

REDACTED DECISION – DK# 15-208 RPD-W

**BY: GEORGE V. PIPER, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON OCTOBER 8, 2015
ISSUED ON DECEMBER 23, 2015**

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 May 5, 2015, the Tax Account Administration Division of the West Virginia State Tax Commissioner's Office (hereafter Respondent), denied Petitioner's (hereafter Petitioner) Schedule M modifications on his 2011, 2012, and 2013 personal income tax returns. Thereafter, by overnight mail, on July 2, 2015, Petitioner timely filed a Petition for Refund with this Tribunal, the West Virginia Office of Tax Appeals. *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. Petitioner served ten (10) years as a clerk and twenty-four (24) years as a special agent with the Federal Bureau of Investigation, retiring effective August 2, 1996.

2. During his tenure as a special agent, Petitioner performed duties commensurate within his job as a sworn federal law enforcement officer in that he was qualified to carry a firearm, obtained and served warrants, made arrests, and conducted criminal investigations.

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

4. On September 3, 2015, this Tribunal ordered the parties to submit the amount of the tax refund applicable for tax years 2011, 2012, and 2013. On September 3, 2015, and

September 10, 2015, respectively, the parties, in separate letters, stated that, if eligible, Petitioners refund amount should be seventy-two (72) percent of the sum of \$_____. The parties are in agreement that Petitioner is not entitled to the tax exemption for the years that he served as a clerk in a non-law enforcement capacity.

DISCUSSION

The sole issue for determination is, whether the Petitioner, Petitioner, a retired special agent with the Federal Bureau of Investigation, 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 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 Petitioner is a retired special agent of the Federal Bureau of Investigation, and that his duties were commensurate with his job as a federal 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; therefore, he 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).

It should be noted that for all subsequent years Petitioner must exempt only seventy-two (72) percent of his federal retirement income.

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 years 2011, 2012, and 2013 is **GRANTED**, as revised in the amount of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
George V. Piper
Administrative Law Judge

Date Entered