GAO

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

Office of the General Counsel

B-270863

June 17, 1996

Mr. Joel Taub
Acting Deputy Chief Financial Officer
Department of the Treasury

Dear Mr. Taub:

This is in response to your request of December 11, 1995, that we grant relief under 31 U.S.C. § 3527(a), to Ms. Sylvia Wren, former Director of the Atlanta Service Center, for the loss of $3,227 in tax collections. The loss occurred as a result of embezzlement by a former Internal Revenue Service (IRS) employee. For the reasons stated below, relief is granted.

The record indicates that the loss occurred in May of 1985 and April of 1986, when Jimmie R. Gleaton, then a clerk in the Receipt and Control Branch, Processing Division, Atlanta Service Center, received remittances for payment of taxes from two taxpayers and failed to process the funds for proper credit to the taxpayers' accounts. The remittance in May of 1985, was a check for $3,000 and the one in April of 1986, was a money order for $613. Both were made payable to the IRS. Mr. Gleaton altered both making them payable to himself and subsequently endorsed them. The loss was discovered when both taxpayers contacted the IRS to report that their check and money order had been altered. The taxpayers' accounts were credited, resulting in an irregularity in the account of the Director in the amount of $3,613.

Mr. Gleaton pled guilty to embezzlement in both instances and was convicted and sentenced for the first instance on January 15, 1986, and again on December 12, 1986, for the second instance. The court ordered restitution of $3,613 and placed Mr. Gleaton on probation for four years and five years, respectively, to be served consecutively. Mr. Gleaton's probation was revoked for failure to make restitution payments and served time in jail as a result. To date, Mr. Gleaton has paid $386. Collection attempts have been unsuccessful and the IRS has determined that the balance, $3,227, is uncollectible.

Losses due to embezzlement by financial personnel are treated as physical losses, and relief will be granted if statutory conditions are met. B-244113, Nov. 1, 1991. Under 31 U.S.C. § 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. Your agency has determined, as required by 31 U.S.C. § 3527(a), that the accountable officer, Ms. Wren, was carrying out her official duties at the time of the loss and the loss was not the result of her negligence or fault.

When relief is requested for an accountable officer who is a supervisor and the loss is due to the actions of subordinate finance personnel, we will review the existence and adequacy of internal controls and procedures to determine negligence. B-215501, Nov. 5, 1984. The record shows that adequate IRS internal controls existed and were enforced at the time of the loss. They included monitoring the integrity of clerks by processing "test payments" through the system, restricting access to the work area, and periodically conducting presentations to all employees regarding the consequences of embezzlement.

We agree with your determination that the loss was not the result of the fault or negligence of Ms. Wren. Even the most carefully established and effectively supervised system cannot prevent every conceivable form of criminal activity. B-260563, Mar. 31, 1995. Accordingly, your request for relief is granted.

Sincerely yours,

Gary Kepplinger
Associate General Counsel

B-270863

June 17, 1996

DIGEST

Former Internal Revenue Service director is relieved from liability under 31 U.S.C. § 3527(a) for loss that resulted from embezzlement by subordinate. The director had an adequate system of procedures and controls in place that showed the loss was not the result of the director's negligence.