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B-193673, May 25, 1979

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VERNON D. ACREE, DEPARTMENT OF THE TREASURY:

THIS IS IN RESPONSE TO A REQUEST FROM THE DIRECTOR, ACCOUNTING DIVISION, OFFICE OF ADMINISTRATION, UNITED STATES CUSTOMS SERVICE, FOR RELIEF OF THE ACTING REGIONAL COMMISSIONER OF CUSTOMS, LOS ANGELES, CALIFORNIA, FROM LIABILITY FOR THE LOSS OF $9,220 IN GOVERNMENT FUNDS, AND TO CHARGE THE SHORTAGE AGAINST THE CUSTOM SERVICE APPROPRIATION FOR SALARIES AND EXPENSES.

YOUR REQUEST INDICATES THAT THE LOSS OCCURRED DURING DECEMBER 1972, WHEN THE ACTING REGIONAL COMMISSIONER OR A SUBORDINATE ACCEPTED FROM ARTHUR W. SPARGUR, ALSO KNOWN AS CHARLES C. WELCH (VARIATIONS OF EACH NAME APPEAR IN THE RECORD), TWO CHECKS TOTALLING $10,370 FOR PURCHASES MADE AT A CUSTOMS AUCTION. THESE CHECKS WERE SUBSEQUENTLY RETURNED BY THE BANK BECAUSE THE ACCOUNT HAD BEEN CLOSED.

AS A RESULT OF THIS EPISODE, MR. SPARGUR WAS CHARGED WITH THE VIOLATION OF CERTAIN PENAL STATUTES, PLEADED GUILTY, AND WAS PLACED ON PROBATION FOR 5 YEARS UNDER THE STIPULATION THAT HE MAKE RESTITUTION OF THE $10,370 DURING THAT PERIOD. WHEN HIS PROBATION EXPIRED ON OCTOBER 14, 1978, MR. SPARGUR HAD REPAID ONLY $1,150, AND, DUE TO HEALTH AND FINANCIAL CONSIDERATIONS, IT NOW APPEARS UNLIKELY THAT HE WILL BE ABLE TO REPAY ANY SIGNIFICANT PORTION OF THE BALANCE.

BASED ON THE FOREGOING, AND PURSUANT TO PROPERLY DELEGATED AUTHORITY AN ASSISTANT COMMISSIONER OF THE CUSTOMS SERVICE HAD DETERMINED THAT THE LOSS OCCURRED WHILE THE ACTING REGIONAL COMMISSIONER WAS ACTING IN THE DISCHARGE OF OFFICIAL DUTIES AND WITHOUT FAULT OR NEGLIGENCE "ON HIS PART OR ON THE PART OF ANY EMPLOYEE IN HIS OFFICE." APPARENTLY IT IS THE PRACTICE OF THE CUSTOMS SERVICE TO HOLD REGIONAL COMMISSIONERS RESPONSIBLE FOR COLLECTION ACCOUNTS, INCLUDING LOSSES IN THOSE ACCOUNTS DUE TO THE NONPAYMENT OF CHECKS RECEIVED. SEE B-188722, OCTOBER 4, 1977. THE ASSISTANT COMMISSIONER ACCORDINGLY RECOMMENDS THAT WE RELIEVE THE ACTING REGIONAL COMMISSIONER FROM LIABILITY FOR THE LOSS UNDER 31 U.S.C. SEC. 82A -1 (1976).

OUR OFFICE IS AUTHORIZED TO GRANT ACCOUNTABLE OFFICERS RELIEF FROM LIABILITY FOR LOSSES ARISING UNDER CERTAIN CONDITIONS PRESCRIBED BY 31 U.S.C. SEC. 82A-1, SUPRA, IF THE HEAD OF THE AGENCY CONCERNED DETERMINES THAT (1) THE LOSS OR DEFICIENCY OCCURRED WHILE THE OFFICER WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES OR BY REASON OF THE ACT OR OMISSION OF A SUBORDINATE OF SUCH OFFICER, AND (2) THE LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF THE OFFICER, AND IF WE CONCUR IN THESE DETERMINATIONS.

THE RECORD DOES NOT SPECIFICALLY INDICATE WHO WAS RESPONSIBLE FOR ACCEPTING THE CHECKS IN QUESTION. ASSUMING, AS APPEARS MOST LIKELY, THAT IT WAS NOT THE ACTING REGIONAL COMMISSIONER HIMSELF BUT RATHER SOME SUBORDINATE EMPLOYEE WHO ACCEPTED THE CHECKS, WE CONCUR WITH THE DETERMINATION OF THE ASSISTANT COMMISSIONER AND GRANT RELIEF OF THE ACTING REGIONAL COMMISSIONER AS REQUESTED.

HOWEVER, IN VIEW OF THE CIRCUMSTANCES SURROUNDING THE LOSS, WE CANNOT CONCUR WITH THE DETERMINATION THAT THE LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF "ANY EMPLOYEE IN THE REGIONAL COMMISSIONER'S OFFICE," SINCE IT APPEARS THAT THE INDIVIDUAL WHO ACCEPTED THE CHECKS WAS NEGLIGENT AND SHOULD BE HELD LIABLE FOR THE SHORTAGE.

UNITED STATES CUSTOMS SERVICE REGULATIONS REQUIRE, AT 19 C.F.R. SEC. 24.1(A)(3), THAT:

"IN DETERMINING WHETHER AN UNCERTIFIED CHECK SHALL BE ACCEPTED IN THE ABSENCE OF A BOND, THE COLLECTOR SHALL USE AVAILABLE CREDIT DATA OBTAINABLE WITHOUT COST TO THE GOVERNMENT, SUCH AS THAT FURNISHED BY BANKS, LOCAL BUSINESS FIRMS, BETTER BUSINESS BUREAUS, OR LOCAL CREDIT EXCHANGES, SUFFICIENT TO SATISFY HIM OF THE CREDIT STANDING OR RELIABILITY OF THE DRAWER OF THE CHECK."

THE APPLICABILITY OF THIS REGULATION TO THE ACCEPTANCE OF UNCERTIFIED PERSONAL CHECKS AT A CUSTOMS AUCTION IS UNCLEAR. HOWEVER, EVEN IN THE TOTAL ABSENCE OF REGULATIONS, THE STANDARD WE HAVE APPLIED FOR DETERMINING NEGLIGENCE IS WHAT THE REASONABLY PRUDENT AND CAREFUL PERSON WOULD HAVE DONE TO TAKE CARE OF HIS OR HER OWN PROPERTY OF LIKE DESCRIPTION UNDER LIKE CIRCUMSTANCES. 54 COMP.GEN. 112 (1974).

IN THE PRESENT CASE, THE TWO CHECKS WERE DRAWN AGAINST THE SECURITY NATIONAL BANK OF SAPULPA, OKLAHOMA, AN OUT-OF-STATE BANK. THE ONLY ATTEMPT AT VERIFICATION WAS TO REQUEST MR. SPARGUR'S DRIVER'S LICENSE AND SOCIAL SECURITY NUMBER. NO ONE CALLED THE BANK TO SEE IF THERE WAS ENOUGH MONEY IN THE ACCOUNT TO COVER THE TWO CHECKS OR IF THE ACCOUNT IN FACT EXISTED. INQUIRY WITH THE BANK WOULD HAVE REVEALED THAT THE ACCOUNT WAS OPENED ON NOVEMBER 1, 1972, AND FORMALLY CLOSED ON NOVEMBER 9.

THE NEED FOR THE EXERCISE OF DUE CARE IN THE ACCEPTANCE OF PERSONAL CHECKS AT AUCTIONS AND THE APPARENT INADEQUACY OF PRIOR PROCEDURES WERE EVIDENCED IN A REGIONAL CIRCULAR DATED OCTOBER 31, 1973, WHICH STATED:

"PAYMENT FOR MERCHANDISE PURCHASED AT CUSTOMS AUCTIONS MAY BE MADE BE MADE BY CASH, U. S. TRAVELERS CHECK, CERTIFIED OR CASHIERS CHECK, POSTAL MONEY ORDER, OR PERSONAL CHECK. PERSONAL CHECKS ARE ACCEPTABLE UP TO THE FOLLOWING DOLLAR LIMITATIONS:

TYPE OF CHECK DOLLAR LIMIT

LOCAL CITY CHECK $500.00

LOCAL STATE CHECK 150.00

OUT OF STATE CHECK 100.00

"ANY SUCCESSFUL BIDDER WHOSE PERSONAL CHECK EXCEEDS THE ABOVE LIMITATIONS MAY BE ALLOWED UP TO THREE BUSINESS DAYS TO OBTAIN ANOTHER FORM OF PAYMENT. (I.E. CASH,

U. S. TRAVELERS CHECKS, CERTIFIED OR CASHIERS CHECK OR POSTAL MONEY ORDER."

IN OUR OPINION, THE ACTIONS IN THIS CASE - THE ACCEPTANCE OF OVER $10,000 IN PERSONAL CHECKS WITH ONLY THE MOST SUPERFICIAL ATTEMPT AT VERIFICATION - DO NOT MEET THE "REASONABLY PRUDENT PERSON" STANDARD AND THEREFORE CONSTITUTE NEGLIGENCE. FURTHER, THIS NEGLIGENCE MUST BE DEEMED THE PROXIMATE CAUSE OF THE LOSS. ACCORDINGLY, WHILE RELIEF IS GRANTED TO THE ACTING REGIONAL COMMISSIONER, THE PERSON RESPONSIBLE FOR ACCEPTING THE CHECKS SHOULD BE HELD LIABLE FOR THE DEFICIENCY.