

**FINAL DECISION ON REMAND  
FROM CIRCUIT COURT OF KANAWHA COUNTY**

**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 has within that limited class of federal retirees who could not collect social security benefits may exclude said retirement benefits from the West Virginia personal income tax pursuant to the ruling in Dodson v. Palmer.

**FINDINGS OF FACT**

1. On July 3, 2001, the local circuit court entered an “Order Affirming Tax Commissioner’s Decision” (“July 3<sup>rd</sup> Order”), upholding the September 5, 2000, decision (“September 5<sup>th</sup> Decision”) of Administrative Law Judge, assessing taxes and penalties against Petitioner, a special agent for the Internal Revenue Service, on the ground that he was not entitled to exclude the entire amount of his federal law enforcement officer’s retirement benefits from his state tax return for the 1998 tax year under W. Va. Code § 11-21-12(c)(6) and 4 U.S.C. § 111.

2. On July 31, 2001, shortly after the aforesaid July 3<sup>rd</sup> Order was entered, in a case identical to the case at hand in every respect except that it involved Taxpayer’s personal income tax returns and assessments issued thereon for the 1996, 1997 and 1999 tax years, administrative law judge ruled that “it is the **DECISION** of the **STATE TAX DEPARTMENT OF WEST**

**VIRGINIA**” that the assessments at issue should be abated on the ground that Petitioner “was a federal law enforcement officer . . . who, . . . performed duties the same as state firefighters and police officers and who like the small number of said federal law enforcement officers and firefighters, such as he, were unable to collect social security benefits.” (Emphasis in original.)

3. Thereafter, by “Agreed Order Remanding to the West Virginia State Tax Department for Decision Consistent with July 31, 2001 Decision of the administrative law judge, the Tax Commissioner agreed to the remand of an identical appeal pending before the judge of the circuit court, involving the 1990 and 1995 tax years, for a decision consistent with administrative law judge’s July 31<sup>st</sup> Decision. Consistent therewith, administrative law judge entered a “Remand Administrative Decision” (“Remanded Decision”) on July 19, 2002.

4. Accordingly, the Tax Commissioner has abated all assessments issued against the Petitioner for the 1990, 1995, 1996, 1997 and 1999 tax years, the years both prior to and following the 1998 tax year at issue herein.

5. That, having heard the Circuit Court’s decision on Petitioner’s Motion and in light of the resultant vacation of this Court’s July 3, 2001 Order, the Parties agreed that this Petition should be remanded to the West Virginia State Tax Department for an Administrative Decision in accordance with the July 31, 2001 decision of the administrative law judge, and thus, the Petitioners’ “Petition for Appeal of Administrative Decision” is hereby **REMANDED** to the Administrative Law Judge for a decision consistent with the July 31, 2001 Decision.

## CONCLUSIONS OF LAW

1. This Tribunal concludes as a matter of law that the July 31, 2001 administrative decision is controlling and thus effectively reverses the earlier September 5, 2000 administrative decision involving Taxpayer's 1998 tax return.

2. Retired federal law enforcement officer who performed duties similar to those performed by state fire fighters and police officers and who has within that limited class of federal retirees who could not collect social security benefits may exclude said retirement benefits from the West Virginia personal income tax pursuant to the ruling in Dodson v. Palmer.

## DISPOSITION

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioners' 1998 personal income tax assessment is hereby **ABATED** in Toto.