tax returns that a concurrent employment tax examination is not warranted, and

(7) The examiner should identify the specific returns being referred to in the Form 4318 or 4700 comments.

(8) If a package audit results in an adjustment to any of the taxpayer's tax liabilities, the applicable original returns will be requisitioned for assignment and association with the case file.

(9) If the group manager concludes that an examiner's time spent ascertaining whether the taxpayer is filing or has filed all other Federal tax returns he/she apparently is required to file will not be productive, the activities and comments will not be required. However, the group manager's involvement must be documented in the case file.

4034.2 (2-25-87)

Employment and Other Withholding Taxes

(1) During a field or office examination of an income tax return of a business taxpayer, the examiner will inspect retained copies of each withholding tax return filed up to and including the last quarter for which a withholding tax return was due. Withholding taxes include employment taxes such as FICA, RRTA, FWT, and FUTA as well as back-up withholding, withholding on income paid to foreign persons, and withholding on gambling winnings. Withholding also includes the tax imposed on a buyer or other transferee (withholding agent) when a U.S. real property interest is acquired from a foreign person (IRC section 1445 and paragraph 231.(11) of IRM 4233, Tax Audit Guidelines, Partnerships, Estates and Trusts, and Corporations.) After inspection, the examiner will decide whether available information warrants a withholding tax examination of the taxpayer's books and records. If warranted, the withholding tax examination will be made concurrently and cover the same period as the income tax return, per Policy Statement P-4-4. Withholding tax examinations for periods subsequent to the income tax examination should be discussed with and approved by the group manager, before they are initiated.

(2) In an office interview examination of a non-business income tax return, where employment taxes were identified under IRM 4138.3.5, the examiner will follow the provisions outlined in (1) above. The examiner should also be alert to any situation which may involve a household employee and determine whether the taxpayer has filed Form 942.

(3) Generally, a withholding tax examination is warranted concurrently with the income tax examination if

(a) available information indicates that the withholding tax returns have not been corrected

(b) delinquent returns are secured (but see exceptions in IRM 4034.1 (3)); and

(c) the potential additional liability or the resulting improvement in voluntary compliance will justify the expenditure of time required to make necessary verification and adjustment.

(4) The scope of a withholding tax examination will vary and be dependent upon the adequacy of taxpayer records and the nature of the business. Normally, the examiner is expected to conduct the examination to a point where he/she is reasonably certain of the taxpayer's liability and to proceed further with the examination would result in no material change in tax liability.

(5) In complex employment tax examinations, the examiner may request the assistance of an employment tax specialist or recommend that the employment tax examination be transferred to the specialist. Such assistance or transfer requires prior approval of the group managers of the examiner and specialist.

(6) In cases involving withholding on foreign persons, the examiners may request the assistance of an International Examiner.

(7) The examiner will make appropriate comments on Form 4318 or 4700 (Examination Workpapers):

(a) That the taxpayer is filing all withholding tax returns required to be filed; and

(b) after inspecting such returns has determined that a withholding tax examination is not warranted.

(8) If a package audit results in an adjustment to taxpayer's withholding tax liability, the applicable original returns will be requisitioned for assignment and association with the case file.

(9) IRM 4650 provides instructions for preparation of examination reports covering withholding tax examinations.

(10) If a payer willfully fails to collect or pay over withholding taxes, the examiner will consider asserting the penalty provisions under IRC 6672. (See IRM 4864.)

4034.3 (3-1-83)

Questionable Forms W-4 Program

(1) IRC 3401 and 3402 provides, generally that every employer shall deduct and withhold Federal income taxes from wages paid to his employees, and each employee shall furnish to the employer, on or before the date of commencement of employment with the employer, a signed Employee's Withholding Allowance Certificate (Form W-4) indicating marital status and the withholding allowances claimed, which shall not exceed the number to which he/she is entitled.

(2) Starting with the second quarter of 198 employers must submit to the Service copies any W-4's filed by employees within their employ, at the end of the reporting period claimer

(c) withholding allowance in excess of 14 for W-4's filed on or after Feb. 25, 1982, or

(b) exemption from withholding if the wages from that employer shall usually exceed \$200 per week.

(3) In addition, an employer when notified by the Service, is required to withhold income tax in accordance with instructions in the Service's letter (Letter 1659, Letter to Employer telling him/her to disregard employee's Form W-4 or Letter 1660, Letter to Employer to disregard an exempt Form W-4) until further notice.

(4) The district office's primary responsibility in the W-4 Program is to ensure that employers are complying with the Regulations. Consequently, package audit requirements are to include certain checks outlined in IRM 4299.7 for every income tax examination of a business return. When these checks are not performed, the examiner will indicate the reasons why not on Form 4318 or 4700 (Examination Workpapers).

4034.4 (12-22-85)

Information Returns

(1) IRC Sections 6041 through 6053 provide reporting requirements of certain information concerning transactions with other persons and information regarding the cash receipt of more than \$10,000 in one transaction (or 2 or more related transactions) during the course of business, and wages paid employees. Generally, the regulations require the reporting on items such as payments made in the course of a trade or business to another person, payments of dividends, payments of interest, payments of wages, etc. These information returns (e.g., Form W-2 Form 8300, Report of Cash Payments over \$10,000 received in a Trade or Business and various forms in the 1099 series) are the primary input documents for our computerized matching programs to detect potential unreported income and/or potential nonfilers. Therefore, it is most important that taxpayers (payors) timely file these returns as required.

(2) Policy Statement P-4-4 and these "Package Audit" provisions spell out the distinct office responsibilities to ensure the timely and correct filing of information returns.

(3) Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments, is required to be filed by applicable issuers on an annual basis for income tax purposes. OIG

is deductible by the issuer and reportable as income by the purchaser. Examiners should be alert regarding compliance in this area and consider the assertion of the non-filing penalty provided by IRC section 6706 when warranted.

(4) The Payer Master File (PMF) was developed to increase compliance in the filing of the 1099 information return series. The PMF is a master file listing of entities, business and individual, filing Form 1099. As of January 1, 1985, the PMF indicator "1099 filer" will appear on Form 5546, Examination Return Charge Out, if the taxpayer is listed on the PMF. Starting November 1985, this PMF indicator will be supplemented by a PMF transcript contained in each case file. If it is determined that the taxpayer filed delinquent returns, and there is a need to ascertain penalties previously asserted, the examiner may request a BMF or IMF transcript as appropriate using MFT 13 or 55 respectively.

(5) During an income tax examination of a business taxpayer or an office interview where information returns are an identified item, the examiner will inspect retained copies of the information returns required to be filed. After inspection, the examiner will decide whether all available information requires a further and more detailed examination of the taxpayer's books and records as they relate to information returns. If such detailed examination is warranted, the examination will be completed as a part of the income tax examination and be made concurrently. If information returns are examined for periods other than the income tax examination period, then the income tax examination will be extended to cover the same periods as the information returns examination.

(6) Generally, a detailed examination (including any penalty consideration) is warranted if:

(a) available information indicates that information returns were not filed;

(b) available information indicates that the income amounts were materially incorrect as reported; or,

(c) the resulting improvement in voluntary compliance (payor or payee) will justify the expenditure of time required to make the necessary verifications and/or to secure copies of the incorrect or delinquent information returns.

(7) The adequacy of taxpayer's records are a critical factor in determining the scope of the examination. Normally, the examiner is expected to continue the examination to a point where the reporting requirements have been met.

4034.3

MT 4000-230

IR Manual

(Next page is 4000-44 1)

Techniques Handbook for In-Depth Examinations

Exhibit 300-3

page
(4-1)

Form 2039-A

Form 2039-A

(Rev. Nov. 1979)

SummonsDepartment of the Treasury
Internal Revenue ServiceA. B. C. Manufacturing Co., Inc.
114 Easy Street
U.S.A.

In the matter of the tax liability of _____

Internal Revenue District of U.S.A.Periods 1976, 1977 and 1978

The Commissioner of Internal Revenue

Mr. John P. Oak, President

To ABC Manufacturing Co., Inc.At 114 Easy Street, U.S.A.

You are hereby summoned and required to appear before Ralph M. River
an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified
above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data.

All records for 1976, 1977 and 1978, of ABC Manufacturing Co., Inc., including
the following:

- (1) Retained copies of all financial statements for the years indicated
- (2) All books and records related to your Federal Income Tax Returns
for 1976, 1977 and 1978
- (3) All cancelled checks and bank statements for 1976, 1977 and 1978
- (4) All correspondence with your customers for 1976, 1977 and 1978

Business address and telephone number of Internal Revenue Service officer named above:

Rm. 300, Federal Building, 900 Chapter Street, U.S.A. (202)555-1000

Place and time for appearance:

at Rm. 300, Federal Building, 900 Chapter Street, U.S.A.on the 22 day of May, 19 79 at 10:00 o'clock A Missued under authority of the Internal Revenue Code this 11 day of May, 19 79(signed) Ralph M. River

Signature of Issuing Officer

Internal Revenue Agent

Title

(signed) Ben Q. Lake

Signature of Approving Officer (if applicable)

Group Manager

Title

Part A — To be given to person summoned

Form 2039-A (Rev. 11-7)

Form 2039

Certificate of Service of Summons and Notice

(Pursuant to section 7602, Internal Revenue Code)



I certify that I served the summons shown on the front of this form on:

| | | | |
|------|----------------------|------|------------|
| Date | 11th day of May 1979 | Time | 11:14 A.M. |
|------|----------------------|------|------------|

How I handed an attested copy of the summons to the person to whom it was directed.

Summons

114 Easy Street

U.S.A.

Was Served

I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any).

| | |
|--------------------------------------|---------------------------------|
| Signature (Signed) Ralph H. River | Title Internal Revenue Agent |
|--------------------------------------|---------------------------------|

This certificate is made to show compliance with section 7609, Internal Revenue Code. This certificate applies only to summonses served on third-party recordkeepers and not to summonses served on other third parties or any officer or employee of the person to whose liability the summons relates nor to summonses in aid of col-

lection to determine the identity of a person having a numbered account or similar arrangement or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Form 2039-01) to the person named below on the date and in the manner indicated.

Date of Giving Notice: _____ Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

How Notice Was Given

I gave notice by certified or registered mail to the last known address of the noticee.

I gave notice by handing it to the noticee

In the absence of a last known address of the noticee, I left the notice with the person summoned.

I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).

No notice is required.

| | |
|-----------|-------|
| Signature | Title |
|-----------|-------|

Form 2039 (Rev. 11-78)

Exhibit 300-4**General Instructions for preparation of Summons**

1. The name and address, including street number, city and State of the taxpayer whose tax liability is being investigated or collected, shall be inserted in the space provided. If returns are under investigation and bear different addresses, or if the taxpayer during the periods resided at several addresses, and his/her present address is still another place, show all of the addresses known.

2. The Internal Revenue District in which the returns were filed, or should have been filed, or the district where the assessment for collection is outstanding, will be inserted by showing the city designation or sub-division thereof in the space provided. For example, "Internal Revenue District of Los Angeles." If returns under investigation were filed in various districts, the name of each one shall be shown.

3. In the space provided for "Periods" shall be inserted the calendar years, fiscal years, quarterly or monthly periods involved in the examination or investigation.

4. Following the word "To" shall be inserted the correct name of the person summoned or the name by which he is customarily known, it being immaterial whether that is his/her true and legal name. If it is desired to obtain testimony or records from a person in his/her capacity as trustee, receiver, custodian, corporate or public official, his/her title or official status should be added to his/her name.

5. Following the word "At" shall be inserted the correct address of the person summoned which may be either the street and number of a place of business, the place of residence, or the location of the place where the person is found.

6. Insert in the blank space provided following "to appear before" the name of the officer who is to take the testimony and/or examine the books and records. In some instances, the name will be the same as that of the officer authorized to issue the summons. If the officer authorized to issue a summons desires the person summoned to appear before another employee, the name of that employee will be inserted.

7. When the summons requires the production of books and records, papers, or other data, it is important that they be properly designated and described with reasonable certainty, that is, that they be specified with sufficient precision for their identification. If the witness

is not required to produce books and records papers or other data, the phrase "and to bring with you and produce for examination the following books, records and papers and other data" shall be stricken.

8. Insert on the line provided, the business address and telephone number of the Internal Revenue Service employee named in the body of the summons.

9. Space to insert the place and time for the witness' appearance is provided in the summons. Following the word "At" under "Place and time for appearance" should be inserted the complete address including the room number of the building at which the person is required to appear. The place of appearance shall be one reasonable under the circumstances of the case.

10. Following the place of appearance should be inserted the date and time the witness is to appear. IRC 7805 provides that the date and time fixed for appearance shall be such as are reasonable under the circumstances and shall not be less than 10 calendar days from the date of the summons. In computing the ten-day period, the date of service should be excluded and the date of appearance should not be prior to the day after the tenth of following service of the summons. In short, for practical purposes use eleven days. Strict compliance with this provision is necessary in the preparation and issuance of a summons in order to enable the enforcement of obedience to its requirements when the person refuses to comply. "Date of summons" is the date at which it is legally served. The date set for a appearance of the person summoned shall be a workday and not on Sunday or legal holiday.

11. If a witness indicates a willingness to comply with the requirements of the summons by the delivery of books or records for immediate examination or on a date earlier than that required by statute, the time for his/her appearance should, nevertheless, be inserted in compliance with the statute. This will not preclude the officer, if agreeable to the person summoned, from making an earlier or immediate examination of the records or the earlier taking of testimony.

Exhibit 300-4 Cont.**General Instructions for preparation of Summons**

0

12. Insert in the space provided the date the summons is signed by the issuing officer. This date is not to be considered as the "date of the summons" in setting the date for appearance pursuant to IRC 7605. (See item 10 above).

13. The authorized issuing officer will manually sign the summons in the space labeled "Signature of Issuing Officer" and insert his/her official title in the space labeled "Title".

14. Insert the signature and title of the approving officer (Group or Case Manager).

15. Insert in the space provided the date and the time of day on which the summons was served.

16. Show the manner in which the summons was served by checking one of the squares provided.

17. Insert the address of the place or the location where the attested copy of the summons was delivered to the person summoned.

18. If the summons is served by leaving an attested copy with a person at the last and usual place of abode of the party summoned, the name and address of the person to whom it is handed will be entered in the space following the word "directed." If the summons is merely left at the witness' last and usual place of abode, only the address will be stated, and the

phrase "with the following person" shall be stricken from the printed sentence above the space for entering the name of the person.

19. The officer serving the summons will sign the certificate of service in the space provided for "Signature" and enter his/her official title in the space designated "Title."

20. When a summons is served on a third-party recordkeeper, the certificate of notice shall be completed, showing date, time of notice, and name and address of noticee. If notice is not required, the appropriate square shall be checked.

21. The officer giving the notice will sign the certificate of notice in the space provided for "signature" and enter his/her official title in the space designated "Title".

22. If the noticee (party named in the body of the summons) is entitled to notice of the issuance, the second attested copy will be provided to the noticee by the officer serving the summons along with the notice explaining the rights to stay compliance and intervene, which is Page 5 of the summons.

23. If the summons is not served on a third-party recordkeeper or notice is not required, the second attested copy and the notice should be discarded.

Exhibit 300-5

Statement

This is to state that I executed an Internal Revenue Summons (Form 2039) and served it on Mr. John P. Oak, President of ABC Manufacturing Co., Inc., 114 Easy Street, U.S.A., on May 11, 1979, at 11:14 a.m. I handed the Attested Copy of the Summons (Form 2039) to Mr. John P. Oak in accord with Section 7603, Internal Revenue Code. That Summons required Mr. John P. Oak to appear before me and to produce certain corporate records on May 22, 1979, at 10:00 a.m., at the office of the Examination Division, Room 300, Federal Building, 900 Chapter Street, U.S.A.

Mr. John P. Oak failed to comply with that Summons. He did not appear at the scheduled time and place, and has since failed to appear or produce the corporate records designated in the Summons.

(Signed) Ralph M. River
Ralph M. River
Internal Revenue Agent

Exhibit 300-6

Examples of Income Computation

(1) Net Worth and Expenditures Method (Cost of Habit)—The taxpayer was arrested for possession of narcotics on June 3, 1978. At the time of his/her arrest he had in his/her possession \$2,300 in cash which is now in the possession of BNDD. From local narcotics authorities it was learned that the taxpayer spends about \$100 per day on his/her habit. The taxable income is computed as follows:

| | |
|---|----------|
| Cost of Habit (\$100/day × 155 days) | \$15,500 |
| Living Expenses (\$13/day × 155 days) | 2,015 |
| Cash on hand when arrested | 2,300 |
| Adjusted Gross Income | \$19,815 |
| Less: | |
| Exemption | 750 |
| Excess Itemized Deductions | 0 |
| Taxable Income | \$19,065 |

(2) Net Worth and Expenditures (Cost of Drugs Seized)—Mr. John Jones was arrested on August 4, 1978, by a State police officer and was charged with violation of Narcotics laws. The arresting officer discovered 10 pounds of pure heroin as well as \$12,000 in cash at his residence. The local Narcotics authorities stated that the cost of pure heroin was approximately \$100,000 per pound. There had been a prior indictment against the taxpayer for the importation of heroin. His income is computed as follows:

| | |
|---|-------------|
| Cash on hand when arrested | \$12,000 |
| Cost of heroin (10 lbs. @ \$12,500 per lb.) | 1,000,000 |
| Living Expenses (\$13/day × 217 days) | 2,821 |
| Adjusted Gross Income | \$1,014,821 |
| Less: | |
| Exemption | 750 |
| Excess Itemized Deductions | 0 |
| Taxable Income | \$1,014,071 |

(3) Source and Application of Funds—Taxpayer was arrested for possession of narcotics on July 27, 1978. At the time of arrest the taxpayer had on his/her person \$4,947 and a small amount of drugs. Taxpayer stated to the arresting officer that a truck seized was purchased for cash on May 19, 1972, for \$1,986. Income is computed as follows:

| | |
|--|----------|
| Funds Applied: | |
| Cash on hand increased | \$4,947 |
| Purchase of truck | 6,966 |
| Living expenses | 2,717 |
| (\$13/day × 209 days) | |
| Total funds applied | \$14,650 |
| Funds provided: | |
| Adjusted Gross Income | \$14,650 |
| Adjusted Gross Income determined | \$14,650 |

| | |
|----------------------------------|----------|
| Less: | |
| Exemption | \$750 |
| Excess Itemized Deductions | 0 |
| Taxable Income | \$13,900 |

(4) Sales of Heroin—It was determined by D.E.A. that Mr. Smith bought and sold three to four kilos of heroin per month. D.E.A. also stated that Mr. Smith, during the current year, had purchased 10 kilos of heroin @ \$45,000 per kilo and sold 10 kilos @ \$60,000 per kilo. His income is computed as follows:

| | |
|---|-----------|
| Gross Sales (10 kilos @ \$60,000) | \$600,000 |
| Purchase (10 kilos @ 45,000) | 450,000 |
| Profit | \$150,000 |
| Less: | |
| Exemption | 750 |
| Excess Itemized Deductions | 0 |
| Taxable Income | \$149,250 |

(5) Sale Price—

(a) Surveillance by undercover agents of the D.E.A. revealed that Joe Winter and Jack Spring are partners dealing in drugs. Pure LSD in crystal form is purchased and "cut" to a reduced purity for subsequent sale. Undercover agents, on two occasions, purchased LSD in a "cut" form. The purchases were for \$3,500 and \$1,500 in official Government funds, at the rate of \$1,500 for one "cut" gram of LSD.

(b) The taxpayers were arrested on May 11, 1978. Winter was arrested inside of a camper bus and Spring was arrested nearby.

(c) A search by the undercover agents revealed \$2,000 in Winter's possession and \$4,030 in Spring's possession.

(d) A search of the vehicle revealed a receipt for a telegraphic money order in the amount of \$5,200 to a California resident with a drug history and one "cut" gram of LSD. Subsequent investigation revealed a second receipt in the amount of \$4,500.

(e) Undercover agents of the D.E.A. have estimated the cost to the taxpayers for one pure gram of LSD at \$900. Also, based on a chemical analysis by D.E.A., it was determined that a pure gram was being cut to realize 3.163 grams of LSD in a selling form.

(f) The selling price was \$1,500 per "cut" gram.

(g) Narcotics agents believe the money order of April 5, 1978, for \$4,500 was for the purchase of 5 "pure" grams of LSD. Five "pure" grams yield 15.815 grams in "cut" form.

4022.16 (11-30-84)**General Procedures for Notice,
Petition to Quash the Summons,
and Compliance/Enforcement**

(1) Period in which Service is required to give notice:

(a) In instances where a summons is served on any person who is a third-party recordkeeper requiring the production of records which relate to the taxpayer, notice shall be given to the taxpayer within 3 days of the date on which service is made but not less than 23 days before the day fixed in the summons as the day upon which the records are to be examined.

(b) No less than 23 days will be allowed from the date of service of the summons to the time for compliance to ensure sufficient time for the notice of issuance of the summons and the filing of a petition to quash.

(2) Right to File Petition to Quash Summons:

(a) A noticee who wishes to prevent compliance with the summons by the recordkeeper must begin a civil action in a U.S. District Court to quash the summons not later than the 20th day after the day notice of the summons is given.

(b) If the noticee initiates a proceeding to quash the summons, the noticee is required to mail (by registered or certified mail) a copy of a petition to quash the summons to the recordkeeper and a copy to the examiner who issued the summons. This must be done within the above 20-day period.

(c) In instances where a summons is served on a third-party recordkeeper for records relating to a person other than the taxpayer, notice will be given to such person. He/she has the right to file a petition to quash the summons.

(d) No examination of the summoned records is allowed before the close of the 23rd day after notice is given, or if a proceeding to quash is begun, until the court so orders, or the noticee who has instituted the proceeding consents. Pattern Letter 1728(P) may be used to document the noticee's consent.

(3) Compliance/Enforcement of Summons

(a) Examiners who receive a petition to quash will notify their District Counsel by telephone on the same day. Within six work days, the District will forward to District Counsel a memorandum report which will include the following:

1 The name, full address, and taxpayer identification number of the taxpayer under examination.

2 A summary of the facts in the case, including whether it involves or is related to the Special Enforcement Program;

3 An explanation of the relevancy of the records, e.g., if records pertaining to periods

other than those under investigation are sought, the relevancy should be explained. Also the relevancy of records pertaining to third parties must be explained;

4 An explanation of why the summoned information is necessary to the success or completion of the examination;

5 All information which would support or refute the validity of each assertion in the petition to quash;

6 A recommendation for or against defense of the petition to quash the summons; and

7 The original of the summons and a copy of the petition to quash the summons.

(b) The running of the statute of limitations for civil and criminal purposes is suspended with respect to the taxpayer if the taxpayer or an agent, nominee, or other person acting under the direction or control of the taxpayer files a petition to quash, or intervenes in a summons enforcement proceeding. The period tolled begins when the petition is filed with the court and is suspended for the period during which a proceeding and appeals related thereto are pending, and relates to the years under examination which are identified in the summons.

(c) Staying compliance or intervention by a person other than the taxpayer or his/her agent will not suspend the running of the statutes of limitation.

(4) Notice and Instructions to Noticee:

(a) Included as part of revised Form 2039 is a notice which contains instructions concerning the noticee's right to contest the administrative summons. It will be served on the noticee together with a copy of the summons (Form 2039-C) by the person serving the summons. Generally, notice will given by certified or registered mail to the last known address of the noticee. The law also permits service of notice by delivering both documents in hand to the noticee, or leaving them at the noticee's residence or, in the absence of a last known address, leaving them with the person summoned.

(b) If the Service has been advised under IRC 6903 of the existence of a fiduciary relationship, it is sufficient if the notice of the service of the summons is mailed to the last known address of the fiduciary of the person entitled to notice, even if such a person or fiduciary is now deceased, under a legal disability, or no longer in existence. The filing of a power of attorney of tax information authorization does not qualify as the creation of a fiduciary relationship under this provision and notice would be given to the taxpayer or other person to whom the records pertain.

(c) certification of serving the summons as well as the certification of giving notice will be completed on the reverse side of the original copy of the summons.

(d) if a summons enforcement is instituted, the third-party recordkeeper, as well as the noticee, is entitled to notice of the enforcement action. Generally, the third-party recordkeeper will be served with process. The noticee will be informed by certified or registered mail. Such notification will be the responsibility of the Department of Justice.

(5) Waiver of Right to Notice, Petition to Quash the Summons:

(a) a person who is entitled to notice, and to petition to quash the summons may waive such rights by executing a general waiver form.

(b) payments for mileage, witness fees and expenses may be made to the third-party recordkeeper in accordance with IRM 4022.5 if a summons is issued.

(6) Coordination of Summons Issuance and Enforcement Actions:

(a) to the extent practicable, summonses pertaining to the same person shall be served and be submitted for enforcement action at or near the same time. Likewise, court requests by the Service for exemption from the requirement of notice relative to the same person shall be made at the same time, if possible.

4022.17 (11-30-84)

Duty and Rights of Third-Party Recordkeeper

(1) The third-party recordkeeper has the right to intervene in the proceeding to quash the summons and is bound by any decision in the proceeding, even if he/she does not intervene.

(2) The law provides the third-party recordkeeper will, upon receipt of the summons, proceed to assemble the summoned records (or such portion as the examiner indicates) and be prepared to produce the records on the day on which the records are to be examined. This responsibility exists whether or not a noticee files a petition to quash a summons.

(3) Upon satisfactory compliance, the third-party recordkeeper may request reimbursement for certain costs necessary to comply with the summons. Form 6863 (Invoice and Authorization for Payment of Administrative Expenses) may be used for this purpose. If the petition is filed, satisfactory compliance by the third-party recordkeeper may include only his/her certification of compliance with the summons (including a detailed statement of costs incidental to compliance with the summons) without actual production of books and records.

(4) Any third-party recordkeeper who makes a disclosure of records in good faith reliance on,

a certificate that the period for beginning to quash a summons has expired and that no such proceeding began within such period or that the noticee consents to the examination, is not liable to any customer or other person for such disclosure.

4022.18 (5-24-87)

Suspension of Statute of Limitations During Prolonged Disputes Over Third-Party Records

(1) Section 1561 of the Tax Reform Act of 1986 amends Internal Revenue Code Section 7609 (relating to special procedures for third-party summonses) by adding subsection (e), Suspension of Statute of Limitations. This added subsection provides for suspension of the period of limitations (under IRC 6501 or 6531) if third-party records are not produced within six months after service of a summons on a third-party recordkeeper. This legislation suspends the period of limitations if a dispute between the third-party recordkeeper and the IRS is not resolved within six months after the IRS serves an administrative summons and ends when the entire dispute is resolved. The issue is not resolved:

(a) during the pendency of any action to compel production of the documents; and

(b) during the pendency of any action to quash the summons.

(2) In addition, in the case of a John Doe summons described in IRC 7609(f) the third-party recordkeeper is required to provide notice of the suspension of the period of limitation to the taxpayer whose records are the subject of the dispute (if the summons requesting the records does not identify the taxpayer by name). Failure by the third-party recordkeeper does not prevent the suspension of the statute.

(3) In order to compute the statute on the monthly AIMS (Forms 4000 & 4000 Code LL) will be used to update AIMS. Once the actual statute date can be determined, the data base should be updated to reflect the correct statute date. The procedures contained in Exhibit 600-1 of IRM 4813(f), AIMS—Use of Forms and Special Handling Procedures, should be followed. When closing out the case file, clearly indicate on Form 3116 (Special Handling Notice) and 395 (Notice of Statute Expiration) that the new statute date has been determined under IRC 7609 as a result of a third-party summons."

4022.2 (5-25-77)

Persons Who May Be Summoned

(1) The following persons may be summoned under the authority of IRC 7602:

(a) person liable for the tax or required to perform the act:

4022.16

MT 4000-234

IR Manual

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(8) A third party invoice resulting from compliance with a summons and which amount is \$25 or less may be paid in cash directly by the issuing employee. This \$25 threshold does not include amounts which are claimed separately as witness fees and mileage.

(9) If the summoned third party submits a bill combining search, reproduction and transportation charges with the witness fee, and the total exceeds \$25, the direct payment procedures do not apply.

(10) In valid direct payment cases, the employee may claim reimbursement on his/her travel voucher (with the third party invoice attached) under "Miscellaneous Expenses," or may submit the receipted bill to the Small Purchases Imprest Fund Cashier for cash reimbursement. Under either procedure, the expense shall be charged to Administrative Summons Expense. Amounts for Administrative Summons expenses claimed on an employee's travel voucher under Miscellaneous Expenses are not to be charged to Other Reimbursable Travel Expenses.

(11) Bills for more than \$25, or \$25 or lesser amounts when direct payment procedures will not be used, must be certified and forwarded to the appropriate Fiscal Management office for payment.

(a) The employee receiving the bill for payment should, to the extent that it is practicable for that employee to do so, ensure that the bill does itemize the specific details of search, reproduction and transportation costs as applicable and that charges have been computed at rates which appear to be appropriate and which are not higher than the allowable rates. For allowable rates see Form 2039-B, Notice to Third Party Recipient of IRS Summons (this is Part B of the five-part snapshot assembly of Form 2039, Summons). The receiving employee will next take necessary action to forward the bill through line managers to the official who initially approved the obligation, or the official with obligation authority appropriate to the amount of the bill.

(b) The obligating official, in most instances, will be a group manager who will receive the bill, evaluate the charges in terms of accuracy and reasonableness, and certify the bill for payment processing by signing the following statement: "Payment is approved and is within my delegated obligational authority." The approving official will record, along with certification, title and organizational identification. This constitutes that official's verification

that the summons has been satisfactorily complied with and that the claim against the Service for reimbursement is valid.

(c) The certified bill will then be forwarded through appropriate channels to the regional Fiscal Management Branch for payment processing.

(12) A special procedure applies when the summonses are inter-regional or inter-district.

(a) In cases where one district requests a summons to be served by employees of another district, the official of the initiating or requesting district with authority to obligate at the estimated payment level of the collateral summons, will obligate funds for the payment of that summons. The requesting district will forward to the serving district a completed Form 2039, Summons, with all information provided except for the time and place for appearance and the official before whom the witness is to appear. The transmittal letter accompanying the summons should indicate the level of obligation authority the approving official has.

(b) If the official of the receiving district determines prior to third party compliance with the summons that the anticipated costs will exceed the obligational amount for which the approving official has authority, he/she will advise the requesting district of the need for the approval of an official with higher obligational authority.

(c) When the official of the district serving the summons in coordination with the issuing official of the requesting district determines that the summons has been satisfactorily complied with, the summoned materials will be submitted to the requesting district.

(d) The third party will then submit its bill through the serving official to the official in the requesting district who originally authorized the summons. If the actual bill exceeds the obligational authority of the approving official, it will be that official's responsibility to obtain subsequent approval at the required level.

(e) The issuing official will review the bill for accuracy and reasonableness and then certify the bill for payment. The bill will then be forwarded to Fiscal Management for payment processing.

(13) To prevent unauthorized disclosure, third party invoices and supporting documents, which result from third party summons, when not being worked on, will be provided with three protection points in accordance with IRM 1(16)41, Physical Security Handbook.

4022.6 (8-8-78) Description and Preparation of Summons

4022.61 (12-15-78) General

(1) Form 2039 has been revised. This form, which is now a five-part snapshot assembly, will be used in all instances after February 28, 1977 when an administrative summons is issued.

(2) The information appearing on the face of the summons will continue basically to be the same as required under IRM 4022.62 through 4022.65. The business address and telephone number of the Internal Revenue Service officer before whom the summoned party is to appear is to be inserted below the line which calls for this information.

4022.62 (3-28-77) Identification of Taxpayer

(1) The name and address of the taxpayer should be stated in full, if known, in the statement of the tax liability. If returns are under investigation and bear different addresses, or if the taxpayer during the periods resided at several addresses, and his/her present address is still another place, show all of the addresses known. It is also important that only the name of the taxpayer appears in this statement. Under certain circumstances in an investigation of related taxpayers, it is appropriate to list the name of all taxpayers assigned for investigation in the caption of the summons where the summons is directed to a witness having information concerning said taxpayers. Whether or not more than one summons should be used in each case will depend upon the facts of the case. If the liability is corporate, the name of an individual should not be shown in this item even though the individuals may be the summoned party, own substantially all the stock of the corporation, and/or be the only corporate officer. If the liability is that of an individual, the name of a corporation or other individual should likewise not appear even though the individual liability may stem from corporate affairs, as in the case of a 100-percent penalty assessment.

(2) When the liability relates to a business carried on under a trade name or by a partnership, the statement should include both the name of the business and the name(s) of the individuals involved.

(3) A summons used to secure the names, addresses, and social security numbers of customers and clients from a return preparer's records will be entitled in the matter of the tax liability of "The clients and customers for whom you prepared Federal Income Tax Returns for the taxable periods indicated below."

(4) The Internal Revenue district in which the returns were filed or should have been filed or the district where the assessment for collection is outstanding will be inserted by showing the city designation or subdivision thereof in the space provided; for example, "Internal Revenue District of Los Angeles, California." If returns under investigation were filed in various districts, the name of each district shall be shown.

(5) The entry under "Periods" should state specifically the calendar years, fiscal years, quarterly or monthly periods involved.

4022.63 (3-28-77) Description of Summoned Party

(1) The name and address of the summoned party should be stated in full regardless of whether this statement in whole or in part is a duplication of the information mentioned in IRM 4022.62. When the appearance is sought of more than one person, even though they are husband and wife, separate summonses, each directed to one individual, should be served. If it is desired to obtain testimony or records from a person in his/her capacity as trustee, receiver, custodian, corporate or public official, his/her title or official status, including the name of the corporation or other entity with respect to which the witness acts in such capacity, should be added to his/her name. Where a summons is for corporate records, it may be directed to a corporate officer and the corporation, i.e. "Mr. X, (as president of XYZ Corporation and the XYZ corporation." The latter description is preferable where records of a corporation or entity are summoned. However, there may be instances in which the personal testimony of a specific corporate officer is desired. It is also acceptable to issue a summons to a corporation only, for production of corporate records, in which event service must be made on a corporate officer or corporate employee probably authorized by the corporation to accept service on behalf of the corporation. The officer's supervisor should be consulted if there is any problem. The exact corporate name should be used.

(2) The home or business address, as applicable, of the summoned party should also be shown.

(3) Insert in the blank space provided following "to appear before" the name of the individual before whom the summoned witness is to appear and give testimony and/or produce books, papers, records or other data. In some instances, the name will be the same as that of the officer authorized to issue the summons; in that instance, the pronoun "me" will be inserted.

ed. If the employee authorized to issue a summons desires the person summoned to appear before another authorized employee, the name of that employee will be inserted.

4022.64 (8-13-80) Description of Documents Requested

(1) Facts in each case will determine what would be considered an adequate description of the requested data. A production of the books, papers, records, etc., for the period and time period. For example—

(a) All books, papers, records and other data pertaining to the operation of the XYZ Restaurant (address) for the period beginning _____ and ending _____, including, but not limited to the following specific records (list).

(b) All books, papers, records and other data of the XYZ Manufacturing Company pertaining to the depreciation expense on key-punch presses purchased in 1968, as claimed on its federal income tax returns for the taxable years ending March 31, 1975 and 1976.

(c) Bank records (in your possession or control), including cancelled checks and bank statements relative to travel, entertainment and advertising expenses as claimed by the XYZ Corporation in its federal income tax return for the taxable years ending February 15, 1975 and 1976.

(2) Information may first be obtained as to what papers or documents are within the possession, custody or control of the witness relative to the inquiry by interrogating him/her under oath. If the witness is not required to produce books and records, papers or other data, the phrase "and to bring with you and produce for examination the following books, records and papers" may be stricken.

(3) Where information is desired to complete another document, such as a financial statement or income tax return, the summoned party should be directed to produce documents and records which will enable a representative of the Service to complete the forms. A blank copy of the form to be completed should be attached to the summons to guide the summoned party in his/her production of the necessary documents and records. Reference to the attach-

ment should be made on the face of the summons and a copy of the attached form or forms should be attached to the original of the summons. See RLM 4022.64(4) for example of description of documents, etc., to be produced to allow a financial statement to be completed. The detail description of the documents required may vary according to the form which the examiner desires to prepare.

(4) The summons should not require the witness to do anything other than to appear on a given date to give testimony and to bring with him/her existing books, papers and records. A witness cannot be required to prepare or create documents. The giving of exemplars, for example, handwriting exemplars, at an appearance pursuant to a summons is not "creating a document." When summaries or lists are necessary, Service personnel should prepare them from books, papers, records and testimony obtained at the interview. However, if a taxpayer or witness who has been summoned to produce documentary material from which a financial statement or summary or list or a return may be compiled, prepares the required return or statement, etc., in advance, the statement or return, etc., may be accepted. If the taxpayer or witness at the interview offers total returns or to make summaries or lists or statements, the offers may be accepted. If necessary, the examiner will assist in preparing his/her return, or financial statement or list or summary from the testimony and documentary information obtained during the interview.

(5) A request for proof of filing, copies of returns, or proof of payment should not be made unless it can be shown that the desired proof or copies are not available in the District Director's office through normal channels.

(6) The following illustrates descriptions which normally meet the above requirements when the summons is directed to an individual taxpayer or to an officer or responsible taxpayer for corporate information. If appropriate references to "the above" are appropriate, they should be used. If the summons are provided as described, they may be modified to fit the particular situation. If the summons is directed to a third party the description should be changed to request only information which the third party is known to possess or can reasonably be expected to have in his/her possession, custody or control.

4022.63

MT 4000-218

IR Manual

(Next page is 4000-219)

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(a) **Employment Tax Records**—All payroll records of salaries or wages, advances, or drawings of the employees of the (individual, company, or corporation) (which may now be in the control or possession of (witness's name)) for the years ending _____, or for the quarters ending (list each quarter). Also, any and all payroll records of wages, advances or drawings paid to the officers, partners, or employees of the (company or corporation) for the years or quarters ending _____.

(b) **Cancelled Checks**—The following described books, records, papers and other data of the (company or corporation) (which may now be in the possession or control of (witness's name)) for the years ending _____.

1 Any and all payroll records of salaries or wages paid to officers or employees including cancelled checks and bank statements for the above-described periods.

2 Any and all records, including, but not limited to, cancelled checks and bank statements relative to travel, entertainment and advertising expenses for the above-described periods.

(c) **Individual Records**

1 All books and records, invoices, statements, and other documents pertaining to the operation of XYZ business for the period beginning _____ and ending _____, including but not limited to: (list).

2 If a specific area is under examination, confine the production request to that area. All books and records and other documents pertaining to the travel expense incurred and claimed on "Sch. C. of your tax return for XYZ business," for the years _____, _____, _____, including but not limited to (list).

(d) **Third Party Records**—The following are examples for specific records from third party witnesses.

1 **Bank Statements**—"All bank statements (and cancelled checks, if applicable) of the above-named taxpayer in your possession, custody, or control which reflect transactions in the (checking, savings, loan, etc.) account with the (name of bank) Bank, located at (address, and/or branch involved, if applicable) for the calendar year, 19____."

2 **Insurance Policies**—"All (life, health, etc.) insurance policies currently in force in your possession, custody, or control, which are owned by the above-named taxpayer, or in regard to which this taxpayer pays the premium or otherwise possesses an interest." Where knowledge of any particular insurance policy

exists, a complete description of the policy (name of insurance company, policy number, etc.) should be given.

3 **Vehicle Registration**—"All current registration certificates for motor vehicles owned by or registered in the above-named taxpayer, or in which this taxpayer has a security, lien, or other interest."

4 **Deeds**—"Deeds to all real property in which the above-named taxpayer has, or may have, a beneficial interest or which the taxpayer may own either individually or jointly, or in which this taxpayer is named as a grantor or grantee."

5 **Investment Data**—All stock broker's statements and other records of the above-named taxpayer in your possession, custody, or control indicating purchase and sale of securities, dividends earned and charges during the year(s) _____.

6 **Accountant's Workpapers**—(See IRM 4024.4.(2)). Workpapers prepared in connection with the preparation of financial statements and tax returns of the above-name taxpayer for the year(s) _____ in your possession, custody, or control.

(e) **Delinquency Investigations**—The following illustrates descriptions which normally meet the legal requirements when a summons is issued in a delinquency investigation.

1 **Income Tax Returns**—"All books, papers, records and other data in your possession or control reflecting the receipt of taxable income by you for the years 19____ through 19____, including but not limited to: Wage Tax Statements (Forms W-2) for the years 19____ through 19____; Forms 1099 regarding interest or dividend income for the years 19____ through 19____; employee earnings statements for the years 19____ through 19____; records of deposits to bank accounts, cancelled checks, and check registers for the years 19____ through 19____; and any and all other books, records, documents, and receipts regarding wages, salaries, tips, fees, commissions, and any other compensation for services (including the receipt of property other than money); income derived from business gains from dealings in property, interest, rental, royalty and dividend income, alimony, annuities, income from life insurance policies and endowment contracts, pensions, income from the discharge of indebtedness, distributive shares of partnership gross income, and income from an estate of trust, so that Federal income tax returns for the years

19—— through 19—— (for which years no returns have been made) may be prepared. Blank Federal income tax returns for the years 19—— through 19—— are attached hereto to guide you in your production of the necessary documents and records."

2 Employment Tax Returns—"All payroll records, cancelled checks and check registers, records of wages paid in cash, employees' social security account numbers, employees' withholding exemption certificates for all employees, and all other books, records and papers containing information relative to wages paid during the above calendar periods by the above-named taxpayer, so that an Employer's Quarterly Tax Return (Form 941) for the calendar quarters(s) ended _____, and an Employer's Annual Unemployment Tax Return (Form 940) for the calendar year(s) 19—— may be prepared; blank copies of such returns are attached hereto, to guide you in your production of relevant documents."

3 Financial Statement—"All books, papers, records and other data in your possession or control reflecting the assets and liabilities of the above-named taxpayer(s), including, but not limited to, the following: all bank statements, checkbooks, cancelled checks, savings account passbooks, and records of certificates of deposit, for this year and the preceding year regarding accounts or assets held in the name of the taxpayer(s) or held for the benefit of the taxpayer(s); all records or documents regarding stocks and bonds, deeds or contracts regarding real property, current registration certificates for motor vehicles, and life and health insurance policies currently in force, any of which items are owned, wholly or partially, by the taxpayer(s), or in which the taxpayer(s) have a security interest, or held for the benefit of (either or both of) the taxpayer(s), so that a

current financial statement may be prepared. A blank copy of such financial statement is attached hereto to guide you in the production of the necessary documents and records."

4022.65 (11-30-84)

Place and Time for Appearance

(1) The time and place specified for the appearance should be reasonable under the circumstances and should not be less than 11 full calendar days from the date the summons is served. The date for appearance should not be on a Saturday, Sunday, or a legal holiday. In computing the 11-day period, the date of service should be excluded and the date of appearance should be counted. In the case of a third-party recordkeeper summons, the date shall be at least 23 days from the date of issuance.

(2) The summons should specify the street address and room number at which the person is required to appear. The room should be reasonably private and suitable for conducting the examination without interruption. Also, it is usually desirable for one other Service employee to be present to witness the proceedings.

(3) When a person indicates he/she will voluntarily comply but requests that he/she be served with a summons as evidence of his/her legal duty to produce records or testify, the summons should specify a date 11 or more days after service even though the person expects to respond on an earlier date. This will not preclude the Service, if agreeable to the person summoned, from making an earlier or immediate examination of the records or the earlier taking of testimony.

(4) If an extension of time for appearance is granted and the person summoned does not furnish the records or testimony requested,

Any extension of the originally appointed date should be carefully documented by the examiner.

**4022.66 (12-15-78)
Date and Signature**

(1) Insert in the space provided, the date the summons is signed by the issuer. This date is not to be considered as the "date of the summons" in setting the date for appearance pursuant to IRC 7605.

(2) The authorized issuing employee will manually sign the summons in the space labeled "Signature" and insert his/her official title in the space labeled "Title". Procedures evidencing advance approval must be strictly followed when applicable.

**4022.7 (7-28-87)
Issuance and Service**

(1) Examination Division employees authorized to issue and service a summons are contained in Departmental Circular (as revised). See also IRM 4022.1. Restrictions have been placed upon issuance of summonses to third parties and summonses known as "John Doe" summonses. All summonses (Form 2039) where the issuer anticipates action to be taken

procedural defects. Review of the Office of Chief Counsel (Internal Revenue Service). Counsel's review is advisory in nature, and Internal Revenue employees and attorneys in the Office of Chief Counsel are not authorized to commit the Service to refrain from exercising its investigative authority to require and receive information pursuant to 26 U.S.C. 7601 and 7602.

(2) After the summons has been prepared, it will be served in accordance with IRC 7605, which provides that service shall be made by delivery in hand of an attested copy to the person to whom it is directed or by leaving an attested copy at his/her last and usual place of abode. The second sheet, Form 2039A, of the form assembly, will be either handed to the person to whom it is directed or left at the person's last and usual place of residence (not place of business) either with some person present or in a place where the person summoned will be likely to find it.

(3) If the summons is left with a person at the residence, the name of such person with whom it is left should be noted as well as that person's age, the relationship to taxpayer, and other cir-

cumstances pertinent to service of the summons.

(4) When a summons is directed to a specific corporate officer to appear on behalf of the corporation, the officer may be personally served either at the corporation, place of business or wherever he/she may be found. When a person is summoned in a corporate capacity the corporate capacity of the individual summoned party should be indicated.

(5) When a summons is directed to a corporation, service must be made upon a corporate officer, director, managing agent, or other person authorized to accept service of process for the corporation. Such persons may be served personally at the corporation's place of business or wherever they may be found.

(6) If service of a summons upon a corporation as described in (4) or (5) above is not feasible, Regional Counsel should be consulted for alternatives.

**4022.8 (12-15-78)
Service, Notice, and Reporting Requirements**

**4022.81 (12-15-78)
Certificate of Service**

(1) After service of a summons, the certificate of service of summons appearing on the reverse side of the summons (marked "Original") will be prepared and completed by the officer serving the summons and returned to the issuer.

(a) Insert in the space provided the date and the time of day when the summons was served.

(b) Show the manner in which the summons was served by checking one of the squares provided.

(c) If the summons is served by leaving an attested copy with a person at the last and usual place of abode of the party summoned, the name and address of the person to whom it is handed will be entered in the space after the word "directed." If the summons is merely left at the witness's last and usual place of abode, the address will be stated, along with where the summons was left, and the phrase "with the following person (name) from the printed list below" will be entered, after entering the name of the person.

(d) The name of the person to whom the summons was left and the place of service in the space provided for the name of the person or his/her official title in the space labeled "Title."

page 4000-22
(7-28-87)

4000 General

(2) The back of the original part of the summons should be filled out to indicate the fact that the summons was served and the manner and time of service.

(3) When the summons is served, the first attested copy (Form 2039-A) shall be given to the person summoned. If the person summoned is a third party entitled to payment for search, reproduction and transportation costs, he/she will be also given the notice explaining the payment procedures, which is the third page of the subpoena. If this information is applicable, this page should be discarded. Under the law all persons summoned, including the taxpayer and his/her representative, may be entitled to witness fees and mileage.

(4) The original of the summons, Form 2039, after the completion of the certificate of service, will be placed in the administrative file in the office of the issuing division. If the person to whom it is directed neglects or refuses to comply with the requirements of the summons, the original will be used as a basis for enforcing compliance.

4022.82 (11-30-84) Certificate of Notice

(1) When a summons is served on a third party recordkeeper, the certificate of notice shall be completed, showing date, time of notice, and name and address of noticee. If notice is not required, the appropriate square shall be checked.

(2) The officer giving the notice will sign the certificate of notice in the space provided for "Signature" and enter his/her official title in the space designated "Title".

(3) If the noticee (party named in the body of the summons) is entitled to notice of the issuance, the second attested copy (Form 2039-C) will be provided to the noticee by the officer serving the summons along with instructions concerning the right to petition to quash the summons (Form 2039-D). If more than one person is entitled to notice of the issuance of summons, the summons and notice may be reproduced to provide such notification. This could occur, for example, in a situation where a bank account is listed in two names.

(4) If the summons is not served on a third party recordkeeper or notice is not required, the second attested copy and the notice should be discarded.

(5) The provisions of the IRC 7609 appear on the back of the notice (Form 2039-D).

4022.81

MT 4000-230

R1 Manual

(6) Upon request by the party summoned of proof that notice has been given, the party summoned will be furnished a copy of the back of the original summons which certifies that the period for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period or that the noticee consents to the examination.

4022.9 (7-28-87) Enforcement

4022.91 (7-28-87) General

(1) The United States District Court for the district in which the person to whom the summons is directed resides or is found shall have jurisdiction to compel his/her attendance, testimony, or the production of books, papers, records, or other data, as detailed in IRC 7402(b) and 7604(a). If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for a process relating to jurisdiction of court or for enforcement of summons.

(2) A judge of the district court or a United States Magistrate may enforce obedience to the requirements of the summons and may punish such person for contempt, including default or disobedience, in connection with the procedure in IRC 7604(b). This authority may be exercised for enforcement of any summons issued under IRC 7602 through the assistance of a subpoena issued upon proper application and upon receipt of proof by the judge or the District Court or a United States Magistrate, or by the proper officer for the district in which the summons is issued. Upon his/her arrest, the person summoned will be brought before the district court or United States Magistrate. The judge or United States Magistrate who shall proceed to the hearing of the case and upon such hearing shall have power to make such order as may be deemed proper not inconsistent with the law for enforcement of compliance, to enforce obedience to the summons and to punish the party for contempt, default or disobedience.

(3) If a summons is not served in accordance with the provisions provided by the law, the summons shall be null and void. If a summons is served in accordance with the provisions of IRC 7603, and 7604,

(4) IRC 7701(a) (39) states that if any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such person or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to:

- (a) jurisdiction of courts, or
- (b) enforcement of summons.

4022.92 (8-1-91)

Procedures in District Offices

(1) Requests for civil enforcement of summonses issued by Examination function will be referred by the Chief, Examination Division (or as designated by the District Director a district where there are no division chiefs), to District Counsel for consideration and determination as to whether the proposed legal action should be taken. These requests should be forwarded to District Counsel within six working days following noncompliance. The referral memorandum should transmit the original of the summons, Form 2039, together with a memorandum prepared by the issuing employee outlining the following:

- (a) a brief resume of the pertinent facts in the case, showing particularly whether it involves or is related to any Special Enforcement Program;
- (b) exactly what is sought to be obtained by the summons; including the years for which records are sought;
- (c) if records of third parties are sought, explain the relationship of these third-parties and their records to the investigation of the taxpayer;
- (d) if records for years other than those under investigation are sought, explain how these records may be relevant to the years under investigation;
- (e) discuss whether service of the summons has been made on a responsible officer in cases in which a corporation is the party summoned. Service on a responsible officer is not always necessary, because in many cases the corporation, by designation or by long-standing practice, has accepted service on someone other than a responsible officer. However, these facts should be discussed;
- (f) a statement that the person or entity named in the description of the records has received notice as required by IRC 7609(a), or if notice was not sent, why it is believed that notice was not necessary;
- (g) the circumstances surrounding contacts with the person summoned, showing particularly the defense claimed for refusing to comply with the summons;
- (h) the need or importance of such testimony or evidence;

(i) any imminent statute of limitations problems involved;

(j) whether this examination is a reexamination within the meaning of IRC 7605(b); and

(k) if clearance to the issuance of the summons has been obtained from another function of IRS or from Department of Justice, these facts and details should be documented.

(2) In cases where summons enforcement is not recommended, the agent serving the summons will prepare a memorandum within six working days following noncompliance to the Chief, Examination Division (or as designated by the District Director a district where there are no division chiefs), explaining the reasons why enforcement proceedings have not been recommended. A copy of this memorandum should be retained in the administrative file.

(3) The original and two copies of the referral memorandum and the original and two copies of the memorandum prepared by the issuing employee will be submitted to District Counsel. If the matter involves or is related to the Special Enforcement Program, the original and five copies of each memorandum will be submitted.

(4) In addition to the required memorandums, the examiners who issued the summons, served the summons and examined the summoned person will, in requesting civil enforcement in a case, each prepare an affidavit for transmission to District Counsel. (Exceptions are in (5) below.) The affidavits should set forth all the facts pertinent to the issuance and service of the summons and the summoned person's noncompliance. See Exhibit 4020-1 for sample format. Where the same examiner performs all three functions only a single affidavit is required. The original affidavit(s) will be transmitted to District Counsel along with the other memorandums described above.

(5) An affidavit need not be prepared and forwarded by the examiner in cases involving "John Doe" summonses, Special Enforcement Program summonses or summonses to financial institutions. The affidavits necessary for enforcement of these summonses will be prepared by or under the supervision of the Department of Justice.

(6) The examiner may use Form 4443 (Summons Referral) instead of the memorandum mentioned in (4) above if it will save time. (See Exhibit 4020-2.) If the form has in item 5 "Organized Crime Drive Case," insert "Special Enforcement Program," and insert type of project, if any. This form outlines the information required in (4) above. If it is used:

(a) Form 4443 should be prepared in quadruplicate, with an additional three copies if a Special Enforcement Program Case is involved;

(b) the transmittal memorandum, affidavit and Form 4443 should be submitted as outlined in (3) and (4) above.

(7) Requests for penal action for failure to obey summonses issued by Examination Division will be referred, within six working days following noncompliance, by its Chief to the Chief, Criminal Investigation Division, for evaluation. If the matter is not accepted for investigation, the Chief, Criminal Investigation Division, will so notify the Chief, Examination Division (or as designated by the District Director in a district where there are no division chiefs) and thereafter the matter may be referred by the Chief, Examination Division (or as designated by the District Director in a district where there are no division chiefs), to District Counsel for civil enforcement action. However, during the time the case is under consideration for penal action no attempt should be made to enforce obedience with the provisions of the summons.

(8) Final reports containing recommendations for penal action for failure to obey summonses will be processed in accordance with IRM 9600. Cases in which penal action is not recommended in the final report will also be processed in accordance with IRM 9600. When a non-prosecution recommendation is approved by the Chief or Assistant Chief, Criminal Investigation Division, in a case referred by the Chief, Examination Division (or as designated by the District Director in districts where there are no division chiefs) for penal action for failure to obey a summons, the Chief, Examination Division (or as designated by the District Director in districts where there are no division chiefs) will be so advised in writing by the Chief, Criminal Investigation Division. Thereafter, the Chief, Examination Division (or as designated by the District Director in districts where there are no division chiefs) may, if he/she deems it advisable to do so, forward the matter to District Counsel for civil enforcement action.

(9) Any attempt to quash a summons through injunction proceedings or other court action before the date fixed for compliance should be immediately reported through normal channels to District Counsel. Every effort should be made to obtain copies of the documents involved so that they can be forwarded with the notification memorandum.

4022.92

MT 4000-245

4022.93 (8-1-91)

Processing at District and National Office Levels

(1) Requests for civil enforcement of summonses issued by Examination Division will, if approved by District Counsel, be forwarded directly to the United States Attorney for the district in which the person resides or is found. A copy of District Counsel's transmittal memorandum with copies of all attachments will be furnished by District Counsel to the Tax Division of the Department of Justice.

(2) Requests for civil enforcement of summonses issued by the Examination Division which relate to the Special Enforcement Program, "John Doe" summonses, summonses to financial institutions or those with special legal problems will, upon approval by District Counsel be forwarded to the Chief Counsel. If Chief Counsel concurs, the requests will be forwarded to the Tax Division of the Department of Justice. If the case involves the Special Enforcement Program, a copy of the referral memorandum or letter will be furnished by the Chief Counsel, to the Criminal Division of the Department of Justice. When requests for civil enforcement of such summonses are forwarded to District Counsel, copies of the background memoranda will be simultaneously forwarded to the Chief Counsel, Attention General Litigation Division, CC:GLS; Washington, D.C. 20224, by the Chief, Examination Division (or as designated by the District Director in districts where there are no division chiefs) for preliminary consideration by the Chief.

(3) In the absence of unusual circumstances, the District Counsel will take final action within six work days from the receipt of a summons case and, where appropriate, Chief Counsel will take final action within three work days after receipt of a summons case from the District Counsel. When emergency action is required, telephonic referral may be made to District Counsel with formal written referral submitted as soon as circumstances will permit.

4022.94 (8-22-91)

Regional Counsel To Be Informed of Subsequent Developments

(1) After a summons has been referred to the Regional Counsel for civil enforcement, he/she will be kept informed by the Department of all situations which have a bearing on the summons enforcement procedure. Some examples of the type of information which will be reported are as follows:

- (a) evidence sought is no longer needed;
- (b) witness has voluntarily complied with the provision of the summons; and
- (c) tax liability is paid or otherwise satisfied; and
- (d) case gone to court for enforcement.

Data should include date set for appearance pursuant to the summons and date of compliance, or adverse decision, whether compliance was satisfactory and whether compliance was pursuant to a court order.

(2) The memorandum required by (1) above will be prepared as soon as the information is received and copies of all pertinent documents obtained will be attached to the memorandum.

(3) The memorandum required by (1) above will be prepared in the same number of copies

and distributed in the same manner as the memorandum which originally referred the matter to the Regional Counsel. For (1)(d) situations, an additional copy will be prepared and sent to General Litigation Division of the Chief Counsel.

(4) In instances when time is of the essence, the Regional Counsel will be immediately advised by telephone of the facts in the matter. The memorandum required by (1) above will then be prepared and distributed in accordance with the provisions of (3) above.

4022.(10) (8-8-78)

Summons Procedures in IRC 482
Cases

4022.5 (4-4-79) Administrative Summons Expenses

4022.51 (4-4-79) Witness Fees and Travel Expenses

(1) The Service will, upon request, pay witness and mileage fees to witnesses who for the purpose of giving testimony or producing records are required to appear before Service personnel in compliance with administrative summonses (Form 2039) issued under IRC 7602, 6420(e)(2), 6421(f)(2), 6424(d)(2) or 6427(f)(2). Such fees will not be paid to a person who appears to give testimony or produce records in response to any request, oral or written, other than summons. The amount of fees is prescribed by section 1821 of Title 28 of the United States Code. (See Lloyd Roberts, et al. v. United States, 397 F.2d 988 (1968). Rev. Rul. 68-645, IRB 1968-51,32.) It should be noted that the procedures and conditions for witness fees and mileage payments are not modified by requirements for reimbursement of third parties for search, transportation, and reproduction costs.

(2) When the payment of witness fees is requested, Standard Form 1157 and 1157A, Public Voucher for Fees and Mileage of Witness, will be prepared, with assistance of the examiner if necessary, and signed by the payee. In the "Case No." space in the upper right corner, "Form 2039" should be written. The employee, before whom the summoned person appears, will review the claim and complete the lower portion of the forms to indicate approval for payment of the amount claimed. In addition, the employee will complete the upper portion of SF 1156 and 1156A, Claim for Fees and Mileage of Witness, including the Summary of Payments section. On the line provided for showing the name of court or board, "Testimony Before (Name and title of officer)" should be shown.

(3) The Forms (SF 1156, 1156A, 1157 and 1157A) will be forwarded through channels to the Chief, Resources Management Division. After necessary processing, a check will be issued to the claimant by the Regional Disbursing Office.

(4) If the claimant demands assurance that payment will be made, an additional copy of SF 1157A should be prepared and furnished to him/her. The following statement should be inserted immediately above the "Approved for

\$ _____" space in the lower portion of the form: "Payment of witness fee and travel expenses as stated above are guaranteed by the Internal Revenue Service."

(5) The amount of the witness fee is prescribed by Section 1821, Title 28 of the United States Code. Each witness is entitled to a fee of \$20.00 for each day of attendance in compliance with the summons. A fraction of a day spent appearing in compliance with a summons will be considered a full day. Only the actual appearance and production of testimony (or refusal to produce or to testify) will entitle the summoned witness to statutory witness fees.

(6) Any time spent in compiling the summoned documents or information, i.e., time spent searching for, selecting and processing, would not be compensatory for purposes of statutory witness fees. For payment of expenses to third parties, see IRM 4022.52.

4022.52 (4-4-79) Payment to Third Parties

(1) Definition

(a) Defendant: This person with respect to whose liability the summons is issued.

(b) Third Party: Any person served with a summons to produce records.

(c) Expenses: The actual time spent, amount of travel, and other costs who, at the time the summons is issued, is acting as such.

(d) Records: Books, papers, records, or other documents of the taxpayer, which are in the possession of the taxpayer, or of any other person, at the time the summons is issued.

(e) Costs: The actual expenses incurred by the third party in producing the records, including the cost of travel.

(f) Reasonable: The amount of fees and expenses which is reasonable under the circumstances, including the nature and complexity of the records, the time and effort required, and the value of the records.

(g) Independent: The amount of fees and expenses which is independent of the amount of the taxpayer's liability for the records, and is not a penalty or a fine.

(h) Actual: The amount of fees and expenses which is actually incurred by the third party, and is not a hypothetical or estimated amount.

(i) Total: The total amount of fees and expenses which is incurred by the third party, and is not a net amount after deducting any other expenses.

2 direct costs of extracting information stored by computer. Salaries of persons locating and retrieving summoned material are not includible in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise or search, nor does it include time spent for such activities.

(f) **Reproduction Costs**—Costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(g) **Transportation Costs**—Are limited to:
1 costs incurred to transport personnel to locate and retrieve records or information requested; and

2 costs incurred solely by the need to convey the summoned material to the place of examination.

(2) The Commissioner has authorized to the below-named officials the authority to obligate appropriated funds for making payment for search costs, reproduction costs and transportation costs in connection with a third party summons issued under the Internal Revenue laws.

(a) Regional Commissioners are authorized to obligate over \$5,000 for payment of such costs associated with any one summons. This authority may not be redelegated.

(b) Assistant Commissioner (International) and District Directors are authorized to obligate up to \$5,000 for payment of such costs associated with any one summons, with authority to redelegate to Chiefs of Divisions with respect to any such obligation not exceeding \$2,500. This authority may also be redelegated to any officer or employee referred to in paragraph 1(d) of Delegation Order No. 4 (as revised) as having authority to personally authorize the issuance of a summons to a third party witness, with respect to any such obligation not exceeding \$1,000.

(3) In accordance with Delegation Order No. 4 (as revised), if a third party summons issued by an officer or employee referred to in paragraph 1(d) of the Order, prior authorization by a case manager, group manager or other supervisory official above that level is required as specified in the Order. However, to process the resultant third party invoice for payment certification is required by an official specified in IRM 4022.52:(2) above, as having obligatory authority of the appropriate amount.

(a) In some cases, depending on the dollar

amount involved, this could mean that two different individuals might be involved in authorizing issuance of a summons and in certifying its invoice for payment.

(b) To minimize the instances in (a) above, and thereby to expedite processing, the procedures described below should be followed:

1 The Service employee issuing for requesting issuance of a third party summons should first make as reasonable an estimate as possible of the obligational authority level required for payment of the costs of compliance with the summons.

2 The issuing (or requesting) employee should then initiate the necessary administrative action to have the summons approved, prior to issuance, by an official who has both approval authority under Delegation Order No. 4 (as revised) and the required level of obligational authority under IRM 4022.52:(2).

3 Officials considering approval of issuance of a third party summons should take into account the anticipated payable costs of compliance as well as the need for the information sought.

(4) Payment for search, reproduction and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for search, reproduction and transportation costs that are both directly incurred and reasonably necessary. In determining whether costs are reasonably necessary, it is essential to consider search, reproduction, and transportation costs separately.

(5) No payment will be made until the third party satisfactorily complies with the summons. No payment will be made unless the third party submits an itemized bill or invoice showing specific details concerning the search, reproduction and transportation costs.

(6) The Service employee serving a summons on a third party shall ensure that Form 2039-B, Notice to Third Party Recipient of IRS Summons, accompanies the summons.

(7) Upon full or satisfactory compliance with a summons, the employee before whom the third party was summoned to appear shall notify the third party that an itemized bill or invoice may be submitted for payment and shall furnish his or her office address for that purpose.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

June 21, 1994

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510-1501

Dear Senator Grassley:

Secretary Bentsen has asked me to respond to your letter to him dated June 17, 1994, concerning the Treasury Department's FY 1995 request for a \$405 million compliance initiative for the Internal Revenue Service (IRS). Your letter requested that you be provided with material to substantiate the commitment that the IRS and the Treasury have made "to initiate and implement education programs for any new employees hired as a result of the compliance initiative"

Enclosed are copies of letters from Secretary Bentsen and me to Senator Pryor which we sent to him on April 22, 1994. Both Secretary Bentsen and I fully support the IRS' efforts to protect the rights and privacy of taxpayers. I emphasized in my letter to Senator Pryor that "the Internal Revenue Service fully recognizes the need to protect the rights and privacy of taxpayers and the need to continue to increase the knowledge of our employees about those rights." In addition, I committed that the Internal Revenue Service "will initiate and implement educational programs with respect to the Taxpayer Bill of Rights for any new employees that we hire as a result of the compliance initiative called for in the amendment."

I also told Senator Pryor that many of IRS' training programs currently address the Taxpayer Bill of Rights, either directly or indirectly. I forwarded copies of materials relating to the ethics workshops each IRS employee attended this year. Those workshops were designed to teach the tenets of respect for others, treatment with courtesy and decency and principles of fairness and concern for others. I also enclosed copies of materials all new collection and examination employees receive during their mandatory training on the Taxpayer Bill of Rights. I am enclosing those materials for your information.

Responding to your specific questions, the education programs for the new employees hired as a result of the compliance initiative will be conducted largely by experienced, professional IRS compliance personnel. Most of the instructors are currently working in front-line compliance positions, and they have subject matter expertise, as well as having completed a Basic Instructor Training Course. Most of them are experienced revenue agents and tax auditors, revenue auditors or revenue representatives. Our special agents assigned to the Criminal Investigation unit are trained at the Federal Law Enforcement Training Center by a combination of criminal investigators and staff of the Training Center.

Enclosed is a list of course descriptions and number of hours devoted to each topic covered. Each training course for the identified audience has a different time frame for the subjects of courtesy, privacy, and protection of taxpayer's rights. A course devoted to safeguarding taxpayer information contained in our computerized systems has been developed for all current employees. It is two hours in length and will be given to our new recruits during their early on-the-job training. For continuing professional education of our computer systems, the curriculum consists of an explanation of specific security rules, penalties for misuse, and reporting procedures for system misuse. For all other courses, there are components dealing with taxpayer relations, including role playing and facilitated discussion about taxpayer rights, interviewing skills, dealing with representatives and customer relations. The remainder of the curriculum covers tax law and tax administrative procedures. Finally, training costs associated with hiring the compliance employees are included in the overall costing of the initiative.

We have a national Task Force which is overseeing and coordinating all Compliance Initiative training. I have asked that Task Force to insure that taxpayer rights, security, privacy, ethics, diversity, and customer service principles are emphasized in all Compliance Initiative training, and the Task Force is planning a nationwide "train-the-trainer" workshop for all instructors at which these areas of emphasis will be discussed in detail.

Finally, you requested that we provide all information that we have submitted to the Chairman of the Senate Budget Committee showing that the compliance initiative would not increase the budget deficit over the next five years. I am enclosing a copy of the June 17, 1994, letter from me to Chairman Sasser which addresses that question.

If you would like any further information about our training programs, please feel free to contact me (202-622-4115) or David Mader (202-622-4700).

Sincerely,


Margie Milner Richardson

Enclosures
MMR:fcx

F.Y. 1995 Compliance Initiative

| <u>OCC</u> | <u>Definition</u> | <u>FTE</u> | <u>AMOUNT</u> |
|------------|---------------------------------|--------------|------------------|
| 11 | PERSONNEL COMPENSATION | | \$175,709 |
| 12 | PERSONNEL BENEFITS | | 62,663 |
| 21 | OPERATING TRAVEL | | 30,320 |
| 22 | TRANSPORTATION OF THINGS | | 1,452 |
| 23 | RENT, COMMUNICATION & UTILITIES | | 15,694 |
| 24 | PRINTING & REPRODUCTION | | 2,265 |
| 25 | SERVICES | | 35,854 |
| 26 | SUPPLIES | | 12,184 |
| 26 | EQUIPMENT | | 68,910 |
| | TOTAL | 5,078 | \$405,051 |

PREPARED STATEMENT OF REPRESENTATIVE NORMAN Y. MINETA

Thank you, Mr. Chairman and Members of the Committee. It's a great honor for me to appear before you today to introduce President Clinton's nominee for the post of Inspector General at the United States Department of the Treasury: Valerie Lau.

The Inspectors General at the departments and agencies of our federal government are charged with a tremendous responsibility: to ensure that the operations under their review are carried out with the highest standards of integrity, honesty, and efficiency.

And I know that Valerie Lau is more than qualified to carry out that role at the Department of the Treasury.

A third generation Californian, Valerie's career as an auditor and management expert has been a distinguished one. In many ways, she is following in the footsteps of her mother, Norma Ng Lau, the City Auditor of Oakland, California.

Valerie began her federal service as a Taxpayer Service Representative at the Internal Revenue Service while still in college. After graduating from the University of California at Berkeley, she later moved on to positions as an auditor at the Defense Contract Audit Agency in Palo Alto, California and as a senior evaluator at the U.S. General Accounting Office in San Francisco.

In 1989, she left federal service to become a consultant in audit training and career development and most recently was a career consultant at the management consulting firm of Drake Beam Morin.

Currently, she serves as the Director of Policy for the U.S. Office of Personnel Management and as that agency's liaison to the Vice President's National Performance Review.

The recognition she has received during her career has been well-deserved. She was the recipient of the 1990 Leadership Award from the Western Intergovernmental Audit Forum, a professional association of senior audit executives, and has held leadership positions with the Institute of Internal Auditors and the Association of Government Accountants.

In short, Mr. Chairman, I believe that the President has made an outstanding choice for Inspector General at the Department of the Treasury.

On May 17 of this year, Mr. Chairman, the Asian Pacific American Members of the House and Senate joined together to found an official Asian Pacific American Caucus, and I was very honored to be asked by my colleagues to serve as the first Chair of that Caucus.

One of the goals that we, as Members of the Caucus, have set for ourselves is to educate our colleagues about the extraordinary contributions which Americans of Asian and Pacific Islands ancestry have made, and are making, to this great Nation.

I can think of no finer example of that than Valerie Lau's career, and her willingness to take on this position at the Treasury Department.

She is truly one of the best and brightest which the Asian Pacific American community has to offer this Nation, and I urge you to give her nomination quick and favorable consideration.

Thank you very much.

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