
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**SOCIAL SECURITY ADMINISTRATION
CONTROLS OVER THE TAXATION
AND SUSPENSION OF PAYMENTS
TO FOREIGN BENEFICIARIES**

March 2004 A-14-03-23005

AUDIT REPORT



Mission

We improve SSA programs and operations and protect them against fraud, waste, and abuse by conducting independent and objective audits, evaluations, and investigations. We provide timely, useful, and reliable information and advice to Administration officials, the Congress, and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- **Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- **Promote economy, effectiveness, and efficiency within the agency.**
- **Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- **Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- **Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

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Vision

By conducting independent and objective audits, investigations, and evaluations, we are agents of positive change striving for continuous improvement in the Social Security Administration's programs, operations, and management and in our own office.



SOCIAL SECURITY

MEMORANDUM

Date: March 3, 2004

Refer To:

To: The Commissioner

From: Inspector General

Subject: Social Security Administration Controls over the Taxation and Suspension of Payments to Foreign Beneficiaries (A-14-03-23005)

OBJECTIVE

The objective of our audit was to determine how effectively the Social Security Administration (SSA) deducts taxes and stops payments to certain beneficiaries living outside the United States (U.S.). To achieve our objective, we examined the process and data that SSA relies on to control payments to non-resident beneficiaries.

BACKGROUND

According to the 1983 amendments to the Social Security Act,¹ SSA must, under certain conditions, withhold benefit payments to non-citizens when they leave the U.S. for 6 consecutive months. Additionally, payments cannot be made to beneficiaries residing in certain countries (see Appendix E). All beneficiaries leaving the U.S. for more than 6 months must file a form with SSA providing certain residency and citizenship information. If the required information is not received, SSA suspends benefits beginning with the seventh month after the beneficiary's departure.

The 1983 amendments to the Social Security Act require SSA to withhold taxes² from the monthly benefit payments of certain non-citizens living outside the U.S. Taxes are not withheld from qualifying beneficiaries if certain circumstances exist. For instance, taxes are not deducted if beneficiaries reside in a country where the U. S. has a tax treaty forbidding taxation of benefits by the U. S. From January 1994 through June 2002, SSA withheld approximately \$1.3 billion in taxes³ from the benefits of non-citizens who are not a legal resident of the U.S., or not living in 1 of the 11 countries that have a tax treaty with the U.S. (see Appendix D). Non-citizen beneficiaries with legal resident status are considered valid "resident aliens" and must show proof of their current status

¹ Public Law 107-5, Social Security Act, section 202(t).

² The 1983 amendments set a 30 percent tax rate on 50 percent of the monthly benefit amount, which was increased in 1995 to 85 percent of the monthly benefit amount.

³ Our audit universe consisted of approximately 5.9 percent of the \$1.3 billion in taxes withheld by SSA.

to prevent tax withholding. SSA is required to inform them that they need to file all forms required by the Internal Revenue Service (IRS) and pay IRS any money owed.

SCOPE AND METHODOLOGY

To help determine how effectively SSA deducts taxes and stops payment to foreign beneficiaries living outside the U.S., we analyzed 4,864 Master Beneficiary Records (MBR) whose beneficiaries had a foreign mailing address or non-citizen information, and country of citizenship was shown as unknown. We sampled and reviewed 53 records where the beneficiary's mailing address did not match his or her non-citizen information on the MBR, and 163 records where there was no discrepancy between address and non-citizen information. We projected monetary results based on our sample records to the population (see Appendix C for details).

Our audit work was performed in Baltimore, Maryland, between April 2002 and June 2003, and conducted in accordance with generally accepted government auditing standards. We determined the data used in the report was sufficiently reliable given the audit objective and intended use of the data, and did not lead to incorrect or unintentional conclusions. Since we found problems with the data that SSA relies on to control payments to non-resident beneficiaries, the problems are discussed as part of our audit findings in a section of the report entitled *Electronic Data Used to Determine Payments to Nonresidents*.

RESULTS OF AUDIT

As summarized in Table I, SSA has not consistently applied alien tax withholding provisions as required by law⁴ or its own policy,⁵ nor has it withheld benefits from certain non-resident beneficiaries as required by Agency guidelines. In addition, SSA has not obtained or kept required documentation in cases where it does not withhold taxes from resident aliens who live outside the country. This lack of documentation offers little assurance that resident aliens are aware of their obligation to file tax returns with the IRS and pay any taxes due.

For approximately 28 percent of the cases that we reviewed, SSA had not obtained or kept required documentation to verify the tax status or tax benefit eligibility of non-residents. Moreover, SSA did not adhere to its own policy and stop payments when the required documentation was not returned.⁶ Finally, the electronic data that SSA relies on in determining whether to pay non-resident beneficiaries is unreliable. Overall, we found that additional controls are needed over the non-resident alien payment process. The control weaknesses resulted in errors to the Social Security Trust Fund of approximately \$112 million since 1984.

⁴ 26 United States Code (U.S.C.) § 1441(a) (2003).

⁵ SSA Program Operations Manual System (POMS) GN 05010.001.B; POMS SM 00618.800E.2. (TN 49 10-86).

⁶ SSA Form SSA-21, *Supplement To Claim Of Person Outside The United States*.

**Table I - Errors in Applying Alien Withholding Tax Provisions
or Paying Benefits to Non-citizens Living Abroad**

Type of Error Category	Number of Beneficiaries ⁷	Percentage of Error	Estimated Number of Beneficiaries	Estimated Dollar Amount of Error ⁸
Overpayments to Beneficiaries Residing Abroad	5	2.3%	1,980	\$57,069,720
Aliens Taxes Required, Not Withheld	22	10.2%	8,700	\$31,535,980
No Proof of Resident Alien Status	6	2.8%	2,360	\$11,623,960
Alien Taxes Not Withheld Retroactively	52	24.1%	20,580	\$8,152,140
Alien Taxes Not Required, Withheld	9	4.2%	3,560	\$3,777,120
Total				\$112,158,920

OVERPAYMENTS TO BENEFICIARIES NOT ELIGIBLE FOR BENEFITS

We found that personnel responsible for managing payments to beneficiaries residing outside the U.S. do not always follow SSA policy and procedures. According to SSA policy, individuals eligible for benefits as a survivor or dependent cannot receive payments unless they meet additional requirements such as maintaining the required relationship for a minimum of 5 years while living in the U.S.⁹ We found five cases in our sample where beneficiaries did not meet the stricter eligibility requirements. In all five cases, SSA had not complied with its policy to stop benefits. We estimate that, since 1984, SSA has overpaid \$57.1 million to ineligible beneficiaries (see Table 1).

⁷ Errors found in the four sample categories are not mutually exclusive. Sample cases may belong in more than one error category.

⁸ See Appendix C for statistical calculations.

⁹ SSA Publication No. 05-10137, ICN 480085, *Social Security – Your Payments While Outside the United States*, June 2001, Part 3-B.

ALIEN TAXES REQUIRED NOT WITHHELD

In 22 of the 216 sample cases we reviewed, SSA should have withheld alien taxes but did not. In 8 of the 22 cases, SSA did not withhold the correct amount of alien taxes. Furthermore, in another 8 cases, SSA showed foreign beneficiaries residing in the U.S. or a country having a tax treaty with the U.S. when they resided in non-tax treaty countries. SSA did not withhold required alien taxes in the 6 remaining cases for various reasons such as delaying case development for an inordinate amount of time. Since 1984, if SSA had obtained required residency and citizenship information, or used available information correctly, it would have withheld an estimated \$31.5 million in alien taxes (see Table 1).

NO PROOF OF RESIDENT ALIEN STATUS

Under the Internal Revenue Code (IRC)¹⁰ and SSA policy,¹¹ individuals classified as resident aliens by the Bureau of Citizenship and Immigration Services¹² can reside outside the U.S. without having taxes withheld from their Social Security benefits. To qualify for this exclusion, the beneficiaries must provide SSA with proof of resident alien status.

We found no documentation establishing U.S. resident alien status for six beneficiaries in our sample and therefore taxes were not withheld. Since 1984, we estimate that SSA has not obtained or retained documentation to support withholding \$11.6 million in taxes from benefit payments to beneficiaries claiming resident alien status (see Table 1).

ALIEN TAXES NOT WITHHELD RETROACTIVELY

In 52 of the 216 sample cases we reviewed, SSA had not applied the alien tax withholding provision as required by IRC.¹³ Moreover, SSA's policy¹⁴ of not withholding taxes retroactively conflicts with the IRC, which requires payment of all taxes due for qualifying beneficiaries. The IRC states that a beneficiary's residency status for the month payment is made determines whether alien taxes are withheld¹⁵. SSA policy instructs personnel not to withhold taxes "...for past periods if benefits have already been paid and it is later discovered that taxes should have been withheld from those

¹⁰ 26 U.S.C. § 1441(a) (2003).

¹¹ SSA POMS GN 05010.030.C.

¹² Formerly the Immigration and Naturalization Service.

¹³ 26 U.S.C. § 1441(a) (2003).

¹⁴ SSA POMS SM 00618.800E.2 (SSA recently deleted this operation procedure from its POMS).

¹⁵ SSA POMS GN 05010.001.B.

benefits.”¹⁶ By not complying with the IRC, SSA policy has prevented staff from withholding an estimated \$8.2 million in alien taxes since 1984 (see Table 1). In a 1988 Office of the Inspector General report entitled *Collection of Nonresident Alien Taxes for Retroactive Periods*, SSA was advised to develop automated procedures to help collect retroactive taxes from non-resident aliens. Although SSA agreed with the recommendation and started planning new procedures, we believe SSA should first change its current policy that prohibits retroactive collections. A policy change would allow SSA staff to collect taxes for retroactive periods using the same procedures it now uses for overpaid benefit amounts. Also, SSA would then be in compliance with existing legislation.

ALIEN TAXES NOT REQUIRED BUT WITHHELD

We also found nine sample cases where SSA withheld taxes from beneficiaries unnecessarily. SSA records substantiated that four of the nine beneficiaries should have been exempt from tax withholding because they were either a U.S. citizen, resident alien or residing in a tax treaty country. In addition, in five of the nine cases, SSA simply miscalculated and withheld more tax than necessary. Because SSA did not accurately update the alien information on these records, we estimate that it has, since 1984, withheld almost \$3.8 million in taxes unnecessarily (see Table 1).

REQUIRED DOCUMENTATION FOR NON-RESIDENT BENEFICIARIES

Documenting the payment status of non-resident beneficiaries is a manual, labor-intensive process susceptible to error. SSA requires beneficiaries, who plan to reside outside the U.S., to complete, sign and return a form designed to capture enough residency and citizenship information for SSA to determine whether payments should stop or taxes withheld. When beneficiaries leave the U.S. before notifying SSA or providing the required information, SSA mails a blank form to the non-residents asking them to complete and return the form. Occasionally, because of distance, poor telephone service and language barriers, non-residents seek the Department of State’s assistance to complete and return the form. When a completed form is returned, SSA manually associates it with the beneficiary claims folder, reviews it and, if necessary, uses information on the form to adjust the payment amount.

Evidence indicates that SSA employees have only limited success when they manually retrieve and analyze a non-resident’s mailed documentation. We did not find the residency and citizenship information form in 25 of our 116 sample claims folders where the residency form was required. Because the form was missing, SSA did not have the information needed to determine the non-resident beneficiary’s tax status and/or continuing eligibility. Although SSA policy requires employees to stop payments when this critical information is not provided, we found that payments continued in 13 of the 25 cases where none of the forms were in the claims folder.

¹⁶ See *id.*

ELECTRONIC DATA USED TO DETERMINE PAYMENTS TO NON-RESIDENTS

We found incorrect, missing or discrepant data on the Alien Information line of the MBR for our non-resident beneficiary sample cases. This data had not been updated with information provided by the beneficiary or other reliable sources.

Based on our sample, we estimate that 85,460 MBR records contain an unknown country of citizenship, most of the time unnecessarily (see Appendix C for details). For example, while MBRs for 216 sample cases showed the country of citizenship as unknown, we were able to use evidence available in the claims folder to determine the correct country of citizenship for 163 of the 216 cases. According to SSA policy, country of citizenship is an element in determining a non-resident's benefit.

Furthermore, MBR data fields regarding tax-withholding status should never conflict with other MBR data fields such as address or zip code. In 934 of the 4,273 cases in our sample universe, alien information on the MBR either showed that a beneficiary with a U.S. mailing address was living outside the U.S., or that a beneficiary with a foreign mailing address was living in the U.S. In most of these cases, SSA had simply not updated the alien information on the MBR when the beneficiary left or re-entered the U.S.

CONCLUSIONS AND RECOMMENDATIONS

SSA's policies¹⁷ and lack of sufficient oversight in managing payments to non-resident beneficiaries have resulted in errors to the Social Security Trust Fund of an estimated \$112 million. They have also weakened the integrity of residency and citizenship information on SSA records and resulted in noncompliance with Federal law.¹⁸

In our audit, we examined 4,273 records where beneficiaries had alien information on the MBR but the latest country of citizenship was shown as unknown and the beneficiaries received payment after 1984. Because the country of citizenship is crucial in deciding whether to pay foreign beneficiaries, we considered these high-risk cases. We did not review, however, nearly 68,000 records that have the same data characteristics (i.e., the same data discrepancies) except for a known country of citizenship. Based on the results of our review, we believe that the same type of problems found in the smaller, high-risk population may also exist for the larger population. SSA not only used the same controls for both non-resident beneficiary populations, but it applied law and policy in the same manner for both groups. Consequently, we believe that there may be additional costs to the Trust Fund as a result of weak controls and SSA's non-compliance with law and policy.

Based on our audit findings, we believe SSA should change its retroactive tax withholding policy to ensure compliance with the IRC. In addition, SSA should design sufficient controls to ensure that its staff obtains the documentation needed to exempt

¹⁷ SSA POMS GN 05010.001.B; POMS SM 00618.800E.2.

¹⁸ 26 U.S.C. § 1441(a) (2003). Public Law 107-5, Social Security Act, section 202(t).

non-resident beneficiaries from taxes, or retrieve and process the basic residency and citizenship information required for beneficiaries living outside the U.S. Procedures designed to have staff suspend payments if required documentation is not received within 7 months depend on manual action and are often ignored. As a result, over 16 percent of the time, SSA does not establish the proper tax withholding status and pay benefits correctly.

SSA's current process for managing benefit payments to non-residents needs automation. SSA should attempt to reduce its ongoing dependence on manual controls over this process, as they are too prone to error. The Agency should consider expanding its current applications for collecting residency and citizenship information from non-resident beneficiaries.¹⁹ Information provided by non-resident beneficiaries could be electronically transmitted to SSA mainframe computers to be stored and processed by the same mainframe software programs that currently process the information. SSA should also consider the use of existing Paperless Process software controls to help ensure that payments stop if documentation is not received within 7 months, and the information that is received is reviewed on-line by SSA staff before being processed by current production software systems.

We believe SSA should modify its current MBR software programs to ensure that alien information keyed into the MBR does not use unknown data codes or information that conflicts with other data fields on the MBR. For instance, SSA should consider using future Title II redesign efforts to prevent the MBR from showing country of citizenship as unknown, or allowing tax withholding status codes to conflict with other MBR data fields such as address. Incorporating the modifications into a planned redesign effort would reduce the cost of making the corrections. The use of electronic forms would reduce the number of times employees would have to manually associate, control and process paper forms.

To prevent further loss of revenue and maintain integrity of its databases, we recommend SSA:

1. Identify cases and recover funds where errors were made in applying alien withholding tax provisions or paying benefits to non-citizens living abroad.
2. Evaluate policies and operating procedures regarding retroactive alien taxes due to determine if any changes are needed to comply with Public Laws and regulations.
3. Establish policy and procedures to ensure that each beneficiary either pays required taxes or submits missing documentation.
4. Periodically review a statistically valid sample of data input transactions that update the alien information line on the MBR to ensure staff adherence to Agency policy and procedures.

¹⁹ The development of a similar application included a reasonable cost estimate of \$540,000.

5. Consider establishing a software application to collect residency and citizenship information from non-resident beneficiaries, and then transmit alien information electronically for processing.
6. Use existing software applications to help ensure that payments to non-resident beneficiaries are suspended if required documentation is not received in accordance with SSA policy.
7. Consider software changes that would prevent updates to alien information on the MBR if the update conflicts with other MBR data fields, or if key data fields like country of citizenship are blank or shown as unknown.

AGENCY COMMENTS AND OIG RESPONSE

SSA substantially agreed with five of our seven recommendations. The Agency disagreed with recommendation 2 and referred to a 1983 White Paper that presented an SSA component's explanation of the alien taxation law. The White Paper asserts that collecting past due taxes is an IRS responsibility and that SSA, when not informed of alien status changes, would primarily maintain a record of alien taxes due and inform the beneficiary and IRS of the liability. In January 1984, IRS responded in writing to the White Paper. It stated that, according to law, SSA is liable for the tax for retroactive periods if alien status changes and SSA is not notified of the change. Based on the information provided by SSA, we could not determine whether or not SSA and IRS ever reached an agreement on this issue. Additionally, in response to a 1988 OIG report (see page 5 for details), SSA agreed to start planning automated procedures to help identify and facilitate collection of retroactive non-resident alien taxes due. To date, the recommendation has not been fully implemented. We did, however, modify recommendation 2 to take into consideration SSA's concerns. We believe that SSA needs to clarify its responsibility to IRS in the alien taxation process, and ensure that taxes due are collected as required by law.

While SSA concurred with recommendation 5 and considered a software application to collect SSA-21 information, it disagreed with the recommendation's objective. SSA does not consider the SSA-21 a self-help form and believes that an interview with an SSA representative is necessary. We agree that beneficiaries should complete the SSA-21 with SSA assistance, but encourage the Agency to consider automation as a way to improve controls over a particularly manual, error-prone process.

SSA also provided Technical comments, which we incorporated in the report as appropriate (see Appendix B for the full text of SSA comments). We also agree with additional comments provided by SSA. To clarify the structure of our report, the first section deals with alien nonpayment issues, the next four sections address nonresident tax issues, and the final two sections discuss procedural weaknesses.

A handwritten signature in blue ink, appearing to read "James G. Huse, Jr."

James G. Huse, Jr.

Appendices

APPENDIX A - Acronyms

APPENDIX B - Scope and Sampling Methodology

APPENDIX C - Results of Applying Alien Withholding Tax Provisions

APPENDIX D - Countries Having a Tax Treaty with the United States

APPENDIX E - Countries Where Payment Is Prohibited

APPENDIX F - Agency Comments

APPENDIX G - OIG Contacts and Staff Acknowledgments

Appendix A

Acronyms

IRC	Internal Revenue Code
IRS	Internal Revenue Service
MBR	Master Beneficiary Record
POMS	Program Operations Manual System
SSA	Social Security Administration
U.S.C.	United States Code

Scope and Sampling Methodology

To help determine how effectively the Social Security Administration (SSA) deducts taxes and stops payment to foreign beneficiaries living outside the United States (U.S.), we identified 5 percent of the Master Beneficiary Record (MBR) and we identified and copied 72,582 records where beneficiaries had a foreign mailing address or non-citizen information. From this universe, we identified 4,864 records where the latest country of citizenship was shown as unknown and used 4,273 of the 4,864 records as our sample population. The 591 records not included in our sample population were for beneficiaries terminated prior to when the 1984 foreign benefit withholding legislation went into effect. Our sample population included records where the beneficiary was currently receiving payment, payment had been temporarily suspended or deferred, or payment had been terminated after 1984.

From the sample population, we randomly selected a total of 216 records. We sampled and reviewed 53 records where the beneficiary's mailing address did not match his or her non-citizen information on the MBR, and 163 records where there was no discrepancy between address and non-citizen information. We projected monetary losses found in our sample records to the sample population.

To determine whether SSA had complied with laws, regulations, and its own policies and procedures in determining when to withhold taxes from beneficiaries living outside the U.S., and in calculating the correct amount to withhold, we obtained and analyzed claim folders for our sample cases.

We requested claim folders for our 216 sample cases but were unable to obtain folders for 75 cases; 22 of which had been destroyed. For 73 of the 75 missing folder cases, we used electronic records to determine whether SSA complied with the Internal Revenue Code (IRC) and its own policy in paying benefits. Information was not available to allow us to determine SSA's compliance with IRC or its own policies in the remaining 2 cases.

We also obtained and reviewed additional payment and enumeration information for our 216 sample cases. This information came from SSA's MBR, NUMIDENT file, and Payment History Update System.

We also:

- Reviewed applicable laws and regulations as well as SSA policies and procedures concerning the process and data that SSA relies on to control payments to non-resident beneficiaries; and
- Discussed our findings and evidence with SSA staff responsible for managing payments to non-resident beneficiaries.

Appendix C

Results of Applying Alien Withholding Tax Provisions and Paying Benefits to Non-Citizens Living Abroad

	Sample Results		Point Estimate		Projection for Complete MBR Segments*	
	Number ¹	Dollars	Number	Dollars	Number	Dollars
Overpayments to Beneficiaries Residing Abroad	5	\$144,328	99	\$2,853,486	1,980	\$57,069,720
Alien Taxes Required, Not Withheld	22	\$79,912	435	\$1,576,799	8,700	\$31,535,980
No Proof Of Alien Resident Status	6	\$29,461	118	\$581,198	2,360	\$11,623,960
Taxes Not Withheld Retroactively	52	\$20,588	1,029	\$407,607	20,580	\$8,152,140
Alien Taxes Over Withheld	9	\$9,538	178	\$188,856	3,560	\$3,777,120
No Decisions	2		40		800	
No Tax Withholding Obligation	116		2,294		45,880	
Taxes Correctly Withheld	88	\$599,652	1,742	\$11,863,816	34,840	\$237,276,320

Note: All projections are at the 90-percent confidence level.

*Multiplied point estimate for 1 segment by 20 to obtain projection to entire MBR.

¹ Does not total 216 cases since some cases fell into more than one category.

Appendix D

Countries Having a Tax Treaty With the U.S.

The following countries have a treaty with the U.S. either agreeing to no taxation or a lower rate of taxation on Social Security benefit payments by the U.S.

- ✓ **Canada**
- ✓ **Egypt**
- ✓ **Germany**
- ✓ **Ireland**
- ✓ **Israel**
- ✓ **Italy**
- ✓ **Japan**
- ✓ **Romania**
- ✓ **Switzerland**
- ✓ **United Kingdom** (defined as England, Scotland, Wales, and Northern Ireland)
- ✓ **India** (to extent benefits are based on Federal, State or local government employment)

Appendix E

Countries Where Payment is Prohibited

The United States (U.S.) Treasury Foreign Assets Control Regulations and Cuban Assets Control Regulations¹ prohibit the delivery of all U.S. Government checks, including Social Security benefit checks, to, or on the behalf of, beneficiaries residing in the following two countries:

North Korea

Cuba

Because the following countries cannot guarantee safe delivery of Social Security benefit checks, the Social Security Administration has restricted benefit payment to beneficiaries in the following countries:²

Azerbaijan	Moldova
Belarus	Tajikistan
Cambodia	Turkmenistan
Georgia	Ukraine
Kazakhstan	Uzbekistan
Kyrgyzstan	Vietnam

¹ Treasury Circular 655; SSA POMS GN 02605.470; RS 02650.001.

² SSA POMS VB 01503.600.B.

Appendix F

Agency Comments



SOCIAL SECURITY

MEMORANDUM

32256-24-967

Date: January 21, 2004 Refer To: S1J-3

To: James G. Huse, Jr.
Inspector General

From: Larry W. Dye /s/
Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Social Security Administration Controls Over the Taxation and Suspension of Payments to Foreign Beneficiaries" (A-14-03-23005)--INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments on the draft report content and recommendations are attached.

Please let me know if you have any questions. Staff inquiries may be directed to Candace Skurnik, Director, Audit Management and Liaison Staff, at extension 54636.

Attachment:
SSA Response

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT
REPORT “SOCIAL SECURITY ADMINISTRATION CONTROLS OVER THE
TAXATION AND SUSPENSION OF PAYMENTS TO FOREIGN BENEFICIARIES”
(AUDIT NO. A-14-03-23005)**

We appreciate the opportunity to review and comment on the draft report, and agree with most of the content and recommendations.

We recommend that the final report use the term “nonresident *alien*” to correctly reflect statute and regulations. Also, we found the report difficult to follow because of the inconsistent use of terms relating to residence and the lack of clear delineation between nonresident alien taxation issues and alien nonpayment issues. For example, terms such as “non-resident” or “non-resident beneficiary” are used when referring to both issues implying that the definition of “resident” for both issues is the same. It is not. Residency is not relevant for alien nonpayment issues, except for dependent aliens to meet a 5-year residency test to receive benefits outside the United States. For example, an alien who has been granted and maintains lawfully admitted status for permanent residence while outside the United States could be exempt from alien taxation but subject to alien nonpayment suspension after 6 months. For this reason, we recommend that this final report be divided into two sections; one that deals with alien taxation issues and one dealing with alien nonpayment issues. Also, each section should define the term “resident” as it was applied to the findings contained in the report.

Finally, in several places, the report refers to provisions of law as “SSA policy,” thereby implying that the Agency has discretion in applying the “policy.” For example, page six of the report contains the following sentence, “According to SSA policy, country of citizenship is an element in determining a non-resident’s benefit.” The report should clarify these instances to avoid the implication that the Agency has discretion in applying the law. Also, citizenship is not an element in determining a nonresident’s benefit; it is a factor in determining whether a benefit can be paid to someone outside the United States.

Our responses to the specific recommendations are provided below, and we have included technical comments that should be made to enhance the accuracy of the report.

Recommendation 1

SSA should identify cases and recover funds where errors were made in applying alien withholding tax provisions or paying benefits to non-citizens living abroad.

Response

We agree. We should identify and recover funds in cases involving administrative error in applying the provision or, where upon receipt of information, an action was not taken timely. However, we do not agree to recover funds in cases where we were not advised of resident to non-resident changes on a timely basis as explained in recommendation 2.

Recommendation 2

SSA should change its policy to ensure that alien taxes are withheld retroactively according to law.

Response

We disagree. SSA determines whether alien tax provisions apply based on the person's status at the time payment is made. This is consistent with the Internal Revenue Service's (IRS) regulations as the taxing authority. For example, if an alien is awarded benefits on a retroactive basis, his or her status during the retroactive period would not be material; it is the status at the time payment is made that determines whether withholding applies.

A separate issue arises when the status of an alien beneficiary (in current pay) changes from a resident to a nonresident and SSA is not informed timely. In a 1983 White Paper sent to the IRS, we stated that we would advise the beneficiary of the apparent liability, however, collection of past due taxes in these situations is the IRS's responsibility. This is analogous to the situation where SSA is not informed when a beneficiary's status changes from a nonresident to a resident and we continued to withhold taxes. In those cases, it is also the responsibility of the IRS to refund any incorrectly withheld taxes.

Recommendation 3

SSA should establish policy and procedures to ensure that each beneficiary either pays required taxes or submits missing documentation.

Response

We agree. We currently have policies and procedures in place regarding alien taxation and alien non-payment of benefits for all beneficiaries residing both in and outside of the United States. We will continue to update those policies and procedures if and when changes take place. We will also send reminders in the form of Operations Bulletins to address OIG's concerns regarding staff errors in erroneously withholding taxes, and the lack of documentation for alien non-payment and overpayments, as shown in Appendix C of the report, "Results of Applying Alien Withholding Tax Provisions." Finally, topics of future reminders will be determined based on the results of ongoing reviews that are conducted under the Office of Central Operations' (OCO) Operational Quality Assurance Reviews.

Recommendation 4

SSA should periodically review a statistically valid sample of data input transactions that update the alien information line on the Master Beneficiary Record to ensure staff adherence to Agency policy and procedures.

Response

We agree. We have implemented an internal review which is contained in OCO's Quality Assurance Plan, effective January 2004. The review covers various workloads in the Office of Disability Operations and the Office of International Operations. Also planned in 2004 is a study on alien non-payment and a study on alien taxation of foreign beneficiaries. The alien information line on the MBR will be the controlling factor in order to randomly select cases for review.

Recommendation 5

SSA should consider establishing a web-based software application to collect residency and citizenship information from non-resident beneficiaries, and then transmit alien information electronically for processing.

Response

We disagree. When a beneficiary moves outside the United States, we need more than residence and citizenship information. The SSA-21 (Supplement to Claim of Person Outside the United States) was designed to collect all of this information. While consideration was given to making this form available over the Internet, the consensus was that this was not a self-help form and that an interview with an SSA representative should be conducted.

Recommendation 6

SSA should use existing software applications to help ensure that payments to non-resident beneficiaries are suspended if required documentation is not received in accordance with SSA policy.

Response

We agree. This recommendation is similar to number 3, and as stated above, we agree that we should utilize all available resources to properly suspend non-resident beneficiaries for lack of documentation.

Recommendation 7

SSA should consider software changes that would prevent updates to alien information on the MBR if the update conflicts with other MBR data fields or if key data fields, like country of citizenship, are blank or shown as unknown.

Response

We agree. We will consider the feasibility of making these software changes contingent upon the availability of funding through the Agency's Information Technology resources prioritization process.

Appendix G

OIG Contacts and Staff Acknowledgments

OIG Contacts

Kitt Winter, Director, Data Analysis and Technical Audit Division
(410) 965-9702

Patrick Kennedy, Audit Manager, Mainframe Controls and Advanced Techniques
(410) 965-9724

Acknowledgments

In addition to those named above:

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Gregory P. Hungerman, Auditor
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Social Security Advisory Board

Overview of the Office of the Inspector General

Office of Audit

The Office of Audit (OA) conducts comprehensive financial and performance audits of the Social Security Administration's (SSA) programs and makes recommendations to ensure that program objectives are achieved effectively and efficiently. Financial audits, required by the Chief Financial Officers' Act of 1990, assess whether SSA's financial statements fairly present the Agency's financial position, results of operations and cash flow. Performance audits review the economy, efficiency and effectiveness of SSA's programs. OA also conducts short-term management and program evaluations focused on issues of concern to SSA, Congress and the general public. Evaluations often focus on identifying and recommending ways to prevent and minimize program fraud and inefficiency, rather than detecting problems after they occur.

Office of Executive Operations

The Office of Executive Operations (OEO) supports the Office of the Inspector General (OIG) by providing information resource management; systems security; and the coordination of budget, procurement, telecommunications, facilities and equipment, and human resources. In addition, this office is the focal point for the OIG's strategic planning function and the development and implementation of performance measures required by the *Government Performance and Results Act*. OEO is also responsible for performing internal reviews to ensure that OIG offices nationwide hold themselves to the same rigorous standards that we expect from SSA, as well as conducting investigations of OIG employees, when necessary. Finally, OEO administers OIG's public affairs, media, and interagency activities, coordinates responses to Congressional requests for information, and also communicates OIG's planned and current activities and their results to the Commissioner and Congress.

Office of Investigations

The Office of Investigations (OI) conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement of SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, physicians, interpreters, representative payees, third parties, and by SSA employees in the performance of their duties. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Counsel to the Inspector General

The Counsel to the Inspector General provides legal advice and counsel to the Inspector General on various matters, including: 1) statutes, regulations, legislation, and policy directives governing the administration of SSA's programs; 2) investigative procedures and techniques; and 3) legal implications and conclusions to be drawn from audit and investigative material produced by the OIG. The Counsel's office also administers the civil monetary penalty program.