Text as published on gao.gov, https://www.gao.gov/products/b-244113, archived 2026-09-09. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-244113, Nov 1, 1991, Office of General Counsel

Number: B-244113

Date: 1991-11-01

B-244113, Nov 1, 1991, Office of General Counsel

DIGEST: Internal Revenue Service official accountable for a loss of tax collections is relieved from liability under 31 U.S.C. Sec. 3527(a). The record indicates that the loss was directly attributable to embezzlement by a former cashier and occurred without fault or negligence on the part of the accountable officer.

Gerald Murphy:

Gerald Murphy

Fiscal Assistant Secretary

Department of the Treasury

This responds to your May 15, 1991, request that we grant relief, under 31 U.S.C. Sec. 3527(a), to Mr. Theron C. Polivka, Director of the Fresno Service Center, Internal Revenue Service (IRS), for the loss of $5,942.93 in tax collections. The loss is due to embezzlement by a former cashier of the IRS, San Francisco District Office. For the reasons stated below, we grant the requested relief.

The record indicates that the loss occurred during the period from January 1985 through March 1986 when Carlo A. Prince, a former IRS cashier, stole cash payments made by taxpayers. By voiding receipts for cash payments, Prince was able to balance his accounts even though he had embezzled funds. Prince targeted for his scheme elderly taxpayers or taxpayers with a limited command of English, presumably because these taxpayers were less likely to discover or complain about an irregularity in their tax accounts. Mr. Prince's scheme was discovered when IRS's Inspection Office reviewed the teller operation.

The IRS reports that Mr. Prince embezzled $8,989.25, but that $3,046.32 has been collected through levy action against Prince's retirement and final salary, leaving a balance of $5,942.93. The IRS has determined that this amount is uncollectible because Mr. Prince has been unable to find employment since his release from prison and he has no assets with which to pay the liability.

Under 31 U.S.C. Sec. 3527(a), we are authorized to relieve an accountable officer of liability for a physical loss or deficiency of funds if the agency determines, and we agree, that the loss occurred (1) while the officer was acting in the discharge of official duties, or because of an act or failure to act by a subordinate of the officer, and (2) without fault or negligence on the

part of the officer. Losses due to embezzlement by financial personnel are treated as physical losses, and relief will be granted if the statutory conditions are met. B-211763, July 8, 1983. Your agency has made the determinations required by section 3527(a), namely, that the accountable officer was carrying out his official duties at the time of the loss and the loss was not the result of the officers negligence or fault.

We have considered Service Center Directors free of fault or negligence for losses resulting from an act or omission of a subordinate when the IRS demonstrates that an adequate system of procedures and controls existed and were followed. E.g., B-226214, et. al., June 18, 1987. The record indicates that procedures and controls were set forth in the Internal Revenue Manual (12) 700, Teller Operations. These procedures included requirements for physical and fiscal security, as well as comprehensive procedures governing access to the cash register. The record further reflects that these procedures were enforced to safeguard the funds received in the collection process. The loss in this case is the result of a clever criminal scheme perpetrated by a former IRS cashier. Even the most carefully established and effectively supervised system cannot prevent every conceivable form of criminal activity. Cf. B-224689, Oct. 31, 1986.

We agree with your determination that the loss was not the result of the fault or negligence of Mr. Polivka. Accordingly, we grant him relief in this case.