

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
MODIFICATIONS REDUCING FEDERAL ADJUSTED GROSS INCOME**

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**

Petitioners have carried the burden of proof with respect to the issue of whether they are entitled to the same treatment as the taxpayer in the *Dodson* ruling, in that they have established their special retirement eligibility as federal law enforcement officers whose retirement system, being separate and apart from the social security retirement program, does not qualify Petitioners to receive social security benefits.

FINAL DECISION

On July 24, 2013, the Tax Account Administration Division of the West Virginia State Tax Commissioner's office, (hereafter Respondent), denied Petitioners Schedule M modifications on their 2009, 2010, 2011, and 2012 personal income tax returns, which rejected a refund request of \$ _____. Thereafter, by mail postmarked September 17, 2013, Petitioners 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 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 Petitioners.

FINDINGS OF FACT

1. Petitioner A served as a corrections officer with the Federal Bureau of Prisons for over twenty-two years, retiring effective April 22, 2000.
2. Petitioner B served as a corrections officer with the Federal Bureau of Prisons for over twenty-five years, retiring effective January 27, 2001.
3. During their tenures, Petitioners performed duties commensurate within their jobs as federal law enforcement officers in that they were qualified to carry weapons, routinely searched inmates when necessary, as well as performing all related correctional job assignments.

4. Petitioners, while employed by the Federal Bureau of Prisons did not pay social security taxes, and therefore, cannot receive social security benefits pursuant to their federal employment.

5. On October 28, 2013, this Tribunal ordered the parties to submit, by November 15, 2013, the amount of the tax refund applicable for tax years 2009, 2010, 2011, and 2012. On November 12, 2013, Petitioners stated by their letter that the corrected refund amount due them was \$_____.¹

DISCUSSION

The sole issue for determination is whether the Petitioners, Petitioner A and B, both retired correctional officers with the Federal Bureau of Prisons, who could not collect social security benefits, may exclude their retirement pensions 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

¹ The Respondent did not submit the amount of the tax refund by the required due date. As a result, we assume by his silence, that the Respondent agrees with the corrected refund amount.

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 Petitioners, in this matter, showed that both A and B are retired correction officers of the Federal Bureau of Prisons, and that their duties were commensurate with their jobs as federal law enforcement officers.

The retirement system into which Petitioners contributed is separate and apart from the social security retirement insurance program and Petitioners did not pay social security taxes while employed and, therefore, cannot receive social security benefits.

Petitioners, as qualified federal law enforcement officers, are therefore entitled to exclude their 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* also 5 C.F.R. §§831.901 and 831.903 (2011).

5. Petitioners have carried the burden of proof with respect to the issue of whether they are entitled to the same treatment as the taxpayer in the *Dodson* ruling, in that they have

established their special retirement eligibility as federal law enforcement officers whose retirement system being separate and apart from the social security retirement program does not qualify Petitioners to receive social security benefits.

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 years 2009, 2010, 2011, and 2012 is **GRANTED**, as corrected, in the amount of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
George V. Piper
Administrative Law Judge

Date Entered

13-143 The Petitioner, a bookkeeper/office manager argued that she was not personally responsible for her employers unpaid withholding taxes. The Office of Tax Appeals ruled that, pursuant to West Virginia Code Section 11-10-19 and Internal Revenue Code Section 6672 she was both required to pay over the corporations' withholding taxes and did she willfully fail to do so.

12-456 The Petitioner, a small corporation, argued that its usage of an enrolled agent to provide accounting services was exempt from sales/use tax because the enrolled agent was providing a professional service. The Office of Tax Appeals ruled that the service provided was not professional and that when an enrolled agent is providing accounting services, which are not considered professional services the exemption does not apply.

08-211 The Petitioner, a small corporation that provides inventory to convenience stores, argued that it should not have been assessed a money penalty for selling cigarette brands that were not on West Virginia's list of approved brands. The Petitioner argued that the Tax Commissioner failed to give it adequate notice of the brands' removal. The Office of Tax Appeals ruled that pursuant to West Virginia Code Section 16-9D-3(b)(3)(C) the Tax Commissioner was not obligated to give the Petitioner notice of the removals and thus the penalty was warranted.

13-381 Petitioners, retired federal law enforcement officers argued that their retirement income should be excluded from West Virginia personal income tax pursuant to the holding in Dodson v. Palmer, Civil Action No. 00-C-AP. The Office of Tax Appeals ruled that it should be so excluded.

13-238 Petitioner is a retired federal law enforcement officer. He argued that his retirement income should be excluded from West Virginia personal income tax pursuant to the holding in Dodson v. Palmer, Civil Action No. 00-C-AP. The Office of Tax Appeals ruled that that it should be so excluded.

12-340 Petitioner operates fitness clubs and argued that it is entitled to the exemption from sales tax relating to charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs.” W. Va. Code Ann. §11-15-9(a)(34). The Office of Tax Appeals ruled that the Petitioner was providing a personalized fitness program. The OTA further ruled that the rules of statutory construction do not require West Virginia Code Section 11-15-9(a)(34) and West Virginia Code Section 11-15-8 to be read in *pari materia*. Therefore, the Tax Commissioner reliance on the legislative rules that inform West Virginia Code Section 11-15-8 was misplaced.

12-464 Petitioner, a state agency appealed the Tax Commissioner’s denial of a refund claim for motor fuel taxes. The Petitioner claimed that the filing deadline for such refunds, found in West Virginia Code Section 11-14C-31(c)(3) should be equitably tolled. The Office of Tax Appeals ruled that Section 11-14C-31(c)(3) uses the mandatory designation of “shall” when setting the filing deadline for motor fuel refunds. As a result the OTA ruled that it had no authority to toll a clear and unambiguous statutory filing deadline.