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B-239134 April 22, 1991

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Mr. Carl L. Moravitz Acting Internal Revenue Service cashier was convicted of embezzlement and ordered by court to make restitution. Fact that restitution order covered only part of the loss does not affect cashier's civil liability for remainder of loss, although relief may be considered if agency makes administrative determinations required by 31 U.S.C. Sec.3527.

Mr. Carl L. Moravitz Acting Director, Finance Division Internal Revenue Service Department of the Treasury Washington, D.C. 20224

Dear Mr. Moravitz:

We have under consideration your request for a determination of whether relief may be granted to Theresa Gibson, cashier of the Small Purchases Imprest Fund at the Internal Revenue Service, Pittsburgh District Office, for a physical loss of $571.30. This is the amount which remains unpaid out of a total loss of $1,321.22 from the fund. The U.S. District Court for the Western District of Pennsylvania found Ms. Gibson guilty of embezzling and converting to her own use $749.92 of the $1,321.22, and has ordered her to make restitution of that amount. /1/ U.S. v. Theresa L. Gibson, Crim. No. 87-27, (W.D. Pa., July 1, 1987).

As an accountable officer, Ms. Gibson is automatically and strictly liable for the physical loss of the funds which were entrusted to her. 65 Comp Gen. 876, 877 (1986). The fact that Ms. Gibson was found guilty of embezzling only $749.92 in a criminal proceeding does not affect her civil liability for repayment of the $571.30. See Helvering v. Mitchell, 303 U.S. 391, 397-98 (1938). However, under 31 U.S.C. Sec. 3527, we may relieve an accountable officer from liability for the physical loss of funds if we concur with the agency's administrative determinations that the loss occurred while the accountable officer was acting in the discharge of official duties and the loss occurred without fault or negligence on the part of the accountable officer. GAO, Policy and Procedures Manual for the Guidance of Federal Agencies, tit. 7, Sec. 8.9A. (Feb. 12, 1990).

Since the net physical loss for which you request relief is less than $1,000, your agency may resolve the loss on the basis of the above administrative determinations. Id., Sec. 8.9C. However, if you wish to have our Office make the determination whether to grant Ms. Gibson relief, please submit the above administrative determinations to us for our consideration.

If you have any questions, please call me or Ms.Amy Shimamura, (202) 275- 5644.

Sincerely yours,

Thomas H. Armstrong Assistant General Counsel

1. We note that your letter and count 2 of the grand jury indictment both state that the amount is $747.92; however, the court order, which controls, states that Ms. Gibson must make $749.92 in restitution.