**OCB AWARD NUMBER: 2201**

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| **SUBJECT:** | **ARB SUMMARY # 2201** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **30-04-20120106-0001-05-02** |
| **DEPARTMENT:** | **Department of Taxation** |
| **UNION:** | **FOP** |
| **ARBITRATOR:** | **Susan Grody Ruben** |
| **GRIEVANT NAME:** | **James R. Johnson III** |
| **MANAGEMENT ADVOCATE:** | **Charles L. Kumpar** |
| **UNION ADVOCATE:** | **Paul L. Cox** |
| **ARBITRATION DATE:** | **12/13/2012** |
| **DECISION DATE:** | **3/13/13** |
| **DECISION:** | **Modified** |
| **CONTRACT SECTIONS:** | **Article 19 – Disciplinary Procedure** |
| **OCB RESEARCH CODES:** | **118.301 – Progressive Discipline; 118.6561 – Work Rules; 118.08 - Suspension** |

**HOLDING: Grievance modified. The Arbitrator found that Grievant did not fail to timely file his taxes as he promptly tried to amend his return. However, Grievant’s actions discredited the Employer when he purchased alcohol from an establishment that he had just inspected. This discredit was sufficient to maintain the one day suspension.**

Grievant was a Tax Enforcement Agent 2 with the Department of Taxation. As part of Grievant’s duties, he was responsible for visiting liquor establishments to ensure that the establishments were properly charging sales tax. It came to the attention of the Employer that Grievant had failed to accurately report income on his 2009 tax returns. This error stemmed from a mistake Grievant’s wife made while filing the taxes, which he believed to have been remedied. Additionally, on July 21, 2011 Grievant had conducted an inspection at a business and shortly thereafter returned to purchase alcohol. This action was in violation of the Employers work rules as he was still on Employer business and would have needed to transport the alcohol in a state vehicle.

The Employer argued that Grievant is in a position of trust and failing to properly amend a tax return as well as purchasing alcohol shortly after inspection and transporting alcohol in a state vehicle breached the public trust. At no point does the evidence show that Grievant informed the proper authorities about the error in his tax return. Additionally, Grievant testified at one point that he purchased the alcohol to ensure sales tax was being applied and disposed of the alcohol without attempting to recoup the cost. However, he later stated that he was no longer on official business when purchased the alcohol. Grievant’s position requires statutory compliance with tax rules and ordinances, and state policy prohibits transporting alcohol in a state vehicle. Thus, a one day suspension was lenient in light of the discipline grid permitting the Employer to give Grievant a one-day suspension for each offense.

The Union countered that the tax forms were prepared by Grievant’s wife. Upon realizing the error, Grievant took immediate steps to correct it. Grievant did not violate the statute as he promptly remedied the error and believed the error to have been fixed. The Union also argued that it was not uncommon for agents to purchase alcohol from establishments they were investigating to ensure proper taxes were charged. Refuting that a one day suspension was lenient, the Union argued the discipline grid was not progressive and a verbal reprimand would have sufficed.

The Arbitrator found that Grievant had not failed to timely file a tax return. Rather, he failed to accurately report income or timely pay an outstanding balance. As Grievant took prompt action to resolve the issue and Grievant’s story was credible and supported by written documentation, discipline was not appropriate for the first offense. However, Grievant’s conflicting stories regarding the purchase of alcohol and the appearance of impropriety justified a one day suspension. Grievant’s actions could have discredited the Department in violation of work rules. Grievant knew his actions were inappropriate. The Employers discipline grid was reasonably related to a violation of the work rules. Therefore, Grievant’s purchase of alcohol independently justified a one-day suspension.