



**December 21, 2011**

## **John Doe Summons Issued on Suspected California Tax Evaders**

A federal court judge has granted permission for a John Doe summons requested by the IRS to be served on California's Department of Equalization (DOE) seeking information on taxpayers who allegedly tried to evade taxes when transferring property to other family members without paying (or not paying enough) taxes between 2005 and 2010. Under the tax code, a person is allowed to transfer up to \$5 million (previously \$1 million) worth of assets over a lifetime to another family member without paying taxes. Any amount above the \$5 million ceiling is subject to tax. Furthermore, a taxpayer is allowed to transfer up to \$13,000 worth of assets to another person per year without having this amount counted towards the \$5 million. Anything above \$13,000 a year is counted towards the \$5 million.

In order for the IRS to keep track of these transfers, taxpayers must fill up Form 709 United States Gift (and Generation-skipping transfer) Tax Return.

So far, the IRS has received data on these transfers from county or state officials in Connecticut, Florida, Hawaii, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington state and Wisconsin. However, California's BOE declined to submit data from their state because California State law does not allow the disclosure of such information without a court approved summons.

Earlier this year in May, an affidavit was filed by the Department of Justice that requested for a summons on California's DOE but the request was declined by Eastern District of California's Judge Morrison C. England Jr. who said the government had not shown that the IRS could not obtain such data from each of California's 58 counties.

But in October, Josephine Bonaffini, the Federal/State Coordinator for the IRS' Estate and Gift Tax Program re-filed the affidavit and this time, the judge noted that some California counties might not have kept accurate records of family transfers of assets thus making it "most reliable and least burdensome" to obtain the data directly from the DOE itself.

So now the arrangement would go like this – the counties will compile the data and send it to the BOE so that the BOE can administer California's Proposition 13, an initiative passed by voters in 1978 which limits annual property assessment increases to 2% or less unless a property is sold. Subsequently two other initiatives, Propositions 58 and 193 were passed that permit property transferred to children and, in certain circumstances, grandchildren, to retain the 2% cap on condition that the requisite information is sent to the BOE where it is entered into a database. After the data has been processed by the BOE, they will submit the information to the IRS.

A John Doe summons is a summons that is not for any specific named person but is meant for all taxpayers who are of a certain group of people the IRS suspects might have broken the law. Recent examples of John Doe summonses were for information on taxpayers who allegedly used their offshore bank accounts in UBS Bank and HSBC Holdings to evade taxes.