

**REDACTED DECISION – DK# 17-139 RPD**

**BY: A.M. “FENWAY” POLLACK, CHIEF ADMINISTRATIVE LAW JUDGE  
SUBMITTED FOR DECISION ON JULY 31, 2020  
ISSUED ON AUGUST 7, 2020**

**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)<sup>1</sup>. 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 did not dispute that the Petitioner is similarly situated to retired Marshal Dawson.

---

<sup>1</sup> (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 modification to the Petitioner's 2016 tax returns, issued by the Tax Commissioner on May 4, 2017, is hereby **VACATED**.

It is further **ORDERED** that for tax year 2016 the Petitioner is entitled to a refund in the amount of \_\_\_\_\_. This amount includes interest through July 21, 2020 in the amount of \_\_\_\_\_. Pursuant to West Virginia Code Section 11-10-14c interest continues to accrue on the amount of refund due, until paid.

**WEST VIRGINIA OFFICE OF TAX APPEALS**

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

\_\_\_\_\_  
Date Entered