



**STATE OF NEW JERSEY**

In the Matter of Maryellen Mignano,  
Department of the Treasury

**FINAL ADMINISTRATIVE  
ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2016-1898

Classification Appeal

**ISSUED: NOV 30 2016** (CSM)

Maryellen Mignano appeals the attached decision of the Division of Agency Services (Agency Services) that the proper classification of her position with the Department of the Treasury is Auditor 3, Taxation. The appellant seeks an Auditor 2, Taxation classification.

The record in the present matter establishes that at the time the appellant filed her request for a classification review, she was serving as an Auditor 3, Taxation. The appellant's position is located in the Division of Taxation and she is supervised by Edith Chukuka, Supervising Auditor, Taxation. The appellant does not have any supervisory responsibility. The appellant sought a reclassification contending that her position would be more appropriately classified as an Auditor 2, Taxation. In support of her request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties that she performed. Agency Services reviewed all documentation supplied by the appellant including her PCQ. Based on its review of the information provided, Agency Services concluded that the appellant's position was properly classified as an Auditor 3, Taxation.

On appeal, the appellant states that an Auditor 2, Taxation can act as a team leader or independently handle field audits of a complex nature. In this regard, she notes that she continues to complete field audits independently that were previously completed by Auditor 1s, Taxation and Auditor 2s, Taxation. Further, the appellant states that there is no definition to base audit complexity on, so the fact that these audits have been completed by upper level auditors demonstrates that they are considered to be of a complex nature. The appellant notes that she has

been reassigned various cases in the past that were previously assigned to an Auditor 2, Taxation who had resigned and all cases which are currently assigned to her are of a "medium complexity." Additionally, the appellant presents that she works under general supervision and independently conducts pre-audit interviews and plans and performs these audits. Margaret Matthews, Assistant Chief, submitted a letter in support of the appellant's appeal. In pertinent part, Matthews states that the appellant has completed numerous cases of the complexity and importance that would be considered Auditor 2, Taxation level work and the appellant is the go-to person in the area of Corporation Business Tax. In a supplemental submission, the appellant states that the prior decision does not make any determination regarding what would be considered Auditor 3, Taxation versus Auditor 2, Taxation work and no one has contacted her to speak to her about the duties she performs. Moreover, she contends that she has compared the duties she performs to other positions and it shows that she is performing the same work as an Auditor 2, Taxation position,<sup>1</sup> which is correctly classified.

### CONCLUSION

The definition section of the job specification for Auditor 2, Taxation states:

Under direction of a Supervising Auditor, Taxation, or Auditor 1, Taxation, Division of Taxation, Department of the Treasury, takes the lead in (1) a group of auditors of lower grades engaged in field or office audits and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division, or (2) independently handles field or office auditing or accounting work of considerable complexity and importance; may be assigned to either field or central office location as required; does related work as required.

The definition section of the job specification for Auditor 3, Taxation states:

Under direction of a Supervising Auditor, Taxation, or other supervisory official, Division of Taxation, Department of Treasury, does auditing or accounting work of some importance and difficulty and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division; may be assigned to either

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<sup>1</sup> A review of the organizational chart submitted by the appointing authority with the appellant's initial request for reclassification review indicated two positions were classified as Auditor 2, Taxation. It is noted that the incumbent in one of those positions requested that her position be reclassified to Auditor 1, Taxation. On May 18, 2012, the former Division of State and Local Operations determined that that employee's position was properly classified by her permanent title, Auditor 2, Taxation.

field or central office location as required; does related technical work as required.

In this matter, the appellant argues that since there was no specific determination as to what is Auditor 2, Taxation versus Auditor 3, Taxation work and that she performs work that was previously assigned to an Auditor 2, Taxation who resigned, the duties of her position are of considerable complexity which warrants an Auditor 2, Taxation classification. While it is difficult to accurately define work of "considerable complexity and importance," duties are not necessarily considered complex based on the sheer volume of work performed, but rather if the work itself involves frequent departures from standard, or routine practices and guidelines. The appellant indicated on her PCQ that 55% of her time is spent conducting financial audits of taxpayer's internal records. After describing these duties, the appellant indicated:

*Some cases are more complex than that of an Auditor 3 level which is my official title and therefore should have been conducted by someone of a higher classification. An Auditor 3 is required to complete 24 audits per PAR year. For mid-term rating period ending 8/31/15 an auditor is required to have 12 completed audits. I have significantly exceeded my goals and objectives.*

She also indicated that for 10% of her time she:

*Conducts audits which have been previously completed by auditors of a higher working position/classification. Complex cases previously handled by an auditor of higher working title should be subsequently completed by an auditor of the same classification.*

In other words, from what the appellant stated on her PCQ, to which both her supervisor and assistant director agreed, it appears that "some" of the cases that are more complex than that of an Auditor 3, Taxation level account for approximately 10% of the time she performs audits. Indeed, the appellant did not indicate in any way on her PCQ that a greater proportion of her time is spent performing work of considerable complexity and importance. Rather, she only stated that "some" of the audits for which she spends 55% of her time are more complex than that of an Auditor 3, Taxation level. In her appeal submission to the Civil Service Commission, she described that the cases she is currently assigned are of a "medium complexity" and that she was reassigned "various cases in the past" that were previously assigned to an Auditor 2, Taxation. Similarly, in her November 16, 2016 letter of support, Matthews indicated that the appellant has completed "numerous cases of the complexity and importance that would be considered Auditor 2 level work," but in no way specified that the greater proportion of her work was considerably complex in nature. Therefore, the written record as a

whole does not demonstrate that the appellant is primarily assigned audit work of considerable complexity and importance. In this regard, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. For purposes of determining the appropriate level within a given class, and for overall job specification purposes, the definition portion of the job specification is appropriately utilized. Therefore, the fact that she performs some higher level audits does not demonstrate that her position is misclassified.

The appellant states that she compared her duties to other positions and this shows that she is doing the same work as an Auditor 2, Taxation whose position was classified correctly. Thus, she questions how it was determined that her position was properly classified when no one spoke to her or her superiors about her classification appeal. As explained above, the information that the appellant provided on her PCQ did not establish that she spent the majority of her time performing the work of higher level auditors who have resigned and that only "some" of her cases are more complex than that of an Auditor 3, Taxation. Thus, even assuming *arguendo* that the appellant's position is assigned precisely the same duties as the unnamed co-worker's position to which she compared her duties, for the reasons stated above, that Auditor 2, Taxation position would be misclassified. In this regard, no vested or other rights are accorded by an administrative error. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998). Further, it is noted that the position in her organizational unit that was determined to be properly classified as an Auditor 2, Taxation was based on an audit that was conducted in 2012. In the appellant's case, while it is axiomatic that duties assigned to a particular position evolve over time, appellants in classification proceedings have the burden to demonstrate that the duties of the position have evolved to an extent warranting reclassification of the position to a higher in-series title. The appellant has not done so in this matter.

With respect to the appellant's assertion that neither she nor her supervisor were contacted during the desk audit process, classification reviews are typically conducted either by a paper review, based on the duties questionnaire completed by the employee and supervisor; an on-site audit with the employee and supervisor; or a formal telephone audit to obtain clarifying information. Given that the PCQ submitted by the appellant indicated that she does not spend the greater percentage of her time performing audits of considerable complexity and importance, it was not necessary for this agency to contact the employee or supervisor for clarifying information. In response to her assertion on her PCQ that an Auditor 3, Taxation should not be interpreting tax statutes and regulations to any one, the job specification clearly indicates that incumbents provide advice to accounting, bookkeeping and other personnel engaged by or representing the taxpayer and must keep current with all the legislative changes in New Jersey Tax Statutes, Internal

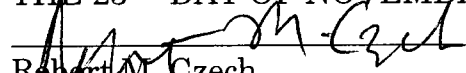
Revenue Code, and court decision that affect the Division of Taxation. Regarding the assertion on her PCQ that an Auditor 3, Taxation is not required to train or assist any employees on any aspect of the auditing procedure, initially, she indicated that only 5% of her time is spent performing these duties. Nevertheless, the job specification indicates that incumbents must have the ability to work with Auditor-Accountant Trainees and other employees engaged in the unit. Accordingly, these duties are properly assigned to an incumbent in the Auditor 3, Taxation classification.

### ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 23<sup>RD</sup> DAY OF NOVEMBER, 2016

  
Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence      Director  
                                 Division of Appeals  
                                 & Regulatory Affairs  
                                 Civil Service Commission  
                                 Written Record Appeals Unit  
                                 P.O. Box 312  
                                 Trenton, New Jersey 08625-0312

#### Attachment

c:      Maryellen Mignano  
         Douglas Ianni  
         Kelly Glenn  
         Records Center



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
AGENCY SERVICES  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Robert M. Czech  
Chair/Chief Executive Officer

Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

November 5, 2015

Ms. Maryellen Mignano  
Department of the Treasury  
Division of Taxation  
1828 West Lake Avenue, 3<sup>rd</sup> Floor  
Neptune, New Jersey 07753

**RE: Classification Appeal – Auditor 3, Taxation  
AS# 06150264, Position# 101941, EID# 000489980**

Dear Ms. Mignano:

This is to inform you, and the Department of the Treasury, of our determination concerning your classification appeal. This determination is based upon a thorough review and analysis of all information and documentation submitted.

**Issue:**

You are appealing your current permanent title of Auditor 3, Taxation (P22) is not consistent your current assigned duties and responsibilities. You contend that the title Auditor 2, Taxation (P25) is consistent with the duties that you currently perform.

**Organization:**

According to the organizational chart that was submitted, your position is assigned to the Division of Taxation, Audit Activity, Field Audit Branch – Neptune A. You currently report directly to Edith Chukuka, Supervising Auditor Taxation, and do not possess supervisory responsibility.

**Finding of Fact:**

The primary responsibilities of your position include, but are not limited to the following:

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- Examining and/or verifying taxpayers' records with respect to the various taxes administered by the Division of Taxation (e.g. Sales & Use Tax, Corporation Business Tax, Partnership, Schedule C, etc.) and/or determining if an audit is required.
- Conducting audits to determine compliance with New Jersey tax laws and/or accuracy of filed New Jersey tax returns.
- Interpreting statutes and/or regulations to state government employees, taxpayers, and/or others concerned with preparation of tax returns.
- Conducting post audit conferences with tax managers, department heads and/or outside accountants to discuss audit findings and/or contested issues.
- Recommending procedures to provide effective controls and/or improve compliance.
- Assisting and/or training auditors in the examination and verification methods of Corporate Business Tax.

### **Review and Analysis:**

Your position is currently classified by the title Auditor 3, Taxation (P22-50814). The definition section of the job specification for this title states:

“Under direction of a Supervising Auditor, Taxation, or other supervisory official, Division of Taxation, Department of Treasury, does auditing or accounting work of some importance and difficulty and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division; may be assigned to either field or central office location as required; does related technical work as required.”

The definition section of the job specification for the title Auditor 2, Taxation (P25-50816) states:

“Under direction of a Supervising Auditor, Taxation, or Auditor I, Taxation, Division of Taxation, Department of the Treasury, takes the lead in (1) a group of auditors of lower grades engaged in field or office audits and/or examining and verifying of accounts and records, both internally and of taxpayers, with respect to various taxes administered by the division, or (2) independently handles field or office auditing or

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accounting work of considerable complexity and importance; may be assigned to either field or central office location as required; does related work as required.”

Positions at this level are characterized by leadership responsibility by acting regularly as a team leader of a small group of professional Auditors performing moderately difficult work. As stated in your Position Classification Questionnaire (DPF-44S) submission, training and assisting personnel in appropriate auditing procedures is performed on an infrequent basis (5% of Time and is ranked #4 out of 5 for Order of Difficulty).

Positions at this level are expected to be able to perform duties and resolve problems of moderate difficulty or complexity on a primary basis. As stated in your DPF-44S, you conduct audits which have been previously completed by auditors of a higher working position/classification. A position cannot be reclassified based solely in comparison to other positions that may be misclassified. Additionally, the level of complexity for the audits that you conduct has not been adequately demonstrated.

A review of the organizational chart provided finds there is: two (2) Auditor 1, Taxation (R28), two (2) Auditor 2, Taxation (P25) and four (4) additional Auditor 3, Taxation (P22) positions within the same unit. Therefore, your position is not functioning as a lead worker.

The preponderance of the assigned duties and responsibilities of the position under review are consistent with the established standards for incumbents functioning in the title Auditor 3, Taxation.

**Determination:**

Based upon the findings of fact above, it is my determination that the assigned duties and responsibilities of your position are properly classified by your current title, Auditor 3, Taxation (P22-50814).

Please be advised that in accordance with *N.J.A.C. 4A:3-3.9*, you may appeal this decision within twenty (20) days of receipt of this letter. This appeal should be addressed to Written Records Appeals Unit, Division of Appeals and Regulatory Affairs, PO Box 312, Trenton, New Jersey 08625-0312. Please note that the



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submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Ridolfi". The signature is written in a cursive style with a large, prominent initial "J".

Joseph Ridolfi, Team Leader  
Agency Services

JR/rmd

c: Ms. Laura Budzinski, Treasury Human Resources