



## Tax Law

### Alert

# Federal Investigation into Offshore Accounts: “John Doe” Summons Served on First Data

On April 16, 2009, a federal judge in Denver granted a Justice Department request to serve a “John Doe” summons on payment processor First Data Corporation (“First Data”). The summons seeks the names of all First Data clients that allegedly used First Data to transfer the proceeds of credit and debit card transactions to offshore accounts since 2002.

The government alleges that First Data used software from Bermuda-based First Atlantic Commerce Ltd. to transfer credit and debit proceeds into offshore accounts. By granting the “John Doe” summons, Judge Robert Blackburn aided federal authorities in their ongoing investigation into U.S. taxpayers who have allegedly used offshore accounts to evade their U.S. taxes. As a result of Judge Blackburn granting the summons, First Data is required to disclose the names of merchants that transferred funds into offshore bank accounts, which could lead to the identification of U.S. taxpayers who held offshore accounts.



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Once the IRS and the Justice Department are able to identify U.S. account holders, these agencies can begin an investigation into whether the account

holders should be subject to criminal and civil penalties and/or prosecution. Under current U.S. law, U.S. taxpayers are required to disclose any interest in foreign bank accounts with assets in excess of \$10,000 on their Foreign Bank and Financial Account Report (FBAR). Failure to report foreign assets can result in criminal penalties of up to five years in prison and civil penalties of \$100,000 or 50 percent of the balance in unreported foreign accounts, whichever is greater.

These developments come amid growing pressure on Swiss banking giants UBS AG and Credit Suisse to close offshore accounts and disclose the names of U.S. account holders to U.S. federal authorities in their ongoing investigation. Furthermore, the Obama administration recently stated that prosecuting U.S. taxpayers that failed to disclose offshore account holdings is a “top tax priority” of the administration.

To potentially avoid criminal prosecution and reduce civil penalties, taxpayers will have to consider many issues and should consider contacting an attorney.

*For more information on this matter and similar issues please contact Kevin E. Thorn at 202.293.8114 or via email at [kthorn@williamsmullen.com](mailto:kthorn@williamsmullen.com).*



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