T-1729.1

1959

Staff Analysis of Recommendation No. 5 in the Report of Touche, Niven, Bailey and Smart, dated August 5, 1959

Recommendation No. 5

"That a single control account in the Treasury Department be established for the Indian trust fund accounts which number approximately 650."

Proposed Procedure

The accounting firm proposed that in order to carry out the above recommendation, the Treasury establish a single control account for Indian tribal (trust) funds and that responsibility for the individual accounts, including the computation of interest, rest with the Bureau of Indian Affairs. The accounting firm stated, "It is realized that amendment of existing laws and regulations would likely be necessary before this proposal could be implemented." The accounting firm recognized that adoption of the proposal would produce only nominal savings; however, the firm advised: "we believe that a duplicate set of accounts serves no useful purpose and that opportunities for simplification in administrative processes would result."

Background and Present Procedure

Legislation

In accordance with legislation or treaties, the Treasury has established numerous accounts on its books. Typical examples of the laws requiring the Treasury to establish or maintain Indian accounts on its books and pay interest thereon are as follows:

Act of May 17, 1926 (44 Stat. 560)

> "That hereafter all miscellaneous revenues derived from Indian reservations, agencies, and schools, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption 'Indian moneys, proceeds of labor,' *** "

Act of February 12, 1929 (45 Stat. 1164)

> "That all money in excess of $500 held by the United States in a trust fund account, and carried on the books of the Treasury Department to the credit of an Indian tribe, if the payment of interest thereon is not otherwise authorized by law, shall bear simple interest at the rate of 4 per centum per annum from the date of the passage of this Act.*** "

Act of June 13, 1930 (46 Stat. 584)

"That the Act approved February 12, 1929 (44 Stat. 1164), entitled 'An Act to authorize the payment of interest on certain funds held in trust by the United States for Indian tribes,' be, and the same is hereby, amended so as to read as follows:

" 'That all funds with account balances exceeding $500 held in trust by the United States and carried in principal accounts on the books of the Treasury Department to the credit of Indian tribes, upon which interest is not otherwise authorized by law, shall bear simple interest at the rate of 4 per centum per annum.

" 'SEC. 2. All tribal funds arising under the Act of March 3, 1883 (22 Stat. 590), as amended by the Act of May 17, 1926 (44 Stat. 560), now included in the fund 'Indian Money, Proceeds of Labor,' shall, on and after July 1, 1930, be carried on the books of the Treasury Department in separate accounts for the respective tribes, and all such funds with account balances exceeding $500 shall bear simple interest at the rate of 4 per centum per annum from July 1, 1930.*** "

Act of May 19, 1947 (61 Stat. 102)

"SEC. 2. The Comptroller of the United States, upon request of the Secretary of the Interior, is authorized and directed to establish a trust fund account for each tribe and the Secretary of the Treasury shall make such transfer of funds on the books of his department as may be necessary to effect the purpose of section 1 of this Act: Provided, That interest shall accrue on the principal fund only, at the rate of 4 per centum per annum, and shall be credited to the interest trust fund accounts established by this section: Provided further, That all future revenues derived from the Wind River Reservation under existing law shall be divided in accordance with section 1 of this Act and credited to the principal trust fund accounts established herein."

Act of September 2, 1958, Public Law 85-915 (72 Stat. 1762)

"SEC. 2. The payments authorized by this Act, *** shall be deposited to the credit of the Standing Rock Sioux Tribe in the Treasury of the United States to draw interest on the principal at the rate of 4 per centum per annum until expended.*** "

Procedure Prior to July 1, 1955

Prior to July 1, 1955, Indian trust fund collections were credited in various "unappropriated" receipt accounts and periodically, by appropriation warrant, transferred to "unrequisitioned" appropriation accounts. On the basis of requisitions from the Bureau of Indian Affairs and the related accountable warrants used until July 1, 1953, and subsequently on the basis of administrative requests, amounts needed for current disbursements were transferred from the appropriation account to the checking account of disbursing officers. The interest credited to the Indian trust funds was computed on daily balances in the "unappropriated" receipt accounts and the "unrequisitioned" appropriation accounts. No interest was credited for balances in disbursing officers' accounts. The above procedure was the basis for a court decision involving the question of interest computations (Menominee Tribe of Indians v. The United States) a/.

Procedure Subsequent to July 1, 1955

Under Joint Regulation No. 4, Revised, the funded checking accounts for disbursing officers making payments for these accounts were discontinued on July 1, 1955. Beginning on that date the Indian trust fund collections were credited to an "unappropriated receipt" account as theretofore and transfer made by an appropriation warrant to a separate "non-expenditure" account. b/ The administrative office, namely, the Bureau of Indian Affairs, continues to furnish periodic advice as to the amount to be disbursed for a given period for each trust fund and such amounts are transferred from the foregoing "non-expenditure" account to the related "expenditure" account. The daily balance in the "non-expenditure" accounts and the "unappropriated receipt" accounts comprises the basis for interest computations in a manner similar to the procedure prior to July 1, 1955. No interest is credited for amounts transferred to the "expenditure" accounts in the Treasury.

Under present procedure, the Washington regional office of the Bureau of Accounts is the only Treasury office that records the individual deposits made for credit to these Indian trust receipt accounts. The original certificate of deposit, irrespective of where the deposits are made in the field, come into that office from the Federal Reserve banks. The date such documents are processed for entry in the Washington regional office accounts is the date the receipts are covered into the Treasury. Therefore, under present procedure as in the past, interest commences with the date of covering of such receipts into the Treasury and stops on the date on which the transfer is made from the "non-expenditure" principal account to the related "expenditure" principal account (formerly the disbursing officers' account).

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a. Court of Claims of the United States, Case No. 44300, decided October 7, 1946.

b. Procedure approved by Comptroller General in Decision B-126459, dated February 20, 1956 (BA File 113.3440).

The present procedure was developed to continue insofar as possible the computation of interest under the procedures on which prior court decisions were based and thereby avoid possible legal complications which might be grounds for overruling the aforementioned Menominee Tribe of Indians case. In this case, the court concluded:

> "We are of opinion that the defendant is obligated to pay interest only from the time the money was 'covered' into the Treasury, and not from the time it was received by the Indian Agent."
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> " *** as a matter of law that plaintiff tribe is entitled to recover interest on amounts received from the sale of logs and lumber from the date of the warrant covering the money in the Treasury, or, if this was issued more than thirty days from the date of its receipt by defendant's agent in charge of said operations, then from thirty days after its receipt by defendant's agent in charge of operations, *** "

Interest Payments

Pursuant to various provisions of law, the Treasury pays interest at rates of three, four, and five percent on certain funds held in trust by the United States for Indian tribes. Compounded interest is not paid under present law; accordingly, accounts credited with interest earnings do not bear interest.

Prior Recommendation

Proposals affecting the Treasury's accounts for Indians have been the subject of numerous discussions in the past. Frequently, the proposal to consolidate accounts was linked with revisions of interest rates which would increase Budget expenditures. The Treasury objected to such revisions. As far back as 1947, proposals have been made to consolidate Indian accounts. S.1710, 80th Congress, 1st Session, introduced in the Congress May 1, 1947, provided that:

> " *** the existing trust funds of each Indian tribe on deposit in the Treasury, except the fund 'Indian Moneys, proceeds of Labor', established pursuant to the Act of May 17, 1926 (44 Stat. 560; U.S.C., title 25, sec. 155), shall be consolidated into one fund for each Indian tribe ***."

The bill also provided for the payment of simple interest at 2½ percent. A substitute draft submitted by the Secretary of Interior would have required the Secretary of the Treasury to determine annually the rate of interest to be paid on Indian trust fund accounts, the rate to be not less than 2½ percent or more than 5 percent. In letter to the Director, Bureau of the Budget, dated

April 26, 1943, the Acting Secretary of the Treasury did not object to the bill, provided the basis on which the Secretary of the Treasury was to determine the rate of interest, be revised. Congress adjourned without taking action on the bill.

A draft of a bill "To authorize the consolidation of Indian trust funds, and for other purposes," originating in the Department of the Interior, was submitted on May 25, 1956, to the Treasury for comment. The bill proposed:

> "SEC. 1. All Indian tribal funds deposited in the United States Treasury for which a different rate of interest is not otherwise authorized by law shall bear interest at the rate of 4 per centum per annum. All deposits of Indian tribal funds in the United States Treasury shall earn interest commencing with the date of deposit in designated depositories, the interest shall be computed on daily balances, and the interest shall be credited semiannually to the accounts in which such funds are held. Funds shall cease to earn interest from the date disbursement is certified for payment to the Treasury disbursing office. Interest credits shall earn interest from the first day of the succeeding interest period regardless of the date of actual deposit into the account. All funds of a tribe that are deposited in the United States Treasury and that are subject to the same rate of interest, together with balances in treaty appropriations belonging to such tribe, may be consolidated in a single account on the records kept by the Secretary of the Interior. All funds of all Indian tribes that are deposited in the United States Treasury may be carried in one account on the records kept by the Secretary of the Treasury."

The bill would have permitted the Department of the Interior to consolidate into one account the principal accounts of each Indian tribe that are subject to the same rate of interest, and the interest derived therefrom. Further, the bill would have allowed the Treasury to carry all trust funds of all Indian tribes in one account. Also, the bill would have amended existing laws with respect to the payment of interest on certain amounts upon which interest is not now paid. It was the intention under the proposed law to have the Interior Department rather than the Treasury maintain the individual tribal accounts and to compute interest on such accounts. In letter dated November 15, 1956, the Acting Secretary of the Treasury advised the Director, Bureau of the Budget, that the Treasury did not object to this feature of the bill, but suggested that any legislation enacted be more specific on this point. However, the Treasury did not favor enactment of the bill due to added interest costs.

The Bureau of the Budget under date of March 13, 1959, requested the Treasury Department to comment on two draft bills submitted by the Department of the Interior "To authorize the consolidation of Indian trust funds, and for other purposes."

The bills were identified as Draft A and Draft B. The two bills are similar as to their intent to consolidate, for simplification of administration, the principal and interest Indian trust fund accounts now on the books of the Treasury and the Bureau of Indian Affairs. Draft A would permit consolidation into a single principal account of all principal funds held in trust for an Indian tribe which are subject to the same rate of interest. All interest on the consolidated accounts would be carried in a separate account, which would bear no interest. Draft B like Draft A would permit consolidation into a single account of all principal funds of an Indian tribe subject to the same rate of interest, but unlike Draft A, it would also permit consolidation in the same account of interest derived from the consolidated accounts. The consolidated accounts would bear interest at the rate established for the interest-bearing principal account prior to consolidation, compounded semiannually.

The Acting Secretary of the Treasury, by letter dated July 27, 1959, advised the Director of the Bureau of the Budget, as follows:

> "The Treasury Department believes that ideally these trust funds should bear interest at rates consistent with those earned by other Government trust funds and that interest should be paid on the interest. It may not be deemed possible, however, to revise the rates of interest paid on the principal accounts in accordance with such a formula. If not, the Treasury Department would object to increasing the present relatively high interest payments by adding to them new payments of interest on the interest accounts. In these circumstances the Department would have no objection to Draft A but would not favor Draft B."

Treasury's Costs

It is estimated that 1,100 man-hours annually (or a computed cost of $2,3[illegible]) are now required in the Treasury for the computation of simple interest and the maintenance of Indian trust fund accounts. This total amount consists of 1[illegible]0 man-hours (or the equivalent of $[illegible]) for computing simple interest; 80 man-hours (or computed cost of $[illegible]) for typing related schedules, transfer documents, and warrants; 250 man-hours (or $525) for maintaining unappropriated receipt ledger accounts; and [illegible] man-hours (or $1,[illegible]) for processing items, mailing, filing, binding, and other related work in connection with the maintenance of Indian trust fund receipt and appropriation accounts. The work involved in the maintenance of receipt and appropriation accounts is handled by eleven types of employees on a very minor part time basis, such as, punch card operators, tabulating machine operators, typists, [illegible], file clerks, etc., and the maximum for any single employee is equivalent to $[illegible] per annum.

Comment and Conclusions

There is no objection to the general purpose of Recommendation No. 5, provided, of course, that there is no conflict with the position of the Treasury as stated in the letters of November 15, 1956 and July 27, 1959 mentioned above; and provided further, that the present basis for the computation of interest as set forth in the third paragraph on page 3 of this paper shall not be changed.

Computed savings in clerical expenses of the Treasury from adopting the proposal in "Draft A" of legislation mentioned above will approximate $600, but since this is only the part time of many employees, the actual savings would be insignificant. If the computation of interest were undertaken by the Department of the Interior, there would be a computed savings in the Treasury of $665, but since this work represents the part time of several employees, the actual amount would be negligible.

Since, in many cases, existing legislation directly or by implication requires the Indian accounts to be maintained on the books of the Treasury, the adoption of Recommendation No. 5 would require the amendment of such laws as proposed in "Draft A." Also for consideration is the question as to whether changes in legislation can be made within the terms of existing treaties. The Treasury has made no research on this subject.