

## tax lawflash

June 24, 2014

## IRS Information Document Request Enforcement Procedures Update

*The U.S. Supreme Court clarifies what is necessary to challenge a summons issued by the IRS for an improper purpose.*

On June 19, in *United States v. Clarke*, the U.S. Supreme Court held that a taxpayer is entitled to examine Internal Revenue Service (IRS) officials on their reasons for issuing a summons “when [the taxpayer] can point to specific facts or circumstances plausibly raising an inference of bad faith.”<sup>1</sup> The Court explained that a “taxpayer must offer some credible evidence supporting his charge” that a summons was issued for an improper purpose and that it is insufficient for a taxpayer to make “[n]aked allegations of improper purpose.”<sup>2</sup> We refer to these principles as the *Clarke* Rule.

The *Clarke* Rule has broad implications in light of the IRS Large Business and International Division’s (LB&I’s) recently issued information document request (IDR) procedures, which many expect will result in summonses being issued to large corporations more frequently.<sup>3</sup> The new IDR enforcement procedures implement mandatory timelines that, after certain thresholds are met, make issuance of summonses inevitable. Taxpayers who make efforts during the IDR process to develop and retain contemporaneous evidence of an improper purpose by examiners will improve their options during a summons enforcement proceeding. Although we believe that summonses issued for improper purposes are rare, when it does happen, taxpayers now have the *Clarke* Rule to anticipate and plan for.

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1. No. 13-301, slip op. at 6 (U.S. June 19, 2014) (resolving a split in the circuits), *available at* [http://www.supremecourt.gov/opinions/13pdf/13-301\\_q9m4.pdf](http://www.supremecourt.gov/opinions/13pdf/13-301_q9m4.pdf).

2. *Id.*

3. See LB&I-04-0214-004, *available at* <http://www.irs.gov/Businesses/Large-Business-and-International-Directive-on-Information-Document-Requests-Enforcement-Process>.

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