

(3) *Reimbursement of costs.* Record-keepers may be entitled to reimbursement of their costs of assembling and preparing to produce summoned records, to the extent allowed by section 7610, even if the summons ultimately is not enforced.

(d) *Effective dates.* This section, with the exception of paragraph (c), applies generally to all summonses issued on or after March 1, 1977. Paragraph (c) applies only to summonses served after December 31, 1982.

(Secs. 7610(a) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 7610(a) and 7805))

[T.D. 7899, 48 FR 32772, July 19, 1983, as amended by T.D. 8091, 51 FR 23054, June 25, 1986]

**§ 301.7609-3 Right to intervene; right to institute a proceeding to quash.**

(a) *Notified person.* Under section 7609(a), the Internal Revenue Service must give a notice of summons to any person, other than the person summoned, who is identified in the description of the books and records contained in the summons in order that such person may contest the right of the Service to examine the summoned records by instituting a proceeding to quash the summons. Thus, if the Service issues a summons to a bank requesting checking account records of more than one person all of whom are identified in the description of the records contained in the summons, then all such persons are notified persons entitled to notice under section 7609(a). Therefore, if the Service requests the records of a joint bank account of A and B both of whom are named in the summons, then both A and B are notified persons entitled to notice under section 7609(a).

(b) *Right to institute a proceeding to quash—(1) In general.* Section 7609(b) grants a notified person the right to institute a proceeding to quash the summons in the United States district court for the district within which the person summoned resides or is found. Jurisdiction of the court is based on section 7609(h). The act of filing a petition in district court does not in and of itself institute a proceeding to quash under section 7609(b)(2). Rather, the filing of the petition must be coupled with notice as required by section 7609(b)(2)(B).

(2) *Elements of institution of a proceeding to quash.* In order to institute a proceeding to quash a summons the notified person (or the notified person's agent, nominee, or other person acting under the direction or control of the notified person) must, not later than the 20th day following the day the notice of the summons was served on or mailed to such notified person:

(i) File a petition to quash in the name of the notified person in a district court having jurisdiction,

(ii) Notify the Service by sending a copy of that petition by registered or certified mail to the Service employee and office designated to receive the copy in the notice of summons that was given to the notified person, and

(iii) Notify the recordkeeper by sending to that recordkeeper by registered or certified mail a copy of the petition.

Failure to give timely notice to either the summoned party or the Service in the manner described in this paragraph means that the notified person has failed to institute a proceeding to quash and the district court has no jurisdiction to hear the proceeding. Thus, for example, if the notified person mails a copy of the petition to the summoned person but not to the designated Service employee and office, the notified person has failed to institute a proceeding to quash. Similarly, if the notified person mails a copy of such petition to the summoned person but, instead of sending a copy of the petition by registered or certified mail to the designated employee and office, the notified person gives the petition by some other means, the notified person has failed to institute a proceeding to quash.

(3) *Failure to institute a proceeding to quash.* If the notified person fails to institute a proceeding to quash within 20 days following the day the notice of the summons was served on or mailed to such notified person, the Service may examine the summoned records following the 23rd day after notice of the summons was served on or mailed to the notified person (see section 7609(d)(1)).

(c) *Presumption no notice has been mailed.* Section 7609(b)(2)(B) permits a

notified person to institute a proceeding to quash by filing a petition in district court and notifying both the Service and the summoned person. Unless the notified person has notified both the Service and the summoned person in the appropriate manner, the notified person has failed to institute a proceeding to quash. If the copy of the petition has not been delivered to the summoned person or the person and office designated to receive the notice on behalf of the Service within 3 days from the close of the 20-day period allowed to institute a proceeding to quash, it is presumed that the notification has not been timely mailed.

(d) *Effective date.* This section applies to summonses served after December 31, 1982. For the rules applicable to summonses issued on or after March 1, 1977 and served before January 1, 1983, see 26 CFR 301.7609-3 (revised as of April 1, 1984).

[T.D. 8091, 51 FR 23055, June 25, 1986]

**§ 301.7609-4 Summonses excepted from section 7609 procedures.**

(a) *In aid of the collection of certain liabilities—(1) In general.* Section 7609(c)(2)(B) contains an exception to the general notice requirement when a summons is issued to a third-party recordkeeper. That section excepts summonses issued in aid of the collection of the liability of any person against whom an assessment has been made or judgment rendered or the liability at law or in equity of any transferee or fiduciary of such a person.

(2) *Examples.* Examples of summonses referred to in paragraph (a)(1) of this section are—

(i) Summonses issued to determine the amount held in a bank in the name of a person against whom an assessment has been made or judgment rendered;

(ii) Summonses issued for the purpose of ascertaining responsible corporate employees or officers for the 100 percent penalty under section 6672, so as to assist in collecting the amount of withheld taxes which have been assessed against the corporation; and

(iii) Summonses issued to enforce transferee or fiduciary liability for a tax which has been assessed.

(b) *Numbered account (or similar arrangement).* Under section 7609(c)(2), a summons solely to determine the identity of a person having a numbered account (or similar arrangement) with a bank or other institution is excepted from the requirements of section 7609. A “numbered account (or similar arrangement)” under section 7609(c)(2) is an account through which a person may authorize transactions solely through the use of a number, symbol, code name, or other device not involving the disclosure of the person’s identity. A “person having a numbered account (or similar arrangement)” includes the person who opened the account and any person authorized to use the account or to receive records or statements concerning it.

(c) *Effective date.* This section applies to all summonses issued after February 28, 1977.

(Secs. 7610(a) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 7610(a) and 7805))

[T.D. 7899, 48 FR 32772, July 19, 1983, as amended by T.D. 8091, 51 FR 23055, June 25, 1986]

**§ 301.7609-5 Suspension of statutes of limitations.**

(a) *Agent, nominee, etc.* Under section 7609(e), statutes of limitations are suspended if a notified person with respect to whose liability a summons is issued, or the notified person’s agent, nominee, or other person acting under the direction or control of the notified person, takes any action as provided in section 7609(b). A person is a notified person’s agent, nominee, or other person acting under the direction or control of a notified person for purposes of section 7609(e) if the person with respect to whose liability the summons is issued has the ability in fact or at law to cause the agent, etc., to take the actions permitted under section 7609(b). Thus, in the case of a corporation, direction or control by the notified person may exist even though less than 50 percent of the voting power of the corporation is held by the notified person.

(b) *Period during which a proceeding, etc., is pending.* Under section 7609(e), the statute of limitations may be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such