

June 22, 2009

TO: Natalie Kaminski, Union Representative
International Federation of Professional and Technical Engineers (IFPTE)
Local 17

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

SUBJECT: Kenneth Cole, et. al. v. Department of Licensing (DOL)
Allocation Review Request ALLO-08-017

On March 25, 2009, I conducted a Director's review conference at the Department of Personnel, 2828 Capitol Boulevard, Olympia, Washington, concerning the allocation of the Prorate & Fuel Tax field auditors at DOL. The positions are allocated to the Auditor 5 classification and assigned to the Audit Section of Prorate and Fuel Tax Services located in three separate regions. You attended the Director's review conference with employees Kenneth Cole and Donna Blume, who spoke on behalf of the others named in the joint Director's review request (Exhibit A-1). Shelby Krismer Harada, DOL Classification and Compensation Specialist, represented DOL. Others present from DOL included Diane Christie, Human Resources Manager; Karla Laughlin, Administrator for Prorate and Fuel Tax Services; and Jeff Beach, Audit Section Manager.

Director's Determination

This position review was based on the work performed for the six-month period prior to November 16, 2007, the date DOL's Human Resources (HR) Office received the employees' Position Review Request packet. As the Director's designee, I carefully considered all of the documentation in the file, the exhibits presented during the Director's review conference, and the verbal comments provided by all parties. Based on my review and analysis of the duties and responsibilities assigned to the positions named in this request, the positions are properly allocated to the Auditor 5 classification.

Background

On November 16, 2007, DOL's HR Office received the employees' Position Review Request packet, submitted as a group request to review the Auditor 5 positions with the working title of Prorate & Fuel Tax Field Auditor (Exhibit C-3).

Summary of Employees' Perspectives

The employees believe the Auditor class series at DOL should be treated the same as the Revenue Auditor class series at Department of Revenue (DOR). The employees contend the professional duties assigned to their positions have more in common with the Revenue Auditors than the auditing functions described in the Auditor series. The employees note there are three levels within the Revenue Auditor series as well. To illustrate their points, the employees created a side-by-side comparison and included notations on copies of the class specifications (Exhibits C-5; B-I and B-J). The employees note that within Prorate and Fuel Tax Services, the technical positions, as well as two collection staff, have been allocated to classes in the Excise Tax Examiners and Revenue Agent series, classes also used by DOR. Therefore, the employees assert DOL should apply the same standards to their positions. Similar to Revenue Auditor 3 positions, the DOL employees contend their positions determine tax liability as reflected by law.

The employees contend their positions are required to ensure compliance with Washington State tax laws, while assessing specific tax adjustments resulting from the audits they perform. The employees indicate they develop audit plans and procedures, work with minimal supervision at a senior or specialist level, train and lead lower level auditor positions, and serve as auditors in charge. The employees assert their positions conduct tax audits of businesses that include the largest and most complex fuel companies, such as Exxon, which are subject to review by out of state and foreign jurisdictions. The employees indicate they are required to understand laws related to the International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP), as well as federal laws and those of other jurisdictions. The employees emphasize safety can become an issue when dealing with angry taxpayers at offsite locations in the field. The employees assert their jobs have become increasingly more demanding and believe their positions should be reallocated to the Revenue Auditor 3 classification.

Summary of DOL's Reasoning

DOL acknowledges the primary focus of the employees' positions involves conducting highly complex tax and licensing audits and investigations of Washington-based and out-of-state taxpayers doing business in Washington. DOL states that the businesses include major oil companies and interstate motor carriers. DOL asserts the positions plan, coordinate, and conduct audits and investigations for diverse accounts for motor fuel tax, special fuel tax, aircraft fuel tax, and interstate motor carriers to determine the correct payment of taxes and licensing fees. DOL agrees that the audits assigned to the positions ensure proper payment of fuel taxes and registration fees under IFTA and IRP provisions. However, DOL contends the specific nature of the duties and responsibilities assigned to the employees' positions are described by the Auditor 5 job class. DOL disagrees with the modified class specifications illustrated by the employees and contends they effectively changed the meaning and intent of the classes. DOL indicates that no duties have changed since the previous job descriptions and maintains that the Auditor 5 class represents the work assigned to the positions.

In preparation for the Director's review, DOL indicates that Ms. Krismer Harada met with a DOR Subject Matter Expert (SME) to gain a better understanding of the work assigned to the Revenue Auditor 3 positions. Based on that review, Ms. Krismer Harada concluded the work assigned to the DOL Auditor 5 positions did not reach the same level of authority or responsibility of the Revenue Auditor 3 class. DOL noted that positions allocated to the Revenue Auditor 3 class deal with a full range of tax audits, including complex business firms from all industries. In response to the allocation of technical positions in Prorate and Fuel Tax Services, DOL indicated the technical positions had always been allocated on a best fit and the Excise Tax Examiner became a better fit when the class became available. DOL asserts the duties and responsibilities assigned to the auditor positions specifically fit within the Auditor 5 classification.

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

The Position Review Request describes the purpose of the employees' positions as follows (Exhibit C-3):

The audit positions in the Prorate & Fuel Tax section conduct highly complex tax and licensing audits and/or investigations of Washington-based and out-of-state taxpayers (major oil companies, interstate motor carriers, etc.) doing business in Washington to ensure proper payment of fuel taxes and registration fees. Under the International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP) provisions, these positions also conduct tax audits on behalf of 48 American states, 10 Canadian provinces and Mexico. Tax assessments are issued as a result of these audits. These positions educate and train taxpayers and their staffs for improved tax compliance with state laws, regulations and agreements.

The primary job duties described as 75% include the following:

- As a senior level auditor, independently plan, coordinate, and conduct audits and/or investigations of individual proprietors, businesses and government agencies, including the largest and most technically diverse accounts for motor fuel tax, special fuel tax, and aircraft fuel tax. Conduct audits of interstate motor carriers to determine the proper payment of taxes and license fees.

Audits are conducted in accordance with professional standards, including Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS).

- Evaluate and determine the accuracy of fuel tax returns and apportionment registration applications of private industry and/or local government agencies for the State of Washington and on behalf of other states and foreign jurisdictions to ensure compliance with state laws, regulations, agency policies, and international agreements.
- Complete pre-audits of accounts, analyzing accounting systems to determine the auditing procedures necessary to conduct and develop audit plan. Examine licensee records, including preliminary preparation of audit work papers, schedules and summaries to be used in the audit.
- Evaluate and verify financial records, internal controls used in taxpayer's accounting system, accounting procedures supporting financial records, reports and application using sampling techniques.
- Conduct entrance conference with licensee's representative. Explain audit process, review audit periods and required records, acquire accounting and operational information, and answers questions.
- Conduct closing conference with licensee's representative detailing audit findings and adjustments. Recommend changes to improve accounting system, record keeping, procedures and internal controls.
- Prepare written audit report of findings, adjustments, and recommendations. Assemble and organize the required audit working paper file for future use.
- Meet minimum international agreement and agency productivity standards. Meet agency established timelines for completing audits and agency satisfaction ratings on customer surveys.

In summary, the remaining duties assigned to these positions include taxpayer assistance and education; develop and deliver segments of training to staff and clients; assist in training less experienced auditors; act as lead auditor when conducting audits of large, complex accounts; review other auditors' work for accuracy; conduct investigations for tax fraud and determine level of fraud; assist law enforcement and testify at formal appeal hearings; participate in quality review teams to develop/revise policies and procedures; review legislative and international agreement changes and determine changes necessary to meet regulations; and review out-of-state audits under international agreements and answer questions on the Washington audit program.

The Regional Audit Managers signed a document agreeing with the characterization of duties on the Position Review Request Form (attachment to Exhibit C-3). Further, the prior Position Description Forms and Classification Questionnaires support the assignment of work identified on the Position Review Request Form (Exhibits A-3 and C-6). DOL noted that two Auditor 5 positions were primarily responsible for conducting audits of major oil companies.

The Reclassification Supplemental Form emphasizes the auditor positions are senior level positions. The supplemental form further describes the organizational structure of the auditor positions (Exhibit B-D). In addition, a DOL Request for In-Training plan illustrates the progression of class levels for the Auditor positions assigned to the Audit Section of Prorate and Fuel Tax Services (Exhibit C-6). The employees' positions (field auditors) report to Regional Audit Managers, who are responsible for selecting the audits and forwarding them to the field auditors. The field auditors then schedule, perform, and explain the audit for the taxpayer (Exhibit B-D, page 5). To exemplify, the field auditors prioritize and schedule audit appointments; conduct meetings with owners and key personnel to explain audit process, findings, recommendations, and assessments; evaluate and determine the type and extent of sampling procedures needed; develop spreadsheet applications and audit tools; determine whether error factor should be projected, whether the records are adequate, and whether or not to deny credits to taxpayers. Positions also have the authority to waive \$1,000 in penalties and interest per tax type and determine whether the taxpayer has made a good faith effort in reporting and recordkeeping. In addition, the employees have indicated their positions prepare audit reports containing technical writing, which is sent to taxpayers, as well as the jurisdictions in which the taxpayer travels (Exhibits B-D, pages 3 and 4; B-E).

During the Director's review conference, Mr. Cole and Ms. Blume elaborated on the assignment of work. They noted their positions deal with a variety of fuel taxes as well as registration fees for licensing any major trucks that travel between two jurisdictions. Mr. Cole pointed out that the types of businesses can vary. For example, they may be dealing with transportation companies, logging companies, farmers, contractors, or private carriers, or fuel companies with their own transports. Mr. Cole explained that the prorate for registration fees are set by law. He added that with the international registrations, taxpayers pay a portion of other jurisdictional fees. Mr. Cole explained that company fleets are set up by year after the initial application is filed and that the original calculations are by a third party vendor. The employees indicated that the percentage established at the beginning of the registration year remains the same but can later be affected by adding jurisdictions. An example of one of the audit functions involves looking at various transport units and where travel has occurred. The employees explained that taxpayers pay fuel tax based on the fuel consumed, which is reported monthly, quarterly, or annually. They also indicated that the field audit positions handle refunds and exemptions. For example, fuel tax is already included in the price at the pump and is intended for use on highways. Individuals may file a marine claim for fuel used in boats. However, if fuel tax is not paid, sales or use tax must be paid. The auditors have an agreement with DOR to figure out the amount designated as use tax, which is determined by an average rating. Audit Section

Manager Jeff Beach reiterated that state fuel tax is their primary consideration and sales or use tax is secondary.

Further, Mr. Cole and Ms. Blume affirmed that Regional Audit Managers select and assign audits within each region. They indicated that if teams are formed, one of the auditors is designated as team lead. In preparation for their audits, the field auditors will look at returns, applications, and other documents, construct initial schedules and plan the specific criteria to review. They then send a letter to the taxpayer to explain the purpose of the audit and what records need to be available. After scheduling an appointment with the taxpayer, the auditor will select a sample of transactions and examine the details, including mileage, operational records, maintenance records, financial records (payroll, accounts receivable and payable) as well as types of fuel. In general, the auditors will look to see if the taxpayer prorated the transactions correctly. If enough problems are found, the auditor may determine an error rate. They will talk with the taxpayer and explain any adjustments, answer questions, let them know the assessment results. Once an audit report is written, the report is reviewed and signed by the Regional Audit Manager and sent to the taxpayer. The taxpayer then pays the assessment or may appeal.

Class Specifications

The primary basis for the employees' argument is their belief that their previous classification of Prorate and Fuel Tax Auditor Senior (Exhibit C-14) should have been merged with the Revenue Auditor 3 (Exhibit C-9) during the class consolidation resulting from Civil Service Reform. While I recognize the employees' viewpoint, the allocation review process is not the proper avenue for rewriting or creating a new classification. Instead, there is a specific process for submitting a class proposal. A position's allocation is based on the comparison of duties and responsibilities to the job classes in the state's classification plan.

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.

The **class series concept** for the **Revenue Auditor** classes reads as follows (Exhibit E):

This series is responsible for administering business and occupation taxes, sales and use tax, and public utility tax, deductions, exemptions, deferrals and credits. These positions conduct audits of businesses in diverse industry groups, including corporate, governmental and nonprofit organizations. A wide variety of financial and nonfinancial records are examined to verify that the business has reported its tax liabilities correctly in compliance with the technical requirements imposed by the Revised code of Washington (RCW), the Washington Administrative Code (WAC), Washington Tax Decisions

(WTD), Interim Audit Guidelines (IAG), and Excise Tax Advisories (ETA) as administered by the Washington State Department of Revenue.

Audits are conducted in accordance with laws, regulations and applicable professional standards. These positions require the skills to deal with delicate issues, such as the examination of confidential records that may result in the assessment of tax; and the organizational skills to manage numerous ongoing audits while administering a wide variety of excise tax laws and rules.

The **definition** for **Revenue Auditor 3** states the following:

This is the senior, specialist, or leadworker level of the series. In addition to the work assignments received from the Field Audit Manager, these positions develop leads that can be used to create audit assignments. Positions deal with the largest, most complex business firms, conducting in-depth, thorough reviews of business activities and tax reporting practices.

Positions are responsible for the development of audit plans and procedures and assist in the development of plans for others, senior auditors provide guidance, participate in the training of new auditors or peers, and are directly responsible for the outcome of these audits. The format and content of the work product is subject to approval by the Field Audit Manager. These auditors receive limited supervision, independently set priorities, and make decisions that commit the agency to a tax policy position through their audit reports.

While there are some similarities with the audit functions performed by the DOL auditors, positions allocated to the Revenue Auditor classes specifically administer a broad range of taxes covering all industries conducting business in Washington State. The scope of responsibility at the Revenue Auditor 3 level includes auditing the largest, most complex businesses and conducting thorough reviews of business activities and tax reporting practices. Although the Revenue Auditor 3 and Auditor 5 classes represent the senior level within each respective series, the DOL auditors' primary responsibility is to audit businesses for fuel related taxes. With the exception of average rating the use tax related to marine and other non-highway used fuel, the DOL auditors do not deal with the gamut of business and occupation tax related functions representative of the Revenue Auditor classes. Because the Auditor class series specifically includes auditing accounts for fuel tax and related operations, the Auditor 5 is the appropriate classification for the auditor positions in DOL's Prorate & Fuel Tax Section.

In previous Board decisions, the PRB concluded that while one class appeared to cover the scope of a position, there was another classification that not only encompasses the scope of the position, but specifically encompassed the unique functions performed. Alvarez v. Olympic College, PRB No. R-ALLO-08-013 (2008). Further, the Board has consistently held that "[w]hen there is a definition that specifically includes a particular assignment and there is a general classification that has a definition which could also apply to the position,

the position will be allocated to the class with the definition that includes the position" Mikitik v. Depts. of Wildlife and Personnel, PAB No. A88-021 (1989).

In this case, the DOL auditors conduct audits of business records to determine compliance with the applicable laws, regulations, and standards utilizing Generally Accepted Auditing Standards and Generally Accepted Government Accounting Principles. This is consistent with the following **class series concept** for the **Auditor** classes (Exhibit D):

Positions in this series conduct fiscal, performance or program audits to determine compliance with applicable laws, regulations, and standards utilizing Generally Accepted Auditing Standards and Generally Accepted Government Accounting Principles. This work can be conducted on or off site and includes the review and analysis of source documents to determine compliance with appropriate auditing standards by validating financial liabilities, payments, assets, fiscal, record or accounting systems. Positions prepare and recommend improved fiscal compliance and control procedures.

In addition, the **definition** for **Auditor 5** states the following:

This is the senior, specialist, or lead worker level of the series. Positions function as senior auditor, trainer, lead worker, or auditor in charge. Conducts audits of individual proprietors, businesses and governmental agencies including the largest and most complex accounts for fuel tax, sale tax, and businesses operating under the International Fuel Tax Agreement (IFTA) and the International Registration Plan (IRP); or plans, organizes, and directs the ferry's system internal control and services programs; or leads surety analysts conducting financial analysis to determine the financial stability and loss development to determine the claims liability and surety requirements of self-insured employers. Positions may lead or supervise lower level staff.

The documents in the record, as well as the comments made during the Director's review conference, confirm that the assignment of work fits within the above definition for Auditor 5. The employees' positions serve as the senior, specialist, lead worker, or auditor in charge. Further, the positions conduct audits of businesses and other agencies, including large and complex accounts, for fuel tax, sale tax, and businesses operating under the International Fuel Tax Agreement (IFTA) and the International Registration Plan (IRP).

The typical work identified in the Auditor 5 class also describes a number of functions performed by the auditors in this case. For example, the DOL auditors complete pre-audits and develop an audit plan that will be followed in the field examination of records; prepare preliminary audit work papers, including appropriate schedules and summaries to be used in the audit; independently plan, coordinate and conduct comprehensive compliance audits and/or investigations; evaluate accuracy of accounting systems, procedures and internal controls; analyze accounting systems and determine auditing procedures needed; conduct entrance and closing conferences, explain audit process, acquires accounting/financial information, and answers questions presented; recommends changes and assist

businesses in implementing these changes; function as a lead examiner and conducts audit team in the field for audits on large employers; assist in developing new/revised legislation, rules and regulations; and assist in cases of suspected theft, fraud, or other illegal operations.

It is clear the DOL auditors in this case have extensive knowledge regarding state, federal, and international laws and regulations for compliance with fuel tax reporting. A position's allocation does not diminish the quality of work performed and is not a reflection of performance. Rather, an allocation is based on the majority of work assigned to a position and how that work best fits the available job classes. The Auditor 5 is the appropriate classification for the positions that are the subject of this review and assigned to DOL's Audit Section of Prorate and Fuel Tax Services.

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.

Please note the following changes:

June 26 through July 3 the offices of the Director's Review Program and Personnel Resources Board Appeals Program will be moving to the Department of Personnel building located at 600 South Franklin in Olympia. Starting June 26, 2009, the main phone number for the two programs will be **360-664-0388** and all requests for Director's Reviews and appeals to the Personnel Resources Board must be filed:

In person at:

**600 South Franklin
Olympia, WA 98504-7530**

OR

By mail at: (unchanged)

**Mail Stop 40911
Olympia, WA 98504-0911**

The fax number remains the same - **360-753-0139**.

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

c: Employees
Shelby Krismer Harada, DOL
Lisa Skriletz, DOP

Enclosure: List of Exhibits

Kenneth Cole, et al v. DOL ALLO-08-017

List of Exhibits

- A.** Letter of request from Natalie Kaminski, IFPTE, filed March 5, 2008, with the following attachments:
1. Employee signatures
 2. Employee contact information
 3. Representative Position Description Form (PDF)
 4. Department of Licensing determination letter
- B.** Employee Exhibits:
- A. Response to department's determination letter
 - B. Unions original cover letter
 - C. Position Review Request – original
 - D. Reclassification Supplemental Form – original
 - E. Letter from Pam Meyers, auditor
 - F. Organizational chart for PR&FT section
 - G. Audit Section Organizational Chart
 - H. Revenue Auditor 3 Class Specifications (expanded) (annotated) by employees
 - I. Auditor 5 Classification Specifications without PR&FT auditor duties, edited by employees
 - J. Auditor 5 Classification Specifications (bolded) (annotated) by employees
 - K. Management support indication for technical positions
- C.** DOL Exhibits: May 19, 2008 letter from Shelby Krismer Harada with the following attachments:

Section 1

1. ALLOCATION REVIEW REQUEST – ALLO-08-017
2. Kenneth Col, et al v. DOL, List of employees included in appeal

Section 2, Allocation Review and Decision:

3. November 16, 2007, Blume, Donna et al, Position Review Request with cover letter and attachments
4. November 7, 2007, Cover Letter from Natalie Kaminski, Union Rep.
5. Staff prepared Position Comparison, Revenue Auditor 3, Auditor 5
6. February 3, 2000, Classification Questionnaire for #2060, Prorate & Fuel Tax Auditor Senior with updated In-Training Plan
7. Position Action Request to establish Major Oil Company Auditor 5

8. Auditor 5 Job Specification
9. Revenue Auditor 3 Job Specification

Section 3, No changes in duties and responsibilities:

10. February 11, 2008, Letter to Ms. Donna K. Blume
11. Prorate & Fuel Tax Audit Section Organization Chart
12. Prorate & Fuel Tax Administrative Group Organization Chart

Section 4, Reallocation Appeal Supporting Documentation:

13. November 2, 2007, Department of Revenue Audit Division Revenue Auditor Series Power Point Presentation
14. Prorate and Fuel Tax Auditor Senior Job Specification (abolished)
15. Licensing Revenue Auditor 3 Job Specification (replaced by Prorate & Fuel Tax Auditor Senior)
16. March 21, 1995, Classification Questionnaire for #2060, Fiscal Management Analyst 1
17. September 20, 1994, Classification Questionnaire for #2060, Licensing Revenue Auditor 3
18. December 28, 1977, Classification Questionnaire for #0469, Motor Vehicle Revenue Auditor III
19. DOL/DOR Internet Audit Website Comparison Chart
20. SKH Summary Sheet contrasts differences between bodies of work

Section 5, In Summary:

21. Department of Revenue Audit Roster

- D.** Auditor 2 class specification with Auditor class series concept
- E.** Revenue Auditor 1 class specification with Revenue Auditor class series concept