

Appellant's duties, as described in the position description, dated June 18, 1992, and signed by her were:

- A. (60%) Resolution of questions about or objections to individual income tax adjustments issued by the computer processing system.
- B. (10%) Resolution of questions about or objections to department issued 1099 G's and 1099 INT's.
- C. (10%) Reviewing and wording of tax adjustment notice. Training of LTE's.
- D. (15%) Testing computer output for new/revised computer programs.
- E. (5%) Provision of other duties for the smooth functioning of the section and unusual workloads or staffing problems.

Appellant was under general supervision, direction and review.

In the state Revenue Agent classification specification, the Revenue Agent 2 and 3 position identifications are:

Revenue Agent 2

This is either experienced entry, progression (developmental) or objective level work performing tax collection, registration, revocation or liability determination functions. Positions allocated to this class may function in one of the following capacities: 1) Positions allocated to this class, as an objective (full performance) level, are responsible for the review of sales/use tax, delinquent tax accounts and/or withholding tax adjustments. These positions also provide taxpayer assistance related to these types of assignments. Work is performed under general supervision; 2) Positions allocated to this class as a progression (developmental) level are responsible for out-of-state collections, sales/use tax or withholding tax office audit review, specialized review and adjustment of delinquent tax accounts, personal liability determination, revocation or nonrenewal, and/or the state temporary and concessionaire sellers program(s). Duties performed at this level differ from the objective level based on the complexity, degree of knowledge and independence in their specialized area. Work is performed under limited supervision; 3) Positions allocated to this class as a progression (developmental) level are responsible for field tax collection and taxpayer assistance. Work is performed under close supervision; 4) Positions allocated to this class at the experienced entry level perform work in reviewing tax liabilities or persons involved in bankruptcy. The work is structured to provide the incumbent with the training and experience necessary to progress to the higher level. Positions should have a similar degree of tax law knowledge as those positions in the second allocation of this class. Work is performed under close supervision.

Revenue Agent 3

This is either experienced entry, progression (developmental) or objective level work performing tax collection, registration, revocation or liability determination. Positions allocated to this class may function in one of the following capacities: 1) Positions allocated to this class, as an objective (full performance) level, perform out-of-state collections, sales/use tax or withholding tax office audit review, specialized review and adjustment of delinquent tax accounts, personal liability determinations, permit revocation or nonrenewal, registration, and/or state temporary and concessionaire sellers work. These positions also provide taxpayer assistance in their area of expertise. Work is performed under general supervision; 2) Positions allocated to this class, as a progression (developmental) level are responsible for field tax collection and taxpayer assistance. Work is performed under limited supervision; 3) Positions allocated to this class, as a progression (developmental) level, are responsible for reviewing tax liabilities of persons involved in bankruptcy. Work is performed under limited supervision; 4) Positions allocated to this class as an advanced level, are responsible for performing the more complex and larger sales/use tax and/or withholding tax adjustments and/or other withholding tax activities including office audit reviews and providing general information assistance. These positions also lead other Revenue Agents in performing reviews of sales/use adjustments and/or withholding tax activities including adjustments. Work is performed under general supervision.

The state Tax Conferee classification specification for Tax Conferee 1 positions under the heading definitions provides:

Tax Conferee 1

This is objective level work which involves recommending action or petitions for redeterminations filed in regard to assessments made by office auditors and revenue agents. Positions allocated to this class are responsible for reviewing petitions for redeterminations filed by individuals and corporations relating to income, franchise, sales/use and withholding tax office audit determinations. Work is reviewed by a higher level Tax Conferee or Tax Conferee Supervisor and is performed under general supervision.

Appellant argues that sixty percent of her time is spent resolving appeals, including thirty-five percent in specialized taxpayer assistance, and for that reason she argues that her position is comparable to the Revenue Agent 3 position of Ann Trachtenberg and could also fit into the Tax Conferee 1 classification.

Documentary evidence and testimony shows that appellant works in the Adjustment Unit of respondent's Tax Processing Bureau. Sixty percent of her work involves responding to taxpayer objections to computer-generated individual income tax adjustment notices. Thirty-five percent of this sixty percent work activity is allocated to independently researching statistics, rules and other sources to respond to taxpayer objections.

In comparing appellant's position with that of Ann Trachtenberg, the evidence shows that Ann Trachtenberg works in the Delinquent Tax Control System (DTCS) of respondent's Compliance Bureau. The Compliance Bureau consists of three sections: Central Compliance, Referral and Field. DTCS is a part of the Field section. Central Compliance is similar to appellant's Processing Bureau. It processes tax returns. Computer-generated billings are issued, which in turn are responded to by the taxpayer. DTCS becomes involved once a bill is transferred to the delinquent roll. DTCS applies the department's policies against individual assessment and explains these various collection policies to its customers. DTCS employes, unlike other Revenue department employes, operate under the collection provisions of the tax statutes.

Trachtenberg specializes in delinquent income tax assessments, and is responsible for all of the income tax correspondence entering DTCS. In addition, she is responsible for developing training materials for new Revenue Agents and other DTCS personnel. Trachtenberg is also responsible for writing letters to the Claims Board indicating the department's position on particular tax questions or letters for the signature of the department Secretary and the Governor. Unlike appellant, Trachtenberg must have understanding and knowledge regarding the entire tax return process, including appellant's income adjustment functions. In addition, Trachtenberg, unlike appellant, handles specialized tax compliance work the majority of the time. Clearly, the Trachtenberg position involves greater responsibility, requires a broader knowledge base, and functions at a higher level than appellant's position.

Notwithstanding the comparison with Trachtenberg, the evidence presented fails to establish that appellant's position fits within the Revenue Agent 3 classification. Appellant does not perform out-of-state collections, sales/use tax or withholding tax office audit reviews, specialized review and adjustments of delinquent tax accounts, personal liability determinations or

the other functions listed under allocation pattern one, with the exception of providing taxpayer assistance in her tax specialty area. Nor does appellant's position fit within the remaining three RA 3 position allocation patterns. Appellant's position is not responsible for performing field tax collection, reviewing tax liabilities in bankruptcy proceedings or performing the most complex and larger sales/use and/or withholding tax adjustment and/or other withholding tax activities as required in these allocation patterns.

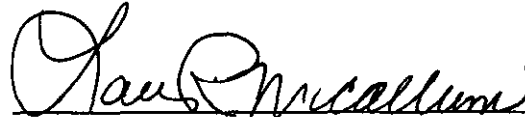
Appellant's position also compares unfavorably with positions at the Conferee 1 level. As stated in the classification specification definition, these positions review petitions for redetermination forwarded from the Audit, Compliance and Processing Bureaus after review by Auditors or Revenue Agents, like appellant, relating to income, franchise, sales/use and withholding tax determinations. Also, as evidenced by the testimony of Thomas Marx, chief of respondent's Personnel Services Section, all Tax Conferee positions are located in respondent's Appellate Bureau. This bureau processes unanswered tax issues or those appealed from the Audit, Compliance and Processing Bureaus. Tax Conferee positions are supervised by higher level Tax Conferee positions. In contrast, appellant's position is only responsible for adjusting income taxes, it does not require knowledge of other taxes identified as required by Conferee 1 positions, and petitions not satisfied at appellant's desk may find their way to the Appellate Bureau, the next level of review, where they are reviewed by Tax Conferees. While the Revenue Agent 2 specifications do not specifically list income tax reviews, those listed -- sales/use tax, delinquent tax accounts and/or withholding tax -- are comparable.

Based on the evidence presented, the Commission believes the Revenue Agent 2 classification is the more appropriate classification for appellant's position.

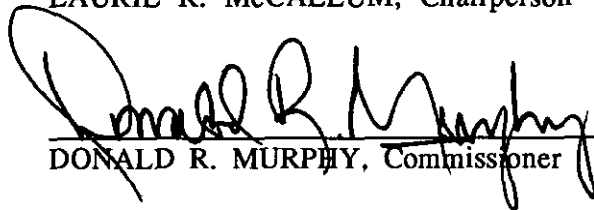
ORDER

Respondent's decision is affirmed and appellant's appeal is dismissed.

Dated: January 20, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DRM:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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**NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION**

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must

serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)
2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)