

IRS Lawsuit To Get Crypto Account Holder Information Signals It Is Time For Kraken Crypto Account Holders To Get Taxes In Order.



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On March 30, the Department of Justice, Tax Division, filed a petition for leave to serve a “John Doe” summons on Payward Ventures, also known as “Kraken,” requesting account information for all United States taxpayers who held accounts there with the equivalent value of \$20,000 or more in cryptocurrency for any one year from 2016 through 2020. In the petition, which is styled *In Re Tax Liability of John Does*, Docket No. 3:21-cv-02201-JCS in the United States District Court for the Northern District of California, DOJ tax maintains that the “John Doe” summons is needed because it doesn’t know who the account holders are, Kraken does know, and there is reason to believe that Kraken account holders “may fail, or may have failed, to comply with one or more provisions of the internal revenue laws.” In other words, the IRS believes that Kraken account holders have not been accurate reporting and paying taxes on their cryptocurrency, and it is asking the court to order Kraken to turn over their names.



Bitcoin golden physical coin illustration on dark black background with reflection. Visual ... [+]

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What is a “John Doe Summons?”

A summons is a tool that the IRS uses to gather information about a person or an entity. A *John Doe* summons is a summons that does not identify the person with respect to whose liability the summons is issued. [Section 7609\(f\)](#) of the Internal Revenue Code establishes a procedure by which the IRS may petition a court to ask for information about a whole group or class of individuals who share some common attribute, but whose specific identity is unknown, so long as there is a reasonable basis for believing that the group or class has failed to comply with any provision of the tax code.

The John Doe summons was famously and successfully used in 2008 to gather account information about U.S. persons who had [undeclared Swiss bank accounts](#). The Swiss John Doe summons culminated in an IRS Offshore Disclosure Program that ended ten years after the summons was issued and after [the IRS collected over \\$11.1 billion](#) in back taxes, interest and penalties.

The John Doe summons that the government is seeking in this case to gather Kraken account holder information is not the first of its kind in the cryptocurrency world. In November of 2016, the United States District Court for the Northern District of California - the same court in which the current petition for a John Doe summons is pending - granted the government's petition for a [John Doe summons on Coinbase](#), Inc. The IRS has been reaching out to Coinbase account holders ever since getting their names.

How Do Courts Respond to IRS Requests for Taxpayer Information at Crypto Exchanges? Isn't that Information Private?

Attorney [John Colvin](#) explains, "In the government's first request for a John Doe summons on a cryptocurrency exchange (Coinbase), the Northern District held that the summons requested by the government was overbroad, and indicated that significant portions of what the government requested were not relevant to the identification of non-compliant taxpayers, but would only become relevant once the potential non-compliance was established. Subsequently, as part of the Taxpayer First Act, in 2019, Congress codified the approach taken by the Northern District, amending the John Doe Summons statute to require that any summons be "narrowly tailored" to identify non-compliance."

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In other words, the IRS can't just say to a court, "we want all the information on everyone who has a Cryptocurrency account." The request needs to be narrowly tailored. In both the Coinbase case and in this new Kraken case, the Court is not just ordering the exchange to hand over

everything the IRS is asking for. One day after the IRS filed its petition, the Northern District of California issued an Order to Show Cause to the IRS, requiring the IRS to provide more detail regarding why “each category of information sought is narrowly tailored to the IRS’s investigative needs”.

According to Colvin, “While requests for John Doe summons are ordinarily granted by courts within a day or two of filing, upon review of the complaint, Chief Magistrate Judge Spero obviously believed that the IRS did not take the holding of the Coinbase opinion, the core tenets of which had become part of the controlling statutory language, into account in drafting its proposed summons. This is how a court should function, especially in an *ex parte* proceedings, where the other side (Kraken and/or the affected taxpayers) are afforded no opportunity to participate.”

What does this mean for Kraken and other Crypto Account Holders?

Tax litigator [Steven Toscher](#) says, “the Court’s decision is important for a number of reasons. First it tells us something we already know - that the IRS is using all of its tools to investigate tax compliance of those who invest and trade in cryptocurrency. More importantly, it reiterates what the District court held in the Coinbase case - that the “narrowly tailored” language recently added to the statute has real teeth.”

[Betty Williams](#), the Managing Shareholder of the Law Office of Williams & Associates, P.C. sees this as a sign of more enforcement to come in this area. “The Service has made clear for the past several years that it is looking at tax compliance and tax evasion in the cryptocurrency field. Cryptocurrency users should make sure they are in compliance with their reporting requirements because the Service is sure to keep its word regarding this area as a top priority for enforcement.”

I recently wrote about [Operation Hidden Treasure](#), an IRS Office of Fraud Enforcement initiative to root out United States cryptocurrency holders who

do not correctly report and pay taxes on their cryptocurrency. While we don't know whether the Kraken summons is part of that effort, its a good bet that it is. And whether a U.S. taxpayer has crypto at Coinbase, Kraken, or in cold storage, the writing is on the wall. The IRS is stepping up enforcement in this area.

As a tax litigation attorney, I can unequivocally say to everyone reading this article who has an account at Kraken or crypto somewhere else that is unreported: your path to putting any mistakes behind you will be much easier if you talk to an attorney about the best way come forward now.

Representatives for Kraken did not respond to a request for comment by publication, but in an excellent [Bloomberg article](#) on this issue by Aysha Bagchi commented that "Kraken complies with the legal and regulatory requirements in all jurisdictions that we operate in."

