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### Don't Ignore The IRS Like Facebook, Here's Why

Facebook is huge, worth billions, and is *very* lawyered up. And it has 'tax strategies' that are at least aggressive. The IRS sure thinks so. In fairness to Facebook, there are other companies facing similar allegations. Zuckerberg's company is not the only tech company to seek offshore and cross-border deals with tax reduction at their center. Still, in this case, the IRS is looking into whether Facebook undervalued the assets it transferred to an Irish subsidiary in 2010.

This is no small matter, and has become more feud than spat. Plainly, the stakes are huge. Facebook has disclosed that the potential liability at stake is something on the order of \$3 billion to \$5 billion, plus interest and penalties. The IRS opened an investigation in 2013, but Facebook has not exactly been forthcoming. And that has consequences. Now, the Justice Department has filed a lawsuit to enforce the IRS summonses served on Facebook for various documents the IRS says it needs.



(AP Photo/Eric Risberg)

In the vast majority of cases, the government wins these disputes. The government usually gets the data, and doesn't like to have to sue to collect it. In that sense, fighting over the data in the first place is usually not where companies want to spend their money. Eventually, the merits of the tax dispute

must be addressed. That is the real fight, not the documentary preliminaries. On the merits, many tax disputes end up getting compromised, as could happen here.

But what is not common is to clam up and stop cooperating, which is what Facebook evidently thought was the right approach. The jury is still out whether that will prove to be wise. But for most people, and for most companies, failing to comply with an IRS summons is a mistake. Almost any IRS correspondence is stressful. But when a simple request for substantiation or documents looks like legal process, stress levels go higher still.

Ignoring IRS requests is dangerous and expensive. Usually, the IRS asks for information in a memo called an [Information Document Request, Form 4564](#), also known as an "IDR." You are under no legal obligation to respond but generally should, since otherwise the case will escalate. When the IRS issues a summons, you can comply, refuse, ignore it, or go to court and attempt to quash it by showing you have legitimate legal reasons not to disclose the information. If you refuse or ignore it, the Justice Department can get a court order to enforce it. If you still refuse, you could face sanctions for criminal or civil contempt.

A summons to hand over books, records or other data is more potent than an IDR, since it carries the threat of court enforcement. The mere fact that the IRS issues a summons rather than an IDR sends a stern message. A summons ups the ante, showing the IRS is playing tough and is willing to go to court. What grounds can you cite for not complying? Common grounds are attorney-client privilege or work product protection, but the standards are high. The IRS uses its summons power frequently today, and court fights are becoming more common.

For example, according to the U.S. Taxpayer Advocate Service, there were only 44 such disputes in 2005. Then, by 2011, the number ballooned to 132. It has probably continued to rise since. And the Taxpayer Advocate says the IRS has won over 90% of its summons cases. With that many cases litigated, many more were probably resolved short of litigation. With a normal summons, the IRS seeks information about a specific taxpayer whose identity it knows.

But is also worth noting that the IRS can issue a John Doe summons too. This allows the IRS to get the names of all taxpayers in a certain group. The IRS needs a judge to approve it, but recent IRS success may lead to more. A John Doe summons is ideal for pursuing tax shelter investors, or account holders at a financial institution. The IRS can claim major successes on this front. After sniffing out American taxpayers with UBS accounts, the IRS did the same with HSBC in India.

As for Facebook, it has very deep pockets, and can play very hardball. But if the IRS is going to get the information anyway, which happens statistically speaking, it could end up being an unwise strategy.

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