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B-223911, Feb 24, 1987, Office of General Counsel

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APPROPRIATIONS/FINANCIAL MANAGEMENT - ACCOUNTABLE OFFICERS - DETERMINATION CRITERIA DIGEST: INTERNAL REVENUE SERVICE CENTER DIRECTOR IS NOT AN ACCOUNTABLE OFFICER WITH REGARD TO FUNDS COLLECTED BY FINANCIAL INSTITUTION UNDER LOCKBOX ARRANGEMENT. THE ARRANGEMENT ELIMINATES THE TRADITIONAL ROLE OF IRS CENTER IN COLLECTING AND PROCESSING TAXPAYER REMITTANCES AND PROVIDES FOR THE FINANCIAL INSTITUTION TO COLLECT REMITTANCES DIRECTLY FROM TAXPAYERS AND PROCESS THEM.

THE HONORABLE JOHN F. W. ROGERS:

THIS IS IN RESPONSE TO YOUR REQUEST ASKING OUR OPINION CONCERNING THE POTENTIAL ACCOUNTABILITY OF INTERNAL REVENUE SERVICE CENTER DIRECTORS UNDER RECENTLY INITIATED LOCKBOX DEPOSITORY ARRANGEMENTS. SPECIFICALLY YOU ASK WHETHER AN EMPLOYEE SUCH AS A SERVICE CENTER DIRECTOR IS AN ACCOUNTABLE OFFICER WITH RESPECT TO FUNDS HANDLED BY A LOCKBOX DEPOSITORY. FOR THE REASONS STATED BELOW, WE DO NOT FIND SUCH AN EMPLOYEE TO BE AN ACCOUNTABLE OFFICER UNDER THESE CIRCUMSTANCES.

IN AN EFFORT TO REDUCE THE COST OF PROCESSING TAXPAYER REMITTANCES AND TO MAKE THE FUNDS RECEIVED AVAILABLE TO THE GOVERNMENT WITH LESS DELAY, THE INTERNAL REVENUE SERVICE (IRS) AND THE DEPARTMENT OF THE TREASURY UNDER THE AUTHORITY OF 31 U.S.C. SEC. 3720 HAVE ENTERED INTO A MEMORANDUM OF UNDERSTANDING FOR ESTABLISHING A LOCKBOX ARRANGEMENT WITH FIRST NATIONAL BANK OF CHICAGO. THIS ARRANGEMENT INVOLVES CERTAIN ESTIMATED TAX PAYMENT VOUCHERS WHICH UNDER THE TRADITIONAL SYSTEM ARE RETURNED WITH PAYMENTS TO THE KANSAS CITY IRS CENTER WHERE THEY ARE PROCESSED. SIMILAR LOCKBOX ARRANGEMENTS ARE TO BE PUT IN PLACE FOR OTHER SERVICE CENTERS THROUGHOUT THE COUNTRY.

UNDER THESE ARRANGEMENTS, TAXPAYERS ARE NOTIFIED OF A POST OFFICE BOX ADDRESS TO WHICH THEY ARE TO SEND THEIR TAX PAYMENTS AND ACCOMPANYING DOCUMENTS. THE RESPONSIBLE FINANCIAL INSTITUTION ACTING AS THE LOCKBOX DEPOSITORY COLLECTS THE MAIL, OPENS AND SEPARATES CHECKS AND DOCUMENTS. THE DOCUMENT INFORMATION FROM EACH TAXPAYER IS TRANSMITTED TO THE IRS AND THE CHECKS ARE ENDORSED AND CREDITED TO A CLEARING ACCOUNT. EACH DAY THE FINANCIAL INSTITUTION WIRE TRANSFERS THAT DAY'S GROSS AMOUNT FROM THE CLEARING ACCOUNT TO A TREASURY ACCOUNT. THE FINANCIAL INSTITUTION MAY RECOVER FROM THE TREASURY ANY AMOUNT FROM THESE CHECKS WHICH CANNOT BE COLLECTED, AND IS LIABLE FOR ANY LOSS OR SHORTAGE WHICH OCCURS WHILE THE REMITTANCES ARE IN ITS POSSESSION. TO ENABLE THE IRS TO ASCERTAIN IF A FINANCIAL INSTITUTION IS FORWARDING TO THE GOVERNMENT THOSE AMOUNTS REMITTED BY THE TAXPAYERS, THESE LOCKBOX ARRANGEMENTS PROVIDE FOR THE TRANSMISSION OF RELEVANT INFORMATION FROM THE FINANCIAL INSTITUTION TO THE IRS.

WHILE THERE ARE CONTROLS AND SAFEGUARDS IN THESE ARRANGEMENTS TO PROTECT THE GOVERNMENT FROM ANY LOSS OF FUNDS, THERE IS ALWAYS A POSSIBILITY THAT A LOSS OF FUNDS COULD OCCUR. IN THE EVENT THAT THE FINANCIAL INSTITUTION CANNOT BE FOUND LIABLE AND RECOVERY OF THE FUNDS BY THE IRS IS NOT POSSIBLE, AN UNRECOVERABLE LOSS MAY BE INCURRED. SINCE THESE LOCKBOX ARRANGEMENTS ARE WITHIN THE JURISDICTIONS OF THE RESPECTIVE SERVICE CENTER DIRECTORS, THE CONCERN IS THAT THE DIRECTOR IS POTENTIALLY LIABLE AS AN ACCOUNTABLE OFFICER FOR SUCH LOST FUNDS.

UNDER THESE CIRCUMSTANCES WE DO NOT FIND THE SERVICE CENTER DIRECTORS TO BE ACCOUNTABLE OFFICERS WITH RESPECT TO FUNDS COLLECTED UNDER A LOCKBOX ARRANGEMENT. GOVERNMENT EMPLOYEES UNDER SUCH ARRANGEMENTS DO NOT MEET THE THRESHOLD REQUIREMENTS FOR BEING ACCOUNTABLE OFFICERS. WE HAVE CONSISTENTLY DEFINED AN ACCOUNTABLE OFFICER AS "ANY GOVERNMENT OFFICER OR EMPLOYEE, CIVILIAN OR MILITARY, WHO BY REASON OF HIS EMPLOYMENT IS RESPONSIBLE FOR OR HAS CUSTODY OF GOVERNMENT FUNDS." 62 COMP.GEN. 476, 479 (1983). WE HAVE SPECIFICALLY INCLUDED IN THIS DEFINITION ANY OFFICER OR EMPLOYEE WHO RECEIVES OR COLLECTS MONEY FOR THE GOVERNMENT. COMP.GEN. 113, 114 (1979).

UNDER THE TRADITIONAL TAX COLLECTION ROLE OF THE IRS CENTER, THE DIRECTOR IS AN ACCOUNTABLE OFFICER FOR FUNDS COLLECTED AND PROCESSED BY THE CENTER. SEE, E.G., B-215501, NOVEMBER 5, 1984. HOWEVER, UNDER THESE LOCKBOX ARRANGEMENTS, THE FINANCIAL INSTITUTION ASSUMES THE RESPONSIBILITY FOR COLLECTING AND PROCESSING TAXPAYER REMITTANCES. SINCE THE ROLE OF THE SERVICE CENTER IN COLLECTING AND PROCESSING THESE REMITTANCES IS ELIMINATED UNDER THESE ARRANGEMENTS, THE DIRECTOR NEITHER GAINED CUSTODY OR CONTROL OF THE DEPOSITS AND WAS NOT RESPONSIBLE IN THE ACCOUNTING SENSE FOR FUNDS COLLECTED IN THIS MANNER. THEREFORE, WE CONCLUDE THAT THE DIRECTOR IS NOT AN ACCOUNTABLE OFFICER WITH REGARD TO FUNDS COLLECTED BY A FINANCIAL INSTITUTION UNDER A LOCKBOX ARRANGEMENT.