

B-14



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Michael D'Errico,  
Department of the Treasury

CSC Docket No. 2016-2017

Classification Appeal

ISSUED: **MAR 13 2017**

Michael D'Errico appeals the attached determination of the Division of Agency Services (DAS) that his position with the Department of the Treasury is properly classified as Investigator 2, Taxation. The appellant seeks an Investigator 1, Taxation classification in this proceeding.

The appellant was regularly appointed to the title of Investigator 2, Taxation on December 10, 2005. His position is located in the Department of the Treasury's Division of Taxation, Office of the Director, Office of Criminal Investigation/Internal Security Administration. He reports to a Supervising Investigator Taxation, and has supervisory responsibility for one Technical Assistant 2, Treasury position. DAS performed detailed analyses of the appellant's Position Classification Questionnaires (PCQ) and other materials submitted.

As a result, DAS found that the appellant's position was properly classified as Investigator 2, Taxation. Although DAS found that the appellant performed investigation, and functioned as lead worker, his position included only supervision of para-professional subordinate staff. As the appellant was not responsible for supervising professional staff, DAS maintained that the preponderance of the appellant's current duties and responsibilities are commensurate with the job description for Investigator 2, Taxation, and it ordered the removal of his supervisory duties.

It is noted that the appellant had previously requested a classification review, and received the determination indicating that he did not perform

supervisory duties. See *In the Matter of Michael D'Errico, Department of the Treasury* (CSC, decided October 1, 2014). It is also noted that DAS has made modifications to the job specification for Investigator 1, Taxation and the definition has changed.

On appeal to the Civil Service Commission (Commission), the appellant argues that his job responsibilities have increased and he works at a significantly higher standard than that set for his permanent title. He states that he performs all aspects of supervision except for performance reviews of other Investigators. He argues that he takes the lead by assigning and reviewing work for Investigators 2, and was performing as an "acting" Investigator 1, Taxation with all of the requisite responsibilities. He also argues that he supervises a Technical Assistant 2, Treasury, and therefore meets the qualifications for the higher title. He states that he works as a backup supervisor and as an Investigator 1, Taxation in the Technical Enforcement Unit and believes he is being held to a higher standard than other employees.

In support of the appeal, the Supervising Special Agent Office of Criminal Investigation and Internal Security, states that the appellant that has taken the lead over investigations that require all the skills of a law enforcement officer. He states that the Technical Enforcement Unit was created to address areas of criminal enforcement and to develop criminal prosecutions of the State's top tax debtors. It recovers millions of dollars through criminal prosecutions, as well as fines and custody sentencing in the superior and municipal courts. Through an agreement with the Mercer County Prosecutor's Office, the unit criminally charges identified violators by preparing investigative reports, complaints or warrants, appearing before grand juries, testifying in court, gathering evidence not available to the civil investigators in the division, and other duties not required of other investigators, including compiling criminal histories, federal data, and intelligence reports which are not available outside of the Office of Criminal Investigation.

He states that the appellant has assisted in developing new legislation that was passed and addressed a loophole in the New Jersey criminal code for bad electronic payments. He states that the appellant assigns work and views investigative reports of a highly complicated nature, and insures compliance with appropriate guidelines, the bank secrecy act, and criminal justice requirements. He indicates that the appellant supervises less experienced personnel and acts as a supervisor in his absence, and he relies on his expertise and leadership in sensitive prosecutions many of which have had wide media exposure.

## **CONCLUSION**

The definition section of the job specification for Investigator 1, Taxation states:

Under the direction of a Supervising Investigator or other higher level supervisory officer in the Division of Taxation, Department of Treasury, supervises a team or unit of subordinate investigators; may be required to conduct independent investigations of a more complex nature 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; trains new investigators; supervises staff in work activities and signs official performance evaluations for subordinate staff; may be assigned to either a field or central office location; does related work as required.

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

Under the direction of an Investigator 1, Taxation, Supervising Investigator, Taxation or other supervisory official in the Division of Taxation, Department of the Treasury, performs investigations of a more complex nature 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; assists in the training of subordinate investigators; may be assigned to either a field or central office location; does related work as required.

In the instant matter, DAS found that the appellant's position was properly classified as Investigator 2, Taxation. Investigator 1, Taxation is clearly a supervisory title. Nevertheless, the Commission has determined that an incumbent in this title must supervise other Investigators. In the attached decision, *In the Matter of Joshua Brown, et al., Department of the Treasury* (CSC, decided November 18, 2015), the Commission rejected the contention that an incumbent was a supervisor since she was responsible for the performance evaluation of a Technical Assistant 3. The job definition for Investigator 1, Taxation at the time indicated that an incumbent must supervise "subordinate investigators." The current job specification indicates this as well, and the same applies to the appellant. The supervision of subordinate individuals not in Investigator titles does not elevate the appellant's position to Investigator 1, Taxation. While it is undisputed that he is performing complex investigations and functioning as a lead worker, such duties fall within the job description for Investigator 2, Taxation. The appellant is not being held to a higher standard than other employees. In this regard, the Commission has informed the Department of the Treasury that any employee in the title of Investigator 1, Taxation be currently assigned appropriate supervisory duties as defined by the Commission. See *In the Matter of Joshua Brown, Department of the Treasury* (CSC, decided October 19, 2016).

In light of the facts of this matter, the Commission again directs the appointing authority to ensure that each Investigator 1, Taxation is currently assigned *appropriate* supervisory duties. Additionally, aside from training and other lead worker duties, the appellant should not be performing supervisory duties. If the appointing authority denies the appellant the responsibility of formally evaluating subordinate Investigators, it should refrain from assigning the appellant the typical work of a supervisor. This includes assigning work, reviewing work, and providing input on evaluations. The appellant can lead and provide guidance to lower level staff, but should not be discussing performance evaluation reviews with subordinates. Those duties and responsibilities belong to the appellant's supervisor, who supervises these staff. If the appellant is performing these duties, he has been inappropriately assigned tasks by his supervisor, who should be responsible for those tasks. It is simply unfair to allow the appellant to bear responsibility for higher level tasks specific to supervision, yet classify the position based on the fact that he does not conduct formal performance evaluations. It is, at the very least, management's duty and responsibility to ensure that supervisory tasks are performed by supervisors.

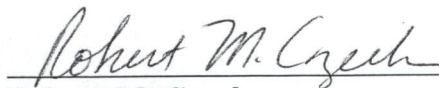
Finally, it is noted that the outcome of position classification is not to provide a career path to the incumbents, but rather is to ensure that the position is classified in the most appropriate title available within the State's classification plan. *See In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff'd on reconsideration* (MSB, decided November 22, 2005). Further, how well or efficiently an employee does his or her job, his or her length of service, and his or her qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees, are classified. Thus, the proper classification of this position is Investigator 2, Taxation.

### **ORDER**

Therefore, the position of Michael D'Errico is properly classified as Investigator 2, Taxation.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 9<sup>th</sup> DAY OF MARCH, 2017



Robert M. Czech  
Commissioner  
Civil Service Commission

Inquiries  
and  
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Director  
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Attachments

c: Michael D'Errico  
Douglas Ianni  
Kenneth Connolly  
Records Center



STATE OF NEW JERSEY  
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P. O. Box 313  
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Chris Christie  
*Governor*  
Kim Guadagno  
*Lt. Governor*

Robert M. Czech  
*Chair Chief Executive Officer*

November 13, 2015

Mr. Michael D'Errico  
Department of the Treasury  
Division of Taxation  
3444 Quakerbridge Road, Building 9, 3<sup>rd</sup> Floor  
PO Box 284  
Trenton, New Jersey 08695-0284

**RE: Classification Appeal – Investigator 2, Taxation  
AS Log# 06150400, Position# 043966, EID# 000329791**

Dear Mr. D'Errico:

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 Investigator 2, Taxation (P22) is not consistent your current assigned duties and responsibilities. You contend that the title Investigator 1, Taxation (R25) is consistent with the duties that you currently perform.

**Organization:**

Your position is located in the Division of Taxation, Office of the Director, Office of Criminal Investigation/Internal Security Administration. You report directly to Donald Krulewicz, Supervising Investigator Taxation (S28), and you do not possess supervisory responsibility.

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**Finding of Fact:**

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

- Taking the lead by assigning and reviewing work for two (2) Investigator 2, Taxation positions; preparing and signing a Performance Assessment Review for one (1) Technical Assistant 2, Treasury (A15) position.
- Conducting investigations to determine if a criminal investigation is warranted.
- Filing criminal charges against taxpayers who have failed to comply with the established standards to replace bad payments.
- Approving and/or filing legal actions including: authorizing investigations, warning letters, plea agreements, and/or court schedules.
- Acting as a witness in court, administrative and/or other hearings.
- Compiling monthly reports of collections, letters sent and criminal charges filed by the group within one month period so those statistics may be included on the Division's overall monthly report.

**Review and Analysis:**

Your position is currently classified by the title Investigator 2, Taxation (P22-51593). The definition section of the job specification for this title states:

“Under the direction of a Supervising Investigator or other higher level supervisory officer in the Division of Taxation, Department of the Treasury, performs investigations of a more complex nature 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; assists in the training of subordinate investigators; may be assigned to either a field or central office location; does related work as required.”

You contend that the title Investigator 1, Taxation is an appropriate title for your position. The definition section of the job specification for Investigator 1, Taxation (R25-51594) states:

“Under the direction of a Supervising Investigator or other higher level supervisory official in the Division of Taxation, Department of Treasury, supervises a team or unit of subordinate investigators; may be required to

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conduct independent investigations of a more complex nature 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; trains new investigators; supervises staff and work activities and signs official performance evaluations for subordinate staff; may be assigned to either a field or central office location; does related work as required."

The Examples of Work include: supervising a team or unit of subordinate investigators, signing official performance evaluations for subordinate staff, training new investigators, and/or analyzing such progress with the section supervisor.

The title, Investigator 1, Taxation is assigned to the "R" bargaining unit. Titles in the "R" bargaining unit are first or primary level supervisory positions. As such, incumbents supervise and complete Performance Assessment Reviews for a team or unit of subordinate investigators. According to the Position Classification Questionnaire (DPF-44S) provided, it states that your duties and/or responsibilities include preparing and signing the Performance Assessment Review (PAR) for one (1) position of Technical Assistant 2, Treasury (A15). The title Technical Assistant 2, Treasury (A15) is classified as a para-professional title.

A review of your primary job duties and responsibilities finds that the position is primarily responsible for: conducting investigations to determine if a criminal investigation is warranted; filing criminal charges against taxpayers who have failed to comply with the established standards to replace bad payments; and approving and/or filing legal actions including: authorizing investigations, warning letters, plea agreements, and/or court schedules.

The assigned duties and responsibilities that you perform are significantly descriptive and commensurate with the title, Investigator 2, 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 Investigator 2, Taxation (P22-51593). Therefore, the classification of your position will remain unchanged.



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Since the title Investigator 2, Taxation (P22-51593) is a non-supervisory title; all supervisory duties must be removed immediately.

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 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,



Joseph Ridolfi, Team Leader  
Classification and Personnel Management

JR/rmd

c: Laura Budzinski, Manager, Department of the Treasury

