

REDACTED DECISION – DK#'S 16-503 RPD-M, 15-451 RPD-M

**BY: A.M. “FENWAY” POLLACK, CHIEF ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON JANUARY 24, 2020
ISSUED ON FEBRUARY 20, 2020**

BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS

FINAL DECISION

This matter is one of approximately forty (40) cases that were held in abeyance pending the United States Supreme Court’s decision in Dawson v. Steager, 139 S.Ct. 698, 203 L.Ed. 2d 29 (2019). In the Dawson case, the Petitioner, a retired U.S. Marshal, sought the reducing modification contained in West Virginia Code Section 11-21-12(c)(6)¹. The Supreme Court ruled that Subdivision (6) violates the intergovernmental tax immunity doctrine, as codified in Section 111 of Title 4 of the United States Code. In plain English, the Court ruled that West Virginia discriminates against retired federal law enforcement officers when it gives certain retired West Virginia law enforcement officers a tax break on their retirement income, but denies that same tax break to retired federal law enforcement officers.

In this case, the Tax Commissioner agreed to be bound by the Dawson decision. During a recent telephonic status conference, counsel for the Tax Commissioner agreed that the Petitioner is similarly situated to retired marshal Dawson.

¹ (c) *Modifications reducing federal adjusted gross income.* -- There shall be subtracted from federal adjusted gross income to the extent included therein:

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia Police, West Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes; W. Va. Code Ann. § 11-21-12 (West).

Based upon the foregoing, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the following two assessments issued against the Petitioners are hereby

VACATED:

- 1) Issued on December 21, 2015, for tax years 2012-2014 in the total amount of \$_____.
- 2) Issued on August 22, 2016, for tax year 2015, in the total amount of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
A. M. "Fenway" Pollack
Chief Administrative Law Judge

Date Entered