

**REDACTED DECISION – DK# 11-277 PD – BY – MATTHEW R. IRBY,
ADMINISTRATIVE LAW JUDGE – SUBMITTED FOR DECISION ON
DOCUMENTS ONLY on JANUARY 5, 2012 – ISSUED ON JULY 5, 2012**

SYNOPSIS

PERSONAL INCOME TAX -- FEDERAL LAW ENFORCEMENT OFFICER'S RETIREMENT BENEFITS NOT TAXABLE – A retired federal law enforcement officer who performed duties similar to those performed by state fire fighters and police officers and who was within that limited class of federal retirees who could not collect social security benefits upon retirement may exclude said retirement benefits from West Virginia personal income tax pursuant to the ruling in Dodson v. Palmer, Civil Action No. 00-C-AP-10 (2000).

WEST VIRGINIA OFFICE OF TAX APPEALS – BURDEN OF PROOF -- In matters before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner to show that he or she is entitled to the refund requested. *See W. Va. Code Ann. § 11-10A-10-(e)* (West 2010) and *W. Va. Code R. § 121-1-63.1* (2003).

WEST VIRGINIA OFFICE OF TAX APPEALS – CONCLUSION OF LAW -- Petitioner has carried the burden of proof with respect to the issue of whether he is entitled to the same treatment as the taxpayer in the Dodson ruling discussed *supra*, because Petitioner does not qualify to receive social security benefits as a retired federal law enforcement officer.

FINAL DECISION

On June 18, 2011, Petitioners (hereinafter Petitioners), filed a petition for refund for tax years 2008, 2009 and 2010, due to a return change by the Respondent denying their Schedule M modification¹. That return change would result in the following tax liability:

- For tax year 2008: Tax in the amount of \$____; penalties and additions in the amount of \$____; and interest in the amount of \$____ for a total liability of \$_____.
- For tax year 2009: Tax in the amount of \$____; penalties and additions in the amount of \$____; and interest in the amount of \$____ for a total liability of \$_____.

¹ The letter informing Petitioners of the change in the Schedule M modification from Corey Skidmore, Personal Income Tax Unit Supervisor, dated May 31, 2011, appears to inform them only of a return change. However, the letter states that "If you disagree with your denial of your claim for refund, you must file a written petition for refund within sixty (60) days after receipt of this letter." Thus, this tribunal shall treat the Petition for Refund as properly filed.

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- For tax year 2010: Tax in the amount of \$____; penalties and additions in the amount of \$____; and interest in the amount of \$____ for a total liability of \$____. The Petitioner also had a claim for refund for this tax year in the amount of \$_____.

On May 31, 2011, the Personal Income Tax Unit of the Tax Account Administration Division of the West Virginia State Tax Commissioner's Office (hereinafter Respondent) denied the refund claim as not being supported by statutory law. Thereafter, Petitioner 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). The case was submitted on documents only and became ripe for review upon final submission of requested documentation.

FINDINGS OF FACT

1. For the time period covered by the Petition for Refund, the Petitioner resided in Morgantown, Monongalia County, West Virginia.

2. Petitioner served as a correctional officer with the Federal Bureau of Prisons for twenty-eight years, retiring on July 1, 2007.

3. During his tenure, Petitioner performed duties commensurate with his job as a law enforcement officer, including routine training in firearms, self-defense, and law enforcement.

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

5. Respondent certified that Petitioner's refund claims total \$_____ for tax years 2008, 2009 and 2010.²

DISCUSSION

In matters before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10-(e) (West 2010) and W. Va. Code R. § 121-1-63.1 (2003).

The sole issue is whether Petitioner, a retired corrections officer with the Federal Bureau of Prisons, 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-10 (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).

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. §§ 831.901, 831.902 and 831.903 (2011).

² As indicated above, this matter was an appeal from a return change that denied his refund. The total amount of tax the Respondent is seeking to collect in addition to the denial of the \$_____ refund is \$_____ for 2008, \$_____ for 2009, and \$_____ for 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 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 he was a duly-retired corrections officer of the Federal Bureau of Prisons with twenty-eight years of service, and that his duties were commensurate with his job as a law enforcement officer.

Petitioner's retirement system 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. Retired federal law enforcement officer who performed duties similar to those performed by state fire fighters and police officers and who was within that limited class of federal retirees who could not collect social security benefits upon retirement may exclude said retirement benefits from West Virginia personal income tax pursuant to the ruling in Dodson v. Palmer, Civil Action No. 00-C-AP-10 (2000).

2. In matters before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner to show that he or she is entitled to the refund

requested. *See* W. Va. Code Ann. § 11-10A-10-(e) (West 2010) and W. Va. Code R. § 121-1-63.1 (2003).

3. Petitioner has carried the burden of proof with respect to the issue of whether he is entitled to the same treatment as the taxpayer in the Dodson ruling discussed *supra*, because Petitioner does not qualify to receive social security benefits as a retired federal law enforcement officer.

DISPOSITION

WHEREFORE, it is the final decision of the West Virginia Office of Tax Appeals that Petitioner's appeal for refund due to his right to exclude his law enforcement retirement benefits from West Virginia personal income tax for tax years 2008, 2009 and 2010, is **GRANTED** and the Tax Commissioner is hereby **ORDERED** to issue a refund to Petitioner in the amount of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
Matthew R. Irby
Administrative Law Judge

Date Entered