



Office of the General Counsel

B-266245

October 24, 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 Ms. Dianna Palmer and Mr. Bob Hughes of the Brookhaven Service Center of the Internal Revenue Service (IRS) for an improper payment in the amount of \$5,137. As explained below, we are unable to grant relief to Ms. Palmer without additional information from you. Therefore, we are tolling the running of the statute of limitations in this matter to allow you adequate time to submit the necessary information. 31 U.S.C. § 3526(g). The matter of Mr. Hughes's relief is not within our jurisdiction, and we are returning that issue for your disposition.

According to your letter, the loss here occurred as a result of the issuance of an erroneous tax refund check. You identify Dianna Palmer as the cognizant certifying officer. 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). In a situation such as this, involving an erroneous tax refund, our consideration would most likely focus on section 3528(b)(1) rather than (b)(2). As you can see, such consideration is necessarily fact-based. Your September 15 submission to us did not include a statement of the facts that resulted in the erroneous refund. In order for us to make the determination required by section 3528(b)(1), we will also need to examine copies of the records that Ms. Palmer referred to in certifying this refund. It appears from the record you submitted that the refund at issue here was found to be erroneous on November 29, 1993. Consequently, the statute of limitations for granting relief to Ms. Palmer expires on November 29, 1996. In order to allow you adequate time to compile and submit the

necessary information and documentation, we are tolling the running of the statute of limitation pursuant to 31 U.S.C. § 3526(g).

You also identify Bob Hughes, Director of the Brookhaven Center, as an accountable officer having pecuniary liability for this erroneous refund. In informal conversations, your staff explained that IRS administrative rules hold Mr. Hughes liable for losses such as this solely by virtue of his position and duties as Service Center Director and supervisor of the responsible certifying officer. While the law does not normally impose pecuniary liability upon an employee solely because he or she supervises certifying officers, e.g., B-214286, July 20, 1984, agencies have the authority to administratively impose pecuniary liability for the loss of government property or funds upon employees who are not otherwise financially accountable. E.g., B-236142.2, Feb. 23, 1990. At the same time, however, the authority to relieve those employees from such administrative liability rests with the agency that created it, not with GAO. E.g., B-191036, July 7, 1978. For this reason, we are returning to you the matter of Mr. Hughes's liability, and we defer to your conclusions as to his request for relief.

If you have any questions about this matter, please call me or Mr. Neill Martin-Rolsky of my staff at 202-512-5644.

Sincerely yours,

Gary L. Kepplinger
Associate General Counsel

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DIGESTS

1. In response to a request under 31 U.S.C. § 3528 for relief for certain Internal Revenue Service (IRS) accountable officers for some erroneous tax refunds, GAO tolled the running of the statute of limitations in order to allow IRS to submit information explaining the facts and circumstances under which those erroneous refunds were made. Not all erroneous refunds give rise to accountable officer liability.
2. GAO returned without action a request for relief under 31 U.S.C. § 3528 for an Internal Revenue Service (IRS) service center director who supervised some certifying officers charged with losses arising from erroneous tax refunds. Supervisors of certifying officers are not automatically accountable under the law for losses incurred by their subordinates, unless the supervisors were accountable officers in their own right with respect to the losses in question. To the extent that IRS regulations administratively impose liability upon the supervisor under these circumstances, only IRS may grant the supervisor relief from that liability.