

REDACTED DECISION – DOCKET NO. 12-223 RPD

**By: MATTHEW R. IRBY, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON DOCUMENTS ONLY ON AUGUST 31, 2012
DECISION ISSUED ON FEBRUARY 27, 2013**

SYNOPSIS

PERSONAL INCOME TAX -- FEDERAL LAW ENFORCEMENT OFFICER'S RETIREMENT BENEFITS NOT TAXABLE -- A retired federal law enforcement officer who performed duties similar to those performed by state fire fighters and police officers and who was within that limited class of federal retirees who could not collect social security benefits upon retirement may exclude said retirement benefits from West Virginia personal income tax pursuant to the ruling in Dodson v. Palmer, Civil Action No. 00-C-AP-10 (2000).

WEST VIRGINIA OFFICE OF TAX APPEALS -- BURDEN OF PROOF -- In matters before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010) and W. Va. Code R. § 121-1-63.1 (2003).

WEST VIRGINIA OFFICE OF TAX APPEALS -- CONCLUSION OF LAW -- 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 *supra*, because Petitioner does not qualify to receive social security benefits as a retired federal law enforcement officer.

FINAL DECISION

On March 9, 2012, Mr. A and Mrs. A. (hereinafter Petitioners) filed an amended 2011 tax return claiming a refund for the 2011 tax year.¹ On or about May 23, 2012, the Personal Income Tax Unit of the Tax Account Administration Division of the West Virginia State Tax Commissioner's Office (hereinafter Respondent) denied the refund claim as not being supported by statutory law. Thereafter, Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund. *See* W. Va. Code Ann. §§ 11-10A-8(2) and 11-10A-9(a)-(b)(West 2010).

¹ In their pleadings with this Tribunal, the Petitioners list the amount of the refund sought as of \$____. By an Order entered on July 16, 2012, the Respondent was directed to submit evidence regarding the accuracy of this number, however no such evidence was submitted. As a result, we assume that by his silence, the Respondent agrees with the requested refund amount.

FINDINGS OF FACT

1. Petitioners live in a West Virginia town located, in a County of, West Virginia.
2. Mr. A. served as a federal law enforcement officer by being a Special Agent with a Federal agency for twenty-three years, retiring on December 31, 2010.
3. During his tenure, the Petitioner performed duties commensurate with his job as a law enforcement officer, including carrying a firearm, carrying a badge, engaging in arrests, and having search and seizure authority.
4. While employed by the Federal Agency, Petitioner did not pay social security taxes; therefore, he cannot receive social security benefits pursuant to his federal employment.

DISCUSSION

In matters before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010) and W. Va. Code R. § 121-1-63.1 (2003).

The sole issue is whether Petitioner, a retired law enforcement officer with the Federal Agency, 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-10 (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, the duties of whose position 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. §§ 831.901, 831.902 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 Petitioner in this matter showed that he was a duly-retired federal law enforcement officer of the Federal Agency with twenty-three years of service, and that his duties were commensurate with his job as a law enforcement officer.

Petitioner’s retirement system is separate and apart from the social security retirement insurance program and Petitioner did not pay social security taxes while employed; therefore, he 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. A retired federal law enforcement officer who performed duties similar to those performed by state fire fighters and police officers and who was within that limited class of

federal retirees who could not collect social security benefits upon retirement may exclude said retirement benefits from West Virginia personal income tax pursuant to the ruling in Dodson v. Palmer, Civil Action No. 00-C-AP-10 (2000).

2. In matters before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010) and W. Va. Code R. § 121-1-63.1 (2003).

3. 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 *supra*, because Petitioner does not qualify to receive social security benefits as a retired federal law enforcement officer.

DISPOSITION

WHEREFORE, it is the final decision of the West Virginia Office of Tax Appeals that Petitioners' appeal for refund and right to exclude his law enforcement retirement benefits from West Virginia personal income tax for the 2011 tax year, is **GRANTED** and the Tax Commissioner is hereby **ORDERED** to issue a refund to Petitioners in the amount of \$_____

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
A. M. "Fenway" Pollack²
Chief Administrative Law Judge

Date Entered

² Administrative Law Judge, Matthew R. Irby, heard this matter and wrote this decision; however, Judge Irby is no longer employed with the West Virginia Office of Tax Appeals. Therefore, this decision was signed by Chief Administrative Law Judge A. M. "Fenway" Pollack.