

IRS Summonses

## Tax Administration Bill Would Tighten IRS Summons Powers

### BNA Snapshot

- Agency must tailor scope of John Doe summonses
- Designated summonses must be approved by highest level IRS employee in pertinent division



By Matthew Beddingfield

A proposal to limit the IRS's use of John Doe summonses could make it harder for the agency to collect taxpayer information using broadly worded requests.

The provisions, part of a bipartisan proposal to overhaul the Internal Revenue Service, would clarify the procedure for issuing a third-party summons, making it consistent with current Internal Revenue Manual guidance. The IRM guidance says John Doe summonses—legal requests for information from unidentified taxpayers or taxpayer groups—can't be used for purposes of a

“fishing expedition,” according to a summary of the draft bill.

The draft bill, released March 26 by House Ways and Means Oversight Subcommittee Chairman Lynn Jenkins (R-Kan.) and ranking member John Lewis (D-Ga.), is expected to be at the top of the House Ways and Means agenda this spring.

The bill's language adds a needed layer of checks and balances to prevent the agency from potentially abusing the summons process, practitioners told Bloomberg Tax.

“There is definitely a concern that the IRS is using John Doe summons as a fishing expedition, and the biggest example of that recently is the Coinbase cryptocurrency case,” Robert Kovacev, a tax controversy partner at Steptoe & Johnson LLP in Washington, said.

### Coinbase Summons Case

The U.S. District Court for the Northern District of California ruled in November that Coinbase Inc., a digital currency exchange, must produce documents the IRS sought. Coinbase was fighting a John Doe summons in which the agency sought records related to U.S. taxpayers who conducted certain types of transactions from 2013 through 2015, without identifying individuals in an ascertainable group.

“It's a very broad summons that basically included anyone who had bought one dollar worth of Bitcoin at any time over a large period of time,” Kovacev said. “I think what this proposal says clarifies that there is supposed to be a bona fide nexus between actual noncompliance by an individual and the breadth of the IRS summons.”

Paul DiSangro, a partner at Mayer Brown in Palo Alto, Calif., said the draft bill creates a statutory mandate that the IRS has to be pursuing a particular compliance failure and shifts the burden to the agency to explain why it is asking for the information in the summons. DiSangro said he didn't feel there was a “dire need” for the provisions, but found it interesting that lawmakers want a statute putting checks and balances in place for the IRS.

“One wonders if constituents, perhaps financial institutions, have complained about overly broad third party summonses,” he said.

### Designated Summonses

The draft legislation also addresses the IRS's authority to issue designated summonses, which are issued to a corporation being examined under the IRS's coordinated examination program.

The proposed provisions say that in order for the agency to issue a designated summons "the highest level IRS employee in the relevant operating division and the relevant division counsel in the Office of Chief Counsel must review and provide written approval of the summons." The draft bill would require the IRS to certify that it made a "reasonable request" for the information sought in the summons.

"Again, there is concern with the designated summons, and the IRS using it as a tool to coerce compliance with overbroad document requests or to coerce extensions of the statute of limitations," Kovacev said. "I think the proposed legislation codifies protections that are supposed to be in IRS policy but haven't always been followed."

DiSangro said the designated summons provision "adds accountability at the highest level of the particular IRS operating division."

David C. Cole, a partner at Vinson & Elkins LLP in Houston, told Bloomberg Tax that the proposed changes to the designated summons modification were "more of a substantive change" and possibly reacted to examples of IRS summons abuse in the past.

The IRS didn't respond to a request for comment on the draft legislation.

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