

REDACTED DECISION – DK# 12-003 RPD

**BY: GEORGE V. PIPER, ADMINISTRATIVE LAW JUDGE, SUBMITTED FOR
DECISION on DOCUMENTS ONLY on JULY 16, 2012
ISSUED ON JANUARY 15, 2013**

SYNOPSIS

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

PERSONAL INCOME TAX -- WEST VIRGINIA ADJUSTED GROSS INCOME OF RESIDENT INDIVIDUAL -- The statutory law of the State of West Virginia explicitly excludes from the 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).

PERSONAL INCOME TAX -- EXCLUSION FOR RETIRED FEDERAL LAW ENFORCEMENT OFFICERS -- 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. *See Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

PERSONAL INCOME TAX -- ELIGIBILITY DEFINED OF FEDERAL LAW ENFORCEMENT OFFICER -- 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. *See* 5 C.F.R. § 831.902 (2011); *See* also 5 C.F.R. §§ 831.901 and 831.903 (2011).

PERSONAL INCOME TAX -- BURDEN OF PROOF MET -- 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, in that he has established his special retirement eligibility as a federal law enforcement officer whose retirement system being separate and apart from the social security retirement program does not qualify Petitioner to receive social security benefits.

PERSONAL INCOME TAX -- SPECIFIC STATUTE TAKES PRECEDENCE -- “The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled” *In re Chevie V.*, 226 W. Va. 363, 369, 700 S.E.2d 815, 821 (2010) (citing Syllabus point 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984); Syl. pt. 6, *State ex rel. Tucker Cnty. Solid Waste Auth. v. West Virginia Div. of Labor*, 222 W. Va. 588, 668 S.E.2d 217 (2008).

PERSONAL INCOME TAX -- STATUTE OF LIMITATIONS APPLICABLE --

The specific statute West Virginia Code Section 11-10-14(l)(1) requires that if a taxpayer claims to be entitled to a refund or credit of any tax paid to Respondent, a taxpayer shall file such claim within three years after the due date of the tax return for which the refund or credit is being sought. Therefore, West Virginia Code Section 11-10-14(l)(1) is the specific statute and the applicable statute of limitations in this matter.

PERSONAL INCOME TAX -- BURDEN OF PROOF NOT MET --

In the absence of any legal authority to the contrary, Respondent was under no duty to apply Petitioner's April 16, 2007 payment, which accompanied his 2006 Schedule L Application for Extension of Time to File to tax year 2007.

PERSONAL INCOME TAX -- BURDEN OF PROOF NOT MET --

Petitioner has not carried the burden of proof with respect to his argument that the applicable statute of limitations is not West Virginia Code Section 11-10-14(l)(1).

FINAL DECISION

On October 15, 2011, Petitioner filed a claim for refund of personal income tax for tax years 2007, 2008, 2009 and 2010, in the amount of \$ _____. On October 25, 2011, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office (hereafter Respondent) denied the refund claim as not being supported by statutory law. Thereafter, by mail postmarked January 5, 2012, 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).

FINDINGS OF FACT

1. Petitioner served as a park ranger for twenty-five years with a Division of the United States Department of Interior, retiring in 2006.
2. During his tenure, Petitioner performed duties commensurate with his job as a law enforcement officer; in that he was qualified to carry weapons, had the power to make arrests, with or without warrants, and was responsible for the investigation and arrests of persons violating the United States Criminal Code.

3. Petitioner, while employed by a Division of the United States Department of Interior, did not pay social security taxes and therefore, cannot receive social security benefits pursuant to his federal employment.

4. Petitioner filed amended tax returns for tax years 2007, 2008, 2009 and 2010.

5. Petitioner never filed an amended tax return (refund claim) for tax year 2006 nor was a refund claim ever denied by Respondent for that year.

6. In its petition for refund filed with this Tribunal, Petitioner sought relief only with respect to tax years 2007, 2008, 2009 and 2010.

7. Petitioner and Respondent are in agreement that because Petitioner received a valid extension for tax year 2007, the statute of limitations is not applicable for that year.

8. Petitioner and Respondent are in agreement that the sum of \$____ should be deducted from Petitioner's refund claim for tax year 2010 because Petitioner had previously received that amount.

9. Petitioner's April 16, 2007, payment which accompanied his 2006 Schedule L Application for Extension of Time to file was made prior to the time that Petitioner filed his 2007 taxes.

DISCUSSION

The primary issue is whether the Petitioner, Petitioner, a retired uniformed officer with a Division of the United States Department of Interior, 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 (Monongalia County, 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, West Virginia firemen, West Virginia state police and West Virginia deputy sheriffs. *See* W. Va. Code Ann § 11-21-12(c)(6) (West 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.

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. *See* 5 C.F.R. § 831.902 (2011); *See also* 5 C.F.R. §§ 831.901 and 831.903 (2011). The federal government has also distinguished such “law enforcement officers” from other civil service employees, including military personnel, in that the federal law officers’ retirement is calculated using an altogether different formula from the one used to calculate other federal civil service employees’ retirement benefits.

The documents submitted by the Petitioner, in this matter, showed that Petitioner was a duly-retired officer of a Division of the United States Department of Interior with twenty-five years of service, and that his duties were commensurate with his job as a law enforcement officer.

The retirement system into which Petitioner made contributions 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).

The only other issue to be determined is whether the applicable statute of limitations in this matter is West Virginia Code Section 11-10-14(l)(1) as maintained by Respondent, or West Virginia Code Section 11-1-2a as asserted by the Petitioner.

West Virginia Code Section 11-10-14(l)(1) specifies that if a taxpayer claims to be entitled to a refund or credit of any tax paid to the Respondent, a taxpayer shall file such claim within three years after the due date of the tax return for which the refund or credit is being sought. There is a general statute of limitations in West Virginia Code Section 11-1-2a that states that effective July 1, 1967, any taxpayer claiming to be aggrieved by having to pay any tax to Respondent could within five years from the filing date of the return seek to have the tax refunded.

However, "the general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled." *In re Chevie V.*, 226 W. Va. 363, 369, 700 S.E.2d 815, 821 (2010) (citing Syllabus point 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330,325, S.E.2d 120 (1984); Syl. pt. 6, *State ex rel. Tucker Cnty. Solid Waste Auth. v. West Virginia Div. of Labor*, 222 W. Va. 588, 668, S.E.2d 217 (2008)).

The reason the Petitioner argues that the more general five-year statute of limitations should control is because he seeks a refund for tax year 2006. Due to the fact that he filed his refund request in October of 2011, the more specific Section 11-10-14(1)(1) bars the Petitioner from a refund for any period prior to tax year 2008.¹ The Petitioner also argues that his 2006 tax payment, which was made on April 16, 2007, should have been applied to his 2007 tax obligations. The problem with the Petitioner's argument is that the April 16 payment was made long before the Petitioner filed his 2007 taxes. The Petitioner presents this Tribunal with no authority for the proposition that the Tax Commissioner had some duty to apply this April 16 payment to his 2007 taxes, and this Tribunal is unaware of any such authority. As a result, we rule that the Petitioner has not met his burden of showing that the Tax Commissioner was wrong in denying that portion of the refund request that applied to tax year 2006.

CONCLUSIONS OF LAW

Based upon all 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 the Petitioner to show that he or she is entitled to the refund requested. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R. § 121-1-63.1 (2003).

2. The statutory law of the State of West Virginia explicitly excludes from the 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).

¹ The only reason tax year 2007 is part of this matter is that the Tax Commissioner granted the Petitioner an extension of time to file for 2007.

3. 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. *See Dodson v. Palmer*, Civil Action No. 00-C-AP-10 (Monongalia County Cir. Ct. W. Va. 2000).

4. 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. *See* 5 C.F.R. § 831.902 (2011); *See also* 5 C.F.R. §§ 831.901 and 831.903 (2011).

5. 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, in that he has established his special retirement eligibility as a federal law enforcement officer whose retirement system being separate and apart from the social security retirement program does not qualify Petitioner to receive social security benefits.

6. “The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled.” *In re Chevie V.*, 226 W. Va. 363, 369, 700 S.E.2d 815, 821 (2010) (citing Syllabus point 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984); Syl. pt. 6, *State ex rel. Tucker Cnty. Solid Waste Auth. v. West Virginia Div. of Labor*, 222 W. Va. 588, 668 S.E. 2d 217 (2008).

7. The specific statute West Virginia Code Section 11-10-14(l)(1) requires that if a taxpayer claims to be entitled to a refund or credit of any tax paid to Respondent a taxpayer shall file such claim within three years after the due date of the tax return for which the refund or credit is being sought. Therefore, West Virginia Code Section 11-10-14(l)(1) is the specific statute and the applicable statute of limitations in this matter.

8. In the absence of any legal authority to the contrary, Respondent was under no duty to apply Petitioner's April 16, 2007 payment, which accompanied his 2006 Schedule L Application of Time to File to tax year 2007.

9. Petitioner has not carried the burden of proof with respect to his argument that the applicable statute of limitations is not West Virginia Code Section 11-10-14(l)(1).

DISPOSITION

WHEREFORE, it is the Final Decision of the West Virginia Office of Tax Appeals that Petitioner's petition for refund of West Virginia personal income tax for tax years 2007, 2008, 2009 and 2010 is **GRANTED** in the revised amount of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____

George V. Piper
Administrative Law Judge

Date Entered