

REDACTED DECISION – DK# 12-314 RPD
BY – GEORGE V. PIPER, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON DOCUMENTS ONLY ON DECEMBER 17, 2012
DECISION ISSUED ON APRIL 5, 2013

SYNOPSIS

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

PERSONAL INCOME TAX -- WEST VIRGINIA ADJUSTED GROSS INCOME OF RESIDENT INDIVIDUAL -- The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to the 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).

PERSONAL INCOME TAX -- EXCLUSION FOR RETIRED FEDERAL LAW ENFORCEMENT OFFICERS -- 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. *See Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

PERSONAL INCOME TAX -- ELIGIBILITY DEFINED OF FEDERAL LAW ENFORCEMENT OFFICER -- 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).

PERSONAL INCOME TAX -- BURDEN OF PROOF MET -- 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, in that he has established his special retirement eligibility as a federal law enforcement officer whose retirement system, being separate and apart from the social security retirement program, does not qualify Petitioner to receive social security benefits.

FINAL DECISION

On April 16, 2012, Mr. A (hereafter Petitioner) filed a claim for the refund of personal income tax for tax year 2011, in the amount of \$380.00. On July 16, 2012, the Internal Auditing Division of West Virginia State Tax Commissioner's Office (hereafter Respondent) denied the

refund claim as not being supported by statutory law. Thereafter by mail received August 21, 2012, Petitioner 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).

During the initial telephonic conference, the parties agreed that in lieu of an evidentiary hearing, the matter would be submitted for decision based solely upon documents provided by the Petitioner.

FINDINGS OF FACT

1. Mr. A served as a law enforcement officer with a Federal Agency for over thirty years, retiring on December 31, 2010.

2. During his tenure, Petitioner served as a correctional officer, which included routine training in firearms, self-defense and the control and detention of prisoners.

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

4. On December 3, 2013, this Tribunal ordered the parties to stipulate, by December 17, 2012, the amount of the tax refund applicable for tax year 2011, pursuant to Section 121-1-47.1.1 of the Procedural Rules of the West Virginia Office of Tax Appeals. On December 10, 2012, Petitioner stated by his letter that the refund due him amounted to \$____.¹

DISCUSSION

The sole issue for determination is whether the Petitioner, Mr. A, a retired corrections officer with the Federal agency, who could not collect social security benefits, may 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).

¹ On January 3, 2013, Respondent's counsel responded by letter that he agreed that if Petitioner was found eligible for the refund the amount should be \$____.

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).

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.

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 officers’ retirement is calculated using an altogether different formula from the one used to calculate other federal civil service employees’ retirement benefits.

The documents submitted by Petitioner, in this matter, showed that Mr. A, was a duly retired corrections officer of the Federal agency with over thirty years of service, and that his duties were 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 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 the Petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R § 121-1-63.1 (2003).

2. The statutory law of the State of West Virginia explicitly excludes from state income tax those pensions and annuities paid to the 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).

3. 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. *See Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

4. 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).

5. 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, in that he has established his special retirement eligibility as a federal law enforcement officer whose retirement system being separate and apart from the social security retirement program does not qualify Petitioner to receive social security benefits.

DISPOSITION

WHEREFORE, it is the Final Decision of the West Virginia Office of Tax Appeals that Petitioner's petition for refund of West Virginia personal income tax for tax year 2011 is **GRANTED** in the amount of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
George V. Piper
Administrative Law Judge

Date Entered