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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

In Reply

Refer To: B-202037

August 31, 1981

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

Dear Mr. Taylor:

This is in response to your request that relief from liability be granted to Mr. Henry P. Seufert, former Director of the Brookhaven Service Center for the loss by theft on June 18, 1974, of a \$600 money order. We grant relief for the reasons detailed below.

The long period of time between the year the theft occurred (1974) and the year in which you requested relief for the accountable officer (1981) raises a threshold question about our authority to consider this case. In two very recent cases (B-197616, February 24, 1981, and B-201840, April 6, 1981), we held that the accountable officer's account must be considered settled after the expiration of the 3-year period prescribed by 31 U.S.C. § 82i. No further charges could be raised against him, and therefore no further adjustments to the account could be made. It followed, we said, that we no longer had authority to grant or deny relief.

We have reconsidered those decisions, in the light of the legislative history of 31 U.S.C. § 82i, and have concluded that we were wrong. It is now clear that the statute was intended to protect disbursing, certifying, and accountable officers from having to answer exceptions raised by the General Accounting Office (GAO) to payments they made (not involving fraud or criminal activities) more than 3 years after the alleged erroneous payment was made. In physical loss cases, however, the GAO is not concerned with erroneous payments to which it wishes to take an exception. A debt against the accountable officer arose automatically when his funds were discovered to be short. The only question before the GAO is whether to grant the officer relief, thereby absolving him from responsibility for the loss and allowing restoration of the account.

Since the account can never be restored without restitution from the accountable officer (assuming inability to collect from the thief) unless the Department of Treasury receives a relief authorization, we conclude that there is no time bar precluding our consideration of requests for relief from responsibility for physical losses or shortages of funds. B-197616, February 24, 1981; B-201840, April 6, 1981, and any other cases, which indicate that relief from responsibility for physical losses or shortages may not be considered if more than 3 years has elapsed since the loss or shortage was discovered are hereby overruled.

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Turning now to the merits of this case, the Internal Revenue Service (IRS) investigation reports indicate that the theft occurred on or about June 18, 1974, in a Contact Unit of the Manhattan District Office. A taxpayer, Mr. Roger Callendar, while being assisted by a tax examiner removed a \$600 money order from a wire basket located on the tax examiner's desk.

Mr. Callendar confessed to the theft and stated that there was no collusion with any IRS employee. Mr. Callendar was sentenced to 2 years in prison (suspended) and 3 years probation. The court did not order Mr. Callendar to make restitution nor did IRS collection actions result in recovery of the funds.

At the time of the theft, it was the common practice and control procedures in the Manhattan District Office to accumulate remittances in the wire baskets for transmission to the cashier for deposit. There was no indication that any examiner deviated from prescribed practices then required. The administrative report states that the security practices of the office were considered adequate until the investigation following the theft indicated serious deficiencies. Office security procedures have been corrected.

Based on the above you have determined that the unrecovered loss of the \$600 occurred through no fault or negligence of Mr. Seufert and that the loss occurred while Mr. Seufert was acting in discharge of his official duties. Therefore, you have requested relief from liability in accordance with the provision of 31 U.S.C. § 82a-1.

31 U.S.C. § 82a-1 (1976) authorizes this Office to relieve an accountable officer from liability if we concur with a determination by the agency head that the loss occurred (1) while the accountable officer was acting in the discharge of his or her official duties and (2) without fault or negligence of the accountable officer. If relief is granted, the law also authorizes adjusting the account by charging the appropriation or fund available for the disbursing function when the adjustment is effected, absent another appropriation specifically provided therefor. You have made the required determination on behalf of Mr. Seufert.

With respect to this case, the record clearly shows that the loss occurred as a result of a theft and that all employees were following common practices and procedures. The deficiencies of the then prescribed security procedures were not recognized until after the theft had taken place.

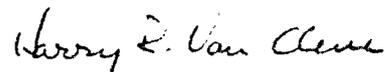
IRS requires that reasonable security protection be afforded to property entrusted to the IRS. See, The Physical and Document Security Handbook, IRM 1 (16) 41. It is doubtful whether allowing funds to accumulate

in wire baskets accessible to anyone entering the office would be considered "reasonable security precautions." If Mr. Seufert had been aware of the lax security procedures then in effect at the District office he would have been negligent in his duty not to have taken corrective action. We have been informally advised, however, that Mr. Seufert did not have this knowledge and since he was not directly responsible for the security program, we cannot find him negligent. Accordingly, we grant relief to Mr. Seufert.

However, your request for relief should have also included the tax examiner who had physical control of the funds. There may be more than one accountable officer in a given case and the concept of accountability is not limited to the person in whose name the account is officially held, B-193673, May 25, 1979; B-197324, March 7, 1980. Any Government officer or employee who physically handles Government funds, even if only occasionally, is "accountable" for those funds while in his or her custody. Therefore, the tax examiner was also liable for the loss. Collection action should be taken against the tax examiner unless you decide to request relief for him or her also. B-191942, September 12, 1979.

Finally, the GAO Policy and Procedures Manual calls for a report of financial irregularities (which have not been resolved administratively) 2 years after the date the accounts are made available to this Office for audit. 7 GAO Policy and Procedures Manual § 28.14; B-161457, August 1, 1969. (Fraud or other serious irregularities of substantial amount or significance must be reported as soon as possible.) We recommend that you take corrective measures to ensure that your personnel are aware of the need for timely action to avoid any future delays in reporting irregularities to this Office.

Sincerely yours,



Harry R. Van Cleve
Acting General Counsel