

REDACTED DECISION – DOCKET NUMBER 14-044 RPDS-C

**GEORGE V. PIPER, ADMINISTRATIVE LAW JUDGE – SUBMITTED DECISION on
JULY 30, 2014 – ISSUED ON OCTOBER 29, 2014**

BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS

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 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).

WEST VIRGINIA OFFICE OF TAX APPEALS

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).

WEST VIRGINIA OFFICE OF TAX APPEALS

CASE LAW

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 her former spouse, Mr. A, is entitled to the same treatment as the taxpayer in the *Dodson* ruling, in that it has been established as to his retirement eligibility as a federal law enforcement officer whose retirement system, being separate and apart from the social security retirement program, does not qualify him to receive social security benefits.

FINAL DECISION

On November 14, 2013, the Tax Account Administration Division of the West Virginia State Tax Commissioner's office, (hereafter Respondent), denied Petitioner's Schedule M modification on her 2011 personal income tax return, as well as her amended income tax returns for tax years 2010 and 2012. Thereafter, by mail postmarked January 27, 2014, 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 is the former spouse of a Federal Prisons Employee Retiree.
2. The spouse served as a law enforcement officer with the Federal Bureau of Prisons for twenty years, retiring effective August 30, 2002.
3. During his tenure, he performed duties commensurate with his job as a federal law enforcement officer in that he was qualified to carry weapons, routinely searched inmates when necessary, as well as performed related correctional job assignments.

4. The spouse, 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.

5. On March 6, 2014, this Tribunal ordered the parties to stipulate the amount of the tax refund, if applicable for tax years 2010, 2011 and 2012, pursuant to Section 121-1-47.1.1 of the Procedural Rules of the West Virginia Office of Tax Appeals. In due course, the parties agreed that should the Petitioner prevail in this matter, she would not be due a refund or owe any taxes for the years in question.

DISCUSSION

The sole issue for determination is, whether the Petitioner, as the former spouse¹ of a retired correctional officer with the Federal Bureau of Prisons, 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

¹ Under the Civil Service Retirement Handbook, Section 74A1.1.2, spousal survivor benefits are payable upon the retiree’s death to a former spouse.

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 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 the Petitioner, in this matter, showed that the spouse was a duly retired correctional officer of the Federal Bureau of Prisons with twenty years of service, and that his duties were commensurate with his job as a law enforcement officer.

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

Because the spouse was a qualified federal law enforcement officer, his petitioner spouse 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 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 her former spouse is entitled to the same treatment as the taxpayer in the *Dodson* ruling, in that it has

been established as to his retirement eligibility as a federal law enforcement officer whose retirement system, being separate and apart from the social security retirement program, does not qualify him 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 years 2010, 2011, and 2012 is **GRANTED** as modified, to reflect that no amount of tax refund is due nor any taxes owed for those years.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
George V. Piper
Administrative Law Judge

Date Entered