

B-260563

March 31, 1995

Edwin A. Verburg
Director
Financial Services Directorate
Deputy Chief Financial Officer
Department of the Treasury

Dear Mr. Verburg:

This is in response to your request of January 25, 1995, that we relieve _____, Director of the Fresno Service Center, Internal Revenue Service, under 31 U.S.C. § 3527(a) for a loss in tax collections totaling \$9,050. For the reasons stated below, relief is granted.

The record indicates that the loss occurred during the period from March 1983 through May 1984¹ when _____ a former IRS revenue officer in the Los Angeles District, stole cash payments made by taxpayers. _____ issued levy notices to tenants in rental properties owned by taxpayer _____. _____ collected cash payments from many of the tenants. Rather than listing the payments on Form 795, Daily Report of Collection Activity, _____ pocketed the cash payments. The I.R.S. reports that _____ embezzled \$9,050 and that all attempts to locate _____ have been unsuccessful and all attempts to collect have been exhausted. Under 31 U.S.C. § 3527(a), we are authorized

¹Under 31 U.S.C. § 3526 (c), the Comptroller General is authorized to settle accounts of accountable officers, and hence to grant or deny relief "within 3 years after the date the Comptroller General receives the account." In general, the 3-year statute of limitations begins to run when an agency's accounts are "substantially complete". GAO, Policy and Procedures Manual for Guidance of Federal Agencies, tit. 7, § 8.7. This statute of limitations does not apply to physical losses. We first reached this conclusion in 64 Comp. Gen. 674 (1981), and have applied it since. However, we have discovered some isolated decisions, B-254454, Nov. 19, 1993; B-248555, June 3, 1992; B-235401, Dec. 6, 1989; that applied the statute of limitations to physical losses and they should not be followed.

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. Losses due to embezzlement by financial personnel are treated as physical losses, and we will grant relief if the statutory conditions are met. B-211763, July 8, 1983. Your agency has made the determinations required by section 3527(a), namely, that the accountable officer was carrying out his official duties at the time of the loss and the loss was not the result of the officers negligence or fault.

We have considered Service Center Directors free of fault or negligence for losses resulting from an act or omission of a subordinate when the IRS demonstrates that an adequate system of procedures and controls existed and were followed. E.g. B-244113, Nov. 1, 1991; B-226214, et. al., June 18, 1987. The record indicates that procedures and controls were established requiring revenue officers to process payments received from notices of levy on their daily collection reports. The record also notes that if there is no evidence of a payment in a case file, it is nearly impossible to detect a misappropriated third party payment until the taxpayer raises the issue. The loss in this case is the result of a clever criminal scheme perpetrated by a former IRS revenue officer. Even the most carefully established and effectively supervised system cannot prevent every conceivable form of criminal activity. Cf. B-224689, Oct. 31, 1986.

We agree with your determination that the loss was not the result of the fault or negligence of . Accordingly, your request for relief is granted.

Sincerely yours,

Gary L. Keplinger
Associate General Counsel