

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 is required.

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 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 job specification for Auditor 2, Taxation has two parts, and the appellant is clearly not taking the lead in a group of auditors of lower grades. As such, the appellant's position must be required to independently conduct the more complex field or office audits or accounting work. In this regard, it is noted that all levels in the title series are expected to perform the breadth of duties, and the Auditor 3 is required to perform auditing or accounting work of average difficulty and can work independently. The Auditor 2, Taxation, if not working as a lead worker, is expected to perform the non-routine, important or problematic work on a consistent basis and under general supervision, with considerable latitude to apply judgment.

At the outset, it is noted that the classification of a position is determined based on the duties and responsibilities assigned to a position at the time the request for reclassification is received in DAS as verified by audit or other formal study. 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.¹ Further, how well or efficiently an employee does his or her job, length of service, and qualifications have no effect on the classification of a position currently occupied, as *positions*, not employees, are classified.

The question herein is whether the level of Ms. Mignano's duties rise to the level of those of an Auditor 2, Taxation. The definition of the titles and examples of

¹ See *In the Matter of Patricia Lightsey* (MSB, decided June 8, 2005), *aff'd* on reconsideration (MSB, decided November 22, 2005).

work outlined in the job specifications are controlling. 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 correspond to the examples of work found in a particular job specification, that title is deemed the appropriate title for the position. Also, it is not uncommon for an employee to perform some duties which are above or below the level of work normally performed. Classification determinations are based on the *primary functions* assigned to the position. In this case, on her Performance Assessment Review (PAR), it states that "Consideration will be given for extraordinarily large or complex audits, non audit activities and/or projects. In order to properly justify the completion of less than the minimum number of required cases [24], auditors in conjunction with supervisors must maintain a detailed description of the number of hours spent on specific non-audit or other miscellaneous activities along with any applicable backup. Time spent on miscellaneous or other non audit activities must tie in with the auditors ESKORT time reports."

On her PCQ, the appellant stated that she performs moderately complex financial audits of taxpayers' internal records for 55% of the time. For another 30% of the time, she independently schedules and conducts moderately complex audits, staying current with rules, laws and regulations. For the final 15%, she independently conducts post-audit conferences. The appellant's supervisor agreed with her statements on the PCQ, and during the audit, the supervisor indicated that because such records are not maintained, it is unknown if the percentage of time is accurately stated. This is in direct opposition to the PAR, which requires auditors and supervises to maintain a detailed description of the number of hours spent on specific non-audit or other miscellaneous activities. The appellant's description of duties is not a paragon of clarity. In this regard, the description of duties is sparse, and it is unclear what is being performed for 30% of the time when she schedules and conducts moderately complex audits while she stays current with laws, rules and regulations. The appellant states that she attached screenshots showing the complexity of the various cases assigned. Nevertheless, the documentation is barely readable as the font is too small, and the audit type description is predominantly "regular." There are value amounts in the audits, but the data is too indecipherable to be of assistance. During the audit, the appellant indicated that she could not determine the complexity of the case until she was working on it because the audit depends on the way the auditee holds their books, and whether there are multiple companies or branches. She also could not determine the specific types of audits or the size of the businesses that she audited. She stated that complex audits amounted to 99% of the cases. Her supervisor indicates that he assigns all types of cases, and the complexity would be considered high where taxes were involved in conjunction with the type of business. He also indicated that cash businesses were more complex, and that there were three of them in inventory at the time of the audit. The non-cash businesses were less complex, and there were 18 in the inventory at the time of the audit. Her

supervisor indicated that all cases received in the unit have "medium" complexity written on the assignment screen, but complexity is more so associated with gross receipt of a company. No further data is available regarding the gross receipts.

In sum, it is the appellant's burden to demonstrate that the duties of the position have evolved to an extent which warrants reclassification in the higher title. In this case, in spite of the necessity of keeping records, the appellant could not differentiate the amount of time spent on routine cases versus the amount of time spent on complex cases. Rather, she indicated that 99% of the cases were complex and she spent 85% of the time on moderately complex audits. Neither the appellant nor the supervisor provided further information regarding the levels of the gross receipts of companies in order to substantiate the complexity of duties. If all the cases are complex, it is illogical that they are described as being of medium complexity on the assignment screen. In a supplement to the appeal, the Chief Field Audit Branch, Assistant Director Audit Activity, and the Deputy Director Audit Activity explain that cases are misclassified as regular when they are actually cash cases. Also, regular cases may be more complex after issues emerge when the audit is initiated. They state that all of the cases in the ESKORT system are classified as medium so this is not an indicator of complexity. In this respect, three of the 18 cases in inventory at the time of the audit were cash, or complex. Further, it appears that no one is tracking the complexity of cases in this location, or rather, the argument is that because complexity is not tracked, they are all complex. This is non-persuasive. Other locations have the ability to track the complexity of audits, usually by value, and this location should be able to do so as well. At the very least, complexity can be assigned at the end of the audit and tracked using that data. The appellant and her supervisor have not provided the proof that the primary focus of the position is handling auditing or accounting work of considerable complexity and importance.


Finally, the appellant received a classification review in 2015 and appealed the results to the Civil Service Commission. *See In the Matter of Maryellen Mignano, Department of the Treasury* (CSC, decided November 23, 2016). The Commission denied her appeal. In that regard, a comparison of the duties listed in DAS' prior determination to the current determination does not indicate a substantial elevation of her duties.

ORDER

Therefore, the position of Maryellen Mignano is properly classified as an Auditor 3, Taxation.

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
THE 6th DAY OF SEPTEMBER, 2017



Robert M. Czedh, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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Enclosure

c: Maryellen Mignano
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Robert M. Czech
Chair Chief Executive Officer

June 9, 2017

Ms. Maryellen Mignano
Department of the Treasury
Division of Taxation
1828 West Lake Avenue
Neptune, New Jersey 07753

RE: Classification Appeal - Auditor 3, Taxation
AS Log# [REDACTED], Position# [REDACTED], EID# [REDACTED]

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 and a telephone audit conducted with you and your immediate supervisor, James Allen.

Issue:

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

Organization:

Your position is located in the Division of Taxation, Audit Activity, Field Audit Branch, Neptune B. You report directly to James Allen, Supervising Auditor Taxation. Your position does not possess supervisory responsibility.

Finding of Fact:

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

- Independently performing audits and/ or examination of taxpayer's internal records; reviewing and comparing reported figures with records such as bank statements, sales invoices, purchase invoices, general ledgers, etc. to determine legitimacy.
- Independently scheduling and conducting audits; staying current with New Jersey tax statutes and regulations, court decisions, and other resources that affect the Division of Taxation.
- Independently conducting Post- Audit conferences with the taxpayer and/ or their representatives in order to review audit results.

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.”

You contend that the title Auditor 2, Taxation (P25- 50816) is an appropriate title for your position. 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 title Auditor 2, Taxation is primarily associated with taking the lead in a group of auditors of lower grade or performing work of considerable complexity and importance. During telephone audit, it was disclosed that complexity of an audit is typically based on gross receipts, type of business audited, and the company's tax responsibility. It was also stated that “cash” audits are more complex than auditing non-cash businesses. Of the eighteen (18) cases in the current inventory, only three (3) were for “cash” businesses. While you may receive a few audits of greater

complexity, the frequency of audit work of considerable complexity and importance has not been adequately established.

Further, consistent with CSC Docket No. 2016-1898, issued November 30, 2016, In the Matter of Maryellen Mignano, Department of the Treasury, a careful review and analysis reveals that the preponderance of your current assigned duties and responsibilities are substantially similar and significantly descriptive of previously assigned tasks which were determined to be that of a Auditor 3, Taxation.

A comprehensive review and analysis of your position's job duties and responsibilities finds that the assigned duties and responsibilities of your position are properly classified by the title Auditor 3, Taxation.

Determination:

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

JR/ io

Cc: Laura Budzinski, Treasury, Human Resources