



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

Office of the General Counsel

B-265853

January 23, 1996

Mr. Roy C. Madsen
Acting Director
Financial Service Directorate
Deputy Chief Financial Officer
Department of Treasury
Washington, DC 20220

Dear Mr. Madsen:

This is in response to your request that we grant relief, under 31 U.S.C. § 3527(a), to Mr. Joseph H. Cloonan, Director, Philadelphia Service Center, for the loss of \$51,821.80 in tax collections. The loss occurred as a result of embezzlement by a former Internal Revenue Service (IRS) employee. We grant relief for the reasons stated below.

The loss occurred in June and July of 1985 when Lawrence Williams, a clerk in the Center's Receipt and Control Branch, stole approximately a dozen checks made payable to the IRS. Mr. Williams altered the payee on the checks and deposited several of the altered checks in his personal account. In anticipation of receiving illegal drugs and a portion of the proceeds, he gave the remaining checks to a friend who cashed them under various names. The checks totalled \$57,901.80. The loss was discovered when one of the depository institutions suspected that a deposited check had been altered and contacted the IRS.

Mr. Williams and four non-employees were convicted of embezzlement in 1986. The court ordered restitution of which \$7,463.96 was payable by Mr. Williams. Mr. Williams has paid \$1,280, and his co-defendants have paid an additional \$4,800. The IRS has determined that the balance, \$51,821.80, is uncollectible.

Losses due to embezzlement by financial personnel are treated as physical losses, and relief will be granted if the 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

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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 was carrying out his official duties at the time of the loss and the loss was not the result of his negligence or fault.

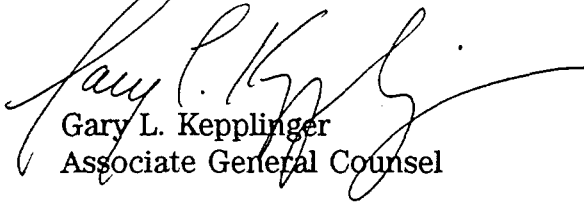
When relief is requested for an accountable officer who is a supervisor and the loss is due to the actions of subordinate finance personnel, we will review the existence and adequacy of internal controls and procedures to determine negligence.

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 Mr. Cloonan. 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 L. Kepplinger
Associate General Counsel