

REDACTED DECISION—10-188 RPD—BY GEORGE V. PIPER, ALJ—SUBMITTED FOR DECISION on SEPTEMBER 28, 2010 —ISSUED on JANUARY 4, 2011.

SYNOPSIS

PERSONAL INCOME TAX -- RETIRED LAW ENFORCEMENT EMPLOYEE'S RETIREMENT BENEFITS EXCLUDED -- A retired investigator assigned to the Criminal Investigation Division of the Internal Revenue Service (Department of the Treasury) who, during his tenure, was authorized to carry firearms to investigate crimes against the United States and to perform other functions commensurate with his job as a law enforcement officer; and who could not collect social security benefits under the federal Old-Age, Survivors, and Disability Insurance program of the Social Security Act of 1935, as amended, may exclude his retirement benefits from the West Virginia personal income tax pursuant to the ruling in *Dodson v. Palmer*; C.A. No. 00-C-AP-10 (2000).

FINAL DECISION

On February 25, 2010, Petitioners filed a claim for refund of personal income tax for the tax year 2009 in the amount of \$____. On April 12, 2010, a Tax Unit Supervisor of the Internal Auditing Division of the West Virginia State Tax Commissioner's Office ("the respondent"), totally denied the refund claim as not being supported by statutory law.

Thereafter, by mail postmarked April 22, 2010, 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] & 11-10A-9(a)-(b) [2005].

FINDINGS OF FACT

1. Petitioner served as a criminal investigator with the Internal Revenue Service for thirty-four years, retiring on January 3, 2008.

2. During his tenure, Petitioner performed duties commensurate with his job as a law enforcement officer in that he was armed with a handgun, investigated crimes against the United States, obtained warrants, conducted surveillance, made arrests, and testified in court.

3. Petitioner, while employed by the Internal Revenue Service, did not pay into the federal Old-Age, Survivors, and Disability Insurance program of the Social Security Act of 1935, as amended and, therefore, cannot receive social security benefits pursuant to his federal employment.

4. Respondent agrees that Petitioners' refund claim in the amount of \$_____ for tax year 2009 is correct.

DISCUSSION

The sole issue is whether Petitioner, a retired criminal investigator with the Internal Revenue Service, who could not collect social security benefits, may totally 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. West Virginia Code § 11-21-12(c)(6), as amended.

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 officer’s 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 a county in 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.

The documents submitted by Petitioners in this matter showed that Petitioner was a duly-retired criminal investigator of the Internal Revenue Service with thirty-four years of service, and that his duties, which included carrying a firearm, obtaining warrants, making arrests, conducting surveillance and testifying in court, are commensurate with his job as a law enforcement officer.

Petitioner’s retirement system is separate and apart from the federal Old-Age, Survivors, and Disability 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 of 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 a petitioner to show that the petitioner is entitled to the refund. *See* W. Va. Code § 11-10A-10-(e) [2002] and W. Va. Code St R. § 121-1-63.1 (April 20, 2003).

2. Petitioner has carried the burden of proof with respect to the issue of whether Petitioner is entitled to the same treatment as the taxpayer in the *Dodson* ruling.

DISPOSITION

WHEREFORE, it is the final decision of the West Virginia Office of Tax Appeals that Petitioners' petition for refund of West Virginia personal income tax for tax year 2009 is hereby **AFFIRMED** in the amount of \$_____.