

**TITLE 4: ECONOMIC RESOURCES**  
**DIVISION 1: REVENUE AND TAXATION**

**§ 1897. Special Procedures for Third Party Summons.**

(a) *Notice.*

(1) *In General.* If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) of the NMTIT) with respect to any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23<sup>rd</sup> day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.

(2) Sufficiency of Notice. Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 1893 of this Division (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice even if such person is then deceased, under a legal disability, or no longer in existence.

(3) Nature of Summons. Any summons to which this subsection applies (and any summons in aid of collection described in this section) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.

(b) *Right to Intervene; Right to a Proceeding to Quash.*

(1) Intervention. Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons.

(2) Proceeding to Quash.

(A) In General. Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.

(B) Requirement of Notice to Person Summoned and to Secretary. If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period, such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

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(C) Intervention; Etc. Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).

(c) *Summons to Which Section Applies.*

(1) In general. Except as provided in paragraph (2), this section shall apply to any summons authorized under this Division.

(2) Exceptions. This section shall not apply to any summons:

(A) Served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;

(B) Issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept;

(C) Issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A) of the NMTIT;

(D) Issued in aid of the collection of:

(i) An assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or

(ii) The liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i);

(E) (i) Issued by a criminal investigator of the CNMI in connection with the investigation of an offense connected with the administration or enforcement of the CNMI tax laws; and

(ii) Served on any person who is not a third-party recordkeeper (as defined in section 7603(b) of the NMTIT)); or

(F) Described in subsection (f) or (g).

(3) Records. For purposes of this section, the term “records” includes books, papers, and other data.

(d) *Restriction on Examination of Records.* No examination of any records required to be produced under a summons as to which notice as required under subsection (a) may be made:

(1) Before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or

(2) Where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(e) *Suspension of Statute of Limitations.*

(1) Subsection (b) Action. If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 18101 of this Division (relating to assessments and collections) or under section 18105 of this Division (relating to criminal prosecutions) with respect to such person shall be suspended for the period during

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which a proceeding and appeals therein, with respect to the enforcement of such summons is pending.

(2) Suspension After 6 Months of Service of Summons. In the absence of the resolution of the summoned party's response to the summons, or the summoned party's response to a summons described in subsection (e), the running of any period of limitations with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in subsection (b)) shall be suspended for the period:

(A) Beginning on the date which is 6 months after the service of such summons, and

(B) Ending with the final resolution of such response.

(f) *Additional Requirement in the Case of a John Doe Summons*. Any summons which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that:

(1) The summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) There is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any Commonwealth tax law, and

(3) The information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

(g) *Special Exception for Certain Summonses*. In the case of any summons, the provisions of subsection (a)(1) and (b) shall not apply if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(h) *Jurisdiction of Commonwealth Superior Court; Etc.*

(1) Jurisdiction. The Commonwealth Superior Court shall have jurisdiction to hear and determine any proceedings brought under this section. An order denying the petition shall be deemed a final order which may be appealed.

(2) Special Rule for Proceedings Under Subsections (e) and (f). The determinations required to be made under subsections (e) and (f) shall be made ex parte and shall be made solely on the petition and supporting affidavits.

(i) *Duty of Summoned Party*.

(1) Recordkeeper Must Assemble Records and Be Prepared to Produce Records. On receipt of a summons, to which this section applies for the production of records, the summoned party shall proceed to assemble the records requested, or such portion thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

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(2) Secretary May Give Summoned Party Certificate. The Secretary may issue a certificate to the summoned party that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period, or that the taxpayer consents to the examination.

(3) Protection for Summoned Party Who Discloses. Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good-faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.

(4) Notice of Suspension of Statute of Limitations in the Case of a John Doe Summons. In the case of a summons described in subsection (e) with respect to which any period of limitations has been suspended under subsection (d)(2), the summoned party shall provide notice of such suspension to any person described in subsection (e).

(j) *Use of Summons Not Required.* Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons.

**Source:** PL 14-35, § 4 (1897), modified.

**Commission Comment:** In the subsection (e)(1) above, the Commission changed the section number originally referenced in PL 14-35 to the proper renumbered section number pursuant to its authority by 1 CMC § 3806(c). Moreover, because there were two subsections (h) designated in the original text of PL 14-35, § 4(1897), the Commission correctly assigned the subsequent subsections as (i) and (j) pursuant to its authority by 1 CMC § 3806(a).