



National Taxpayer Advocate

MAR 14 2006

1111 Constitution Ave., NW
Washington, DC 20224

Mr. Martin Gold
Acting Small Business & Agriculture Regulatory Enforcement Ombudsman
409 3rd Street, SW, MC 2120
Washington, DC 20416-0005

Dear Mr. Gold:

This is in response to your inquiry dated December 9, 2004, addressed to Gail R. Harris with the Taxpayer Advocate Service. Your office received a complaint about the Internal Revenue Service (IRS) from Mr. Frank Karkota, President of ComPol, Inc. (ComPol). Mr. Karkota's letter states that IRS actions were directly responsible for ComPol's bankruptcy.

Case Advocate Leslie Sanfilippo, located in our Boston Taxpayer Advocate Office, conducted an independent review of Mr. Karkota's complaint. The following discussion summarizes her findings.

An IRS revenue officer in the Nashua office initially contacted ComPol on April 3, 2002 about unpaid employment tax liabilities for tax years 2001 and 2002. He provided ComPol with both a verbal and a written explanation of the collection process. Mr. Karkota, ComPol's President, agreed to submit full payment for the outstanding tax liabilities by April 24, 2002. The revenue officer advised Mr. Karkota that he would issue Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing*, if the IRS did not receive full payment by the agreed date. Mr. Karkota advised the revenue officer that he had applied for a loan to fully pay ComPol's outstanding liability. In addition, Mr. Karkota agreed that ComPol would stay current with its payroll tax deposits and timely file returns while attempting to resolve the prior liabilities. However, Mr. Karkota was unable to secure financing and the liability remained unpaid. Mr. Karkota advised the revenue officer that ComPol was experiencing production delays and cash flow problems.

On July 23, 2002, the revenue officer issued Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing*, to ComPol via certified mail. As Letter 1058 explains, the IRS may levy on a taxpayer's property unless the taxpayer fully pays the liability, makes alternative arrangements to pay, or requests for a Collection Due Process (CDP) hearing within 30 days of the letter. See IRC § 6331(d); IRC § 6330(a). The revenue officer also telephoned Mr. Karkota the same day and advised that he was issuing Letter 1058, and advised Mr. Karkota that ComPol would need to provide financial information and a proposed payment plan within 30 days to avoid levy action.

ComPol did not fully pay its liability, make an alternative payment proposal, or request a CDP hearing during the 30 day period. In addition, ComPol failed to pay its current payroll tax deposits. On August 26, 2002 the IRS filed a Notice of Federal Tax Lien against ComPol. On October 1, 2002 the IRS issued a Notice of Levy to both Fleet Bank and Fitchburg Savings Bank for the accounts owned by ComPol. On October 7, 2002, Mr. Karkota contacted the revenue officer who advised that he would release the levy if ComPol paid its current liabilities, as it previously agreed, within 21 days.

On October 16, 2002 the ComPol case was reassigned to another revenue officer. At this point, ComPol had not provided financial statements, a payment proposal, nor had it kept current with its payroll liabilities. Actually, ComPol had accrued additional liabilities for the Form 941, Employer's Federal Tax Returns due for the quarters ending in March, June and September 2002. Mr. Karkota met with the revenue officer on February 13, 2003 and promised to provide a financial statement and payment proposal by the next scheduled appointment.

On March 7, 2003 Attorney George Nadar, the ComPol's appointed representative, contacted the revenue officer and advised that he would contact her by March 17, 2003 with a detailed plan for ComPol. On March 24, 2003 Attorney Nadar telephoned the revenue officer and advised that ComPol had filed Chapter 11, Bankruptcy. As a result, the IRS ceased all collection action against ComPol.

In connection with ComPol's bankruptcy, ComPol and the IRS Insolvency Unit entered into a payment plan agreement effective April 2004. According to the IRS Insolvency Unit, ComPol is only sporadically making its agreed monthly payment of \$320.86. If ComPol continues violate its agreement by missing payments, the IRS could place its account back into active collection status.

To the extent that Mr. Karkota's concerns have not been addressed above, issues raised in your letter are as follows:

1. Why and how did you take enforcement or compliance action(s)?

ComPol was unable to fulfill its agreement to obtain financing to fully pay its liabilities, continued to fail to pay its current employment tax deposits, and did not

offer any acceptable payment alternatives. As a result, the IRS issued Letter 1058 and followed its procedures to levy ComPol's bank accounts.

- 2. Did you notify the small business about the enforcement or compliance action(s)? If so, did your agency provide the business an opportunity to come into compliance?**

Yes. The IRS notified ComPol on April 3, 2002 and July 23, 2002 of possible enforcement action if it failed to meet its payment and filing obligations.

- 3. Did you review the action(s) of the investigator/auditor/inspector/individual? to ensure compliance with your agency's policies and procedures?**

Yes. TAS's review of the actions of the IRS compliance employees assigned to work this case found that they followed the IRS's policies and procedures.

- 4. Were your agency's regional and programs offices responsive to the small business? If so, please cite some examples.**

Yes. When the revenue officer first contacted Mr. Karkota on April 3, 2002 he agreed to provide full payment of the liability by April 24, 2002. Mr. Karkota called and informed the revenue officer that the loan could not be secured and the deadline was extended to May 15, 2002. This deadline was also extended an additional two weeks to allow Mr. Karkota to review his financial data. The revenue officer also refrained from filing a Notice of Federal Tax Lien while the taxpayer attempted to secure a loan to fully pay the liability.

- 5. Was the small business informed of their right to contact the Office of the National Ombudsman at SBA?**

Yes. When the IRS initially contacted Mr. Karkota on April 3, 2002 they gave him Publication 1, Your Rights as a Taxpayer. This publication provides contact information for the Small Business Ombudsman.

- 6. Did your agency consider any alternatives to the enforcement action, such as: waiving penalties or reducing fines?**

Yes. Enforcement action was taken only after Mr. Karkota repeatedly missed deadlines for both payment and filing over a six month period between April and October 2002. No other resolution was possible because ComPol was not making its required federal tax deposits.

Mr. Karkota's request for penalty abatement was denied and he did not pursue any appeal rights.

- 7. As a result of the issues raised by this small business concern, has your**

**agency implemented any changes to address this situation in the future?
If so, please describe the changes implemented.**

No. No changes are planned or will be implemented as a result of the review of this case.

We hope the information provided will be beneficial in responding to Mr. Karkota's concerns, and we thank you for the opportunity to address his concerns. If you have any further questions or concerns, please contact Mrs. Gail Harris, of my staff, at (202) 622-3341.

Sincerely,



Nina E. Olson
National Taxpayer Advocate