

REDACTED DECISION – DK# 12-177 RPD

**BY: GEORGE V. PIPER, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON DOCUMENTS ONLY ON JULY 26, 2012
DECISION ISSUED ON JANUARY 16, 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 state income tax those pensions and annuities paid to the 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.

FINAL DECISION

On April 5, 2012, Mr. and Mrs. A., (hereafter Petitioners), filed a claim for the refund of personal income tax for tax year 2011, in the amount of \$ _____. On April 10, 2012, the Internal Auditing Division of West Virginia State Tax Commissioner's Office (hereafter Respondent) denied the refund claim as not being supported by statutory law. Thereafter, by mail received April 30, 2012, Petitioners 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. Mr. A served as a special agent of the United States Secret Service for twenty-seven years, retiring in 1997.
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 District of Columbia Criminal Code and the United States Criminal Code.
3. Petitioner, while employed by the United States Secret Service, did not pay social security taxes and therefore, cannot receive social security benefits pursuant to his federal employment.
4. Respondent is in agreement that Petitioners' refund claim totals \$ _____ for tax year 2011.

DISCUSSION

The sole issue is whether Mr. A, a retired special agent with the United States Secret Service, who could not collect social security benefits, may 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 enforcement 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 Petitioners, in this matter, showed that Petitioner, Mr. A, was a duly-retired officer of the United States Secret Service with twenty-seven 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).

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 state income tax those pensions and annuities paid to the 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).

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.

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 year 2011 is **GRANTED** in the amount of \$_____.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
George V. Piper
Administrative Law Judge

Date Entered