



**STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT**

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM
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August 14, 2013

TO: Teresa Parsons, SPHR
Director's Review Program Supervisor

FROM: Kris Brophy, SPHR
Director's Review Investigator

SUBJECT: Lori Lindstrom v. Department of Revenue (DOR)
Allocation Review Request ALLO-13-001

Director's Determination

This position review was based on the work performed for the six-month period prior to October 4, 2012, the date DOR Human Resources received Ms. Lindstrom's request for a position review. As the Director's Review Investigator, I carefully considered all of the documentation in the file, the exhibits, and the verbal comments provided by both parties during the review conference. Based on my review and analysis of Ms. Lindstrom's assigned duties and responsibilities, I conclude her position is properly allocated to the Revenue Agent 2 classification.

Background

On October 4, 2012, DOR HR received Ms. Lindstrom's Position Review Request (PRR) form requesting that her Revenue Agent 2 position be reallocated to the Revenue Agent 3 classification (Exhibit B-2).

By letter dated December 27, 2012, DOR HR notified Ms. Lindstrom that the request to reallocate her position was denied and that she was properly allocated to the Revenue Agent 2 classification (Exhibit B-1).

On January 7, 2013, the State Human Resources Division received Ms. Lindstrom's letter of appeal requesting a Director's review of DOR's allocation determination (Exhibit A-1).

I conducted a Director's review conference with the parties on July 9, 2013. Present during the conference were Ms. Lori Lindstrom, Mr. Frank Marshall, WPEA Representative, Ms. Malissa Antonelli, Office Operations Manager, DOR; and Ms. Dorothy Hibbard, Human Resource Consultant 4, DOR.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

Duties and Responsibilities

Ms. Lindstrom serves as a collections revenue agent for the Miscellaneous Tax section of the Special Programs Division at DOR. Ms. Lindstrom performs a variety of professional collection activities and taxpayer services in order to locate individuals and assets to satisfy outstanding taxpayer liability. The purpose of Ms. Lindstrom's position is to independently resolve statewide delinquent Miscellaneous Tax accounts involving the collection of cigarette tax, leasehold tax, real estate excise tax [REET], and vessel tax.

The Position Description on file for Ms. Lindstrom's position at the time of the position review request describes her duties and responsibilities as follows: (Exhibit B-5)

- 75% Manages an assigned RDS [Region/District/Sub-district] within the Miscellaneous Tax section of Special Programs. Uses advanced professional techniques in telephone contact and correspondence. Determines tax liability and affects compliance. Collects from assigned TARIS [Taxpayer Account Receivable Inventory System] documents. Locates individuals and assets to satisfy outstanding tax liability utilizing automated data. Independently contacts taxpayers, taxpayer representatives, county officials, and potential levy sources. Utilizes and updates case history files and taxpayer information on appropriate agency computer systems.
- 10% Analyzes detailed credit reports and evaluates assets to determine liability to pay liabilities and in connection with petitions for Closing Agreements. This includes reviewing business records, financial statements of varying complexities, and information obtained through field investigations. Researches available records to determine ownership, location, lien holders, and payoff balances for all assets prior to distraint. In order to secure the State's interest, issues and files tax warrants, as well as file abstracts of judgments in counties where investigations have shown additional assets are located. Independently finds third party sources of information and serves summons to provide documents relating to tax liabilities. Identifies financial resources of delinquent accounts including financial institutions, employers, and accounts receivables. Issues and serves garnishments and levies. Issues Satisfactions of liens.
- 10% Conducts financial reviews to resolve complex tax liabilities with taxpayers who are represented by tax practitioners to determine the actual amount of tax liability and the most expedient method to retire that liability. Counsels taxpayers or their representatives on tax filing and paying obligations. Represents the Department in negotiating partial payment agreements based

on detailed analyses and verification of financial information. Interprets and explains complex departmental policies, procedures, and legal provisions to taxpayers and their representatives and resolves questions, concerns, and objections. Maintains knowledge of appropriate tax laws and rules.

Ms. Lindstrom describes her assigned duties and responsibilities in the Position Review Request form (PRR) as follows: (Exhibit B-2) (Note: the percent of hours work total more than 100%)

- 40% Calls
- 15% nocl [Notice of Claim of Lien] filings and releases from review to see if doable to actual filing
- 15% wnt [warrant] filing for me and the other RA
- 15% conducts research to determine financial ability to pay
- 15% discuss accounts with etes [Excise Tax Examiner] (reet [real estate excise tax] esp[ecially] to determine paperwork needed to exempt
- 10% skip tracing
- 5% forest tax accounts
- 5% letters
- 5% respond to calls for payoffs for all accounts...mine and other RA's

Ms. Lindstrom provided additional written comments describing how her position's duties have changed from when she was first hired. She describes her revised duties in the Position Description form submitted with the PRR for reallocation as follows: (exhibit B-3)

- When I started this job the majority of the accounts were lower level cigarette tax, to date I have one or two cigarette tax accounts and now the focus is heavily on the REET accounts for bigger dollars and higher levels of complexity.
- I have approval from compliance to be their go to person for UCP [i.e. unclaimed property]. When UCP determines they have a claimant who has debt, I handle the claim process for DOR by seizing their funds.
- In addition, I have been approved by compliance to go thru their deferred accounts to see if there is any UCP or current wages. If I find UCP, I claim it. If it is current wages, I send an email to the DCM of that region. All money located and seized is logged onto the O: drive.
- I have added duties of NOCL (Notice of Claim of Lien) for Real Estate Excise Tax. My added duties include deciding when and if this lien is viable. Once I reach a decision, I submit a request, which includes all of the necessary information: parcel #, legal description and I ensure that the proper accounts on our systems are annotated and a check is obtained. I mail the paperwork to the property county auditor. I also release all of the NOCL liens.

- I am physically located in the office with all the ETE's that work the REET program. I am the "go-to" person for all payoffs for liens that the state has issued to ensure a timely closing for either refinance or sale.
- I am collecting forest tax accounts. This work includes all of the following collection activities: filing the warrants with the proper county, skip tracing, locating assets, withholding assets, negotiating payment arrangement, and reviewing the financial paperwork to support payment proposals or closing agreements.

Ms. Malissa Antonelli is the Office Operations Manager for the Miscellaneous Tax unit and is Ms. Lindstrom's supervisor. Ms. Antonelli completed the supervisor's section of the PRR and disagrees that Ms. Lindstrom's description of her assigned duties and responsibilities is accurate and complete. She states in her comments that Ms. Lindstrom's position in Miscellaneous Tax has always worked with diverse and unique tax programs. She states that Ms. Lindstrom's description of duties regarding her responsibility for collecting Forrest Tax accounts is partially correct; however, this function was a temporary assignment and was removed once a vacant Forrest Tax RA 3 position was filled. Ms. Antonelli indicates this work constituted about 5% of her duties.

She also indicates that the filing of NOCL was also a temporary duty as a result of vacancies in TSR positions which started in September 5, 2012 and continued for the remainder of Ms. Lindstrom's allocation review period.

Ms. Antonelli disagrees with Ms. Lindstrom's duties involving skip tracking, making phone calls, payoff requests, research, and letters are higher level functions. She states that these duties are all day-to-day responsibilities performed by all levels of Revenue Agents within the agency.

Ms. Antonelli indicates that Ms. Lindstrom's decision making authority includes, "issuing tax warrants, requesting NOCL, and issuing withhold and delivers".

Ms. Antonelli indicates that Ms. Lindstrom must get approval before issuing payment agreements, closing agreements, deferred collections, and delayed warrant filings.

Ms. Antonelli also states that, "The current Revenue Agent 3 in Miscellaneous Tax is responsible for the collection of complex accounts REET Controlling Interest; Other Tobacco Products; and LCB seizure assessments."

Summary of Ms. Lindstrom's Perspective

Ms. Lindstrom asserts her position exceeds the Revenue Agent 2 level of responsibility.

Ms. Lindstrom asserts she assumed duties in her position which requires her to perform work as a technical specialist which reaches the RA 3 level of responsibility. Ms. Lindstrom asserts the focus of her duties have shifted from doing a variety of cigarette tax, leasehold tax, and some REET tax work to now performing little or no cigarette tax work and much more higher-level REET tax work within the Miscellaneous Tax unit.

Additionally, Ms. Lindstrom asserts she is often tasked with training and coaching her colleagues with her supervisor's support on a regular and more frequent basis which is consistent with lead-level responsibility. During the review conference Ms. Lindstrom indicated this includes leading the Excise Tax examiner and Office Assistant positions in the

office and others internal and external to her unit regarding setting up accounts and performing other technical collections-related functions.

Ms. Lindstrom asserts the RA 2 class focuses on the technical aspects of standard Revenue agent work, while working in the Miscellaneous tax unit is unique and encompasses a variety of taxes which requires the ability to interpret and apply complex tax structures such as REET controlling interest transfer accounts which is very technical in nature. Ms. Lindstrom contends the scope of this work includes resolving complex REET cases which requires involved investigative work and documentation and a thorough understanding of all REET exemptions and details in order to perform her job.

Summary of Department of Revenue's Reasoning

DOR asserts Ms. Lindstrom's position does not meet the requirements of the RA 3 level class in that her position has not been designated in writing as lead or trainer or technical specialist as required.

DOR asserts the Excise Tax Examiner 3 class is not a good fit for her position on the basis that her primary function is to collect taxes and not to resolve the most complex examinations to ensure proper liability and distribution as required.

DOR asserts Ms. Lindstrom independently performs routine to difficult collection activities consistent with the RA 2 class such as conducting seizures and delinquent claims liability assessments. In total, DOR asserts Ms. Lindstrom's duties do not reach the Revenue Agent 3 level of responsibility and her position is properly allocated to the Revenue Agent 2 class.

Comparison of Duties to Class Specifications

When comparing the assignment of work and level of responsibility to the available class specifications, the class series concept (if one exists) followed by definition and distinguishing characteristics are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

When determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

Comparison of Duties to the Revenue Agent 2 (RA 2)

The Definition for the Revenue Agent 2 class states:

At the journey level, independently performs routine to difficult collection activities that includes (but not limited to) seizures, successorships, revocations, delinquent claims accounts, mainstream delinquent accounts, tax discovery investigations, compliance corporate officer liability assessments, and prime contractor liability. Incumbents are experienced in

utilizing professional compliance methods and have a detailed understanding of program goals.

Comparison of Duties to Revenue Agent 3 (RA 3)

The Definition for Revenue Agent 3 states:

Serves as:

A lead worker over lower-level staff

OR

The trainer for a functional or geographic unit

OR

A technical specialist in a specific area such as Bankruptcy, Crime Victims Compensation, Tax Discovery or Field Compliance resolving complex and time consuming cases that involve investigating and documenting criminal activity for prosecution.

The Distinguishing Characteristics for this class state:

Positions at this level are designated in writing. The lead and trainer positions provide technical assistance to lower level staff. As a technical specialist, positions perform collection activities on the most complex accounts that are outside the normal statutes and collection functions. This includes, but is not limited to, unique legal challenges and law application, large businesses or cases involving a high dollar volume, tax fraud, complex criminal activity, and multiple business entities such as unique contractual relationships, limited liability partnerships/corporations, joint ventures, and shell corporations. Assigned cases are of statewide significance or precedent-setting and involve criminal fraud or multiple state and/or local/federal agencies.

Ms. Lindstrom's position does not meet the requirements of the Definition and Distinguishing Characteristics of the RA 3 class. While portions of her duties reaches aspects of this class, her position has not been designated in writing to serve as a Revenue Agent 3 lead, trainer, or technical specialist revenue agent as required.

Lead

The *Glossary of Terms for Classification, Compensation, & Management* defines **lead** as follows:

An employee who performs the same or similar duties as other employees in his/her work group and has the designated responsibility to regularly assign, instruct, and check the work of those employees on an ongoing basis.

Ms. Lindstrom's position does not have responsibility to lead other employees in her work group. She does not have designated responsibility to regularly assign, instruct, or check the work of other employees on an ongoing basis.

Trainer for a functional or geographic unit

Ms. Lindstrom's position does not have responsibility of serving as a designated trainer for a functional or geographic unit. Ms. Lindstrom provides instruction and assistance to her coworkers and others including Excise Tax examiners and Office Assistant positions regarding setting up accounts and other process-related collections activities. However, this does not reach to the level of providing training to staff in all aspects of collections including laws and rules, policy and procedure, computer systems, and legal documents and actions. Ms. Lindstrom does not work with other trainers to develop and update policy and procedure manuals and make presentations at statewide conferences. The scope of her work does not include having formal training responsibility.

Technical Specialist

While Ms. Lindstrom works in the Miscellaneous Tax unit within the Forest Tax section of the Special Programs Division, her position does not have designated responsibility for serving as a technical specialist in a specific area such as Bankruptcy, Crime Victims Compensation, Tax Discovery or Field Compliance. In addition, the overall scope of her cases does not reach the Distinguishing Characteristics of this class of regularly resolving complex and time consuming cases that involve investigating and documenting criminal activity for prosecution.

As stated in the Distinguishing Characteristics of this class, technical specialists at this level perform collection activities on the most complex accounts within their designated specialty area. This includes working on collections accounts that fall outside the normal statutes and collection functions such as cases involving legal challenges and law application, large businesses or cases involving a high dollar volume, tax fraud, complex criminal activities, and multiple business entities such as unique contractual relationships, limited liability partnerships/corporations, joint ventures, and shell corporations. Cases assigned at this level have statewide significance or precedent-setting and involve criminal fraud or multiple state and/or local/federal agencies.

The thrust and scope of Ms. Lindstrom's cases do not reach this overall level of complexity. Ms. Lindstrom's position does not have responsibility for performing collection work on the most complex Miscellaneous Tax unit accounts. Even though Ms. Lindstrom's duties have shifted to performing a higher number of REET-related cases, in her comments, Ms. Antonelli indicates there is another employee who is responsible for the collection of the most complex accounts in the unit. This includes REET Controlling Interest accounts, complex tobacco products cases, and LCB seizure assessments.

In total, the thrust of Ms. Lindstrom's position, and the majority of her duties as a whole, involves performing routine to difficult collection activities consistent with the RA 2 level of responsibility. The scope of Ms. Lindstrom's collections duties, including conducting skip tracing, making phone calls, conducting research, and issuing letters, are fully consistent with the requirements of the RA 2 level class. In addition, the level of Ms. Lindstrom's decision making authority with respect to issuing tax warrants and other collections functions is consistent with the RA 2 class. This is also consistent with Ms. Antonelli's

comments indicating Ms. Lindstrom must get approval with respect to activities including payment and closing agreements, deferred collections, and delayed warrant filings.

Ms. Lindstrom is a fully qualified and experienced revenue collections agent. She performs a variety of professional revenue agent collections activities utilizing professional compliance methods to accomplish her tasks.

When determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

In this case, the majority of the duties assigned to Ms. Lindstrom's position and her overall level of responsibility as a whole are best described by the Revenue Agent 2 classification. Ms. Lindstrom's position should remain allocated to that class.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located on the 4th floor of the Insurance Building, 302 Sid Snyder Avenue SW, Olympia, Washington. The main telephone number is (360) 902-9820, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Lori Lindstrom, DOR
Frank Marshall, WPEA
Dorothy Hibbard, DOR
Lisa Skriletz, SHR

Enclosure: List of Exhibits

LORI LINDSTROM v DOR

ALLO-13-001

List of Exhibits

A. Lori Lindstrom Exhibits

1. Letter requesting Director's Review from Lori Lindstrom received by Director's Review office on January 7, 2013
2. DOR allocation determination letter from Dorothy Hibbard to Lori Lindstrom dated December 27, 2012
3. November 2012 job announcement for RA3
4. November 2012 email chain to/from Ms. Lindstrom regarding RA3 opening
5. Comments regarding DOR policy regarding employee-initiated reallocation request
6. Additional comments from Ms. Lindstrom regarding exhibits 3 and 4

B. DOR Exhibits

1. DOR allocation determination letter from Dorothy Hibbard to Lori Lindstrom dated December 27, 2012
2. Position Review Request PRR for Lori Lindstrom dated October 4, 2012 (Note: not date stamped but verified by Ms. Hibbard received that date)
 - a. Supervisor portion of PRR
 - b. Employee portion of PRR
3. Revised Position Description form (PDF) submitted for position review dated October 4, 2012
4. Organizational Chart for Miscellaneous tax unit
5. 2007 Position Description form for Lori Lindstrom's position
6. Follow-up email string between Lori Lindstrom and dated October 2012
7. State HR Revenue Agent 2 class specification, 174F
8. State HR Revenue Agent 3 class specification, 174G
9. State HR Excise Tax Examiner 3 class specification, 172N