



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.5.3

DECEMBER 22, 2016

EFFECTIVE DATE

(12-22-2016)

PURPOSE

- (1) This transmits a revision to IRM 25.5.3, *Summons, Procedures*.

MATERIAL CHANGES

- (1) IRM 25.5.3.2(9), made an editorial change to the first sentence substituting “served” with “given”, and added the IRC reference.

EFFECT ON OTHER DOCUMENTS

IRM 25.5.3 dated August 1, 2016 is superseded.

AUDIENCE

All operating divisions and functions.

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25.5.3
Procedures

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25.5.3.1
(08-01-2016)
Overview

- (1) The Summons Handbook provides guidelines for all IRS functions in one multi-functional handbook. Procedures for the preparation of a summons can be found in IRM 25.5.2, *Summons Handbook, Preparation*. This section provides information and the proper procedures for:

- Service of Summons
- Designated Summons
- Time and Place of Examination Set by Summons
- Records on Encrypted Storage Media
- Electronic Summons Processes

- (2) Various summons forms are discussed throughout this section. Form 2039, *Summons*, assembly consists of six parts:

- a. **Original** Summons with the Service of Summons, Notice, and Record-keeper Certificates on the reverse side;
- b. **Part A** Summons (Attested copy), with a reprint of pertinent IRC provisions on the reverse side;
- c. **Part B** Summons Notice to Third-Party Recipient of IRS Summons with a reprint of IRC § 7609 on the reverse side;
- d. **Part C** Summons Noticee's Copy with a reprint of pertinent IRC provisions on the reverse side;
- e. **Part D** notice explaining the right to contest the administrative summons, with a reprint of IRC § 7609 on the reverse side; and
- f. **Part E** to be given to the corporate taxpayer if the summons is a designated or related summons with a reprint of IRC § 6503(j) on the reverse side.

Note: General instructions for preparation of a summons are found in IRM Exhibit 25.5.2-1, *General Instructions for Preparation of a Summons*.

- (3) Collection personnel may use the following specialized summons forms for specific purposes. (Form 2039 may be used by all personnel, including Collection, for all purposes.)

- a. Form 6637, *Summons Collection Information Statement*, (generally served only on the taxpayer to collect an assessed tax). This form contains the Original and Parts A and B.
- b. Form 6638, *Summons Income Tax Return*, (generally served only on the taxpayer to secure an unfiled return). This form contains the Original and Parts A and B.
- c. Form 6639, *Financial Records Summons*, (may be served on third parties; give notice as required by IRC § 7609). This form contains the original and Parts A through D.

25.5.3.2
(12-22-2016)
Service of Summons

- (1) Serve an attested copy of a summons in accordance with IRC § 7603. The face of the summons given to the summoned person should bear a signed attestation statement. See Form 2039, *Summons*, Form 6637, *Summons Collection Information Statement*, Form 6638, *Summons Income Tax Return*, and Form 6639, *Financial Records Summons*, Part A. Part A of the forms should be:

- a. Handed to the person to whom it is directed (preferred method of service); or

- b. Left at his or her last and usual place of abode by leaving it with a person who is of suitable age and discretion, with instructions that the summons be given to the summoned individual, or by affixing the summons to the front door of the last and usual place of abode by a means that will not mar the finish. The last and usual place of abode is where the person actually lives. It differs from a "last known address." If the summoned person establishes that the service address was not their last and usual place of abode, the defective service could make the summons unenforceable.

Note: A summons should not be prepared in the presence of the taxpayer. This action might encourage the taxpayer to become defiant and non-compliant.

- (2) When serving a summons to an individual and the person refuses to take the summons, place the summons within view and reach of the summoned individual, state what it is and that it is an important legal document.
- (3) Serve a summons issued to a third-party recordkeeper by registered or certified mail (preferred method of service), or personally deliver it to the person to whom it is directed. See IRM 25.5.6.3.2, *Third-Party Recordkeeper*, for an explanation of third-party recordkeepers. Mail the summons to the last known address of the recordkeeper and document the case file by recording the method of service. The summons can be faxed or transmitted electronically if the third-party signed a waiver authorizing service of the summons by fax or electronic transmission. See paragraph (18) below.
- (4) If a witness requests that he or she be served with a summons as evidence of his or her legal duty to produce records, testify, or provide handwriting analysis, and indicates he or she will voluntarily comply, issue the summons for that purpose. This is commonly referred to as a "friendly summons." However, do not follow this procedure with a John Doe summons because such a summons can only be served after approval by a federal district court judge. Serving a John Doe summons without court approval violates the statute and may jeopardize the investigation.
- (5) If information requested by a summons is later determined to be unnecessary, compliance with the summons may be waived by the issuing official, provided the summons is not the subject of litigation. If the summons is the subject of litigation, concurrence of the Counsel office handling the litigation must be obtained before compliance may be waived.
- (6) Witness fees and payments for mileage may be made to all summoned witnesses, whether a third-party witness, the taxpayer, or an officer or employee of the taxpayer. (Refer to IRM 25.5.9.4, *Claims for Witness Fees and Travel Expenses*. Use Standard Form (SF) 1157, *Claims for Witness Attendance Fees, Travel and Miscellaneous Expenses*, for this purpose.)
- (7) The Secretary may reimburse costs that are reasonably necessary and incurred in searching for, reproducing, or transporting records. However, IRC § 7610(b) limits the summoned witnesses that are eligible for reimbursement of costs. IRC § 7610(b)(1) excludes from eligibility third parties summoned to produce records in which the taxpayer has a proprietary interest. IRC § 7610(b)(2) excludes from eligibility the taxpayer or the taxpayer's officer, employee, agent, accountant, or attorney who was acting in that capacity when the summons was served. If the person summoned is a third party entitled to reimbursement, he or she will be given the notice explaining the payment pro-

cedures (Part B of the summons forms); otherwise, discard Part B. See IRM 25.5.9, *Fees and Costs for Summoned Witnesses*, for further information.

- (8) If the summons is served on a third party, and the taxpayer (and any other person) is entitled to notice of its issuance, provide Part C of Forms 2039 or 6639 to the noticee. Include Part D of the summons, which explains the right to contest the administrative summons. Under IRC § 7609(a)(2), the notice of the summons (Part C and Part D) can be hand-delivered to the noticee, or sent by certified or registered mail to the last known address of the noticee. If more than one person is entitled to notice of the summons, Parts C and D may be reproduced to provide such notification. See IRM 25.5.6.3.8, *Noticee*, regarding who is entitled to notice. More than one person is entitled to notice of the summons, for example, in a situation where a bank account is listed in two names even if the two persons reside at the same address.

Note: The copy of the summons provided to the noticee, Part C of the summons form, is not required to bear an original signature. However, the copy served on the summoned party, Part A, must bear an original signature and title of the IRS official serving the summons. An electronic or manual signature is an original signature. See IRM 25.5.2.2, *Preparation and Use*.

- (9) The required notice to an overseas addressee may be given via registered mail to the overseas entity's or individual's last known address under IRC § 7609(a)(2). If the IRS is unable to locate any last known address for the overseas noticee, the IRS has the option under IRC § 7609(a)(2) of leaving the notice copy for the noticee with the summoned party.
- (10) Notice from the IRS under IRC § 7609(a) is not required under the circumstances described in IRC § 7609(c), including any summons **served on the person with respect to whose liability the summons is issued or any officer or employee of such person**. IRC § 7609(c)(2)(A). If a summons is excepted from the notice requirements of IRC § 7609(a), then such notice need not be provided because the summons fits into an exception to the notice requirements of IRC § 7609, discard the second copy (Part C) and the notice of explanation of rights (Part D).
- (11) Provide Part D (noticee copy) of Forms 2039 or 6639 to the taxpayer and other required notices. If the taxpayer for whose liability a summons was issued files a petition to quash the summons (or intervenes in any suit concerning enforcement of the summons), the periods of limitation for assessment of tax liabilities and for criminal prosecutions will be suspended pursuant to IRC § 7609(e)(1) for the tax periods to which the summons relates. The suspension will be effective while any proceeding (or appeal) with respect to the summons is pending. Part E of Form 2039 should only be given to the corporate taxpayer if the summons is a designated or related summons.
- (12) When investigating the liability of a husband and wife who filed a joint return, serve a separate summons on each spouse if it is necessary to obtain records or testimony from both spouses. However, if only one spouse has custody or control of all of the records that may be relevant to the investigation, or if the Service needs the testimony of only one spouse, serve only the spouse from whom the records or testimony is sought.

Note: These summonses are treated by the IRS as third-party summonses to which the notice requirement of IRC § 7609(a) applies. If only one spouse is summoned, the other spouse should be given notice under IRC § 7609(a) as

a person identified in the summons. Even when both spouses are summoned (by issuing and serving separate summonses), each spouse should be given notice of the other spouse's summons. This procedure preserves each spouse's opportunity to move to quash the summons served on his or her spouse. See IRM 25.5.6.3.1.2, *Summons Served to Examine a Married Person's Joint Return*.

- (13) When issuing a summons to a person in his or her capacity as trustee, receiver, custodian, corporate or public official, the person's title or position and the name of the entity should be added. For example, a summons for the testimony of a corporate president would read, "Mr. S, as president of XYZ Corporation."
- (14) A summons may be issued to a corporation for the production of corporate records. If the summons is directed to the custodian of records, it must be personally served on the custodian. If the summons is directed solely to the corporation, it must be personally served on a corporate officer or a person authorized to accept service of the summons on behalf of the corporation. Although IRC § 7603 provides that a summons may be served by leaving it at the summoned person's "last and usual place of abode," this rule does not apply when a corporation is the summoned party because a corporation has no abode. Consequently, do not serve a summons on a corporation by leaving it at the custodian's or the authorized person's place of abode. They are not the summoned corporation; they merely represent that entity.
- (15) Any copy of a summons given to the person summoned should contain the following statement of attestation: "I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original."
- (16) The back of the original summons must have a statement that the copy served contained the required attestation.
- (17) After the summons has been served, complete the certificate of service on the reverse side of the original summons and include the signature of the employee who served the summons. Place the summons form marked "Original" in the administrative file in the office of the issuing division for use in enforcement litigation.

Note: If the summoned party fails to comply with the requirements of the summons, see IRM 25.5.10, *Enforcement of Summons*, for enforcement procedures.

- (18) A summoned witness may waive proper service of the summons by signing a waiver. The waiver should be in writing and the Service should obtain the waiver from the witness in advance of serving the summons. The waiver can authorize service of the summons by certified mail, by fax, or by electronic transmission. Examples of waivers can be found on the mySBSE Credit Card Processors web page at <http://mysbse.web.irs.gov/examination/tip/summons/jobaids/12434.aspx>.

25.5.3.2.1
(07-11-2013)
**Service of Summons in
Other Areas**

- (1) To serve a summons in another area:

- Collection should issue an Other Investigation (OI) -- Summons Activity, via the Integrated Collection System (ICS) for service of the summons in the receiving area.
- Exam/TEGE should use Form 2209, *Courtesy Investigation*, to send the summons to the other area to request that it be served.
- Criminal Investigation should prepare a collateral request for this purpose.

- (2) The initiating area should prepare the summons for issuance. The receiving area will complete the spaces on the summons indicating the name, address, and telephone number of the IRS employee before whom the summoned party is required to appear, as well as the place and time for appearance.
- (3) Collection employees should contact Advisory for guidance on serving a summons on an individual or entity located outside of the United States.

25.5.3.2.2
(08-01-2016)

Issuing a Summons for Service in Another Area and Summoning Information From a Foreign Organization or Individual-Examination

- (1) Coordination and cooperation is necessary between the examining office and another area.
 - a. When conducting an IRC § 482 examination, it may be necessary to summon a person living or doing business in another area. If so, obtain approval to issue the summons from the Area Director for the area in which the examination is taking place.
 - b. If the summons crosses area lines, the originating area will forward the summons to the area requested to cooperate.
 - c. The examining office will provide a completed summons (if possible), and a memorandum explaining the need for the information, and the assistance needed from the cooperating office.
 - d. The examining office has the basic authority and responsibility for issuing the summons and for its enforcement. The cooperating office acts solely as an agent of the examining office.
 - e. Forward judicial enforcement requests to Associate Area Counsel where the examining office is located.
- (2) Documents related to foreign accounts or entities may often be obtained by use of a summons. For countries with which the United States has tax treaties or tax information exchange agreements (TIEAs), examiners generally may request information that is either in the other country's possession or obtainable under the laws of the particular country. Tax treaties and TIEAs generally provide that the parties are not obligated to provide information that would disclose any trade or business secret. All requests for foreign information are made through the Commissioner, LB&I (or his delegate) who is the U.S. Competent Authority for tax treaties and TIEAs. See Delegation Order 4-12 for the current delegated offices within the Deputy Commissioner (International) (LB&I). Also, see Chief Counsel Directives Manual *CCDM 34.6.3.6.6, Tax Treaty and TIEA Summonses*, for procedures in the handling and the enforcement of Tax Treaty and TIEA exchange of information requests.
- (3) Consult with Area Counsel prior to sending the summons to determine if the summons will be enforced if the taxpayer or third party does not comply. Area Counsel will coordinate with the Office of Associate Chief Counsel (International).

25.5.3.2.3
(08-01-2016)

**Summonses Issued in
U.S. Territories**

- (1) The IRS can obtain information regarding entities and persons in the U.S. territories of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, Puerto Rico, and the U.S. Virgin Islands. Prior to issuing any summons, however, the IRS must generally notify the tax department of those territories. This notification must be made through the LB&I U.S. Territories Program (SE:LB:IN:ADCI:TAIT) or the IRS Disclosure Office handling the U.S. territories.
- (2) The United States has entered into tax coordination and tax implementation agreements with each of the territories. The requirement to notify the territory tax department prior to issuing a summons is found in the agreements with American Samoa, Puerto Rico and the U.S. Virgin Islands. While not required by the agreements with the CNMI and Guam, the IRS also provides notification to their tax departments before issuing a summons in those territories.
- (3) For more information, see the LB&I International U.S. Territories Program intranet website at http://lmsb.irs.gov/international/dir_treaty/eoi_overseas/insular/index.asp.

25.5.3.2.3.1
(07-11-2013)

**Procedures for
Notification of Summons**

- (1) Any IRS personnel (officer, agent, etc.) who issues any summons (direct, third party, etc.) to an entity located in American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, Puerto Rico or the U.S. Virgin Islands must:
 - a. Fax a copy of only the first page of the summons to the Disclosure Office handling the U.S. Territories. The appropriate disclosure office can be located by visiting the Disclosure web site at <http://discl.web.irs.gov/contact.asp>.
 - b. If the taxpayer's EIN/SSN is needed, the IRS can provide that information in a cover document or letter as indicated in IRM 25.5.2.4(5), *Description of Information Requested*; this would avoid disclosing such sensitive information to anyone entitled to notice under IRC § 7609(a).
- (2) For questions about these instructions or the Exchange of Information provisions in our Tax Implementation Agreements and Tax Coordination Agreement with these three U.S. Territory jurisdictions, please contact the U.S. Territories Program Manager (Deputy Commissioner LB&I), or the Governmental Liaison, U.S. Territories.

25.5.3.2.4
(01-22-2010)

**Responsibilities of
Disclosure Office
Personnel**

- (1) The following actions should be taken by Disclosure Office personnel when serving a summons in U.S. Territories:
 - a. Release (fax) the summons notification information to the appropriate Revenue and Tax agency; and
 - b. Complete the necessary IRS Disclosure and Third Party Notice accounting requirements.

25.5.3.3
(07-11-2013)

Designated Summons

- (1) In general, the assessment statute that applies to a corporate tax return being examined under the IRS's Coordinated Issue Case (CIC) program is suspended under IRC § 6503(j) when a court proceeding is brought to enforce or defend a designated or related summons issued to examine that return. The suspension provision for designated and related summonses was enacted to address the refusal by some corporate taxpayers to disclose information necessary to the examination, such as by transferring the records to another

entity, and the refusal to extend the limitations period, thus forcing the IRS to issue notices of deficiency before fully examining the return.

- (2) In general, the suspension arises on and continues throughout the judicial enforcement period, which begins on the day the court proceeding is brought and continues until the day the summoned person fully complies with the enforcement order, plus an additional 120 days if the court orders compliance with any part of the summons. If the court orders no compliance, the assessment statute will not expire before 60 days after the date of final resolution. As described more fully throughout these IRM subparagraphs, the suspension provisions contain concepts, such as judicial enforcement period, compliance, final resolution, and others, that have technical definitions which take into account several variables, such as appeal periods and collateral proceedings. To fully understand and correctly determine the IRC § 6503(j) suspension, it is necessary to read this entire IRM section and understand how each concept relates to the others.

25.5.3.3.1
(07-11-2013)

**Conditions a Designated
Summons Must Meet**

- (1) For a summons to be a designated summons under IRC § 6503, it must satisfy the following conditions:
 - a. A designated summons may only be issued to a corporation (or to any other person to whom the corporation has transferred records) as part of an examination of the corporation's tax return for a tax period being examined under the CIC program (or any other successor to the coordinated examination program);
 - b. The Division Commissioner and the Division Counsel of the Office of Chief Counsel (or their successors) for the organizations having examination authority over the taxpayer corporation have reviewed the summons before it is issued;
 - c. The summons is issued and served at least 60 days before the day the statute of limitations on assessment expires (determined with regard to extensions);

Note: In determining whether a designated summons has been issued and served at least 60 days before the day the statute of limitations on assessment expires, the provisions of IRC § 7503 apply when the last day of the assessment period falls on a Saturday, Sunday, or legal holiday.
 - d. The summons states that it is a designated summons for purposes of IRC § 6503(j). Specifically, there must be a statement at the top of the summons that reads: "This is a designated summons pursuant to IRC § 6503(j)."
- (2) Only one designated summons may be issued for an examination of a specific taxable year or period. A designated summons may cover more than one taxable year or period. The designated summons may require production of information that was sought in a prior summons (other than a designated summons) issued during the examination of that particular corporation if that information was not previously produced.

25.5.3.3.2
(07-11-2013)

**Conditions a Related
Summons Must Meet**

- (1) For a summons to be a related summons under IRC § 6503, it must satisfy the following conditions:

- a. A related summons must relate to the same corporate return as the designated summons;
 - b. A related summons must have been issued (served) during the 30-day period that begins on the day the designated summons was issued; and
 - c. A related summons can be issued to any person, including the person to whom the designated summons was issued, or any third person.
- (2) There is no restriction on the number of related summonses that may be issued to examine the corporate return.
 - (3) A related summons may request the same information as the designated summons, from a different witness.

25.5.3.3.3
(07-11-2013)

**Concepts Key to Correct
Application of IRC §
6503(j) Suspension**

- (1) The taxpayer corporation's period of limitations on assessment is suspended under IRC § 6503(j) during the judicial enforcement period relating to a designated or related summons. If the court orders any compliance with the summons, the suspension shall continue for 120 days after the close of the judicial enforcement period. If the court does not order any compliance with the summons, the period of limitations on assessment shall not expire before the 60th day after the end of the judicial enforcement period.
- (2) To properly apply this rule and correctly calculate the suspension period, it is essential to define several concepts. They are "judicial enforcement period," "court proceeding," "date when proceeding is no longer pending," "compliance," "the date compliance occurs," and "final resolution."

25.5.3.3.3.1
(07-11-2013)

**Judicial Enforcement
Period**

- (1) The judicial enforcement period is the period that begins on the day a court proceeding, defined below in IRM 25.5.3.3.3.2, *Court Proceeding*, is begun with respect to a designated or related summons and ends on the day on which there is a final resolution of the summoned person's response to that summons.

25.5.3.3.3.2
(07-11-2013)

Court Proceeding

- (1) A court proceeding is a proceeding filed in a United States district court either to quash a designated or related summons under IRC § 7609(b)(2) or to enforce a designated or related summons under IRC § 7604. A court proceeding includes any collateral proceeding, such as a civil contempt proceeding.
- (2) For the period of limitations on assessment to be suspended under IRC § 6503(j), a court proceeding to enforce or quash a designated or related summons must be instituted within the IRC § 6501 period of limitations on assessment that otherwise applies to the corporate tax return.

25.5.3.3.3.3
(07-11-2013)

**Date When Proceeding
Is No Longer Pending**

- (1) A proceeding to quash or to enforce a designated or related summons is no longer pending when all appeals (including review by the Supreme Court) are disposed of or after the expiration of the period in which an appeal may be taken or a request for further review (including review by the Supreme Court) may be made.
- (2) If, however, following an enforcement order, a collateral proceeding is brought challenging whether the testimony given or production made by the summoned party fully satisfies the court order and whether sanctions should be imposed against the summoned party for failing to so testify or produce, the proceeding to quash or to enforce the summons shall include the time from which the proceeding to quash or to enforce the summons was brought until the decision in

the collateral proceeding becomes final. The decision becomes final on the date when all appeals (including review by the Supreme Court) are disposed of or when all appeal periods or all periods for further review (including review by the Supreme Court) expire. A decision in a collateral proceeding becomes final when all appeals (including review by the Supreme Court) are disposed of or when all appeal periods or all periods for further review (including review by the Supreme Court) expire.

25.5.3.3.3.4
(07-11-2013)

**Compliance and the
Date Compliance Occurs**

- (1) Compliance is the giving of testimony or the performance of an act or acts of production, or both, in response to a court order concerning the designated or related summons and the determination that the terms of the court order have been satisfied.
- (2) Compliance with a court order that wholly denies enforcement of a designated or related summons is deemed to occur on the date when all appeals (including review by the Supreme Court) are disposed of or when the period in which an appeal may be taken or a request for further review (including review by the Supreme Court) may be made expires.
- (3) Compliance with a court order that grants enforcement, in whole or in part, of a designated or related summons, occurs on the date the IRS determines that the testimony given, or the books, papers, records, or other data produced, or both, by the summoned party fully satisfy the court order concerning the summons. The IRS will determine whether there has been full compliance within a reasonable time, given the volume and complexity of the records produced, after the later of the giving of all testimony or the production of all records requested by the summons or required by any order enforcing any part of the summons. See the following subparagraph for a further explanation and examples of the reasonable time requirement that the IRS must meet when reviewing records.
- (4) The following are non-exclusive examples of reasonable time periods within which the IRS must determine whether the summoned corporate taxpayer or a third person served with a designated or related summons has fully complied with that summons. These examples do not constitute suggested time frames because each case is different and will turn on its own facts and circumstances:

Example: The IRS served a designated summons on the corporate taxpayer to produce its records showing the original purchase price of certain capital assets acquired from a foreign vendor. The Government sued to enforce the designated summons, and the court ordered it enforced. The taxpayer produced the records, consisting of ten pages written in English, ten months after the date the suit was filed. The examiner should require no more than two business days to review the records and determine whether they are complete and whether the taxpayer has complied with the summons. Compliance occurred two business days after the taxpayer provided the records to the examiner.

Example: The IRS served a related summons on a third party to produce ten leases entered into by three foreign business entities controlled by the corporate taxpayer. The Government sued to enforce the related summons, and the court ordered it enforced. Pursuant to the enforcement order, the third party produces the ten documents on May 1. Six of the documents are written in English and are each under ten pages in

length, but four documents are written in an obscure foreign language and total 40 pages. The IRS has no employees who can interpret the documents and must contract with an outside source to have the documents translated. The process of obtaining an outside contractor and receiving the English translation takes three months. The examiner obtains the translation on August 1 and takes five business days to review the leases and determine that they are complete and that the summons is satisfied. Compliance occurred five business days after August 1.

Example: The IRS summoned a taxpayer corporation to produce all documents, described both generically and as specifically as possible in the summons, that relate to complex series of transactions among related entities. After the Government sued for enforcement and the court ordered the summons enforced, the taxpayer turned over 50 boxes of information, containing approximately 800 documents, written in English. The documents are not indexed, nor are they arranged in any discernible order. It takes a team of three revenue agents eight months to organize, catalog, and review the documents and then compare the information to the summons request. Once the comparison is complete, the agents conclude that the taxpayer complied with the summons. Compliance occurred eight months after the taxpayer turned over the documents.

- (5) If, following an enforcement order, collateral proceedings are brought challenging whether the production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failure to do so, the suspension of the periods of limitations shall continue until the order enforcing any part of the summons is fully complied with and the decision in the collateral proceeding becomes final. A decision in a collateral proceeding becomes final when all appeals are disposed of, the period in which an appeal may be taken has expired or the period in which a request for further review may be made has expired.

25.5.3.3.3.5
(07-11-2013)
Final Resolution

- (1) Final resolution occurs when the designated or related summons or any order enforcing any part of the designated or related summons is fully complied with and all appeals or requests for further review are disposed of, the period in which an appeal may be taken has expired, or the period in which a request for further review may be made has expired.

25.5.3.3.4
(07-11-2013)
Contemporaneous Documentation Requirement

- (1) As soon as the summoned person produces any of the information, the examiner will determine, consistent with the reasonable time standard discussed above in IRM 25.5.3.3.3.4, *Compliance and the Date Compliance Occurs*, whether the production constitutes full compliance. The examiner will keep contemporaneous, written records in the administrative file of all matters concerning the summoned person's compliance or failure to comply with the summons. The purpose for keeping a written record as part of the administrative file is to establish and preserve a contemporary evidentiary basis to support the IRS's determination of final resolution in court.

- (2) If the summoned person's production does not fully comply with the enforcement order, either in whole or in part, the examiner shall promptly contact the summoned person in writing, using Letter 5140, *Designated and Related Summons*. See Exhibit 25.5.3-1, *Designated and Related Summons*. The letter states that the production is insufficient and describes the information the summoned person must produce to comply with the court order. Mail a copy of this letter to the taxpayer (if different from the summoned person) on the same date on which it is mailed to the summoned person. This letter informs both the summoned person and the taxpayer (if different from the summoned person) that the summoned person's failure to fully comply with the court order is prolonging the suspension of the taxpayer's period of limitations on assessment. This procedure should be followed every time the summoned person produces information pursuant to the summons.

Note: The purpose for providing the taxpayer (if different from the summoned person) with copies of the form letters is to keep the taxpayer informed of the events that may prolong the suspension of its periods of limitation on assessment. The letter also contains a provision advising the taxpayer that the taxpayer may contact the examiner for information concerning the suspension under IRC § 6503(j).

- (3) In cases in which the documents produced are voluminous, written in a foreign language, or present any other complicating factor, the examiner will document the particular complication in the administrative file to enable the Government to credibly show a court why it took the time spent to determine final resolution.

25.5.3.3.5
(07-11-2013)
**Time Court Proceedings
Must Be Brought**

- (1) As stated above in IRM 25.5.3.3.3.2, *Court Proceeding*, for the period of limitations on assessment to be suspended under IRC § 6503(j), a court proceeding to enforce or quash a designated or related summons must be instituted within the IRC § 6501 period of limitations on assessment that otherwise applies to the corporate tax return.

25.5.3.3.6
(07-11-2013)
**Computation of
Suspension in Case of
Multiple Court
Proceedings**

- (1) If more than one court proceeding is instituted to enforce or quash a designated summons or one or more related summonses concerning the same tax return, the period of limitations on assessment is suspended beginning on the date the first court proceeding is brought. The suspension ends on the date that is the latest date on which the judicial enforcement period, plus the 120 day or 60 day period (depending on whether the court requires any compliance), expires with respect to each summons.

25.5.3.3.7
(07-11-2013)
**Effect on Other
Suspension Periods**

- (1) Suspensions of the period of limitations on assessment under IRC § 6501 provided for under IRC §§ 7609(e)(1) and (e)(2) do not apply to any designated or related summons under IRC § 6503(j). The suspension under IRC § 6503(j) of the period of limitations on assessment under IRC § 6501 is independent of, and may run concurrent with, any other suspension of the period of limitations on assessment that applies to the tax return to which the designated or related summons relates.

25.5.3.3.8
(07-11-2013)

Examples of Computations Of the Suspension Period Under IRC § 6503(j) and of The Application of the Rules Governing the Computations

- (1) The period of limitations on assessment against Corporation P, a calendar year taxpayer, for its 2007 return is scheduled to end on March 17, 2011. (Ordinarily, Corporation P's returns are filed on March 15th of the following year, but March 15, 2008, was a Saturday, and Corporation P timely filed its return on the subsequent Monday, March 17, 2008, making March 17, 2011, the last day of the period of limitations on assessment for Corporation P's 2007 tax year.) On January 4, 2011, a designated summons is issued to Corporation P concerning its 2007 return. On March 3, 2011 (14 days before the period of limitations on assessment would otherwise expire with respect to Corporation P's 2007 return), a court proceeding is brought to enforce the designated summons issued to Corporation P. On June 6, 2011, the court orders Corporation P to comply with the designated summons. Corporation P does not appeal the court's order. On September 6, 2011, agents for Corporation P deliver material that they state are the records requested by the designated summons. On October 13, 2011, a final resolution to Corporation P's response to the designated summons occurs when it is determined that Corporation P has fully complied with the court's order. The suspension period applicable with respect to the designated summons issued to Corporation P consists of the judicial enforcement period (March 3, 2011, through October 13, 2011) and an additional 120-day period under IRC § 6503(j)(1)(B), because the court required Corporation P to comply with the designated summons. Thus, the suspension period applicable with respect to the designated summons issued to Corporation P begins on March 3, 2011, and ends on February 10, 2012. Under the facts of this example, the period of limitations on assessment against Corporation P further extends to February 24, 2012, to account for the additional 14 days that remained on the period of limitations on assessment under IRC § 6501 when the suspension period under IRC § 6503(j) began.
- (2) Assume the same facts set forth above in IRM 25.5.3.3.8(1) except that in addition to the issuance of the designated summons and related enforcement proceedings, on April 5, 2011, a summons concerning Corporation P's 2007 return is issued and served on individual A, a third party. This summons is not a related summons because it was not issued during the 30-day period that began on the date the designated summons was issued. The third-party summons served on individual A is subject to the notice requirements of IRC § 7609(a). Final resolution of individual A's response to this summons does not occur until February 15, 2012. Because there is no final resolution of individual A's response to this summons by October 5, 2011, which is six months from the date of service of the summons, the period of limitations on assessment against Corporation P is suspended under IRC § 7609(e)(2) to the date on which there is a final resolution to that response for the purposes of IRC § 7609(e)(2). Moreover, because final resolution to the summons served on individual A does not occur until after February 10, 2012, the end of the suspension period for the designated summons, the period of limitations on assessment against Corporation P expires 14 days after the date that the final resolution as provided for in IRC § 7609(e)(2) occurs with respect to the summons served on individual A.

25.5.3.3.9
(07-11-2013)

Third-Party Notice Requirement of IRC § 7609

- (1) If a designated or related summons is served on a third-party, such as when a designated summons is served on a person to whom the corporation transferred its records or when a related summons is served on any third person, the third-party notice procedures of IRC 7609 apply. Give notice of the designated or related third-party summons to the taxpayer corporation.

Note: Pursuant to the regulations promulgated under IRC § 6503(j), only the suspension provision under IRC § 6503(j) applies to designated or related summonses. The suspension provisions of IRC § 7609(e) do not apply.

25.5.3.3.10
(08-01-2016)

**Approvals Required
Before a Designated or
Related Summons may
Be Served**

- (1) As indicated above in IRM 25.5.3.3.1 (1) b), *Conditions a Designated Summons Must Meet*, designated summons must be pre-reviewed by the Division Counsel and Division Commissioner for the organizations having examination authority over the taxpayer corporation.
- (2) Both designated and related summonses must be pre-approved by a Field Territory Manager or Practice Area Program Manager in the area that will issue the summonses.
 - a. If approved by the Territory Manager or Practice Area Program Manager, forward the summons to the Associate Area Counsel for review and coordination at the area level.
 - b. A memorandum should accompany the summons to the Territory Manager or Practice Area Program Manager and the Associate Area Counsel, explaining why the taxpayer refused to extend the statute of limitations for assessment. If the summons is to be issued near the end of the period permitted by IRC § 6503(j), the memorandum should explain why the summons was not issued at an earlier date. In addition, the memorandum should contain sufficient factual background to establish that all procedural requirements for issuing the summons have been met.
 - c. After securing the approval of the Territory Manager or Practice Area Program Manager and the Associate Area Counsel, forward the summons and the supporting memorandum through their respective management channels to the Division Counsel and the Division Commissioner for simultaneous consideration.
 - d. The running of the period of limitations will not be suspended under IRC § 6503(j) if no enforcement suit is filed because, for example, the designated or related summons was voluntarily complied with.
 - e. The statute of limitations will be suspended by filing suit to enforce a related summons, even when the taxpayer has complied with the designated summons. Examiners should consult with Associate Area Counsel on whether the IRS should seek to suspend the statute based solely on a suit to enforce a related summons.
- (3) After review, Associate Area Counsel will notify Examination whether the summons should be issued.

25.5.3.3.11
(07-11-2013)

**Recording and Tracking
The Suspension in
Computer Records With
Alpha Codes**

- (1) In general, the suspension arises on the day the court proceeding is brought and continues until the day the summoned person fully complies with the enforcement order, plus an additional 120 days if the court orders compliance with any part of the summons. If the court orders no compliance, the assessment statute will not expire before 60 days after the date of final resolution.
- (2) In the instance of a suspended statute of limitations, Counsel will notify Examination of the filing of the suit so that the statute can be updated accordingly.
- (3) The examiner responsible for the case will:

- a. Update the statute using the alpha code: "PP" to identify the irregular statute date.
- b. Remove the alpha code "PP" when the suspension expires.
- c. Update the statute date when the suspension period ends.

25.5.3.4
(08-01-2016)

**Time and Place of
Examination Set by
Summons**

- (1) Generally, the following guidelines apply to all summonses:
 - a. The time and place of examination must be reasonable.
 - b. The date for appearance should not be on a Saturday, Sunday, or a legal holiday.
 - c. If a prospective witness is cooperative, the summons should be made returnable, if feasible, at the place that suits the witness' convenience at an office located within the witness' commute area.
 - d. If the witness is uncooperative or attempts to hamper the investigation, it may be best to have him or her appear and produce his or her records at the IRS office located nearest the summoned person. See Item 9 of IRM Exhibit 25.5.2-1, *General Instructions for Preparation of a Summons*.
 - e. In computing the time period for appearance or production of records, do not include the date of service or the date of appearance within the 10 or 23 day waiting periods.
- (2) If the summons is directed to a third party and is subject to the notice and waiting period requirements of IRC § 7609:
 - a. Set the date for appearance at least 24 days after the date notice of the summons is given.
 - b. Do not accept records from the summoned third party prior to the date of appearance because noticees have the right during this time period to initiate proceedings to quash the summons. See "Note" in IRM 25.5.6.2(1), *General*.
 - c. If a proceeding to quash has properly been instituted, do not examine records unless the court so orders or the noticee who has instituted the proceeding consents.
- (3) If the summons is not subject to IRC § 7609 requirements, the date for appearance must be not less than 10 full days after the date of service, but the summoned person may voluntarily comply at an earlier time.
- (4) A third-party witness may request service of a summons as evidence of a legal duty to testify or produce records. If the summons is not subject to IRC § 7609 notice and waiting period requirements, the date for appearance is 10 or more days after service of the summons even if the person expects to respond on an earlier date. (See IRC § 7609(c)(2) and IRM 25.5.6, *Summonses on Third-Party Witnesses*, for a discussion of third-party summonses not subject to the 23 day waiting period of IRC § 7609.)

Note: Do not use this procedure when the taxpayer or other person is entitled to a notice. Do not use this procedure for a John Doe summons, which may only be served after approval by a federal district court judge.

- (5) If a summoned witness for a valid reason (such as illness) cannot appear on the date fixed in the summons, the date may be continued by mutual agreement. To formally extend the compliance date of the summons:

- a. Obtain the approval of the new summons compliance date from the IRS employee who approved the issuance of the original summons.
 - b. Prepare a letter to the summoned party and include the:
 - Date of the original summons,
 - New compliance date, and
 - Name of the summoned party.
 - c. The IRS employee who issued the original summons should sign the letter.
 - d. Mail the letter by certified mail or hand deliver it to the summoned party.
- (6) If the issuing IRS employee has problems obtaining compliance on the extended appearance date, consult Associate Area Counsel for possible remedies.
- (7) IRC § 7605 governs the time and place of appearance. The place of appearance should generally be in the nearest city with an IRS office of the same IRS operating division (e.g. SBSE or LB&I). Alternatively, a witness may request and the IRS may agree to interview a witness at another convenient location, such as his POA's office. The summons interview may be before a cooperating IRS agent in the office for appearance, and the issuing office agent may participate in the summons interview by speakerphone. Consult Associate Area Counsel for guidance. The nearest IRS office to the summoned party can be found at <https://apps.irs.gov/app/officeLocator/index.jsp>.

25.5.3.5
(08-01-2016)
**Records on Encrypted
Storage Media**

- (1) Due to financial, banking, and privacy laws, third parties may respond to summonses by providing electronic records on encrypted storage media (e.g. CD, DVD or USB drives).
- (2) When a third-party provides the records on encrypted storage media, process the storage media in accordance with IRM 10.8.1, *Informational Technology (IT) Security, Policy and Guidance*.
- (3) The storage media must first be scanned for viruses in a stand-alone environment (not connected to the IRS network). See IRM 10.8.1.4.10.6(2), *MP-7 Media Use*.
- (4) The storage media may require a decryption software program to access the records. **Do not** run any executable files found on the storage media (e.g. a file with the .exe extension). For help with decrypting storage media, or with assistance on whether or not storage media can be opened, send an email to **SBSE E-Summons Decryption Team*. The requests will be worked in the order received. The customer will be contacted by a specialist to assist with extracting the data within 7 to 10 days. Include in the email:
 - The need for assistance with extracting electronic summoned data,
 - The name of the financial institution, and
 - The number of CDs or DVDs.
- (5) Once records are retrieved from the storage media, copy the original files to a CD or DVD disc for the administrative case file. See IRM 25.5.3.6.2.2, *Saving Records for Administrative Case File*, for instructions.

- (6) When the case is closed, follow the procedures in IRM 2.7.4, *Information Technology (IT) Operations, Magnetic Media Management*, for proper destruction of the original storage media received from the summons. **Do not** store the original encrypted storage media with the administrative case file. For questions, send an email to **IT Media Destruction*.

25.5.3.6
(08-01-2016)

Electronic Summons Processes

- (1) There are two types of electronic summons processes.
- One method is for the examiner to both serve the summons and later retrieve the records. The examiner serves the summons by uploading the summons to the electronic portal. The third party notifies the examiner by email when the records are ready for retrieval. The examiner returns to the electronic portal to retrieve the records. This process is a two-way transmission process.
 - The second method is to use an electronic summons process to only retrieve records. The summons is served in the normal manner (e.g. hand delivery, certified mail, or fax). The third party notifies the examiner by email when the records are ready for retrieval. The examiner retrieves the records from the electronic portal. This process is a one-way transmission process.
- (2) The employee's email address is **required** to use electronic summons processes. Employees can provide the email address on the face of the summons, or provide the email address on a cover letter. The third party sends notification by email when the records are ready. The third party will call the examiner if the email address is not provided on the summons or on a cover letter.
- (3) The benefits for using an electronic summons process are:
- Faster receipt of information
 - Better protection of taxpayer information
 - Lower cost to both the third party and to the IRS
 - Summoned records can be retrieved from any location
 - Some records are in electronic format and can be imported into a user database or spreadsheet application, such as Microsoft Excel or Access
- (4) Send an email to **SBSE E-Summons Decryption Team* for questions on electronic summons processes.

25.5.3.6.1
(08-01-2016)

Electronic Service of Summons

- (1) A third party may request examiners to serve the summons electronically through a summons portal or by fax. When the records are ready, the examiner returns to the summons portal to retrieve documents electronically. See IRM 25.5.3.6.2 below for electronic retrieval of records.
- (2) Use of a summons portal to both serve a summons and later retrieve the documents electronically (a two-way transmission) requires a Memorandum of Understanding (MOU) between the third party and the IRS.
- (3) The third party is also required to sign a waiver authorizing the IRS to electronically serve the summons through the portal. The authorization waives the IRC § 7603 service requirements.
- (4) Use of a summons portal for two-way transmission requires formal approval from multiple business units, including IT Cybersecurity and Privacy.

- (5) Job aids for approved electronic summons processes can be found on the MySB/SE web pages at: <http://mysbse.web.irs.gov/collection/toolsprocesses/Enforcement/Summons/jobaids/default.aspx> and <http://mysbse.web.irs.gov/examination/tip/summons/jobaids/default.aspx>.

25.5.3.6.2
(08-01-2016)
**Electronic Retrieval of
Records**

- (1) The third party may request examiners to retrieve documents through an electronic summons portal.
- (2) When the records are ready for retrieval, the third party notifies the examiner by secure email.
- (3) Multiple emails may be sent by the third party's summons process. One email contains instructions on how to retrieve the records. A URL web link to the records is embedded in the email. A second email may be sent containing a password or passcode which is used to log into the summons portal.
- (4) Access to the summons portal is time limited and expires after a number of days. Examiners are encouraged to download the records to their workstations (e.g. laptop or desktop computer) as soon as the period to quash the summons expires.
- (5) For additional information, refer to the job aids for approved electronic summons processes found on the MySB/SE web pages at: <http://mysbse.web.irs.gov/collection/toolsprocesses/Enforcement/Summons/jobaids/default.aspx> and <http://mysbse.web.irs.gov/examination/tip/summons/jobaids/default.aspx>.

25.5.3.6.2.1
(08-01-2016)
**Accessing Records
Through URL Web Links**

- (1) Use of a secure summons portal to only access records from a URL web link does not require a MOU. If you are unsure if the summons portal is secure, send an email to **SBSE E-Summons Decryption Team* before accessing an electronic summons portal through a URL web link.
- (2) Access to a third party secure web site to download records is allowed as long as the examiner:
 - Has a business need to access the site;
 - Does not download executable files or software applications (e.g. Java, ActiveX);
 - Uses the site to only download records; and,
 - Does not upload the summons or PII data to the summons portal.
- (3) The third party notifies the examiner by secure email when the records are ready for electronic retrieval. Examiners access the records through the link contained in the email.
- (4) When the examiner accesses the web site, CSIRC's security technologies inspect the connection to ensure none of the IRS security related policies is violated. If the web site is restricted, the Block Page message displays the following information instructing the examiner how to access the restricted web site:
"To request access to a restricted web site for business purposes or to report an inaccurately categorized web site, complete and submit the *Internet Content Filtering Change Request Form*."

- (5) The examiner will need to click on the *Internet Content Filtering Change Request Form* link contained within the Block Page message to provide the business justification to access the web site. CSIRC processes the examiner's request to allow access to the web site to download the documents.
- (6) Some summons portals require the examiner to register or create an account on the summons web site prior to accessing the records. The examiner is prompted to register and create a password when they click on the link embedded in the summons process email.
- (7) The URL web link is typically time limited, expiring after a certain number of days. Examiners are encouraged to download the records to their workstations (e.g. laptop or desktop computer) as soon as the period to quash the summons expires. Contact the third party to re-activate the URL web link whenever there is a delay in accessing the records.

25.5.3.6.2.2
(08-01-2016)

**Saving Records for
Administrative Case File**

- (1) Once the case investigation is complete, the electronic records need to be saved on encrypted storage media such as a CD or DVD disc. IRS security policy requires encryption of all sensitive data stored on removable media. See IRM 10.8.1.4.10.3, *MP-4 Media Storage*, and IRM 10.8.1.4.10.3.1, *Portable Electronic Devices (PEDs) as Storage Media*.
- (2) The Symantec Endpoint Encryption program, formerly known as Guardian Edge Removable Storage (GERS), includes a CD-DVD burning program that automatically encrypts all files written on CD-DVD media. For complete details on using the CD/DVD burner, refer to the reference guide at http://mits.web.irs.gov/EDWeb/Phase2/GERS_Reference-Guide.pdf.
- (3) SB/SE Exam employees will follow the guidance found in IRM 4.10.9.7.11, *Workpapers: Closing Cases with Automated Workpapers and Reports*, for the GERS password and disc labelling.
- (4) LB&I employees will follow the instructions found on the LB&I web page, http://lmsb.irs.gov/hq/pqa/downloads_BNA/InstructionsforSavingTaxComputations.asp.
- (5) All other employees (including SB/SE Collection employees) will use the following instructions:

#

2. Set the GERS password before backing up the files to the device. Refer to the GERS reference guide for instructions on how to set the GERS password.
3. Copy the original files to the disc. Follow the instructions found in the GERS reference guide.
4. Put the disc into a CD sleeve or plastic case and place into an envelope. Before stapling the envelope to the left side of the case folder, write the following on the sleeve or envelope:
 - "SBU GERS eSummons"
 - Name control and last four digits of TIN
 - Media information (e.g. records from ABC Bank)
 - Employee's name and TSIGN
 - Date disc was created

Exhibit 25.5.3-1 (08-01-2016)**Letter 5140, *Designated and Related Summons***

Letter 5140, *Designated and Related Summons*, is now a PDF fillable form and can be found at: <http://publish.no.irs.gov/getpdf.cgi?catnum=61616C>.

