

**REDACTED DECISION – DK# 10-438 RPD – BY – CHRISTOPHER B. AMOS,
ADMINISTRATIVE LAW JUDGE – SUBMITTED FOR DECISION on JANUARY 28,
2011 – ISSUED ON JUNE 30, 2011**

SYNOPSIS

PERSONAL INCOME TAX – FEDERAL LAW ENFORCEMENT OFFICER’S RETIREMENT BENEFITS NOT TAXABLE – Retired federal law enforcement officer who performed duties similar to those performed by state fire fighters and police officers and who was within that limited class of federal retirees who could not collect social security benefits upon retirement may exclude said retirement benefits from West Virginia personal income tax pursuant to the ruling in *Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (2000).

FINAL DECISION

On September 2, 2010, Petitioner filed a claim for refund of personal income tax for tax years 2007, 2008 and 2009, in the amount of \$____. On September 7, 2010, the Internal Auditing Division of the West Virginia State Tax Commissioner’s Office (hereinafter Respondent) denied the refund claim as not being supported by statutory law. Thereafter, by mail postmarked October 30, 2010, 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).

FINDINGS OF FACT

1. Petitioner served as a corrections officer with the Federal Government for twenty-three years, retiring in July 2002.
2. During his tenure, Petitioner performed duties commensurate with his job as a law enforcement officer, including routine training in firearms, self defense, hostage negotiations, disturbance control, and armed prisoner transport, to name a few.
3. Petitioner, while employed by the Federal Government, did not pay social security taxes, and therefore, cannot receive social security benefits pursuant to his federal employment.

4. Respondent certified that Petitioner's refund claims total \$ ___ for tax years 2007, 2008, and 2009.¹

BURDEN OF PROOF

In matters before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10-(e)(West 2010) and W. Va. Code St R. § 121-1-63.1 (2003).

DISCUSSION

The sole issue is whether Petitioner, a retired corrections officer with the Federal Bureau of Prisons, 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-10 (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).

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. §§ 831.901, 831.902 and 831.903 (2011). The federal government has also distinguished such law enforcement officers from other civil service employees, including military personnel, in that

¹ This amount is \$ ___ more than the amount that Petitioner indicated on his petition with this tribunal. Since the discrepancy is in the Petitioner's favor, it will be presumed that he does not contest that valuation.

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 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. The documents submitted by Petitioner in this matter showed that he was a duly-retired corrections officer of the Federal Bureau of Prisons with twenty-three years of service, and that his duties were commensurate with his job as a law enforcement officer.

Petitioner's retirement system 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 of the above, it is **HELD** that:

1. In matters before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10-(e)(West 2010) and W. Va. Code St R. § 121-1-63.1 (2003).
2. 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 discussed *supra*, because

Petitioner does not qualify to receive social security benefits as a retired federal law enforcement officer.

DISPOSITION

WHEREFORE, it is the final decision of the West Virginia Office of Tax Appeals that Petitioner's appeal for refund of West Virginia personal income tax for tax years 2007, 2008 and 2009, is **GRANTED** and the Tax Commissioner is hereby **ORDERED** to issue a refund to Petitioner in the amount of \$_____.