



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
STATE HUMAN RESOURCES | DIRECTOR'S REVIEW PROGRAM
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February 10, 2015

TO: Connie Goff, PHR
Rules and Appeals Program Manager

FROM: Kris Brophy
Director's Review Program Investigator

SUBJECT: Richard Cason v. Department of Revenue (DOR)
Allocation Review Request ALLO-14-026

Director's Determination

This Director's review was based on a review of the updated Position Description forms (PDF) on file for Mr. Cason's position and comments provided by Mr. Cason to DOR Human Resources in October 2013.

As the Director's designee, I carefully considered all of the documentation in the file, including the exhibits presented during the Director's review conference and the verbal comments provided by both parties. Based on my review and analysis of Mr. Cason's assigned duties and responsibilities, I conclude Tax Policy Specialist 2 (TPS 2) is the appropriate classification for his position.

Background

Mr. Cason's position remained allocated to the Tax Policy Specialist 2 (TPS 2) class following a management-initiated request for DOR's Human Resources (HR) Office to review Tax Policy Specialist positions in the Interpretations & Technical Advice (ITA) division of DOR. On February 10, 2014, DOR-HR issued its allocation decision, concluding that Mr. Cason's position was properly allocated to the TPS 2 class. (Exhibit B-1)

On March 10, 2014, State HR received Mr. Cason's request for a Director's review of DOR's allocation determination. (Exhibit A-1)

On January 14, 2015, I conducted a combined Director's review conference for Gayle Carlson and Richard Cason from the same work unit at DOR. Present for the meeting were Richard Cason and Gayle Carlson; Anna Vosk, Staff Representative, WPEA; Niki Pavlicek, Programs Manager, DOR HR; and Dylan Waits, Managing Senior Policy Council, 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

Mr. Cason works as a Tax Policy Specialist in the Interpretations & Technical Advice Division of the DOR. Mr. Cason reports to Dylan Waits, Managing Senior Policy Council. Mr. Cason's position provides technical policy advice to division management, agency staff, and the public on the application of the agency's complex tax laws and rules.

His position provides technical policy advice to division management, agency staff, and the public on the application of the agency's complex tax laws and rules. His position also drafts and revises rules (WAC's) and interpretive Excise Tax Advisory (ETA) statements issued by the department relating to tax programs administered by the agency.

The PDF on file for his position describes his assigned duties and responsibilities as follows: (Exhibit B-1)

60% Technical Advice Program

- Provides technical policy advice on taxation issues to division management, agency staff, and the public. This involves reviewing, analyzing, and researching state statutes and their legislative history, state rules, court decisions, and Department administrative decisions. It may involve researching, reviewing, and analyzing statutes, rules, court decisions, and administrative decisions issued by other states or the federal government. This will involve participating in meetings with department personnel, taxpayers, and business interest groups.

Areas of lead technical policy responsibility include, but are not limited to the manufacturing industry and M&E exemption, timber industry incentives, and taxation of the photography automobile industries. Due to recent staff changes, this position will likely in the future have more involvement with issues in the tax incentive programs.

- Reviews and advises on technical advice requests assigned to less-experienced staff.
- Maintains information on ITA's Intranet web site.
- Reviews draft executive-level determinations issued by the Appeals Division and determinations proposed for publication.
- Reviews letter rulings, Special Notices, and industry guides issued by the Taxpayer Services division for correctness of tax application.
- Reviews recent relevant decisions of state courts and the Board of Tax Appeals to develop expertise.

35% Rules and Interpretative Statement Programs

- Drafts rules (WACs) and interpretative statements issued by the Department at the direction of the Department's Rules Coordinator. These rules and statements relate to tax programs that are administered by the Department under Title 82 RCW and ancillary statutes. This requires legal research and analytical skills, including analysis of statutes and the interaction of the various tax programs.

As part of the rule making processes, conducts public meetings and hearings to receive public comment regarding proposed rules in accordance with the Administrative Procedures Act.

- Reviews existing rules and Interpretative documents as part of the Department's review program. This review requires identification of pertinent statutory changes, court decisions, administrative decisions, and business changes to determine if existing rules/documents need amending or repealing.

5% Other Duties

- Training Program – Participating in training programs or modules that target Department staff, including personnel in operations divisions.
- Legislative Program – Reviewing and analyzing draft legislation. Lead for identifying rule and interpretative statement costs associated with proposed legislation.

Mr. Cason provided input to the Position Description form (PDF) on file for his position. In exhibit B2, Mr. Cason states that:

In Section 23 of the PD, it states that drafting and reviewing rules and ETAs may require moderately complex drafting, but do not require complex legal research. That is not the case. Rule/ETA drafting or revising are not assigned based on the complexity of the issues or legal research, but on the employee's area of expertise. I have been dealing with complex issues and performing complex legal research since starting in ITA in 2006.

Mr. Cason also states that in addition to the taxation areas assigned to him in the PDF, he also has lead responsibility for the following areas:

- Construction
- Lease or rental of tangible personal property
- Agriculture
- Printing and publishing,
- Vessel industry.

Summary of Mr. Cason's Perspective

Mr. Cason states he performs senior level work which includes dealing with highly-complex issues and performing complex legal research and analysis consistent with the TPS 3 class. Mr. Cason asserts there are TPS 3 positions working in the agency that do not practice law, and that equivalent TPS 3 positions working in the Research and the Licensing & Policy divisions are not required to be attorneys.

Mr. Cason regularly performs TPS 3 level duties. For example, Mr. Cason says that the majority of his work involves developing, interpreting and advising executive management on highly complex interpretative statements (ETAs) and technical advice requests (TARs) concerning tax policy tax issues that have industry-wide and statewide significance. In his exhibits, Mr. Cason provided examples of three ETAs that he completed, including "Out-of-State Printers", "Dump Truck Operators", and Public Works contracts." Mr. Cason explains in his comments that ETAs are interpretative statements authorized by RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or set of facts.

Mr. Cason explains his work assignments require in-depth analysis of issues including its relationship with other state and federal laws and must align with other state agency rules and regulations.

In total, Mr. Cason states that the overall scope of his duties includes performing complex technical legal and policy analysis and research work consistent with the requirements of the TPS 3 class. Mr. Cason contends that his position should be reallocated to that class.

Summary of DOR's Reasoning

During the review conference Ms. Pavlicek clarified that the class specifications are out of date with respect to the division's current organizational structure. She stated that Mr. Cason is assigned to the ITA Division which was formed out of the Legal and Policy (L&P) division. Ms. Pavlicek asserts that while DOR acknowledges Mr. Cason's high level of expertise and technical knowledge providing technical advice to agency management and staff on highly complex taxation issues that at times can have industry-wide or statewide significance, he does not meet the primary allocating factor stated in the distinguishing characteristics of being a qualified legal practitioner performing complex legal research and providing technical legal advice as an attorney.

During the review conference Mr. Waits stated that work assignments for TPS staff are first reviewed by the Division's supervisors. This consists of looking at the nature, background history, and scope of the work assignment in addition to the primary tax areas assigned to each employee. Mr. Waits indicated there is often an overlap in the level of complexity between the TPS 2 and 3 work assignments, including the level of industry-wide or statewide impact and how big the issue is and what is involved to ultimately complete the work assignment.

Mr. Waits asserts that the scope and level of technical legal analysis is the primary distinction between initially assigning it at the TPS 2 versus TP S 3 level. He indicated however, that once work is assigned to a TPS 2, it is not reassigned to a TPS 3 if it is found to be of a more complex nature. In that case, the TPS 2 employee works more closely with higher level staff to complete the project. Mr. Waits asserts the overall scope of legal analysis work assigned to Mr. Cason does reach the TPS 3 requirement of being a qualified legal practitioner performing complex technical legal analysis as required.

For each of these reasons, DOR asserts Mr. Cason's position is properly allocated to the TPS 2 class.

Comparison of Duties

When comparing the assignment of work and level of responsibility to the available class specifications, the Class Series Concept (if one exists) followed by the 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.

Comparison of Duties to Tax Policy Specialist 3

The Definition for the TPS 3 class states:

In the Department of Revenue, Tax Policy and Administration Branch, develops and interprets, and advises executive management on, highly complex tax policies and issues having industry-wide and statewide significance.

The Distinguishing Characteristics for the TPS 3 class state:

Incumbents at this level serve as senior policy analysts in a variety of tax policy disciplines.

Legislation and Policy Division:

- Incumbents are qualified legal practitioners. They analyze, review, and draft proposed taxation legislation for the agency, other agencies, taxpayers and legislators. They draft WAC revenue rules and conduct public hearings regarding proposed new rules and rule changes. They provide technical legal advice on taxation issues to agency management, staff and the taxpaying public.

Research Division:

- Incumbents conduct highly complex studies upon which they base recommendations concerning the characteristics, design, implementation and administration of various tax policies. Incumbents also prepare and present testimony to legislative committees and workgroups, and advise legislators and legislative staff regarding the impacts of various tax policy options.

Interpretation and Appeals Division:

- Incumbents are qualified legal practitioners. They preside over highly complex administrative taxpayer appeals. Decisions often set precedent and require extensive research and interpretation of tax law and tax policy. Incumbents argue informal cases on the agency's behalf before the Board of Tax Appeals.

Mr. Cason's position reaches aspects of the requirements of this class of serving as a senior policy analyst. For example, Mr. Waits clarified during the review conference that Mr. Cason's rule making and tax policy assignments vary in complexity and all are completed by Mr. Cason once assigned. Therefore, a portion of his duties does include responsibility for developing, interpreting and advising executive management on highly complex tax policies and issues having industry-wide and statewide significance. Mr. Cason provided examples of work demonstrating his responsibility for drafting complex WAC revenue rules, and also completing complex ETA and TAR assignments which can have industry-wide or statewide significance.

However, Mr. Cason's position does not reach the TPS 3 requirement of being a qualified legal practitioner performing complex technical legal analysis as required. For example, the

distinguishing characteristics for this class state that positions working in the division at this level are responsible for drafting WAC revenue rules and providing technical legal advice on taxation issues to agency management and staff as qualified legal practitioners. Mr. Cason is not a legal practitioner and his position does not provide technical legal advice on taxation issues to agency management and staff as an attorney.

In total, Mr. Cason provides a high level of expertise and technical knowledge in his position as a tax policy specialist. His position drafts complex WAC rules and his position provides senior level technical tax policy advice to agency management and staff, but he is not a qualified legal practitioner as required and therefore is precluded from being allocated to the TPS 3 level class.

For this reason his position should not be allocated to the TPS 3 class.

Comparison of Duties to Tax Policy Specialist 2

The Definition for the TPS 2 class states:

In the Department of Revenue, Tax Policy and Administration Branch, researches, develops, analyzes, implements, or interprets tax policy.

The Distinguishing Characteristics for this class state:

Incumbents at this level independently perform professional level work in a variety of tax policy disciplines.

Legislation and Policy Division: Incumbents perform one of three kinds of work:

- Incumbents are responsible for the implementation and integration of new tax programs or changes to existing programs. They analyze proposed tax legislation, and formulate and present policy options to executive management and legislative staff. They serve as lead policy analyst and agency liaison to state and local government and industry, and prepare and present tax policy related testimony to legislative committees and workgroups. Or;
- Incumbents research, analyze, draft, and ensure compliance with Administrative Procedures Act (APA) requirements on mainstream excise tax WAC rules. Or;

Research Division:

- Incumbents conduct tax studies of major importance. They are responsible for the implementation, direction and review of all aspects of a study to include the assessment of impacts and policy implications from the agency perspective. Incumbents prepare and present testimony to legislative committees and workgroups.

Interpretation and Appeals Division:

- Incumbents, as qualified legal practitioners, assist a Tax Policy Specialist 3 in the analysis and development of administrative tax policy, perform legal research, and prepare draft decisions and determinations for less complex taxpayer appeals.

This class generally addresses the scope of Mr. Cason's responsibility for independently performing professional level tax policy work. This includes developing rules, and providing formal and informal technical policy advice to management and staff regarding tax policy issues. He researches, analyzes and drafts mainstream excise tax WAC rules and conducts public hearings and receives testimony regarding proposed rules. However, in addition, a portion of his duties includes responsibility as a senior policy analyst for developing, interpreting and advising executive management on highly complex tax policies and issues having industry-wide and statewide significance.

However, as a whole, when comparing the definition and distinguishing characteristics of the two classes, given the requirement at the TPS 3 level of having responsibility for being a qualified legal practitioner, the TPS 2 class provides an overall better fit for the majority of work that Mr. Cason performs.

In *Salsberry v. Washington State Parks and Recreation Commission*, PRB Case No. R-ALLO-06-013 (2007), the Personnel Resources Board addressed the concept of best fit. The Board concurred with the former Personnel Appeals Board's conclusion that while the appellant's duties and responsibilities did not encompass the full breadth of the duties and responsibilities described by the classification to which his position was allocated, on a best fit basis, the classification best described the level, scope and diversity of the overall duties of his position. *Allegri v. Washington State University*, PAB Case No. ALLO-96-0026 (1998).

Therefore, 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).

The majority of the duties assigned to Mr. Cason's position and his level of responsibility are best described by the Tax Policy Specialist 2 class. His 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:

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 PO Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located on the 3rd floor of the Raad Building, 128 10th Avenue SW, Olympia, Washington. The main telephone number is (360) 407-4101, and the fax number is (360) 586-4694.

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

c: Richard Cason
Anna Vosk, WPEA
Niki Pavlicek, DOR

Enclosure: List of Exhibits

A. Richard Cason Exhibits

1. Director's Review Memo from Richard Cason
2. Complaint of Employment Discrimination to Pat Hazzard, DOR HR Division
3. Desk Audit Results Letter– February 10, 2014
4. Mfg. Semiconductor Hot Issue Memo – November 26, 2013
5. Clarifying Language for the M&E Exemption – May 20, 2013
6. Proposal Form – Agency Request Legislation
7. Director's Briefing Document – July 1, 2013
8. Farm Replacement Parts – Hop Harvesting
9. Manufacturing – Remote Access Software
10. Electronically Delivered Software
11. Check Verification Service
12. Farm Replacement Parts
13. Sourcing Vessel Lease Payments Letter – July 11, 2013
14. Satellite Uplink Service
15. Refining Coal
16. Manufacturing – M&E Exemption
17. Non Resident Vessel Permit – June 27, 2013
18. Boat Haul – Out Fees – October 3, 2013

B. DOR Exhibits

1. Allocation determination letter (includes position description relevant to the time period and an organizational chart)
 2. Email from Mr. Cason dated 10/29/13 identifying any differences from March 2007 position description to current duties (includes notes taken during desk audit conducted 11/13/13)
 3. Classification criteria considered, includes the following:
 - a. Tax Policy Specialist 2 job specification
 - b. Tax Policy Specialist 3 job specification
- Exhibit added during the review conference
4. ITA Division staff assignment list

C. Class Specifications

1. State HR Class Specification for Tax Policy Specialist 2
2. State HR Class Specification for Tax Policy Specialist 3