



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

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Office of the General Counsel

B-223327

August 26, 1986

Ms. J

Dear Ms.

This is in response to your inquiry of June 4, 1986, regarding the decision made by the Director, Finance Division, Internal Revenue Service (IRS), to deny you relief from your liability for a loss incurred by the Los Angeles District, Small Purchase Imprest Fund in 1981. You ask us to explain the extent of your appeal rights and how we may be of help. As explained below, our authority is limited since the IRS did not determine you were free from fault or negligence in the loss.

In August and September 1981, a shortage of \$299.68 was discovered in an imprest fund for which you were responsible. As a supervisory accountable officer, you are liable for any shortages in the imprest fund until you are relieved from liability by this Office under 31 U.S.C. § 3527(a) (1982).

Certain statutory criteria must be satisfied before relief may be granted under 31 U.S.C. § 3527(a). The provision requires the head of the agency (in your case the IRS) or his designee to make certain specific determinations, including a finding that the loss was not the result of fault or negligence by the accountable official while carrying out official duties. If the agency head makes the determination required by the above provision, relief may be granted if we concur with the determinations. However, when the agency head finds that the statutory criteria for relief has not been satisfied, and does not request us to grant relief, we have no authority to review and overturn the agency's finding and substitute our own. 59 Comp. Gen. 113 (1979). Moreover, for physical losses of under \$750, we have delegated to the agencies the authority to grant relief. IRS has not found you free from fault or negligence as required by the relief statute. As a result, this Office has no authority to review the agency's determination. You have apparently exhausted the appeal mechanisms within IRS.

Since IRS has denied relief, you are indebted to the Government for the amount involved. Please note that the "three year statute of limitations" to which you refer (31 U.S.C. § 3526) is applicable only to the Comptroller General's settlement of the account of an officer who has been charged with making an unauthorized payment. There is no comparable limitation for matters involving a physical loss or shortage of funds. This means that you cannot consider the matter to be closed by operation of law, but at the same time, you are not precluded from seeking relief in the courts.

I have the following suggestion. Under 5 U.S.C. § 5512, the amount found to be owing may be withheld from your pay. However, under subsection (b) of that provision, the accountable officer may request this Office to report the balance due to the Attorney General who is required to initiate suit against the accountable officer within sixty (60) days. When suit is filed, you will be able to either negotiate a settlement with the Department of Justice or present your defense before the court when the law suit is filed.

If you send me a written subsection (b) request, I will proceed as described above. If for any reason, the Department of Justice declines to file suit against you, you will have to file an action yourself in the United States Claims Court for recovery of the amounts withheld from your salary.

I regret that I could not be of more assistance.

Sincerely yours,



(Mrs.) Rollee H. Efros  
Associate General Counsel