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[Request for Relief From Liability for Loss for IRS Employee]

Number: B-215501

Date: 1984-11-05

B-215501, NOV 5, 1984, OFFICE OF GENERAL COUNSEL

ACCOUNTABLE OFFICERS - RELIEF - REQUIREMENTS FOR GRANTING - RELIEF OF SUPERVISOR DIGEST: IRS OFFICIAL ACCOUNTABLE FOR TAX RECEIPTS EMBEZZLED BY A SUBORDINATE RELIEVED FROM LIABILITY FOR PHYSICAL LOSS WHERE RECORD INDICATES THAT OFFICIAL FOLLOWED AGENCY PROCEDURES AND PROVIDED REASONABLE SUPERVISION.

THE HONORABLE CAROLE J. DINEEN FISCAL ASSISTANT SECRETARY DEPARTMENT OF THE TREASURY

DEAR MS. DINEEN:

YOUR LETTER REQUESTING RELIEF FOR MR. NORMAN E. MORRILL, DIRECTOR AND ACCOUNTABLE OFFICER OF THE PHILADELPHIA SERVICE CENTER, PHILADELPHIA, PENNSYLVANIA, INTERNAL REVENUE SERVICE (IRS), FROM LIABILITY FOR A LOSS OF $14,839.74, RESULTING FROM THE FRAUDULENT ACTIONS OF A FORMER EMPLOYEE, HAS BEEN FORWARDED TO THE OFFICE OF GENERAL COUNSEL FOR CONSIDERATION. FOR THE REASONS STATED BELOW, WE GRANT THE REQUESTED RELIEF.

DURING THE PERIOD OF OCTOBER 2, 1972 THROUGH JUNE 19, 1975 A FORMER REVENUE OFFICER AT THE IRS BALTIMORE OFFICE SUPERVISED BY MR. MORRILL, ALTERED VARIOUS TAX RECEIPTS ISSUED FOR MONIES HE COLLECTED IN SETTLEMENT OF DELINQUENT TAX ACCOUNTS AND CONVERTED THESE FUNDS TO HIS OWN PERSONAL USE. THE EMPLOYEE ADMITTED HIS FRAUDULENT ACTIONS AND IN A SUBSEQUENT INVESTIGATION IT WAS DETERMINED THAT A TOTAL OF $17,587.26 HAD BEEN EMBEZZLED BY HIM. THE INVESTIGATION DISCLOSED NO EVIDENCE OF WRONGDOING ON THE PART OF MR. MORRILL, WHO WAS THE EMPLOYEE'S SUPERVISOR AND ACCOUNTABLE FOR THE EMBEZZLED FUNDS.

THE LOSS WAS REDUCED TO $14,839.74 BY RESTITUTION FROM THE EMPLOYEE'S SALARY, ANNUAL LEAVE, AND RETIREMENT PAY. HOWEVER, A BANKRUPTCY COURT ISSUED AN ORDER ENJOINING COLLECTION OF FURTHER ASSESSMENTS AGAINST THE EMPLOYEE HOLDING THAT THE DEBT WAS DISCHARGEABLE UNDER THE BANKRUPTCY ACT. MR. MORRILL AS AN ACCOUNTABLE OFFICER REMAINS LIABLE FOR THIS LOSS. YOU RECOMMEND THAT OUR OFFICE RELIEVE MR. MORRILL FOR THE UNRECOVERED LOSS OF $14,839.74

UNDER 31 U.S.C. SEC. 3527(A) (FORMERLY 31 U.S.C. SEC. 82A-1), THE GENERAL ACCOUNTING OFFICE IS AUTHORIZED TO RELIEVE AN ACCOUNTABLE OFFICER OF LIABILITY FOR A PHYSICAL LOSS OR DEFICIENCY WHERE THE HEAD OF THE AGENCY DETERMINES THAT (1) THE LOSS OR DEFICIENCY OCCURED WHILE THE OFFICER WAS ACTING IN THE DISCHARGE OF OFFICIAL DUTIES; AND (2) THE LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF THE OFFICER. WE MUST ALSO AGREE WITH THE AGENCY DETERMINATION. LOSSES DUE TO THEFT OR EMBEZZLEMENT BY OTHER FINANCIAL PERSONNEL ARE TREATED AS PHYSICAL LOSSES, AND RELIEF WILL BE GRANTED IF THE STATUTORY

CONDITIONS ARE MET. B-211763, JULY 8, 1983. A SUPERVISOR MAY BE CONSIDERED FREE OF NEGLIGENCE IN A LOSS WHERE IT CAN BE DEMONSTRATED THAT HE FOLLOWED AN ADEQUATE SYSTEM OF PROCEDURES AND CONTROLS. CF. 62 COMP.GEN. 476, 480 (1983).

IN THIS CASE, THE REQUISITE FINDINGS HAVE BEEN MADE THAT MR. MORRILL WAS NOT NEGLIGENT AND THAT HE WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES. THE EMPLOYEE ADMITTED THAT HE EMBEZZLED FUNDS. THERE IS NO EVIDENCE IMPLICATING MR. MORRILL IN THE EMBEZZLEMENT. THE INSPECTION REPORT FOUND NO DEVIATIONS FROM REQUIRED IRS PROCEDURES ON THE PART OF MR. MORRILL, ALTHOUGH WE NOTE THAT IRS HAS SINCE STRENGTHENED INTERNAL CONTROLS AND MANAGEMENT PROCEDURES TO AVOID SUCH LOSSES IN THE FUTURE. WE, THEREFORE, AGREE WITH THE AGENCY DETERMINATIONS AND GRANT RELIEF TO MR. MORRILL.