

E. Third-Party Recordkeeper Summonses

Section 7609 provides that when an IRS summons is issued to any of several specifically defined third parties, the taxpayer must receive notice of the summons and may, by letter, force the summoned party to refuse compliance with the summons. The statute also accords the taxpayer a right to institute a proceeding to quash such a summons and to raise substantive objections to its enforcement.[FN31] These statutory rights arise, however, only if the summoned records are maintained by the summoned party in its capacity as a "third-party recordkeeper" as that term is defined in Section 7609 (a)(3) and the Regulations thereunder. A "third-party recordkeeper" is defined by the statute to include only banks and other financial institutions, consumer reporting agencies, brokers, attorneys, accountants, barter exchanges, regulated investment companies, and "any person extending credit through the use of credit cards or similar devices." Section 7609 (a)(3)(C).

FN31. The filing of a petition to quash tolls the running of the civil and criminal statutes of limitations for the period during the proceedings, and appeals therein. Section 7609(e). *See generally Hefti v. Commissioner*, 983 F.2d 868 (8th Cir. 1993).

As discussed above, the summons power conferred by Section 7602 must be broadly construed; and statutory restrictions on that power must be limited to the express Congressional language. *United States v. Euge*, 444 U.S. 707, 711 (1980); *United States v. First Bank*, 737 F.2d 269, 273 (2d Cir. 1984). A "limited construction" of such restrictions is also "supported by the law's general antipathy to the erection of the barriers to the ascertainment of truth." *De Masters v. Arend*, 313 F.2d 79, 87 (9th Cir. 1963) (discussing the Section 7605(b) limitation to the summons power and citing, for this point, *Application of Magnus*, 299 F.2d 335, 337 (2d Cir. 1962), and *McMann v. SEC*, 87 F.2d 377 (2d Cir. 1937)). Thus, strict construction of Section 7609's statutory language is mandated in the absence of evidence of express Congressional purpose to the contrary. *First Bank*, 737 F.2d at 273.

An examination of Section 7609 legislative history reflects Congress' clear intent in this regard.[FN32] The limited definition of the term "third-party recordkeeper" was an extremely late amendment to the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, Section 1205. As originally passed in the House in late 1975, Section 1211 of H.R. 10612, 94th Cong., 1st Sess., proposed the addition of a new provision to the Code which would have granted a taxpayer a statutory right of intervention in a summons enforcement proceeding involving a summons issued to a third party for "books relating to the business or transactions of one or more other persons [*e.g.*, taxpayers] who are identified in the description of the books which are to be produced * * *." 121 Cong. Rec. 38633 (1975). The original proposal made no specific reference to the term "third-party recordkeeper" and broadly described the categories of summonses which would trigger the special notice and intervention provisions. In discussing the proposal, the House Ways and Means Committee Report reinforced this broad view of the provision by stating that it applied "in the case of a third-party summons to a bank, brokerage house, accountant, or other third-party record keeper * * *." H.R. Rep. No. 94-658, 94th Cong., 1st Sess. at 307 (1976-3 Cum. Bull. (Vol. 2) 695, 999).[FN33]

FN32. In enacting Section 7609, Congress did not intend to broaden the substantive defenses a taxpayer may have had under prior law in objecting to enforcement. *United States v. New York Telephone Company*, 682 F.2d 313, 316 (2d Cir. 1982). The purpose of Section 7609, rather, was merely "to facilitate the opportunity of the noticee to raise defenses which * * * [were] available under the law." S. Rep. No. 94-938, 94th Cong., 2d Sess. at 370 (1976-3 Cum. Bull. (Vol. 3) 49, 408). Many potential defenses to enforcement already had been foreclosed by the Supreme Court by the time of Section 7609's enactment. *See, e.g., Couch v. United States*, 409 U.S. 322 (1973); *Donaldson v. United States*, 400 U.S. 517 (1971); *Reisman v. Caplin*, 375 U.S. 440 (1964); *United States v. Powell*, 379 U.S. 48 (1964). Thus, while the moving party in a petition to quash proceeding instituted under Section 7609 is permitted to speak, he may, legally, have little to say.

Exhibit 300-14 Cont. (4)

Form 2039-D

Tax Liability of:

Tax Periods:

Date of Notice:

To:

Address:

Enclosed is a copy of a summons served by the IRS to examine records or to request testimony relating to records which have been made or kept of your business transactions or affairs by the person summoned. If you object to the examination of these records, you may stay (prevent) examination of the records until a summons enforcement proceeding is commenced in court. Compliance with the summons will be stayed if, within 14 days from the date of this notice, you advise the person summoned, in writing, not to comply with the summons, and you send a copy of that notice by certified or registered mail to the Internal Revenue Service at the address shown on the summons. The copy should be sent to the attention of the Internal Revenue Service officer before whom the summoned person is to appear.

The Internal Revenue Service may begin an action to enforce the summons in the United States District Court. In such case you will be notified and you have the right to intervene and present your objections before the court whether or not you have previously objected to examination of the records or the taking of testimony. The court will decide whether or not the person summoned should be required to comply with the summons request. A stay of compliance with the summons or intervention by the taxpayer (or by an agent, nominee or other person acting under the direction or control of the taxpayer) will suspend the running of the statute of limitations for civil liability or for criminal prosecution for offenses under the tax laws for the tax periods to which the summons relates. The suspension is in effect while any proceeding and appeals related to the enforcement of the summons are pending.

The relevant provisions of the law are printed on the back of this notice. If you have any questions regarding this matter, please contact the Internal Revenue Service officer before whom the person summoned is to appear. The officer's name and telephone number are shown on the summons.