

**REDACTED DECISION -- 07-413 RPD -- BY GEORGE V. PIPER, ALJ -- SUBMITTED  
for DECISION on OCTOBER 11, 2007 -- ISSUED on OCTOBER 15, 2007**

**SYNOPSIS**

**PERSONAL INCOME TAX -- RETIRED FEDERAL "LAW ENFORCEMENT OFFICER"'S RETIREMENT BENEFITS FULLY EXCLUDED** -- A retired registered nurse who, prior to retirement, had been assigned to the Federal Bureau of Prisons and who: acted as a security guard when alone with inmates; was qualified to carry weapons; received yearly self-defense and weapons training; routinely searched inmates for contraband prior to performing medical examinations or treatment; escorted inmates to medical facilities for surgeries, when necessary; filled in for correction officers during prison disturbances; and who could not collect social security benefits -- may fully exclude said retirement benefits from the West Virginia personal income tax pursuant to the Monongalia County Circuit Court's ruling in *Dodson v. Palmer* (2000).

**FINAL DECISION**

On March 1, 2007, the Petitioner filed a claim for refund for the tax years 2005 and 2006. The Personal Income Tax Unit of the Internal Auditing "Division" of the West Virginia State Tax Commissioner's Office ("the Commissioner" or "the Respondent"), by letter dated June 5, 2007, totally denied the refund claim as not being supported by statutory law.

Thereafter, by mail postmarked July 17, 2007, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund. See W. Va. Code §§ 11-10A-8(2) [2002] & 11-10A-9(a)-(b) [2005].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

**FINDINGS OF FACT**

1. Petitioner is a registered nurse who worked at a certain Federal Prison for Women located within West Virginia, for twenty-four years and seven months, retiring on September 3, 2004.

2. Petitioner was designated as the assistant health services administrator for the prison and: acted as security guard when alone with inmates; was qualified to carry a weapon; underwent annual self-defense and weapons training; routinely searched inmates for contraband or weapons prior to medical examinations or treatment; escorted inmates to medical facilities when necessary; and filled in for corrections officers during prison disturbances or when otherwise needed, etc.

3. Petitioner, while employed by the Federal Bureau of Prisons, did not pay social security taxes and, therefore, did not qualify to receive social security benefits.

### **DISCUSSION**

The sole issue is whether, Petitioner, a registered nurse dealing with inmates on a daily basis within and without the confines of the prison, and who could not collect social security benefits, is allowed to totally exclude her retirement pension for West Virginia personal income tax purposes, pursuant to the holding in *Dodson v. Palmer*, Civil Action No. 00-C-AP (Monongalia County, WV 2000).

The statutory law of the State of West Virginia explicitly excludes, fully, from state income tax, those pensions and annuities paid to retired “West Virginia police officers,” West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. West Virginia Code § 11-21-12(c)(6), as amended.

For purposes of establishing special retirement eligibility, the Federal Office of Personnel Management has defined a federal “law enforcement officer” to mean “an employee whose job duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. 5 C.F.R. § 831.902; *see also* 5 C.F.R. §§ 831.901 and 831.903. The federal government has also

distinguished such “law enforcement officers” from other civil service employees, including military personnel, in that the federal “law enforcement officers” retirement is calculated using an altogether different formula from the one used to calculate other federal civil service employees’ retirement benefits.

According to the ruling of the Circuit Court of Monongalia County, West Virginia, in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (2000), a person who proves that he or she worked as a federal “law enforcement officer” and did not qualify to receive social security benefits while working in that job may exclude all of his or her federal retirement income from that job, for purposes of the West Virginia personal income tax (akin to the total exclusion for West Virginia police and firefighters’ retirement income).

During the conduct of the hearing, Petitioner testified that, as a nurse assigned full time to a women’s correctional facility, Petitioner was required to do much more than just to dispense medical examinations and treatment. Petitioner was normally the only correctional person present during medical examinations and, therefore, acted also as a security guard; Petitioner was the one required to search or “pat down” inmates for contraband or weapons prior to examination or treatment; was required to escort persons (usually all alone) to medical facilities for surgeries; and was required to fill in for correctional officers during prison disturbances or other circumstances which required their presence elsewhere, including a stabbing incident which required Petitioner to maintain control over a psychiatric inmate.

Additionally, Petitioner was required to undergo annual self-defense and weapons training, and Petitioner was qualified to carry weapons, was proficient with the M-16 rifle, 38-caliber pistols, and 9mm hand guns.

Accordingly, because of the requirements placed upon Petitioner to provide her own security when dealing with inmates, coupled with the fact that Petitioner performed duties often

performed by correctional officers, it is Determined that Petitioner qualifies as a federal “law enforcement officer” under the particular circumstances shown in this case.

### **CONCLUSIONS OF LAW**

Based upon all of the above, it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner-taxpayer to show that the petitioner-taxpayer is entitled to the refund. *See* W. Va. Code § 11-10A-10-(e) [2002] and W. Va. Code St R. § 121-1-63.1 (April 20, 2003).

2. The Petitioner has carried the burden of proof with respect to the issue of whether Petitioner is entitled to the same treatment as the taxpayer in the *Dodson* ruling discussed above, because Petitioner does qualify as a federal “law enforcement officer.”

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner’s petition for refund of West Virginia personal income tax for the years 2005 and 2006 should be and is hereby **GRANTED**.

It should be noted that, because Petitioner did not report retirement income on either the 2005 or 2006 West Virginia personal income tax returns, no refund is due Petitioner for those years.