

**The Program to Determine Worker Status for  
Federal Tax Purposes Needs Expanded Goals  
and Increased Operational Oversight**

**March 2004**

**Reference Number: 2004-30-055**

**This report has cleared the Treasury Inspector General For Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

INSPECTOR GENERAL  
for TAX  
ADMINISTRATION

March 5, 2004

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED  
DIVISION

*Gordon C. Milbourn III*

FROM: Gordon C. Milbourn III  
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report - The Program to Determine Worker Status for  
Federal Tax Purposes Needs Expanded Goals and Increased  
Operational Oversight (Audit # 200330020)

This report presents the results of our review of the Internal Revenue Service's (IRS) program that makes determinations of workers' employment tax status as employees or independent contractors. The overall objective of this review was to determine the effectiveness of the program in achieving its objectives in support of the IRS' compliance mission.

A Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (Form SS-8) is used by a business or worker to request a determination regarding a worker's employment tax status as an employee or independent contractor. This worker status determination has important tax consequences to both parties. Once a Form SS-8 is processed, a determination letter along with filing instructions is sent to the responsible party.

The SS-8 Program addresses compliance problems that relate to employment taxes. Situations with high indications of examination potential or possible fraud should be referred to the Examination or Criminal Investigation function, respectively. Examination function personnel involved in employment tax examinations may also make worker status determinations.

Prior to 1996, the SS-8 Program was decentralized across the country. In 1996, the SS-8 Program was centralized in two sites – Newport, Vermont, and Austin, Texas. In January 2003, the Program was moved from its Austin, Texas, site to Brookhaven, New York.

In summary, management and internal controls were adequate to ensure the timely and accurate processing of Forms SS-8. Management performed reviews of worker status determinations made to evaluate the effectiveness of individual tax examiners. The Senior Program Analyst representing the National Headquarters Office of Employment Tax maintained contact with onsite managers to identify and resolve problems. This included developing and applying examination referral criteria, resolving technical issues, working toward the development of Internal Revenue Manual procedures, and developing program report schedules.

However, the effectiveness of the SS-8 Program could not be readily determined, as its objectives did not include ensuring filing and payment compliance with worker status determinations made. There were no follow-up procedures to identify noncompliance with status determinations made and to actively encourage compliance. Also, there was no performance measure to quantify the compliance effect achieved by the SS-8 Program.

Continuing to operate the SS-8 Program in two locations has left two issues unresolved. First, the processing sites have dissimilar organizational and reporting structures that, without sufficient operational oversight, may result in inconsistent treatment of taxpayers. Second, the Brookhaven site has experienced constant delays during remote access of the case-processing database maintained in Newport, Vermont.

The SS-8 Program does not maintain a database of closed worker status determinations that SS-8 Program tax examiners and field Examination function personnel can readily research to help ensure the consistency of their determination decisions. Presently, the closed case information is available on the SS-8 Program case-processing database; however, the services of a computer programmer are required to retrieve the information. Also, while quality review guidelines had been developed to review worker status determinations, the reviews were not being performed.

We recommended the Director, Compliance, Small Business/Self-Employed Division, expand the objectives of the SS-8 Program to ensure compliance with tax laws in all cases in which worker status determinations have been made and establish a performance measure to enable management to determine Program effectiveness in terms of compliance achieved. The Director should also increase the Headquarters' oversight resources dedicated to the SS-8 Program, establish one operational position to oversee the application of operational policy for both processing site locations, or establish an operational policy oversight group for the SS-8 Program to meet periodically to discuss and resolve all issues affecting the consistency of worker status determinations. Finally, the Director should work with the Modernization and Information Technology Services (MITS) organization to resolve the problem of remote access delays, establish and include a readily researchable source of all closed worker status determinations for use by both field Examination function personnel and SS-8 Program personnel during the development of the web-based database design, and implement an independent system of quality review for all worker status determinations made.

Management's Response: IRS management agreed with the findings and recommendations made in this report. They are looking at various options to perform follow-up research on employers that appear not to have complied with the determination and will develop performance measures to quantify the results of that research. Also, management has assigned a second Headquarters Employment Tax Senior Program Analyst to the SS-8 Program and has established an operational policy oversight group. A team of MITS organization employees is currently analyzing the causes of remote access delays and will make recommendations for needed hardware. In addition, IRS management will implement a procedure to include field Examination function worker status determinations in the Form SS-8 processing site database and will update a computer programming request that will enable research of worker status determinations. Lastly, consistent quality review procedures will be developed to assure that both Form SS-8 processing sites are using the same criteria. Management's complete response to the draft report is included as Appendix IV.

Copies of this report are also being sent to the IRS managers who are affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Richard J. Dagliolo, Acting Assistant Inspector General for Audit (Small Business and Corporate Programs), at (631) 654-6028.

**The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded  
Goals and Increased Operational Oversight**

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## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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### Background

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Businesses with employees are generally required to withhold income, Social Security, Medicare, and unemployment taxes from their employees' wages and remit amounts withheld to the Internal Revenue Service (IRS). These businesses are required to match the amounts they withhold from their employees for these various taxes and pay the matching amounts (called "employment taxes"). Businesses are not required to withhold or pay employment taxes on amounts paid to workers that are not their employees.

Laws defining who is and who is not considered an "employee" of a business are confusing to both businesses and workers. A Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (Form SS-8) is used by a business or worker to request a determination regarding a worker's Federal Government employment tax status as an employee or independent contractor. The information on the Form SS-8 is reviewed by a tax examiner in the SS-8 Program, and a determination is made based upon the common law relating to employment relationships. Field Examination function personnel may also make a determination during an employment tax examination. Revenue Procedure 2003-1<sup>1</sup> provides procedures for issuing a determination letter, along with filing instructions, to the responsible party.

The Forms SS-8 are also a potential source of leads for employment tax examinations and criminal investigations. After completing all actions related to determining worker status, tax examiners evaluate the Forms SS-8 to determine whether they meet examination or fraud criteria and make the appropriate referrals.

Prior to 1996, the SS-8 Program was decentralized across the country. In 1996, the SS-8 Program was centralized in two sites – Newport, Vermont, and Austin, Texas. In January 2003, the Program was moved from its Austin, Texas, site to Brookhaven, New York.

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<sup>1</sup> Dated January 6, 2003.

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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We recently conducted an audit in the area of employment tax and, in January 2003, issued a report<sup>2</sup> that included a look at businesses that misclassify their workers as nonemployees when they should have been classified as employees. These businesses can be liable for significant amounts of back taxes as a result of misclassifications.

This review was performed at the Small Business/Self-Employed (SB/SE) Division National Headquarters in New Carrollton, Maryland, and Washington, D.C., and at the Form SS-8 processing sites located in Brookhaven, New York, and Newport, Vermont, from June through November 2003. The audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

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### Management and Internal Controls Were Adequate and Effective

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Management and internal controls were adequate and effective to ensure both timely processing of Forms SS-8 and employee competency. The average time for the Newport and Brookhaven sites to process a Form SS-8 was 146 days during Fiscal Year (FY) 2003, well within the 180 days allotted to process these Forms. Management reviews were performed, for evaluative purposes, to ensure employee competency to make accurate worker status determinations.

In FY 2003, the 3 sites, including the discontinued Austin site, made 5,960 worker status determinations. The Brookhaven and Newport processing sites made 3,377 of these decisions. The businesses and workers accepted the decisions in 3,148 (93 percent) of the 3,377 determinations made. Requests for reconsiderations<sup>3</sup> occurred in only 229 (7 percent) of the total determinations, and only 14 (0.4 percent of 3,377) determinations were reversed during reconsideration.

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<sup>2</sup> *The Internal Revenue Service Needs to Be Consistent and Fair When Assessing Interest and Penalties on Employers Who Misclassify Their Employees* (Reference Number 2003-30-042, dated January 2003).

<sup>3</sup> Reconsideration requests occur when the business or worker disagrees with the determination made.

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While the SS-8 Program does not presently have operating procedures published in the Internal Revenue Manual (IRM), standard operating procedures are documented that detail all aspects of processing, including timeliness standards and referral procedures for employment tax cases with examination or fraud potential. Actions to convert the standard operating procedures to the IRM are in progress.

The Newport processing site staff was instrumental in assisting the Brookhaven site in standing up. The sites now share an integrated case-processing system database that serves the Brookhaven site remotely as a database and online processing environment. Newport site personnel also provided adequate training to all Brookhaven site personnel. Review of receipts and closures at both sites indicate that the workload supports year-round staffing.

To help ensure consistency in the application of compliance policy between processing sites, the National Headquarters Senior Program Analyst representing the Office of Employment Tax maintains contact with onsite managers to identify and resolve problems. This includes developing and applying examination referral criteria, resolving technical issues, working toward the development of IRM procedures, and developing program report schedules.

Currently, the SS-8 Program objectives are limited to making determinations as to a worker's Federal Government employment tax status. The Program's objectives do not include ensuring compliance with the determinations once they are made.

To meet the IRS' overall compliance mission of helping taxpayers meet their tax responsibilities, the SS-8 Program objectives should include ensuring that taxpayers comply with the worker status determinations made and measuring the degree of voluntary compliance achieved.

An SB/SE Division study of the SS-8 Program, released in January 2002, stated, "there is currently no system to ensure follow-up is performed to verify future compliance with the determination." This study included a recommendation to add the responsibility for monitoring compliance with worker status determinations to the duties of the SS-8 Program. According to SB/SE Division management, they

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### **The SS-8 Program Objectives Do Not Include Ensuring Compliance With the Worker Status Determinations**

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## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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did not implement this recommendation because the move from Austin, Texas, to Brookhaven, New York, required all available resources during the yearlong transition.<sup>4</sup>

Consequently, the IRS has no assurance that these taxpayers are meeting their tax responsibilities. The potential exists for filing and payment noncompliance and the loss of credibility with businesses and/or workers. Noncompliance with the IRS worker status determinations also prevents the SS-8 Program from achieving its larger mission of instilling the highest degree of public confidence in the tax system's integrity, fairness, and efficiency.

### Recommendation

1. The Director, Compliance, SB/SE Division, should expand the objectives of the SS-8 Program to ensure compliance with tax laws in all cases in which worker status determinations have been made. This may be accomplished through subsequent account research and reminder notices where necessary. Continued noncompliance should result in referrals to the Examination function.

Management's Response: The Director, Reporting Compliance, SB/SE Division, is looking at various options for conducting follow-up research on employers that appear not to have complied with the determination and will consider these alternatives as resources become available.

Forms SS-8 meeting specific criteria are sent to field offices to be further reviewed by the Examination or Criminal Investigation function. However, after the cases are referred, the SS-8 Program receives no feedback to allow for the measurement of Program accomplishment. Getting feedback and developing a performance measure would enable SS-8 Program management to evaluate their success and refine their criteria.

In addition, should the SS-8 Program expand its mission to include ensuring compliance with worker status

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**Performance Measures Are Needed to Allow Management to Assess the SS-8 Program's Effectiveness**

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<sup>4</sup> The requirement to follow up to ensure compliance with IRS worker status determinations has been established as a priority in the SB/SE Division's FY 2004 Employment Tax Plan.

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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determinations, it would be beneficial to develop a performance measure to quantify the level of compliance achieved.

The Government Performance and Results Act of 1993 (GPRA)<sup>5</sup> requires the use of performance measures. Performance measures should be used to evaluate the effectiveness of a program in meeting its objectives.

Management has not established a performance measure to quantify the level of compliance with the determinations, in part, because the SS-8 Program did not implement an internal study recommendation from 2002 that suggested ensuring compliance with its worker status determinations. Because there was no requirement to measure business or worker compliance with the worker status determinations, there had been no need for a performance measure. In addition, management has not established a performance measure to evaluate the cases they refer to the Examination and Criminal Investigation functions. As a result, there is no way to evaluate the effectiveness of the services provided by the SS-8 Program.

### Recommendation

2. The Director, Compliance, SB/SE Division, should establish a performance measure to enable management to determine SS-8 Program effectiveness in terms of compliance achieved. This performance measure would require establishing follow-up procedures to identify and measure compliance with the worker status determinations made and soliciting results of referrals made to the Examination and Criminal Investigation functions.

Management's Response: The Director, Reporting Compliance, SB/SE Division, will develop performance measures to quantify the results of the follow-up research and establish baselines and performance goals.

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<sup>5</sup> Pub. L. No. 103-62, 107 Stat. 285 (codified as amended in scattered sections of 5 U.S.C., 31 U.S.C., and 39 U.S.C.).

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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### **The Decision Not to Centralize the SS-8 Program Into One Site Has Left Two Issues Unresolved**

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The SB/SE Division study of the SS-8 Program, released in January 2002, recommended all Form SS-8 work be consolidated to one site. The main reasons for consolidation were to “enhance consistency, efficiency, and ease of management and control.”

In June 2003, the Director of Compliance award was presented to the Newport, Vermont, SS-8 Unit in recognition of its dedicated efforts and outstanding accomplishments. The decision was made not to centralize to one site to retain the experience in the Newport site while preserving and using available resources in the Brookhaven site. As a result, some problems inherent in maintaining two sites have not been resolved.

#### **Inadequate operational oversight may result in inconsistent worker status determinations**

The two SS-8 Program processing sites presently have differing organizational structures, spans of managerial control, personnel grade series and levels, numbers of tax examiners and clerks to process similar volumes of Forms SS-8, and reporting requirements. For example, 2 units exist at 1 site with the span of managerial control for those units at 14:1 (approximately 10 tax examiners and 4 clerks in each unit). The other site has 1 unit with a span of 19:1 (17 tax examiners and 2 clerks). In addition, the technical employees at one site are grades General Schedule (GS)-6 and GS-7, while the other site’s technical employees are GS-7 through GS-9.<sup>6</sup>

The 2002 SB/SE Division study stated, “the staffing configuration in the two sites, both in terms of grade structure and productivity, is inconsistent. This situation carries potential for conflict and must be resolved to reflect sound classification and position management practices.”

We agree with the study’s assessment. In addition, the uniform application of operational policy is necessary to maintain consistency within the SS-8 Program. For example, differences in how the two sites handle technical and administrative issues within the Program, such as implementing new procedures, new laws, or new language

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<sup>6</sup> GS is one of two basic pay systems in the IRS.

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in letters to businesses or workers, may make it more difficult to oversee the Program. Consistency needs to be maintained with regard to the following:

- Interpretation of law.
- Operational reviews to include technical and procedural features.
- Coordination of Continuing Professional Education requirements.
- Development of training manuals, cadre, and courses.
- Liaison with the Office of Chief Counsel and the Taxpayer Advocate Office and feedback to SS-8 Program processing site personnel.
- Coordination of the dissemination of operational information to the processing sites.
- Reviews of the effectiveness of referral issues.
- Establishment and refinement of performance measures.
- Maintenance of a balanced workload between processing sites.

The Office of Employment Tax develops and implements policies and strategies for Employment Tax programs. This is accomplished by providing program coordination and oversight for all employment tax activities, ensuring employment tax programs and policies are consistent, formulating and revising policy and processes affecting employment tax examination and compliance initiatives, and developing policies and guidelines that apply to all employment tax programs. The Senior Program Analyst for the Office of Employment Tax is directly responsible for oversight of the SS-8 Program, in addition to planning work for the field Examination function personnel, monitoring the results of that work, and providing liaison to the field.

The Senior Program Analyst devotes approximately 15 percent of his time to oversight of the SS-8 Program. Initially, the Newport site had been steering the operating

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policies while the Brookhaven site stood up. However, per the Senior Program Analyst:

*The Office of Employment Tax does not have the resources to ensure detailed operational consistency between the two sites. Presently, day-to-day operational procedures are managed separately by management at the two sites. A single management structure would be able to provide consistency in day-to-day operations.*

Without sufficient operational oversight, consistency between sites may deteriorate as various issues are handled differently. Differences in the handling of issues between processing sites may result in inconsistent worker status determinations and, ultimately, inequitable treatment of taxpayers. In fact, the 2002 SB/SE Division study reported, “there have been instances where the two sites have given contrary opinions on comparable facts.”

### **The Brookhaven site is experiencing delays during remote access of the case-processing database located in Newport**

The SS-8 Program case-processing database is maintained in Newport. The SS-8 Program personnel in the Brookhaven site routinely experience minutes-long response times when accessing the case-processing database.

To meet the 180-day timeliness standard for Form SS-8 processing, it is important to have reasonable response times to the remote case-processing database. Acceptable computer response times should be measured in seconds, not minutes.

In November 1998, a proposal was submitted to move from the existing case-processing database structure to a web-based design. This would provide instantaneous application updates for all users, including remote users, and decrease administrative costs. This proposal will be implemented when computer resources become available.

Remote access delays in accessing and updating the case-processing database are a constant source of frustration for employees and reduce program efficiency.

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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### Recommendations

The Director, Compliance, SB/SE Division, should:

3. Increase the National Headquarters Office of Employment Tax resources dedicated to the SS-8 Program.

Management's Response: A second Headquarters Employment Tax Senior Program Analyst has been assigned to the SS-8 Program.

4. Establish one operational position to oversee the application of operational policy for both processing site locations or establish an operational policy oversight group for the SS-8 Program, consisting of the Senior Program Analyst for the Office of Employment Tax and managers from the Newport and Brookhaven processing sites, to meet periodically to discuss and resolve all issues affecting the consistency of worker status determinations.

Management's Response: An operational policy oversight group has been established for the SS-8 Program.

5. Work with the Modernization and Information Technology Services (MITS) organization to resolve the problem of delays experienced by the Brookhaven site during remote access of the Newport site database, as an interim measure until the web-based design is implemented.

Management's Response: A team of MITS organization employees led by the Customer Relationship Management function within the End User Equipment and Services function is currently analyzing the causes of remote access delays and will make recommendations for needed hardware. The approved hardware will be installed and training will be provided to the system administrator.

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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### **Readily Researchable Records of Closed Worker Status Determinations Are Needed**

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Worker status determinations from employment tax field examination results<sup>7</sup> are not available for research by SS-8 Program tax examiners or field Examination function personnel. In addition, no records of SS-8 Program worker status determinations are readily available for research by field Examination function personnel or SS-8 Program tax examiners. While the closed case information for the SS-8 Program processing sites is available on the SS-8 case-processing database, the services of a computer programmer are currently needed to retrieve the information. A readily researchable database of determination decisions is a necessary tool for SS-8 Program tax examiners and field Examination function personnel to use to help ensure the consistency of future determinations.

The Newport SS-8 Program site submitted a group suggestion in December 2000 to create an employment tax history on the Integrated Data Retrieval System<sup>8</sup> to provide IRS-wide access to employment tax information including worker status determinations. This suggestion resulted in a monetary group award. However, the suggestion has not been implemented because of programming resource constraints.

Inconsistent worker status determinations made on a case-by-case basis and between sites may result in inconsistent treatment of taxpayers. Further, it increases taxpayer burden when the IRS must have field Examination function personnel or SS-8 Program tax examiners rely on the worker or business to learn of previous worker status determinations made by the other group.

Without the availability of researchable records of closed field Examination function personnel worker status determination decisions, the SS-8 Program Tax examiners may have to rely on the taxpayer to provide information on the results of any worker status determination resulting from an employment tax examination.

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<sup>7</sup> Field examiners involved in employment tax examinations may make worker status determinations in addition to those made in the SS-8 Program sites.

<sup>8</sup> IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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### Recommendation

6. The Director, Compliance, SB/SE Division, should establish a readily researchable source of all closed worker status determinations made by both field Examination function personnel and SS-8 Program personnel and include it in the web-based database design being developed.

Management's Response: The Director, Reporting Compliance, SB/SE Division, will implement a procedure to include field Examination function worker status determinations in a Form SS-8 processing site database and update a computer programming request to include a change to allow for research of worker status determinations.

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### Quality Review Procedures Have Not Been Implemented

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At the time of our review, completed worker status determinations were not being subjected to an independent quality review. Quality reviews should provide management with an independent assessment of the extent to which the organization complies with its standards, policies, and procedures. This assessment should provide valuable feedback to top management concerning both how well the organization achieves its quality goals and the consistency of worker status determinations between processing sites.

There were quality review procedures specific to worker status determinations; however, the quality review position became vacant in the Newport site and was not restaffed, and a quality review position was not established at the Brookhaven site.

As a result, inconsistent worker status determinations, on a case-by-case basis or between sites, may go unidentified. Also, management has one less technique available to monitor, measure, and improve the quality of work. Data cannot be accumulated to provide quality statistics and to identify trends, problem areas, training needs, and opportunities for process improvement.



**The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight**

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**Recommendation**

7. The Director, Compliance, SB/SE Division, should implement a system of quality review to help ensure consistency among examiners and between processing sites.

Management's Response: The Director, Reporting Compliance, SB/SE Division, will ensure that a consistent quality review procedure will be developed to assure both Form SS-8 processing sites are using the same criteria.

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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### Appendix I

#### Detailed Objective, Scope, and Methodology

The overall objective was to determine the effectiveness of the SS-8 Program in achieving its objectives in support of the Internal Revenue Service's compliance mission. To achieve our objective, we:

- I. Determined whether SS-8 Program objectives were proper, suitable, and relevant to the compliance mission.
  - A. Obtained and evaluated the program objectives of the SS-8 Program.
  - B. Interviewed National Headquarters and local management to determine how effectively the SS-8 Program objectives supported the compliance mission.
- II. Determined whether goals for the SS-8 Program were established and achieved.
  - A. Interviewed National Headquarters and local management to determine whether goals had been established and desired results or benefits achieved.
  - B. Interviewed National Headquarters and local management to identify existing performance measures and evaluated the effectiveness of these performance measures.
  - C. Interviewed management, reviewed Internal Revenue Manual documentation, and reviewed local desk procedures to determine whether referral procedures existed to direct the referral of employment tax cases with examination or fraud potential.
- III. Determined whether management systems for measuring effectiveness were adequate to meet goals and objectives.
  - A. Reviewed management and internal controls and determined whether Determinations of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (Form SS-8) were processed timely, accurately, and consistently.
    1. Reviewed desk procedures and determined whether timeliness standards for the processing of Forms SS-8 were established and were reasonable. We reviewed closed case statistics and determined whether timeliness standards were met.
    2. Interviewed management and determined the extent of quality and management reviews performed to ensure the accuracy of the worker status determinations.
    3. Interviewed management to determine what controls existed to ensure consistency in worker status determinations made on a case-by-case basis as well as between the Form SS-8 processing sites. We ascertained whether management effectively maintained the results of prior worker status determinations for employee research purposes.

## **The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight**

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- B. Reviewed management information systems reports and determined whether they provided sufficient information to allow National Headquarters and local management to effectively oversee the SS-8 Program.
  - C. Interviewed National Headquarters and local management and determined whether the SS-8 Program included a follow-up feature to ensure all required income tax returns were filed and employment taxes were paid by the employer and/or the employee, as required, as a result of the worker status determinations made.
  - D. Interviewed National Headquarters personnel responsible for the SS-8 Program and determined whether there was effective Program oversight for both compliance and operational policy.
- IV. Determined whether the SS-8 Program was using its resources effectively to achieve program objectives.
- A. Determined whether adequate training was provided to new employees at the Brookhaven processing site.
    - 1. Reviewed the training course syllabus and training materials and determined the extent of the training provided to trainees.
    - 2. Developed a questionnaire for recently trained examiners and clerks to obtain feedback and determined the effectiveness of the training.
  - B. Reviewed reports of receipts and closures and determined whether the workload supports full staffing annually.

**Major Contributors to This Report**

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**The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded  
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**Appendix III**

**Report Distribution List**

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The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

Appendix IV

Management's Response to the Draft Report




COMMISSIONER  
SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

RECEIVED  
FEB 20 2004

FEB 17 2004

MEMORANDUM FOR TREASURY INSPECTOR GENERAL FOR TAX  
ADMINISTRATION

FROM: Dale F. Hart   
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – The Program to Determine Worker  
Status for Federal Tax Purposes Needs Expanded Goals  
and Increased Operational Oversight  
(Audit # 200330020)

I have reviewed your draft report and agree with your recommendations. The goal of the Program to Determine Worker Status for Federal Tax Purposes (also known as the Form SS-8, Worker Status Determination Program) is to make accurate and timely determinations of a workers' employment status as an employee or independent contractor. We recognize the need to improve our procedures, we have already taken corrective actions to address your concerns. One significant action is the development of a new Internal Revenue Manual (IRM) section in the Employment Tax Handbook, IRM 4.23, titled "Form SS-8 Worker Status Determination Program." The IRM will contain updated administrative guidance and operating procedures for the program.

Our comments on your recommendations follow:

**RECOMMENDATION 1**

The Director, Compliance, Small Business/Self-Employed (SB/SE) Division, should expand the objectives of the SS-8 Program to ensure compliance with tax laws in all cases in which worker status determinations have been made. This may be accomplished through subsequent account research and reminder notices where necessary. Continued non-compliance should result in referrals to the Examination function.

**CORRECTIVE ACTION**

We are looking at various options for conducting follow up research on employers who appear not to have complied with the determination. As resources become available we will consider these alternatives.

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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### **IMPLEMENTATION DATE**

October 15, 2004

### **RESPONSIBLE OFFICIAL**

Director, Reporting Compliance, Small Business/Self-Employed Division

### **CORRECTIVE ACTION MONITORING PLAN**

The Program Manager, Employment Tax, will advise the Director, Reporting Compliance of corrective action delays.

### **RECOMMENDATION 2**

The Director, Compliance, SB/SE Division, should establish a performance measure to enable management to determine SS-8 Program effectiveness in terms of compliance achieved. This performance measure would require establishing follow-up procedures to identify and measure compliance with the worker status determinations made and soliciting results of referrals made to the Examination and Criminal Investigation functions.

### **CORRECTIVE ACTION**

We will develop performance measures that will quantify the results of the process described in the corrective action for Recommendation 1. After a baseline is established for these measures, performance goals will be established. Please refer to Recommendation 7 for information on the Quality Review process.

### **IMPLEMENTATION DATE**

October 15, 2004

### **RESPONSIBLE OFFICIAL**

Director, Reporting Compliance, Small Business/Self-Employed Division

### **CORRECTIVE ACTION MONITORING PLAN**

The Program Manager, Employment Tax, will advise the Director, Reporting Compliance of corrective action delays.

### **RECOMMENDATION 3**

Increase the National Headquarters Office of Employment Tax resources dedicated to the SS-8 Program.

### **CORRECTIVE ACTION**

A second Headquarters Employment Tax Senior Program Analyst has been assigned to the SS-8 Program.

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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### **IMPLEMENTATION DATE**

Completed

### **RESPONSIBLE OFFICIAL**

NA

### **CORRECTIVE ACTION MONITORING PLAN**

NA

### **RECOMMENDATION 4**

Establish one operational position to oversee the application of operational policy for both processing site locations or establish an operational policy oversight group for the SS-8 Program, consisting of the Senior Program Analyst for the Office of Employment Tax and managers from the Newport and Brookhaven processing sites, to meet periodically to discuss and resolve all issues affecting the consistency of worker status determinations.

### **CORRECTIVE ACTION**

An operational policy oversight group for the SS-8 Program has been established that includes a Headquarters representative and managers from Newport and Brookhaven. The first meeting was held in January, 2004.

### **IMPLEMENTATION DATE**

Completed

### **RESPONSIBLE OFFICIAL**

NA

### **CORRECTIVE ACTION MONITORING PLAN**

NA

### **RECOMMENDATION 5**

Work with the Modernization and Information Technology Services (MITS) organization to resolve the problem of delays experienced by the Brookhaven site during remote access of the Newport site database, as an interim measure until the web-based design is implemented.

### **CORRECTIVE ACTION**

A team of MITS employees being led by the Customer Relationship Management (CRM) function within End User Equipment and Services (EUES) is currently doing analysis to determine the causes of the remote access delays. By the end of February 2004, MITS will have reviewed the identified connectivity issues and



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made recommendations on needed hardware for the Newport Site. The approved hardware will be delivered and installed and the administrator will receive training on the system.

### **IMPLEMENTATION DATE**

November 1, 2004

### **RESPONSIBLE OFFICIAL**

Program Manager, Planning Coordination and Asset Management, Information and Technology Services

### **CORRECTIVE ACTION MONITORING PLAN**

The EUES Brookhaven Territory Management will advise the Program Manager, Planning Coordination and Asset Manager, Information and Technology Services of any delays.

### **RECOMMENDATION 6**

The Director, Compliance, SB/SE Division, should establish a readily researchable source of all closed worker status determinations made by both field Examination function personnel and SS-8 Program personnel and include it in the web-based database design being developed.

### **CORRECTIVE ACTION**

A procedure to forward worker status determination results from the field to one of the determination sites for inclusion in the database is being developed. As resources allow, the forwarded field results will be included in the database of worker status determinations.

The SB/SE Division will update the requirements of the May 2003 SS-8 development and maintenance Request for Information Services (RIS) to include a change to allow for research of worker status determinations.

### **IMPLEMENTATION DATE**

May 15, 2004 – Update RIS to include the ability to research worker status determinations.

October 15, 2004 - Inclusion of field worker status determinations in the current database, dependent on resource availability.

### **RESPONSIBLE OFFICIAL**

Director, Reporting Compliance, Small Business/Self-Employed Division

## The Program to Determine Worker Status for Federal Tax Purposes Needs Expanded Goals and Increased Operational Oversight

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### **CORRECTIVE ACTION MONITORING PLAN**

The Program Manager, Employment Tax, will advise the Director, Reporting Compliance of corrective action delays.

### **RECOMMENDATION 7**

The Director, Compliance, SB/SE Division should consider implementing a system of quality review to help ensure consistency among examiners and between processing sites.

### **CORRECTIVE ACTION**

A process of embedded quality review is in place, but a consistent review procedure will be developed to assure that both sites are using the same criteria.

### **IMPLEMENTATION DATE**

October 15, 2004

### **RESPONSIBLE OFFICIAL**

Director, Reporting Compliance, Small Business/Self-Employed Division

### **CORRECTIVE ACTION MONITORING PLAN**

The Program Manager, Employment Tax, will advise the Director, Reporting Compliance of corrective action delays.

If you have any questions, please call me at (202) 622-0600 or Robert L. Hunt, Acting Deputy Director, Compliance Policy, Small Business/Self-Employed Division, at (202) 283-2200.