

**REDACTED DECISION – DOCKET NUMBER 13-238 RPD C - By GEORGE V. PIPER,  
ADMINISTRATIVE LAW JUDGE – SUBMITTED for DECISION on OCTOBER 7, 2013  
– DECISION ISSUED on APRIL 7, 2014**

**SYNOPSIS**

**TAXATION**

**WEST VIRGINIA OFFICE OF TAX APPEALS  
HEARING PROCEDURES**

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).

**TAXATION**

**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).

**TAXATION**

**MONONGALIA COUNTY CIRCUIT COURT  
CASE LAW**

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).

**CODE OF FEDERAL REGULATIONS**

**FEDERAL LAW ENFORCEMENT OFFICER  
DEFINITION**

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).

**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, 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 June 8, 2013, the Tax Account Administration Division of the West Virginia State Tax Commissioner's office, (hereafter Respondent), denied Petitioner's Schedule M modification on his 2012 personal income tax return, which rejected a refund of \$\_\_\_\_\_. Thereafter, by mail postmarked July 12, 2013, 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 status 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. Petitioner served as a law enforcement officer with a Federal Agency for thirty years, retiring effective January 3, 1998.
2. During his tenure, Petitioner served as a supervisory criminal investigator, which included the authority to carry firearms and make arrests, as well as other law enforcement duties.
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 September 13, 2013, this Tribunal ordered the parties to stipulate, by October 7, 2013, the amount of the tax refund applicable for tax year 2012, pursuant to Section 121-1-

47.1.1 of the Procedural Rules of the West Virginia Office of Tax Appeals. On September 16, 2013, Petitioner stated by his letter that the refund due him amounted to \$5,534.89.<sup>1</sup>

## **DISCUSSION**

The sole issue for determination is, whether the Petitioner, a retired supervisory criminal investigator with a 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).

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 of 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

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<sup>1</sup> The Respondent did not stipulate the amount of the tax refund by the required due date. As a result, we assume by his silence, that the Respondent agrees with the requested refund amount.

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 Petitioner was a duly retired supervisory criminal investigator of a Federal Agency with thirty years of service, and that his duties were commensurate with his job as a law enforcement officer.

The retirement system into which Petitioner contributed 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 federal 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 2012 is **GRANTED** in the amount of \$\_\_\_\_\_.

**WEST VIRGINIA OFFICE OF TAX APPEALS**

By: \_\_\_\_\_  
George V. Piper  
Administrative Law Judge

\_\_\_\_\_  
Date Entered