

**REDACTED DECISION – 07-204 RPD – BY GEORGE V. PIPER, ALJ –
SUBMITTED for DECISION on MARCH 29, 2007 – ISSUED on APRIL 4, 2007**

SYNOPSIS

PERSONAL INCOME TAX – FEDERAL LAW ENFORCEMENT OFFICER’S RETIREMENT BENEFITS TAXABLE WHEN ELIGIBLE FOR SOCIAL SECURITY – Retired federal law enforcement officer who performed duties similar to those performed by state fire fighters and police officers but who was not within that limited class of federal retirees who could not collect social security benefits upon retirement may not exclude his retirement benefits from the West Virginia personal income tax pursuant to the Monongalia County circuit court ruling in *Dodson v. Palmer* (2000).

FINAL DECISION

Petitioners filed a claim for a refund of personal income tax for the year 2006. The Personal Income Tax Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or the “Respondent”), by letter dated March, 2007, totally denied the refund claim as not being supported by statutory law.

Thereafter, by mail postmarked March 17, 2007, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund. *See* W. Va. Code §§ 11-10A-8(2) [2002] and 11-10A-9(a)-(b) [2005].

Prior to the hearing, the parties requested that the hearing in person be waived and that a decision be rendered based upon the enclosed evidence, including the admission that Petitioner husband paid into the social security system during his entire career as a federal law enforcement officer. This tribunal granted that request.

FINDINGS OF FACT

In November, 2005, Petitioner husband retired from the Federal Bureau of Prisons (“FBOP”), after twenty (20) years of service as a corrections officer and supervisor.

During his tenure within the FBOP, Petitioner husband was legally required under the Federal Employers' Retirement System to pay social security taxes and did so until his retirement in November, 2005.

DISCUSSION

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. 5 C.F.R. § 831.902; see also 5 C.F.R. §§ 831.901 and 831.903. 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.

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 West Virginia personal income tax (akin to the total exclusion for West Virginia police and firefighters' retirement income).

ISSUE AND DETERMINATION

The sole issue raised by the Petitioners is that the holding in *Dodson* should not be limited to those federal law enforcement officers who did not qualify to receive social security benefits, but rather should be expanded to cover all retired federal law enforcement officers.

In *Dodson* it was held that state firefighters and police officers, like Dodson, were unable to collect social security benefits and that the only difference between the state retirees and Mr. Dodson was the source of their pensions.

In this case, the applicable federal retirement plan made social security mandatory upon joining same, and that is not like *Dodson*.

CONCLUSIONS OF LAW

It is **DETERMINED** that:

1. In hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner-taxpayer, to show that the petitioner-taxpayer is entitled to the refund. *See* W. Va. Code § 11-110A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).
2. The Petitioners in this matter have shown that the Petitioner husband worked as a corrections officer for the FBOP which qualified him as a federal law enforcement officer.
3. The Petitioners have not, however, carried the burden of proof with respect to the issue of whether Petitioner husband is entitled to the same treatment as the taxpayer in the *Dodson* ruling discussed above, because Petitioner husband admitted that, unlike Dodson, he was required at the outset of his federal law enforcement career to pay into the social security system and did so until his eventual retirement.

4. This tribunal must apply the court decision in *Dodson*, as written, and will not deviate to cover all retired federal law enforcement officers irrespective of the social security issue. The courts would be the appropriate tribunals to expand that judicial ruling.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioners' petition for refund of West Virginia personal income tax, for the year 2006, in the amount of \$___, should be and is hereby **DENIED**.