

B-2c



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Brett Hamlin,  
Department of the Treasury

CSC Docket No. 2014-1007

Classification Appeal

ISSUED: OCT 03 2014

(RE)

Brett Hamlin appeals the attached decision of the Division of Classification and Personnel Management (CPM) which found that his position with the Department of the Treasury is correctly classified as Technical Assistant 2, Treasury. He seeks an Investigator 3, Taxation classification in these proceedings.

The appellant requested a review of his position as a Technical Assistant 2, Treasury, the title to which he was regularly appointed on December 6, 1997. His position, located in the Department of the Treasury, Division of Taxation, Compliance and Enforcement Activity, reports to a Supervising Investigator Taxation, and has no supervisory responsibility.

CPM's original September 19, 2013 determination found that based on the primary duties of the position, Mr. Hamlin's title is properly classified as Technical Assistant 2, Treasury. However, the original decision had an incorrect address at the top and used an incorrect title code and definition for the Investigator 3, Taxation title. On appeal, the appellant argues that these errors indicate that his position was not properly and fairly evaluated, that he performs the duties of his requested title, and that he meets the qualifications for this title. He states that he receives complicated cases and is a representative in field offices regarding deferred payments, ensuring correct field work and accurate statistics. Subsequently, the appellant was sent the attached October 23, 2013 corrected determination, which is the attachment herein, and he did not respond with further arguments. Additionally, the appellant submits an organizational chart, dated September 24,

2013, where his position is listed as "Acting Investigator III."<sup>1</sup> It is noted that this organizational chart differs from the one presented to CPM during the audit.

## CONCLUSION

The definition section of the job specification for the title Technical Assistant 2, Treasury states:

Under the direction of a Technical Assistant 1, Treasury or other supervisory official in the Department of the Treasury or, in the Lien Section, Office of the Public Defender collects, reviews and verifies data from forms, claims, applicants, returns, assessments, proposals, and error listings, determines the completeness and accuracy of information, benefits, and/or liability reported or calculated; makes routine eligibility, award, and liability determinations and calculations; does related work.

The definition section of the classification specification for Investigator 3, Taxation states:

Under the direction of a Supervising Investigator or other higher level supervisory officer in the Division of Taxation, Department of the Treasury, performs routine investigations as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division of Taxation; may be assigned to either a field or central office location; does related work as required.

Based upon a thorough review of the information presented in the record, it is clear that the appellant's position is properly classified as Technical Assistant 2, Treasury. It is long-standing policy that upon review of a request for position classification, when it is found that the majority of an incumbent's duties and responsibilities are related to the examples of work found in a particular job specification, that title is deemed the appropriate title for the position. The outcome of position classification is not to provide a career path to the incumbents, but rather is to ensure that the position is classified in the most appropriate title available within the State's classification plan. *See In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff'd on reconsideration* (MSB, decided November 22, 2005).

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<sup>1</sup> The organizational chart also shows an Acting Assistant Chief, and three other Acting Investigators III. The three Acting Investigators III were provisionally appointed in September or October 2013.

The Investigator 3, Taxation title is a professional title, requiring at least a Bachelor's or higher level degree, with a clause to substitute experience, while the Technical Assistant 2, Treasury title is para-professional, requiring an Associate's degree. Professional work is predominantly intellectual and character, as opposed to routine mental, manual, mechanical or physical work, and it involves the consistent exercise of judgment. It is basically interpretive, evaluative, analytical and/or creative, requiring knowledge or expertise in a specialized field of knowledge. This is generally acquired by a course of intellectual or technical instruction, study and/or research at an institution of higher learning or acquired through an in-depth grasp of cumulative experience. However, there must be thorough familiarity with all the information, theories and assumptions implicit in the chosen field. Persons in professional work should be able to perceive, evaluate, analyze, formulate hypothesis, and think in the abstract. Positions are considered professional when the work requires *application* of professional knowledge and abilities, as distinguished from either the desirability of such application or the simple possession of professional knowledge and abilities. The primary focus of the Investigator 3, Taxation title is to perform routine investigations as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of tax statutes administered by the Division.

In the instant matter, the appellant indicated on his Position Classification Questionnaire (PCQ) that for 60% of the time, he performs four different tasks. He added two other tasks, one performed 30% of the time, and one performed 10% of the time. This method of completion of the form essentially does not respond to the amount of time performing each task. Auditees are expected to unambiguously list their duties and, according to the instructions, do so in a manner "so clear that persons unfamiliar with the work can understand exactly what is done." Essentially, the amount of time spent on each of the four tasks listed in the 60% duty cannot be construed.

The first example of work on the job specification reads, "Conducts routine investigations of taxpayers to determine adherence to the provisions of New Jersey tax laws." For the duty performed 60% of the time, the first of four tasks was, "Under minimal direction of 2 Supervising Investigators or another higher level management official within the Division of Taxation, I conduct routine investigations related to the collection of tax revenues, delinquent and/or deficient taxes. I independently conduct investigations of taxpayer returns, tax returns, and legal documents to determine the accuracy of reported liabilities. I process and maintained in excess of 350 DPC cases that require intricate monitoring for accuracy and compliance." This task first a paraphrases the job definition for the requested title, and then uses the first portion of the example of work, but changes the reason for the "investigation" from determining adherence to tax laws to determining accuracy of reported liabilities. This section provides no actual information on the duties of the position except to indicate that the appellant is

monitoring cases for accuracy and completeness. Simply monitoring cases for accuracy and completeness is a technical function and does not rise the level of an investigation, which searches for suspected violations of the law and other irregularities.

The second duty in the 60% group is to initiate contact with the taxpayer to confirm their liability and assess their ability to pay, as well as to negotiate payment plans. He also approves installment and repayment proposals or disaffirms payment plans, and reports instances of violations in irregularities with filings. The third duty in the 60% group was reviewing businesses requesting deferred claimant payment plans by gathering information from databases to confirm taxpayer compliance with taxes and laws, and verifying all necessary tax returns are filed. The fourth duty in the 60% group was issuing and filing legal documents and notifying the court of debt satisfaction. The appellant also performs updates on the database, approves and denies refund requests and bills, and places taxpayers on deferred payment plans or processes the case for an audit or enforcement action. While related to the collection of tax revenues or delinquent and efficient taxes, these duties are dissimilar to evaluating documents and information to determine the possibility of fraud, which is the basis of an investigation.

For 30% of the time, the appellant indicated that he receives notifications regarding liabilities and payment plans and responds with technical information and assistance. He also reviews requests for abatements of penalties and interest, requests for cancellations of judgment, and determines if "Release of Liens and Subordination of Liens" are warranted and provides these determinations to higher level management. For 10% of the time, the appellant reports to field offices to review casework, correct errors, ensure plans are updated, review warning notices in cases of default, report all issues and concerns, address solutions to prevent inaccuracies, collect figures for the monthly report, prepare and monitor statistics on money collected, perform investigations, assure compliance on processed cases and payments, review inconsistencies in the backlog and production with management, and verify accuracy of reports. Additional information was collected during the telephone audit and CPM's determination described this information adequately.

A review of the appellant's PCQ does not support that the majority of his duties are those of an Investigator 3, Taxation. An Investigator 3, Taxation performs an analysis of information gathered to determine if a taxpayer is adhering to the provision of New Jersey tax laws. This function exceeds merely checking information for accuracy and completeness. In addition, CPM has indicated that the position does not prepare informative reports of tax investigation detailing findings, conclusions, and recommendations, for submission to his supervisor. It also indicated that the position does not gather information from taxpayers and by

other means by conducting interviews to obtain leads, researching bank accounts, serving subpoenas to obtain transcripts, and/or using other methods in seeking taxpayer asset information. The majority of the appellant's work involves reviewing proposals to ensure that they meet the parameters for payment plans and then establishing the terms of the plans. The position verifies taxpayer records, tax returns, and legal documents in order to determine the accuracy of reported liabilities. Researching and verifying taxpayer information or reported liability is not necessarily an investigation without further effort in gathering information from taxpayers and other sources to determine compliance with New Jersey tax laws. While the appellant may perform some analysis regarding compliance with New Jersey tax laws, the record does not establish that performing investigations is the primary focus of the position.

Moreover, how well or efficiently an employee does his or her job, length of service, volume of work and qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees are classified. See *In the Matter of Debra DiCello* (CSC, decided June 24, 2009). As such, the appellant's qualifications have no bearing on a classification determination.

Next, "acting" appointments are not recognized under Civil Service rules. *N.J.S.A. 11A:4-13* and *N.J.A.C. 4A:4-1.1, et seq.*, provide only for regular, conditional, provisional, interim, temporary, and emergency appointments. See e.g., *In the Matter of Russell Davis* (MSB, decided August 10, 2005); *In the Matter of Michael Shaffey* (MSB, decided September 20, 2006). Therefore, the Department of the Treasury is precluded from appointing an individual in an acting capacity when the individual's appointment can be recognized under any one of the above classifications. The organizational chart that the appellant submits shows his title to be "Acting Investigator 3" and is dated one week after CPM's initial determination, and a month before the corrected determination, were issued. It is important to note that the foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by this agency through an audit or other formal study. Classification reviews are based on a current review of assigned duties and any remedy derived therefrom is prospective in nature since duties which may have been performed in the past or which may be performed in the future cannot be reviewed or verified.

Thus, if the appellant was assigned higher level duties subsequent to CPM's determination, the appellant should have been designated as a provisional Investigator 3, Taxation. However, there is no evidence in the record that the appellant is primarily performing the higher level duties. Should the appellant believe that he is currently misclassified, he may pursue a new classification request pursuant to *N.J.A.C. 4A:3-3.9*. If the appointing authority intends to have the appellant perform a significant percentage of duties of an Investigator 3,

Taxation, it should provisionally promote him to the position and remove his Technical Assistant 1, Treasury duties.

One final comment is warranted in this matter. This is not the first matter regarding the Department of the Treasury the Commission has seen where employees are being placed in "acting" positions. *See, e.g., In the Matter of Heather Lowery, Department of the Treasury* (CSC, decided May 15, 2013); *In the Matter of Kevin Curry, Department of the Treasury* (CSC, decided December 4, 2013); *In the Matter of Stephen Klein, Department of the Treasury* (CSC, decided February 26, 2014). The designation of such positions is clearly improper and in violation of *N.J.A.C. 4A:3-3.4*. Accordingly, the Department of the Treasury should *immediately* discontinue the use of "acting" positions. The proper designation for such advancements would be either temporary appointments pursuant to *N.J.A.C. 4A:4-1.7* or provisional appointments pending promotional procedures pursuant to *N.J.A.C. 4A:4-1.5*. If the Department of the Treasury fails to comply with this directive, it may be subject to fines or other penalties pursuant to *N.J.A.C. 4A:10-2.1*.

A thorough review of the information presented in the record establishes that Brett Hamlin's position is properly classified as Technical Assistant 2, Treasury and he has not presented a sufficient basis to establish that his position is improperly classified.

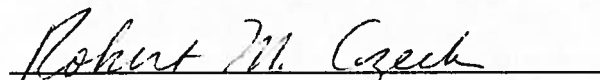
### ORDER

Therefore, it is ordered that this appeal be denied.

Additionally, the Department of the Treasury is ordered to immediately discontinue the use of "acting" positions. Failure to do so may subject it to fines or other penalties pursuant to *N.J.A.C. 4A:10-2.1*.

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 1<sup>st</sup> DAY OF OCTOBER, 2014



Robert M. Czech

Chairperson

Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment

c: Brett Hamlin  
Douglas Ianni  
Kenneth Connolly  
Joseph Gambino



Chris Christie  
Governor  
Kim Guadagno  
Lt. Governor

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
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P. O. Box 313  
Trenton, New Jersey 08625-0313  
(609) 292-8189

Robert M. Czech  
Chair/Chief Executive Officer

October 23, 2013

"Corrected Letter"

Mr. Brett Hamlin  
Department of the Treasury  
Division of Taxation  
Deferred Payments 1  
50 Barrack Street  
P.O. Box 190  
9<sup>th</sup> Floor  
Trenton, New Jersey 08695-0190

**RE: Classification Appeal- Technical Assistant 2 Treasury  
CPM Log# 03130210, EID # 000377114**

Dear Mr. Hamlin:

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 submitted and a telephone audit conducted on August 29, 2013 with you and your immediate supervisor, Mr. Robert Joyce, Supervising Investigator Taxation (S28).

**Issue:**

You contend that the duties of your position are inconsistent with your current title of Technical Assistant 2 Treasury (A15-51633) and that the title Investigator 3, Taxation (P19-51592) is consistent with the duties that you currently perform.



Mr. Brett Hamlin

Page 2

October 23, 2013

**Organization:**

Your position is located in the Department of the Treasury, Division of Taxation, Compliance and Enforcement Activity; you report to Mr. Robert Joyce, Supervising Investigator Taxation (S28). Your position has no supervisory responsibility.

The Department of the Treasury, Division of Taxation, Compliance and Enforcement Activity Field South- Deferred Payments I monitors compliance with deferment plans to ensure compliance with payment of tax debit.

**Findings of Fact:**

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

- Reviewing requests for deferment plans to ensure they meet the parameters to qualify for plan approval; reviewing taxpayers' history to ensure there are no outstanding taxes owed; and making corrections to tax records as necessary.
- Sending notifications to demand payment or take action to correct problems in a particular case; sending out warrants of satisfaction as necessary if tax debit is paid; and reporting suspected law violations and other irregularities.
- Monitoring taxpayers approved for payments to ensure their payments are made each month; researching business information; and verifying entities are filing all necessary taxes.
- Approving or denying taxpayers refund requests and bills; processing cases for audits or further enforcement action; and assisting with monitoring deferment plans in field offices.
- Reviewing taxpayers' requests for abatements of penalties and/or cancellations of judgments; reporting all issues and concerns to senior management; and tracking monies collected.

Mr. Brett Hamlin

Page 3

October 23, 2013

**Review and Analysis:**

Your position is currently classified by the title Technical Assistant 2 Treasury (A15-51633). The definition of this job title states:

"Under the direction of a Technical Assistant 1, Treasury or other supervisory official in the Department of the Treasury, or in the Lien Section, Office of the Public Defender collects, reviews and verifies data from forms, claims, applicants, returns, assessments, proposals, and error listings, determines the completeness and accuracy of information, benefits, and/or liability reported or calculated; makes routine eligibility, award, and liability determinations and calculations; does related work."

You contend that the title Investigator 3, Taxation (P19-51592) is an appropriate title for your position. The definition section of the job specification states:

"Under supervision of a Supervising Investigator or other higher level supervisory official in the Division of Taxation, Department of the Treasury, performs routine investigations as they relate to the collection of tax revenues, delinquent and/or deficient taxes, abatements, and enforcement of the tax statutes administered by the office location; does related work as required."

The review of duties and responsibilities for this position finds that the position reviews proposals from taxpayers and determines if they meet the requirements of deferred payment plans; researches taxpayer records for additional tax debit; makes corrections to taxpayer records; makes recommendations for audits; sends demand for payment notification for outstanding tax payments; examines taxpayer records to see if they are owed a refund; ensures tax amounts are correct by interacting with other units; provides assistance with deferment plans to field office; forwards letters on delinquent accounts to taxpayers; assesses and negotiates payment plan amounts; monitors payment plan compliance; verifies business entities are filing all necessary taxes; researches tax returns, legal documents, and taxpayer records to determine the accuracy of reported liability; and prepares and monitors statistics on monies collected. The primary function collects, reviews, and verifies data from

Mr. Brett Hamlin

Page 4

October 23, 2013

forms, and proposals to determine the completeness and accuracy of information and/or liability reported or calculated.

This position is not primarily engaged in the performance of routine investigations in terms of gathering information from taxpayers to determine compliance with N.J. tax laws. The gathering of information is accomplished by; conducting interviews to obtain leads, researching bank accounts, serving subpoenas to obtain transcripts, and/or any other methods in seeking taxpayer asset information. Additionally, the position does not prepare informative reports of tax investigations detailing findings, conclusions, and recommendations for submission to supervisor.

While the position may perform a small number of duties in support of the program that are related to those of an Investigator 3, Taxation, the majority of these duties are encompassed within the title, Technical Assistant 2, Treasury.

The preponderance of your assigned duties and responsibilities are significantly descriptive of tasks assigned to the title Technical Assistant 2 (A15-51633).

**Determination:**

Based on the findings of fact above, it is my determination that the assigned duties and responsibilities performed by the position are best classified by the title Technical Assistant 2 (A15-51633). Therefore, the classification of your position will remain unchanged.

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 Merit System Practices and Labor Relations, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being

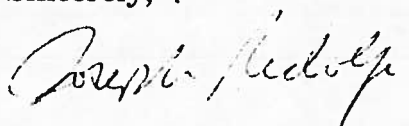
Mr. Brett Hamlin

Page 5

October 23, 2013

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 cursive script, appearing to read "Joseph Ridolfi".

Joseph Ridolfi, Team Leader  
Classification and Personnel Management

JR/ts

c: Ms. Laura Budzinski