

**DOCUMENT RESUME**

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[Liability of Roy D. Clark for Loss of a Taxpayer's Remittance].  
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Letter to Paul H. Taylor, Deputy Fiscal Assistant Secretary,  
Department of the Treasury; by Paul G. Dembling, General  
Counsel.

Contact: Office of the General Counsel: General Government  
Matters.

Organization Concerned: Internal Revenue Service.  
Authority: 31 U.S.C. 82a.



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548



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OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO: B-192567

NOV 03 1978

The Honorable Paul H. Taylor  
Deputy Fiscal Assistant Secretary  
Department of the Treasury

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Dear Mr. Taylor:

This is in response to your request for relief from liability of Mr. Roy D. Clark, Director and accountable officer of the Kansas City Service Center, Internal Revenue Service (IRS), for the loss of \$1,089, pursuant to 31 U.S.C. § 82a-1.

Pearl Dietrich Swift, a subordinate of the accountable officer, reported the loss of a taxpayer's remittance while she was employed as Tax Examiner in the Kansas City Service Center. Mr. Walter A. Walker, Chief, Kansas City Office Group, Mrs. Swift's immediate supervisor, referred the matter to IRS' Office of the Regional Inspector immediately upon receipt of the report of loss. On May 17, 1976, Mrs. Swift resigned.

The February 7, 1977, report of the Assistant Regional Inspector, IRS, and the June 1, 1977, memorandum from the Chief, Collection Division, to the Director, St. Louis District, IRS, apparently form the basis for your determination that the loss occurred by reason of the act or omission of Mrs. Swift, without fault or negligence on the part of Mr. Clark.

From the investigation reported in those documents, it was determined that on or about October 7, 1975, a taxpayer paid tax arrears at the Kansas City Service Center in an amount estimated to be \$1,180. Mrs. Swift received the appropriate forms and the funds but issued no receipt to the taxpayer. On the same day Mrs. Swift purchased three postal money orders in the aggregate amount of \$1,180 payable to herself and subsequently cashed them. She has not been able to explain satisfactorily the source of the funds used to purchase the money orders. In November 1975 she purchased a postal money order in the amount of \$11 which she processed on November 26, 1975, as the same taxpayer's remittance for some of his tax liability. She never processed the forms covering the taxpayer's liability for other tax periods; but on May 6, 1976, reported that she had found the reports in her desk, but that the accompanying remittance was lost. On May 7, 1976, she confirmed the loss under oath.

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Collection action was attempted, but the debt was found to be uncollectible at this time. The debt is scheduled for normal IRS follow-up procedures in the event Mrs. Swift acquires the assets to liquidate all or part of the debt. In addition, the matter was referred to the United States Attorney, Western District of Missouri, who declined to prosecute, concluding that the evidence demonstrated that Mrs. Swift was grossly negligent, but was not convincing beyond a reasonable doubt that there was an intentional conversion of the funds to her personal use. There is no evidence tying Mr. Clark to Mrs. Swift's unlawful or negligent behavior.

Accordingly, we concur with your determination that the loss occurred without fault or negligence on Mr. Clark's part by reason of the acts of a subordinate and he may be relieved of liability for the loss of \$1,089. The appropriate adjustments in appropriation accounts may be made.

Sincerely yours,

Paul G. Dembling

Paul G. Dembling  
General Counsel