

REDACTED DECISION – DK# 14-152 RPD

**BY: GEORGE V. PIPER, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON AUGUST 13, 2014
ISSUED ON JANUARY 22, 2015**

SYNOPSIS

FILED
2015 JAN 27 A 11:12
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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).

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 he 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 qualified 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 March 25, 2014, the Tax Account Administration Division of the West Virginia State Tax Commissioner's office, (hereafter Respondent), denied the Petitioner, Schedule M modification on his 2013 personal income tax return. Thereafter, by fax dated May 22, 2014, the 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. The Petitioner served as a law enforcement officer with a law enforcement agency in the District of Columbia for twenty years, retiring effective September 21, 1991.
2. During his tenure, he performed duties commensurate with his job as a federal law enforcement officer in that he was armed with a handgun, investigated crimes against the United States and the District of Columbia, obtained warrants, made arrests, and patrolled the community.
3. The retirement system for the law enforcement agency in Washington, D.C. is administered by the United States Department of the Treasury.
4. Petitioner, while employed by a law enforcement agency in Washington, D.C., did not pay social security taxes and, therefore, cannot receive social security benefits.
5. On August 6, 2014, this Tribunal ordered the parties to stipulate the amount of the

tax refund applicable, if applicable for tax year 2013, 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, he would not be due a refund or owe any taxes for the year in question.

DISCUSSION

The sole issue for determination is whether the Petitioner, a retired law enforcement officer with a law enforcement agency in Washington, D.C., 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* 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, show that he was a duly retired officer of a law enforcement agency in Washington, D.C., with twenty years of service, and that his duties were commensurate with his job as a law enforcement officer.

Petitioner’s retirement system, which is administered by the United States Department of the Treasury, 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* 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 it has been established as to his retirement eligibility as a qualified 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 the tax year 2013 is

GRANTED as modified, to reflect that no amount of tax refund is due nor any taxes owed for that year.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
George V. Piper
Administrative Law Judge

Date Entered