

**REDACTED DECISION – DK# 11-042 PD – BY – GEORGE V. PIPER,
ADMINISTRATIVE LAW JUDGE – SUBMITTED DECISION on MAY 9, 2011 –
ISSUED ON OCTOBER 5, 2011**

SUBMITTED FOR DECISION ON DOCUMENTS ONLY ON MAY 9, 2011

SYNOPSIS

PERSONAL INCOME TAX - - FEDERAL LAW ENFORCEMENT OFFICER'S RETIREMENT BENEFITS NOT TAXABLE -- Retired federal law enforcement officer who performed duties similar to those performed by West Virginia state firefighters and police officers and who did not pay security taxes and thereby did not qualify to receive social security benefits under the civil service retirement system may exclude those retirement benefits from the West Virginia personal income tax pursuant to the ruling in *Dodson v. Palmer*, Civil Action No. 00-C-AP (Monongalia County, WV 2000).

FINAL DECISION

On November 22, 2010, the Compliance Division of the West Virginia State Tax Commissioner's Office, the Respondent, issued a personal income tax assessment against the Petitioners. The assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the tax years 2007 and 2009, for tax in the amount of \$____, interest in the amount of \$____, computed through November 22, 2010, and additions to tax in the amount of \$____, for a total assessed tax liability of \$_____.

Written notice of the assessment was issued on the Petitioners as required by law.

Thereafter, by mail postmarked February 8, 2010, Petitioners timely filed with this Tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code Ann. §§ 11-10A-8(1) & 11-10A-9 (West 2010).

FINDINGS OF FACT

1. Petitioner, Mr. A, served as a corrections officer, shop supervisor and weapons instructor with the Federal Bureau of Prisons for twenty-eight (28) years, retiring in 2004.

2. During his tenure, Petitioner performed duties commensurate with his job as a law enforcement officer; in that he was qualified to carry weapons, routinely searched inmates, and supervised inmates when assigned.

3. Petitioner, while employed by the Federal Bureau of Prisons, did not pay social security taxes, and therefore, cannot receive social security benefits pursuant to his federal employment.

DISCUSSION

The sole issue is whether Petitioner, Mr. A, a retired corrections officer with the Federal Bureau of Prisons, who could not collect social security benefits, may totally exclude his 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 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. *See* W. Va. Code Ann. § 11-21-12(c)(6) (West 2010).

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. *See* 5 C.F.R. § 831.902 (2011); *see also* 5 C.F.R. §§ 831.901 and 831.903(2011). The federal government has also distinguished such “law enforcement officers” from other civil service employees, including military personnel, in that the federal law enforcement officer’s 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.

The documents submitted by Petitioners, in this matter, showed that Petitioner, Mr. A, was a duly-retired corrections officer of the Federal Bureau of Prisons with twenty-eight (28) years of service, and that his duties are commensurate with his job as a law enforcement officer.

The retirement system into which Petitioner made contributions is separate and apart from the social security retirement insurance program and Petitioner did not pay social security taxes while employed and, therefore, cannot receive social security benefits.

Petitioner, as a qualified law enforcement officer, is therefore entitled to exclude his law enforcement retirement benefits from West Virginia personal income tax pursuant to the ruling in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (2000).

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 reassessment, the burden of proof is upon a Petitioner to show that assessment against him is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R. §§ 121-1-63.1 and 69.2 (2003).

2. Petitioner has carried the burden of proof with respect to the issue of whether he is entitled to the same treatment as the taxpayer in the *Dodson* ruling discussed above, because Petitioner does not qualify to receive social security benefits as a federal law enforcement officer.

DISPOSITION

WHEREFORE, it is the Final Decision of the West Virginia Office of Tax Appeals that the personal income tax assessment issued against the Petitioners for tax years 2007 and 2009, for tax in the amount of \$____, interest in the amount of \$____ and additions to tax in the amount of \$____, totaling \$____ should be and is hereby **VACATED**, and the Petitioner owes no further tax liability for the period in question.