

Internal Revenue Code – John Doe Summons

Statute of limitations extended for any year only if it results in the taxpayer identified as a member of the group for that year and the amount is not *de minimis* and providing a clearly ascertainable standard for date to which statute of limitation is extended

26 USC §7609(e); 26 USC §7609(f)

Proposed change:

26 USC Section 7609(e)(3) is added to read as follows:

Subsection (e) shall not apply to any summons described in subsection (f)).

26 USC 7609(f)(4) is added to read as follows

The running of any period of limitations under section 6501 or under section 6531 for any person whose identity is sought under this section for any year shall be suspended for the period beginning on the date which is six months after the service of any legally enforceable summons and ending on the date on the later of: i) the date on which the summoned party shall have fully complied with the summons or ii) two years; provided, however, if during this period enforcement proceedings have been commenced in any court to enforce the summons, the suspension period shall end on the date on which such legal proceedings shall be finally adjudicated and the summoned party shall have fully complied with the terms of any final court order. Notwithstanding the preceding sentence, suspension of the period of limitations for any taxpayer shall not occur for any year unless: i) the taxpayer is within the class of individuals whose identity is sought under the summons is a member of that class during that taxable year; and ii) the taxpayer shall have an understatement in current tax liability for that year of at least \$5,000 arising from the activity which is the subject of the summons.

Reason for change:

The John Doe summons provisions of the Internal Revenue Code provide for the suspension of the limitations period for assessment is designed to give the Internal Revenue Service the time to identify taxpayers whose identity is not known but who may have tax liability based on their participation in activities promoted by a promoter. It suspends the statute of limitations based on two assumptions. The first assumption is that the summons issued by the Internal Revenue Service is a valid summons. The second assumption is that if the person summoned does not comply with the summons, the Service will seek to enforce the summons in a timely manner and obtain a court order requiring compliance with the summons.

While the current John Doe summons provisions may work in the domestic context, their use in the international context has highlighted the assumptions that underlie the current provision and require reform in order to operate fairly both to the Government and taxpayers.

If a summons issued by the Service is not validly enforceable, there should not be a suspension of the limitations period. The statute should so provide.

At the present time, the Service may issue a summons and leave it outstanding for an indeterminate period of time. If the party summoned does not comply with the summons, the Service is under no obligation to begin legal proceedings to enforce the summons. The result is that taxpayers who may have a relationship with the summoned party may not know whether or not their limitations period has been suspended. Indeed, their limitations period may be extended indefinitely. The issuance of the summons effectively eliminates the limitations period rather than suspending it. The proposal provides that if the Service does begin enforcement proceedings, and then chooses to dismiss the proceedings, the suspension period ends with the dismissal. If the Service begins enforcement proceedings and the summons is enforced in whole or part, the suspension period ends with compliance on the part of the summoned party with the court order.

The Service is asserting in current proceedings that if taxpayer is encompassed within the scope of a summons for any year, the limitation period for all years of the taxpayer encompassed by the summons is suspended. For example, assume the Service issued a summons for the years 2008 through 2013. The taxpayer is a party who is identified as having participated in the activity which is the subject of the summons in 2008, but not in any other year. The Service is asserting that because the taxpayer participated in the activity in 2008 and is identified as having done so in the response to the summons, the limitations periods for the taxpayer for 2008 through 2013 are suspended. The Service is then making assessments against the taxpayer for unrelated activity for years in which, but for section 7609(e)(2), the limitations period will have run. The Internal Revenue Code provides that liability of a taxpayer is determined on an annual basis. Participation in the activity in 2008 covered by the John Doe Summons should not affect that taxpayer for any other tax year.

The Service is also asserting that if the taxpayer is a party that is identified in the response to the summons, the limitation period for the taxpayer for the year of participation is suspended regardless of whether the taxpayer omitted income or improperly claimed a deduction from that activity in the tax year. For example, assume that a taxpayer has a foreign bank account. The taxpayer properly discloses the existence of the bank account and properly reports all income and gains from the foreign bank account. The Service then issues a John Doe summons to the bank requesting information about all bank accounts owned by United States persons. The bank contests the John Doe summons for more than six months. When the Service finally receives the information summoned from the bank, it learns that the taxpayer has an account with the bank. Notwithstanding that the taxpayer was fully compliant, the Service is asserting that the limitations period for the assessment of taxes for the taxpayer for that year is suspended by the operation of section 7609(e)(2). The Service is then making assessments against the taxpayer for unrelated matters in that year even though the limitations period for assessment, but for the operation of section 7609(e)(2), would have run. The issuance of the John Doe

summons should not operate to suspend the limitations period for a taxpayer unless the taxpayer can be shown to have done something improper that is discovered as a result of the John Doe summons.

The purpose of a limitations period is to provide certainty. Fairness dictates that the Service should not arbitrarily be permitted to issue a summons and to avoid the limitations periods by doing so.