

OFFICERS AND EMPLOYEES—RETROACTIVE PROMOTION.

Where the law provides for appointment by one officer with the approval of another officer, the approval of the promotion of an employee when given will relate back to the date of action by the appointing officer and make the promotion effective from said date if the other conditions necessary to make the promotion effective had been fulfilled on said date.

Promotions in the Bureau of Internal Revenue to positions to which appointments were not authorized to be made by the Commissioner of Internal Revenue, either with or without the approval of the Secretary of the Treasury, are not effective until action by the Secretary of the Treasury upon such promotions.

Promotions involving a change in duties are effective only from date of acceptance and entrance upon duty after notice.

In case of promotions involving no change in duties, the acceptance may be assumed and the promotion regarded as effective from the date the officer having authority to make the promotion actually selects and designates the employee for such promotion unless the promotion is made effective from some subsequent date. In no case can such promotion be made to take effect retroactively.

Comptroller General McCarl to J. L. Summers, disbursing clerk, Treasury Department, February 28, 1924:

I have your letter of February 16, 1924, as follows:

Your decision is requested whether the accompanying pay rolls marked "Supplemental" covering additional pay on account of promotions for the period from February 1 to February 15, 1924, may properly be paid. The pay rolls

are approved in the sums of \$1,961.44 and \$63.13, respectively, payable from the appropriations for "Collecting the Internal Revenue" and for "Salaries, Office of the Commissioner of Internal Revenue." It will be observed that opposite each name in the remarks column is a statement to the effect that the promotion is to be effective from February 1, 1924. This office is advised that those promotions were recommended by the Commissioner of Internal Revenue by letter dated February 13, 1924, which letter received the approval of the Secretary of the Treasury under date of February 14, 1924.

Attention is invited to the accompanying letter of the Assistant to the Commissioner dated the 15th instant stating that the employees in question were selected and designated for the increase prior to February 1, 1924.

The appropriations involved, "Salaries, Office of the Commissioner of Internal Revenue," and "Collecting the Internal Revenue," are carried in the act of January 3, 1923, 42 Stat., 1096 and 1097, respectively. The first named appropriation provides for the statutory salaries of officers and employees in the Office of the Commissioner of Internal Revenue. The other is a lump-sum appropriation for expenses of assessing and collecting the internal revenue taxes, including the employment of the necessary officers, attorneys, experts, agents, accountants, inspectors, deputy collectors, clerks, janitors, and messengers in the District of Columbia and the several collection districts, to be appointed as provided by law.

Section II of the act of October 3, 1913, 38 Stat., 166, provided for an income tax. Paragraph N of the section, page 180, provided that the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, was authorized to appoint all officers, agents, inspectors, deputy collectors, clerks, messengers, and auditors for employment in the District of Columbia or any collection district in the United States or any of the territories thereof necessary for the purpose of carrying into effect the provisions of Section II and also provided that in the office of the Commissioner of Internal Revenue there should be appointed by him, with the approval of the Secretary of the Treasury, an additional deputy commissioner, two heads of divisions, and such other clerks, messengers, and employees as might be necessary.

Title I of the act of September 18, 1916, 39 Stat., 756, also imposed an income tax. Section 22 of Title I, page 776, under the heading "general administrative provisions" provided that all administrative, special, and general provisions of law, including the law in relation to assessment, remission, collection, and refund of internal revenue taxes not theretofore specifically repealed and not inconsistent with the provisions of the title were thereby extended and made applicable to all the provisions of the title and to the tax therein imposed. Section 24 of the same title provided that Section II of the act approved October 3, 1913, was thereby repealed except as therein otherwise provided.

Section 10 of the act of December 17, 1914, 38 Stat., 789, called the Narcotic Act, provides that the Commissioner of Internal Revenue,

with the approval of the Secretary of the Treasury, is authorized to appoint such agents, deputy collectors, inspectors, chemists, assistant chemists, clerks, and messengers in the field and in the District of Columbia as may be necessary to enforce the provisions of the act.

Section 38 of Title I of the act of October 28, 1919, 41 Stat., 319, known as the National Prohibition Act, provides that the Commissioner of Internal Revenue and the Attorney General are respectively authorized to appoint and employ such assistants, experts, clerks, and other employees in the District of Columbia or elsewhere as they may deem necessary for the enforcement of the provisions of the act.

From the statutes hereinbefore mentioned it would appear that a certain class of employees of the Bureau of Internal Revenue may be appointed by the Commissioner alone, that certain other classes may be appointed by the Commissioner with the approval of the Secretary of the Treasury, and that still other classes may be appointed only by the Secretary of the Treasury. It also appears that under the two appropriations involved in this case there are two classes of employees, to wit, one class in which appointments and promotions may be made by the Commissioner, with the approval of the Secretary, and another class in which the appointments and promotions may be made only by the Secretary.

Promotions such as are here involved can be made only by the officer having the authority to appoint to the position involved. Original appointments to positions in the classified civil service and promotions therein involving a change in duties are effective only from date of acceptance and entrance upon duty after notice of appointment. In the case of a promotion involving no change in duty the acceptance may be assumed and the promotion regarded as effective from the date the officer having the authority to make the promotion actually selects and designates the employee for such promotion, unless it is stipulated that the promotion shall be effective from some subsequent date. In no case can such appointment or promotion be made to take effect retroactively, but the date of formal notice of appointment or promotion is not controlling when it is shown that the officer having the authority to make the promotion actually made the selection and designation at an earlier date. The selection and designation, to be effective, must actually be made by the officer authorized by law to make the appointment or promotion and this authority may not be delegated to a subordinate.

Where the law provides for appointment by one officer with the approval of another officer, the approval when given will relate back to the date of action by the appointing officer and make the

promotion effective from said date if the other conditions necessary to make the promotion effective had been fulfilled on said date.

From the procedure followed in making the promotions here involved it may be assumed that none of them were to positions to which appointments or promotions may be made by the commissioner either with or without the approval of the Secretary. It does not appear that there was any action by the Secretary, on these promotions, until February 14, 1924. You are advised, therefore, that from the facts appearing payment under said promotions may not legally be made for any period prior to February 14, 1924.