GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-266249

November 14, 1996

Mr. Edwin A. Verburg
Deputy Chief Financial Officer
Department of the Treasury

Dear Mr. Verburg:

This responds to your letter of September 15, 1995, requesting relief from liability for certifying officer Carol Phillips and Mr. Thomas M. Quinn, her supervisor at the Andover Service Center of the Internal Revenue Service (IRS), for a loss arising from the payment of an erroneous tax refund in the amount of $3,503. Due to the expiration of the applicable statute of limitations, we are returning this case to you without action.

Certifying officers are generally responsible for the existence and correctness of the facts stated in the certificate, voucher, and supporting documentation; the correctness of the computations on the voucher; and the legality of the proposed payment under the appropriation or fund involved. Moreover, they are pecuniarily liable to the United States, automatically and strictly, for any illegal, improper, or incorrect payment that results from a false or misleading certification, or which is prohibited by law or does not represent a legal obligation under the appropriation or fund so used. 31 U.S.C. § 3528(a). At the same time, this Office is authorized to relieve a certifying officer from liability when we find that (1) the certification was based on official records and the certifying officer did not know, and by reasonable diligence and inquiry could not have discovered, the correct information; or (2) in the context of payments under contracts, the contractual obligation was incurred in good faith, no law specifically prohibited the payment, and the United States received value for the payment. 31 U.S.C. § 3528(b).

Recently, we advised you concerning when and how to refer requests for relief of IRS certifying officers under section 3528(b) for losses arising from erroneous tax refunds. B-266245, Oct. 24, 1996 (copy enclosed). In that case, we noted that the Internal Revenue Code and IRS policy require IRS certifying officers to initially assess taxes and certify and pay refunds based upon the representations contained in the taxpayer's return, subject to later adjustment and collection of any refunds found erroneous. We explained that while IRS certifying officers are generally

liable for losses arising from erroneous certifications of tax refunds, they are not liable for losses arising from certifications that were not erroneous at the time that they were made. The latter category includes refunds that are determined in post-payment audits or adjudications to have been fraudulently obtained or otherwise erroneous. Id. In B-266245, we "tolled" the running of the applicable statute of limitations, 31 U.S.C. § 3526(c), to allow your office to ascertain some omitted factual information bearing on whether the certifying officer actually was liable for the loss under section 3528(a), and if so, whether to resubmit the request for her relief under section 3528(b).

In the present case, your submissions state that this loss occurred because a tax preparer, without the taxpayer's knowledge, submitted a false return using the taxpayer's name and social security number. Presumably, the fraud was not apparent on the face of the return, and accordingly, the Internal Revenue Code and IRS policy required Ms. Phillips to process the return and certify any tax refunds claimed therein based on the information stated in it. In that case, the refund was not erroneous at the time Ms. Phillips certified it, and she would be neither liable for, nor in need of relief from, this loss. However, if the fraud was apparent on the face of the return, then Ms. Phillips's certification was erroneous at the time she made it and she would be automatically liable for the loss. Her eligibility for relief from that liability would depend, in part, upon whether she acted with or without negligence in certifying the refund. B-266245, supra.

Normally, as in B-266245, supra, we would refer this matter to you for your determination on the remaining factual issue of whether her certification was consistent with the Internal Revenue Code and IRS Policy, i.e., was the fraud apparent on the face of the return? Or, if you determined that the refund was not consistent with the Internal Revenue Code and IRS policy and, thus, legally erroneous at the time she certified it, but you (or Ms. Phillips) still believed that she qualified for relief under section 3528(b), you could resubmit a request for her relief. In this case, however, it appears from your office's submissions that the applicable statute of limitations, 31 U.S.C. § 3526(c), has already run on this case, and further examination into this matter is unnecessary.

Under 31 U.S.C. § 3526(c), this Office is required to settle and adjust all accounts of the United States within three years after the date that a "substantially complete" account is available for audit. E.g., B-258735, Dec. 15, 1994. See also GAO, Policy and Procedures Manual for Guidance of Federal Agencies (GAO-PPM), tit. 7, § 8.7 (TS No. 7-43, May 18, 1993). Where the loss is due to fraud, the three-year period begins when the loss is discovered and reported to appropriate agency officials. E.g., 70 Comp. Gen. 616, 622 (1991); 7 GAO-PPM § 8.7. In the absence of appropriate action by this Office within the three-year period, account irregularities are deemed conclusively settled against both the Comptroller General and the executive branch. 31 U.S.C. § 3526(c)(2), (d). E.g., 70 Comp.Gen. 420, 423 (1991). In order to preserve and protect the government's rights with respect to the

three-year period specified in section 3526(c), agencies should report, with certain exceptions not relevant here, all unresolved irregularities to this Office within two years after the date that the relevant account is substantially complete and ready for audit. 7 GAO-PPM § 8.4C.

Your supplemental submission states that the refund at issue here was certified for payment on March 26, 1990, and was officially found and reported to be improper on March 27, 1991. Given these facts, the three-year statutory period established in section 3526(c) expired at the end of March, 1994. Consequently, to the extent that Ms. Phillips may have been legally liable for the loss in this matter, her account has already been settled in her favor, by operation of the law. Accordingly, there is no occasion for us to consider your request for her relief pursuant to 31 U.S.C. § 3528(b). E.g., B-258735, supra.

Finally, Mr. Quinn's relief (for any liability he may have under IRS regulations as Ms. Phillips' supervisor) is not within our jurisdiction. See B-266245, supra. We are returning this issue to you for your disposition.

Sincerely yours,

Gary L. Kepplinger
Associate General Counsel

Enclosure

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DIGEST

A request under 31 U.S.C. § 3528 for relief of an Internal Revenue Service certifying officer from pecuniary liability for an erroneous tax refund was returned without action because the statute of limitations established in 31 U.S.C. § 3526(c) expired before the matter was submitted to GAO.