

Building for a Solid Future

By Steve Delaney

Building for a Solid Future is the theme for this year's annual gathering of the National Conference of State Social Security Administrators to be held this year in Rapid City, South Dakota. The conference is being held Saturday, July 28, 2002, through Wednesday, August 1, 2002, at the Rushmore Plaza Holiday Inn. The conference theme emphasizes the fact that our agenda will be covering solid straightforward steps that can be taken by State Social Security Administrators to ensure compliance in each individual state with regard to their Section 218 agreements. A complete agenda to the conference follows at the end of this article but allow me to take just a moment to review some of the highlights you can expect if you are able to make the arrangements to attend:

Issues impacting state administration

Funding: One of the major issues impacting all states across the country is budgetary. How do you get the funds to run a program such as ours when there are so many other competing needs within each state budget. The last issue of the NCSSSA newsletter took up this issue and explained how we address budgetary concerns in Oregon. Elsewhere in this newsletter you will find a follow-up article by state administrator Wayne Godwin explaining how the issue is tackled by our neighbor to the North, Washington State. Recently a survey was made of all states to determine how budgets are being met and not surprisingly a number of creative methods were uncovered. That survey and the lessons that can be drawn from it will be discussed on Sunday afternoon, July 27 at the conference. This issue is of such importance; you can expect to see additional articles in coming newsletters.

Litigation: In a few cases State Social Security Administrators have been drawn into litigation over the Section 218 agreement in their state. What

happened, and what lessons can be learned will be the topic of discussion on Tuesday afternoon. The goal will be to assist all in attendance to determine where the hidden land mines in their paperwork back home may lie.

Issues to be addressed by Both the Social Security Administration and the IRS

Memorandum of Understanding: The conference begins Monday morning with a discussion by both Social Security and Internal Revenue Service personnel of the recently completed Memorandum of Understanding, a document that helps better clarify the areas of oversight of each agency. This discussion will really set the tone for the rest of the conference, as the two agencies help us all better understand the part we play in this unusual, and what has proven to be a highly effective union of state and federal resources which is the National Conference of State Social Security Administrators.

Issues to be addressed by the Social Security Administration

Clean Up: Name Changes, mergers, consolidations, annexations, and dissolutions—have you ever experienced any of these in your state? More to the point, if you have experienced these events, and who hasn't, are your Section 218 agreements all up-to-date, reflecting the reality of your state's present situation. Judy Sobus and Richard Harron of the Social Security Administration will be leading a discussion on how we can approach what for many of us is a large back-log of work. You'll want to be there Monday morning to hear what pointers they have to share.

Mandatory Social Security and Medicare: Monday afternoon an excellent slide show presentation will be provided by the SSA representatives to address when mandatory coverage issues require the attention of State Social Security Administrators, as well as discussing the details of Medicare-only coverage.

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Issues to be addressed by the IRS

Audits: For the past four or five years we in the conference have heard about possible IRS audits to determine compliance on the part of public employers to the provisions of their Section 218 agreements. So where are we in the process? What kind of notification, if any, could an individual State Social Security Administrator expect to receive should a Section 218 audit be scheduled in his or her state? What does an audit actually entail? How could a State Social Security Administrator assist in the process? You will learn the answers to these questions and more Tuesday morning as Allen Jones, Director of Federal, State and Local Governments takes up this topic.

As this year's Vice-President, I want to extend once again the invitation to all of you to make plans to join us in Rapid City as we meet and learn together how we can better serve our public. If you need to receive a conference sign-up package, please call my assistant, Karen Park, at (503) 603-7556, or you can e-mail her at karen.park@state.or.us.

Following are the topics for the conference as it currently stands:

- Budgeting for your Program
- Budgeting for your Social Security Program
- State Newsletters
- Overview of Publication 963 — What has changed!
- Mandatory Social Security and Medicare Slide Show
- Mergers/Dissolutions/New Formations
- History of Police and Fire Service Coverage
- SSA Digital Library/SLGE Website
- Review Social Security Legislation
- Legal issues/cases being faced around the country
 - How to do it—218 Legal Landmines
- Advisory Committee on Tax Exempt and Government Entities (ACT) update
- Update on Outreach
 - Accomplishments to date
 - 2003 Outreach Plans
 - Role of SSSA in Outreach
 - Moving from Outreach to Audit
- Update on Audit Program
 - Role of SSSA in Audits & Compliance Checks
 - Compliance Checks & Audits
- IRC 457 Regulations-403(b) Mandatory coverage issue
 - Medical Residents
 - Chore Workers
- How NCSSSA can help

Internal Revenue Service Publication 963

By Maryann Motza, NCSSSA President

The NCSSSA is pleased to announce that IRS Publication 963, Federal-State Reference Guide, has been updated and is now available online or can be downloaded in pdf file format at the IRS web page www.irs.gov/govts.

Publication 963, as you know, provides states and their local governments a comprehensive reference source for FICA coverage, withholding and reporting rules. This revised edition reflects the numerous legislative and regulatory changes that have occurred since the 1997 publication.

The 2002 revision is the result of a cooperative effort by the Social Security Administration, IRS and the NCSSSA. This effort required a great deal of hard work by NCSSSA members, the SSA Division of Coverage, the IRS Federal/State/Local Government team and the IRS Office of Chief Counsel.

The NCSSSA appreciates the diligence and professionalism displayed by both the IRS team, under the leadership of Allen Jones, the Office of Chief Counsel's team, under Mary Oppenheimer's direction, and the SSA team, coordinated by Judy Sobus. Specifically, Bill Reed and Stewart Rouleau (both with the IRS); Elizabeth Edwards and Sarah Hill Ingram (Office of Chief Counsel); and Helen Huber, Ann Augustine, and Diane Freelump (with SSA). All of whom provide valuable insight and comments that make this publication an important reference tool.

SSA, IRS, the Office of Chief Counsel, and the states, working together on this joint project, have provided the nation's 90,000 governmental employers with a publication that supports them in achieving their employer responsibilities.

Publication 963 will be available in print form in about a month. State administrators and their governmental employers may order them by calling the IRS toll free number 1-800-829-3676.

Funding in the State of Washington

By Wayne Godwin

The State of Washington's Old-Age Survivor's Insurance (OASI) program is funded from contributions from each entity that is covered for Social Security.

Before you consider this funding program, please research your state's statutes to determine whether your state can bill each government entity for OASI program costs. Throughout my conversations with other states looking for a funding source it has become apparent that this is the key component to identify whether your state can use this funding method.

Due to the prudent thinking of the original Washington State OASI Administrator and the approval of a majority of the Legislators of this great State, the statutory authority to bill each entity on a prorated basis is authorized within the Revised Code of Washington, RCW 41.48.080 Administration costs — Allocation. It reads, "All costs allocable to the administration of this chapter shall be charged to and paid to the general fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions."

If you have this statutory authority in place or you can get this approved by your Legislature, you will be required to gather several pertinent pieces of data to develop an accurate billing method. You will need to have a forecasted budget in place. Second, you will need to send a request to each entity covered for Social Security requesting their entity's total wages for the most recently completed calendar year. You may ask why no Medicare only billed, but Washington does not bill Medicare only entities. Third, once you have got all the total wage responses returned, you would have to add all the total wages together to obtain a total wages figure for all OASI entities. From these figures you can get a pro-rated percentage by dividing the total wage figure into each entity's individual total wage figure. Once the percentage is calculated, multiply the figure times forecasted budget figure. This is the figure that the entity is billed.

As a result, each year my Administrative Assistant, Lynda Aiello, sends out a letter to each political subdivision covered for Social Security requesting their prior

years total wages. Once all the entities have reported their respective entity's payroll information, we have a total payroll figure to calculate or pro-rate each political entity's annual bill. The minimum billing is \$25.00. The payments received from each entity are placed in a General Fund with the proper safeguards mandated by the State Treasurer. On a quarterly basis, I monitor this fund balance and over time a surplus of funds may develop. We are currently preparing a program policy to determine when, where, and how to use a surplus to reduce the entity contribution. All things considered, the policy will probably be along the lines of "at such time the surplus equal or exceeds fifty percent of the forecasted budget, the surplus will be used and entity contribution are adjusted accordingly." It was evident when I came on-board that there was substantial excess in the OASI account. As a result, I did not bill the entities last year and this is one of those times when the State OASI Administrator is held in very high esteem by the entities typically billed.

Another strong selling point of the billing program is it is very evident from my customer's responses that this billing procedure is a great way to keep in touch with each entity. Numerous bills are returned with specific status changes ranging from new names, mergers, and other related issues. This greatly assists me with one of my program goals to maintain the integrity of which state and local political subdivisions should be reported for Social Security and/or Medicare within my state. At the same time, adequate levels of funding were available to coordinate and present at nine state-wide education meeting in conjunction with Tim Beard of the Seattle Regional Social Security Office and Clark Fletcher and Sue Ann Jansen of the Seattle and Portland, Oregon Internal Revenue Service Offices. These sessions gave our training team the ability to touch over 250 political subdivisions and to resolve their respective questions and concerns. My state also conducted over twenty additional training seminars as part of my education and referendum guidance. And that is not all.... With these efforts comes a solid working relationship with your federal partners. Ultimately, we all greatly benefit toward achieving our mutual goal to provide quality customer service. I cannot even begin to explain how essential this is to my program's success.

It is cooking in Washington and adequate funding is why. Please write, e-mail, or call me with any questions or assistance you may need.

The Problem of Finding a Budget

By Steve Delaney

Not surprisingly the single biggest impediment to a state program is being able to obtain sufficient budgetary authority. In December of last year, Oregon's State Social Security Administrator (SSSA) conducted a survey of other states to determine how those states were obtaining funding to carry out their 218 duties. The response was excellent with 47 states responding. As mentioned elsewhere in this newsletter, a full discussion of the results will be conducted at this year's conference in South Dakota. However, with so much interest expressed by many of our respondents and reasoning that a number of you will be unable to attend this year's conference for this very reason, i.e., the lack of a budget, this article will discuss in some detail the findings of that survey. My hope is that the information contained herein will get us all thinking creatively and many more of you will be in attendance August 10-13, 2003, at the conference to be held in Portland, Oregon.

The survey revealed that State budget's for Section 218 activities fell into four broad categories: Living off the pre-1987 assets, Invoicing Participating Employers, Living off the float, and Fighting for your share of the budget.

Living Off Pre-1987 Assets

A few states reported having dollars remaining from budgets and collections allocated prior to 1987, back when states were collecting FICA taxes from Section 218 employers and remitting those to the Internal Revenue Service. States with such a remaining legacy have attempted to operate presently from the earnings of those accounts.

Idea: Determine if your state had an account to be used for the administrative costs of collecting and remitting FICA taxes prior to 1987. Are there still funds remaining that have been overlooked? Could such an account be reactivated? (See NCSSSA winter 2002 newsletter for details on how Oregon successfully reactivated its account.)

Invoicing Participating Employers

In some states the implementing state statute allows for billing employers for the administrative costs of the

State Social Security Administrator. In Oregon, Washington, and Alaska, that has proved to be very successful. While in Oregon this required instituting a new billing that employers had not anticipated, complaints have been few. That may be partly attributed to our emphasis in Oregon on demonstrating value to public employers, via newsletters, workshops, and instant telephone, and e-mail access.

Idea: Review your state's implementation statute. Was your office given the authority to bill for administrative costs? In Oregon we had the authority but simply hadn't exercised for a 10-year period (1986-1996). Fortunately the statute had not been repealed.

Living Off The "Float"

Kentucky is unique in this regard, but it is a concept worth looking into for other states. The State of Kentucky is a Section 218 participant. The state's FICA payment is placed in a holding account for a limited number of days prior to transmission to the Internal Revenue Service. The SSSA duties are funded from the earnings or "float" of that payment while in its holding account. A key component to Kentucky's success in this regard is the fact that the SSSA duties are assigned to the state Comptroller's Office, the same office that generates the state's monthly FICA remittance, making the interrelation of the two much easier to establish and justify.

Idea: So long as your state government is a Section 218 employer, determine what agency makes the monthly payment. How is that payment made? Is there a holding period creating a "float"? Could there be?

Fighting for Your Share of the Budget

Unfortunately, this is where the majority of state's fall—coming to the table and having to fight for your share of the pie. The problem here is that the importance of the State Social Security position is little understood in any state except for those of course that deal with Social Security on a regular basis. The success to obtaining funding in the midst of the biennial budgetary melee seems to lie in the process of clearly outlining to your superiors the importance of this program to the agency in relation to the other activities being overseen by the agency.

One thing the survey seemed to show is that having the SSSA program overseen by the same agency that administers the state retirement plan makes this task

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an easier proposition. In Oregon the SSSA program is housed within the Oregon Public Retirement System, I can personally attest to how helpful that has proven to be as my coworkers are fully informed on retirement issues and though not understanding the details of Social Security, they do appreciate its importance.

Let me give you an example of what happened here in Oregon. While you may have read in an earlier newsletter of how Oregon SSSA currently bills employers to cover its administrative expenses, that hasn't always been the case. In the early 90s. the program in Oregon was nearly moribund. In 1996 it became clear that the Internal Revenue Service was considering undertaking audits of public entities to ensure compliance with their Section 218 agreements. As the single PERS staffer assigned to take care of SSSA duties as they came up, I approached the PERS director with information that came out of the 1996 conference in Denver. The director quickly grasped what a public relations nightmare Oregon PERS would face were a public entity covered under a Section 218 agreement to fail one of these audits. The director immediately provided funding from the Oregon PERS administra-

tive budget to allow for employer workshops and greater oversight of the Section 218 agreements.

Note: In 1998 our attorneys cautioned that fully funding the Social Security activities out of the Oregon PERS retirement fund was likely an impermissible diversion of trust fund assets. It was at that point that Oregon PERS reinstated its program of invoicing public entities for administrative costs. [See the Winter 2002 NCSSSA-Today issue for the full story.]

Ideas:

1. If you're having trouble obtaining budgetary dollars, being able to bandy about the name of the IRS is helpful. People tend to sit up and take notice. Allen Jones, Director of the Federal, State and Local Governments, has offered to help the SSSA staff in any state to make the case for their program to the higher ups. Give him a call.
2. Much tougher to undertake, but take it under consideration if it fits your circumstances – If you find your program is lodged in a State agency with little or nothing in common with retirement issues, look into the possibility of getting your program moved to a more relevant agency. Its been done before elsewhere—Washington State being such an example (though I hasten to add that the move there had some politics tied to it.)

Memorandum of Understanding

The Social Security Administration and the Internal Revenue Service have signed a memorandum of understanding (MOU) for State and local government compliance issues. The MOU discusses the responsibilities of both agencies for educating State social security administrators, educating State and local government employers, maintaining Section 218 agreements, improving the reporting process between SSA and the IRS, and the sharing of taxpayer return information.

The MOU was recommended in an audit report issued December 1996 by the Office of the Inspector General (OIG). OIG Audit Report #A-04-95-06013, "Social Security Coverage of State and Local Government Employees." It addressed operational and oversight responsibilities for the Social Security and Medicare coverage provisions under Sections 210 and 218 of the Act and the mandatory Social Security and Medicare tax provisions under the Internal Revenue Code. The report concluded a significant tax liability existed because of lack of understanding by public employers of the Social Security and Medicare coverage and taxation provisions for public employees. The OIG report recommended SSA pursue a MOU with the IRS specifying the responsibilities of each agency to State and local government public employers to ensure the accuracy of earnings records for public employees.

The MOU is an important document because it formalizes the working relationship between SSA and the IRS in addressing State and local government compliance issues to ensure the accuracy of SSA's earnings records. Additionally, the MOU implements the Section 218 Committee as a formal forum for discussion of policy, procedural and compliance issues relating to State and local coverage. You can view or download the MOU at www.state.ky.us/agencies/finance/depts/ss/SSA-IRSMOU.pdf.



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It's Not Too Early to Start Planning For Next Year's Conference In Portland, Oregon

August 10 – 13, 2003
Marriott Portland Downtown

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