

**REDACTED DECISION—10-001 RPD—BY GEORGE V. PIPER, ALJ—SUBMITTED FOR DECISION on JULY 23, 2010 —ISSUED on JANUARY 4, 2011.**

### **SYNOPSIS**

**PERSONAL INCOME TAX -- RETIRED LAW ENFORCEMENT EMPLOYEE'S RETIREMENT BENEFITS EXCLUDED** -- A retired Washington, D.C. Metropolitan Police Department patrol officer who was commissioned during his tenure to carry firearms, to investigate crimes against the United States and the District of Columbia and to perform other functions commensurate with his job as a law enforcement officer; and whose retirement system was administered by the United States Department of the Treasury and 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; C.A. No. 00-C-AP-10 (2000)*.

### **FINAL DECISION**

On November 20, 2009, a Tax Unit Supervisor of the Internal Auditing Division of the West Virginia State Tax Commissioner's Office (the respondent) denied Petitioners' claim for refund of personal income tax for tax years 2006, 2007, and 2008 as not being supported by statutory law.

Thereafter, by mail postmarked January 4, 2010, Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund. See W. Va. Code §§ 11-10A-8(2) [2002] & 11-10A-9(a)-(b) [2005].

Subsequently, notice of a hearing on the petition was sent to the petitioners and a hearing was held in accordance with the provisions of W.Va. Code § 11-10A-10 [2007] and W.Va. Code St. R. § 121-1-61.3.3 (Apr. 20, 2003).

## **FINDINGS OF FACT**

1. Petitioner served as a police officer with the Washington, D.C. Metropolitan Police Department for twenty years. He retired August 20, 1986.
2. During his tenure, Petitioner performed duties commensurate with his job as a law enforcement officer in that he was armed with a handgun, investigated crimes against the United States and the District of Columbia, obtained warrants, made arrests, testified in court, and patrolled the community.
3. The retirement system for the Washington, D.C. Metropolitan Police Department is administered by the United States Department of the Treasury.
4. Petitioner, while employed by the Metropolitan Police Department, did not pay social security taxes and, therefore, cannot receive social security benefits.
5. Respondent agrees that Petitioners' refund claims for tax years 2006 and 2007 are correct.

## **DISCUSSION**

The sole issue is whether Petitioner, a retired patrolman with the Washington, D.C. Metropolitan Police Department, 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 (a county in 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, firemen, state police officers and deputy sheriffs. West Virginia Code § 11-21-12(c) (6), as amended.

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. § 831.902; *see also* 5 C.F.R. §§ 831.901 and 831.903. The federal government has also distinguished such “law enforcement officers” from other civil service employees, including military personnel, in that 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.

According to the ruling of the Circuit Court of a county in 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 Petitioner is a duly-retired officer of the Washington, D.C. Metropolitan Police Department, with twenty years of credible service, and that during his tenure he conducted criminal investigations and carried a firearm in connection with his duties.

Petitioner’s retirement system, which is administered by the United States Department of the Treasury, 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 a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner to show that the petitioner is entitled to the refund. *See* W. Va. Code § 11-10A-10-(e) [2002] and W. Va. Code St R. § 121-1-63.1 (April 20, 2003).

2. Petitioner has carried the burden of proof with respect to the issue of whether the petitioner is entitled to the same treatment as the taxpayer in the *Dodson* ruling discussed above, because Petitioner is a qualified law enforcement officer whose retirement program is administered by the United States Department of the Treasury.

### 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 2006 and 2007 is hereby **AFFIRMED** in the amount of \$ \_\_\_\_\_. The sum of \$ \_\_\_\_\_ having been previously refunded, no refund is now due Petitioner for tax year 2008.

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