No. 17-419

IN THE

Supreme Court of the United States

JAMES DAWSON AND ELAINE DAWSON,

Petitioners,

v.

DALE W. STEAGER, AS STATE TAX COMMISSIONER OF WEST VIRGINIA,

Respondent.

On Writ of Certiorari to the Supreme Court of Appeals of West Virginia

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 19, 2017
CERTIORARI GRANTED JUNE 25, 2018

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GENERAL DOCKET

SUPREME COURT OF APPEALS OF WEST VIRGINIA

CLERK'S OFFICE | DOCKET SHEET

General Case Information

Case Number:	16-0441	Filing Date:	04/29/2016 12:00:00 AM
Case Title:	Dale W. Steager, State Tax Commissioner v. James D. Dawson and Elaine F. Dawson		
Case Type:	Administrative – Tax	Case Status:	Disposed
County:	Mercer		
Disposition Method:	Mandate	Disposition Date:	06/22/2017 3:27:50 PM

Action Log

Action Date	Action
	* * *
08/02/2016	Filed Petitioner's Brief.
08/02/2016	Filed Appendix
09/12/2016	Filed Respondent's Brief
10/03/2016	Filed Reply Brief
	* * *
05/17/2017	Issued Memorandum Decision. Reversed and remanded.
	* * *

GENERAL DOCKET
CIRCUIT COURT OF MERCER COUNTY, WEST VIRGINIA

CASE 15-C-326

JAMES DAWSON VS. MARK W. MATKOVICH (TAX COMM)

DATE	ACTION
	* * *
11/30/2015	PETITIONERS' BRIEF FILED: BY PT BRIEF
	* * *
01/11/2016	TAX DEPARTMENT'S BRIEF OPPOSING PETITION FOR APPEAL, BY JJ BRIEF
01/25/2016	PETITIONER'S REPLY BRIEF
03/24/2016	TRANSCRIPT OF PROCEEDINGS ON 03/14/2016 BEFORE JUDGE SADLER, PLACED IN COURT FILE: BY PT TRANSCRIPT
04/01/2016	ORDER GRANTING APPEAL & REVERSING THE DECISION OF THE WEST VIRGINIA OFFICE OF TAX APPEALS
	* * *

THE FOREGOING IS A TRUE COPY OF A DOCUMENT ENTERED IN THIS OFFICE ON THE 11 DAY OF JULY, 2016 DATED THIS 11 DAY OF JULY 2016

JULIE BALL, CLERK OF THE CIRCUIT COURT OF MERCER COUNTY WV

BY *<u>/s/ Jessica Jones</u>*
HER DEPUTY

GENERAL DOCKET

BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS

DAWSON, JAMES D.,	)	DOCKET NO.
and ELAINE F.,	)	14-026 RPD
Petitioners,	)	
	)	
v.	)	
	)	
MATKOVICH, MARK	)	
W., as ACTING STATE	)	
TAX COMMISSIONER	)	
of WEST VIRGINIA	)	
Respondent	)	

DATE	**DESCRIPTION OF DOCUMENT OR PROCEEDING**
	* * *
01/23/2015	Petitioners' Exhibits One (1) Through Fifteen (15)
01/23/2015	Respondent's Exhibits One (1) Through Seven (7)
01/23/2015	Transcript of 01/23/2015 Hearing and Sign-In Sheet for Hearing
	* * *
02/06/2015	Petitioners' Letter and First Brief
02/06/2015	Respondent's Letter and First Brief Opposing Refunds
	* * *

02/20/2015	Respondent's Letter and Final Brief Regarding Opposing Refunds
02/20/2015	Petitioners' Letter and Final Brief in Response to Respondent's Brief Opposing Refunds

* * *

08/07/2015	WVOTA Final Decision of 01/23/2015 Evidentiary Hearing

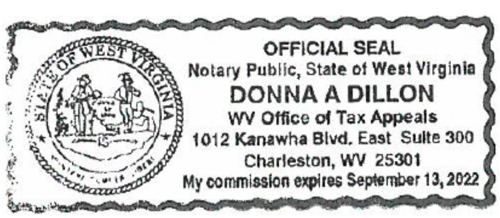
* * *

State of WEST VIRGINIA, County of Kanawha
This is to certify that this is a true and correct copy.

/s/ Stephen P. Lee

Stephen P. Lee, Executive Director

WV Office of Tax Appeals
Subscribed and sworn before me this 9th
Day of December, 2015.
/s/ Donna A. Dillon, Notary Public
My Commission Expires Sept. 13, 2022.
Donna A. Dillon



YOUR FEDERAL RETIREMENT BENEFITS

United States
Office of
Personnel
Management

Retirement and
Insurance Service

YOUR FEDERAL RETIREMENT BENEFITS

Dear JAMES DAWSON

This *personalized* booklet describes your monthly benefits, and provides other essential information. Review it carefully and keep it with your important papers and documents.

Federal employees play a valuable role in our country's workforce. We care for national parks, conduct research on treating and curing disease, and perform the important work of the American government. Our country needs and depends on us. Your years in the Federal Government have been significant in helping our nation grow and prosper. During your service in the Federal workforce, you have earned and accrued certain retirement benefits. Now that you have stepped away from active Federal employment, it is time to receive and enjoy these benefits.

The Office of Personnel Management (OPM) can help you make the transition to retirement. We are here to answer your questions and explain your retirement benefits in detail. Call us toll-free at 1-888-767-6738 (Retirees in the Washington, DC area should call 202-606-0500).

Our best wishes on a happy and healthy retirement. OPM looks forward to serving you in the years ahead.

Joseph E. Donald, Jr.
Assistant Director
Retirement Services Program
Office of Personnel Management

PERSONAL STATISTICS

This Explanation of Benefits was prepared as of June 18, 2008

Name:	JAMES D. DAWSON
Civil Service Annuity (CSA) Number:	CSA 8 373329 0
Retirement System:	FERS
Beginning Date of Benefits:	04/01/2008

Current Correspondence Address:

JAMES D DAWSON
134 COTTONWOOD COURT
PRINCETON WV 24740

Personal Identification Number (PIN):

Direct Deposit: Type of Account;
Account Number

The amounts shown in this booklet are based upon employment records on file with us as of June 18, 2008 and your retirement application. If you believe any of this information is incorrect, please contact us at once. See the chapter "How to Contact Us" in this booklet for instructions. Please keep this with your personal records for future reference.

* * *

YOUR MONTHLY BENEFIT

Monthly Benefit

Your benefits began:	April 1, 2008
Date of first regular monthly payment:	July 1, 2008
Your initial gross monthly retirement benefits is:	$3,926.00

Your retirement benefit is payable on the first business day of each month. Each monthly payment represents benefits for the prior month (e.g., the July 1, 2008 payment is for the mouth of June).

Your FERS Annuity Supplement

Because you retired under FERS but are not yet eligible for Social Security retirement benefits, you will receive a FERS Annuity Supplement of $801.00, in addition to your monthly annuity benefit shown above. The Benefit Supplement may continue until you become eligible for Social Security, generally at age 62, subject to data provided in the annual Annuity Supplement Survey.

Monthly Additions And Deductions

The net amount of your first regular payment: $3,896.58

If the net amount ever changes for any reason, we will send you a Notice of Annuity Adjustment explaining the change.

Current Cross Monthly Benefit	$3,926.00
Less:/Plus:	
Health Insurance Premium	-314.47
Family Life Insurance	-9.75
Standard Optional Life insurance	-3.03
Federal Income Tax	-456.69
Basic Life Insurance	-46.48
FERS Benefit Supplement	+801.00
Net Monthly Benefit	$3,896.58

See Retroactive Benefits Explanation for adjustment payment information.

Please note that although your retirement benefit provides for survivor benefits, (see Survivor Benefits chapter), you will not see separate monthly deductions for that coverage. Instead, the cost of the survivor benefit was factored into the computation of year gross monthly benefit shown above.

YOUR BENEFIT COMPUTATION

Many factors go into the computation of your monthly benefit. The following information summarizes the major components of your benefit computation.

Type Of Computation

You received the special computation given to eligible firefighters and law enforcement officers.

Average Salary

The "high-3" average salary in your case is: **$134,224.00**

Your benefit is based, in part, on the highest average salary during any three year period while you were employed. This three year period does not always occur in the last three years of employment. We have ensured that the average salary we computed is the highest average applicable to your salary history.

Length Of Service

Your benefit is also based, in part, on the amount of Federal service you performed as an employee. Your retirement records showed the following:

Military service included in total:	04 Years, 00 Months
Total Federal Service:	25 Years, 00 Months

Only years and full months are used in the computation; partial months are not counted.

Other Significant Factors

We credited your payment of $1,097.48 to cover your military service performed after December 31, 1956. Your payment amount is included in the retirement contributions shown in the Contributions and Tax Information chapter. That payment will permit you to continue to receive credit for all of your military service after you become eligible for Social Security benefits.

SURVIVOR BENEFITS

In the event of your death, your survivors should call our Retirement Information Office at **(1-888) 767-6738**. Customers within the local **Washington, DC**, calling area must call **(202) 606-0500**.

You elected to provide survivor benefits as follows based upon the **full amount** of the annuity. As noted on your retirement application, you may change your election by filing a new election in writing **not later than** 30 days after the date of your first regular monthly payment.

The redaction to provide survivor benefits is made from your basic annual annuity at retirement. There are no separate monthly deductions for providing survivor annuities.

Surviving Spouse

Name: ELAINE F

Surviving Children

Any dependent, unmarried children under age **18** (or disabled children over **18** if disabled prior to age 18, or full-time students under age 22) could be eligible for a survivor annuity.

Cost-of-living increases to your annuity will increase the value of your survivor benefits.

HEALTH INSURANCE BENEFITS

Your Federal Employees Health Benefits coverage is described below:

Your Plan name:	BLUE CROSS BLUE SHIELD Self-And-Family
Enrollment code:	105
Your cost each month:	314.47
Government share:	713.48
Total cost:	1,027.95

Other Information
Self and Family

You are enrolled under a Self and Family plan. You may change to Self Only at any time. However, if you switch to Self Only, you can only change back to Self and Family under Special circumstances such as: the birth or adoption of a child, a change to marital status, or an open season. Family members who lose coverage under your plan (i.e., a non-disabled, dependent child who reaches age 22) may qualify for Temporary Continuation of Coverage (TCC) for up to 36 months, Under TCC, the covered Individual must pay the full cost of coverage (individual and government share), plus an administrative fee of 2%.

Medicare

For retirees, Medicare is the primary health benefits provider for most eligible individuals age 65 and over. When you reach age 65, you should contact your local

Social Security office or call the toll-free number under "Other Useful Numbers" in the chapter on "How To Contact OPM" to obtain Medicare information.

Health Benefits Open Season

Once a year, we hold a Health Benefits Open Season during which you can change plans, or switch from Self Only to Self and Family. We will provide information prior to the beginning of Open Season.

LIFE INSURANCE BENEFITS

Your life insurance coverage under the Federal Employees' Group Life Insurance Program, is based on your coverage at the time of separation, your final salary, and elections at retirement. You cannot carry any coverage into retirement that you have not had continuously since your earliest opportunity to elect, or for 5 years immediately preceding retirement, whichever is shorter.

Basic Life Insurance – Your Basic Life insurance amount at retirement is $143,000. This is the result of taking your final salary, rounded to the next thousand (if it is not an even thousand), and adding $2,000.

You elected a 75% reduction schedule for your Basic Life insurance. This means the amount payable on your Basie Life insurance begins to reduce by 2 percent of the original amount per month beginning the second month after you attain age 65, until it reaches 25% office value. Your cost for this coverage reduces to zero at age 65.

Standard Life Insurance (Option A) – Your Standard Life insurance amount at retirement is $10,000. This is the normal amount for this type of coverage. The amount payable, on your Standard Life insurance will begin, to reduce by 2 percent per month of the original amount beginning the second month after you attain age 65, until it reaches $2,500. Your cost for this coverage reduces to zero at age 65.

Family Life Insurance (Option C) – Your Family Life insurance amounts at retirement are $25,000 of coverage for your spouse and $12,500 for cadi eligible child. This is the result of taking the minimum amounts ($5,000 and $2,500, respectively), and multiplying by the number of multiples (5) you carried into retirement.

Because you directed No Reduction for your Option C coverage, the amount payable on your Family Life Insurance will not reduce throughout your retirement. Premiums will continue for life, unless you cancel coverage or switch to a Full Reduction Schedule. No premiums will be refunded if you change your reduction schedule or cancel your insurance.

Approximately three months before your 65th birthday (or shortly after retirement if you are already 65 or older), we will send you a letter reminding you that you can change your Option B and/or Option C reduction election. At that time, if you have more than one multiple, you may elect No Reduction for some multiples and Full Reduction for others.

The monthly costs of Optional coverage for a retiree vary with age, as follows (effective January 1, 2005), and are subject to change in the future:

	Option A (10.000)	Option B (per $1,000)	Option C (per multiple)
Under 35	$.65	$.065	$.59
35 - 39	$.87	$.087	$.74
40 - 44	$1.30	$.130	$1.00
45 - 49	$1.95	$.195	$1.30
50 - 54	$3.03	$.303	$1.95
55 - 59	$5.85	$.607	$3.14
60 - 64	$13.00	$1,300	$5.63
65 - 69	$ 0	$1,560*	$6.50*
70 - 74	$ 0	$2,600*	$7.37*
75 - 79	$ 0	$3,900*	$9.75*
80+	$ 0	$5,200*	$13.00*

* These are the rates for No Reduction. Optional coverage is free as of the month after you turn age 65, or the date of retirement if you are already 65 or older when you retire, unless you elect No Reduction for Option B or Option C.

Living Benefits

If you become afflicted with a terminal illness (prognosis 9 months or less to live), you may apply for and receive a Living Benefit payment equal to what your Basic life insurance amount will be 9 months after the date the Office of Federal Employees' Group Life insurance receives your application, reduced by a nominal amount to make up for lost earnings to the Life Insurance Fund. Once you receive a Living Benefit payment and cash or deposit the check, the election is irrevocable. A Living Benefit election has no effect on any Optional coverage held. If you assign your life insurance prior to receiving a Living Benefit, neither you nor the assignee may elect a Living Benefit.

Assignment

You may assign your life insurance at any time. Assignment means you transfer ownership of your life insurance to someone else, but you continue to be responsible for payment of premiums. An assignment applies to all coverages held (Basic and Options), except Option C, Family, which cannot be assigned. Once you assign your life insurance, you give up the right to designate a beneficiary, or to reduce, cancel or convert your coverage (except for the initial Reduction Schedule election, which you still get to make at retirement). Also, if you assign your life insurance, neither you nor the assignee may then apply for or receive a Living Benefit based on your coverage.

Other Information

Unless you assign your life insurance, you can cancel all of your coverage, or any one of the Options (A, B or C), or reduce the number of multiples under Additional or Family (Options B or C) at any time. Any cancellation or reduction must be in writing, and is irreversible once in effect. If you cancel Basic, any Optional coverage you have is also canceled. You cannot increase your coverage after retirement, or reinstate any coverage previously cancelled. If you elected 50% Reduction or No Reduction, you can change to 75% Reduction, but not the other way around (you also cannot switch from No Reduction to 50% Reduction, or the other way around). Also, the Accidental Death and Dismemberment coverage you had automatically as an employee ended at retirement.

CONTRIBUTIONS AND TAX INFORMATION

Your Retirement Contributions

The amount of retirement contributions to your credit is $ 21.646.00. This amount includes the deposit made to cover military service after December 31, 1956.

If the total amount of retirement benefits paid to you (and any survivors eligible for monthly benefits) is less than the amount of your retirement contributions plus any applicable interest, the difference will be paid to your survivors or estate as a lump sum. Once you (and any survivors receiving monthly benefits) receive gross monthly benefits that exceed your contributions, there are no more contributions in your account, and no lump sum payment is made. You continue, however, to receive your monthly annuity even when your benefits paid exceed your contributions.

Recovering an amount equal, to your retirement contributions for tax purposes is treated differently, and is discussed on the following page.

Federal Income Tax

Your retirement benefit is subject to Federal income tax.

Because you already paid Federal income tax on your retirement contributions, you are entitled to receive an amount equal to those contributions as tax-free income. Under the IRS Simplified General Rule, a portion of each monthly payment is tax-free, and, represents the recovery of your previously taxed contributions. The remaining portion of each monthly payment is fully taxable. You continue to claim this tax-free amount until the total tax-free amounts claimed equal your retirement contributions. At that time, all of your Benefit becomes taxable.

Under the Simplified General Rule, $52.80 of each monthly payment is tax-free. You can claim this monthly tax-free amount until the total tax-free benefit claimed equals your retirement contributions.

Federal Income Tax Withholding

Your retirement benefit is subject to Federal income tax withholding.

We are withholding Federal income tax at the rate applicable to a married individual claiming 2 withholding allowances. This withholding rate results in a monthly deduction of $456.69.

You can start, stop, or change your Federal income tax withholding at any time by calling our automated telephone system. See chapter on "How To Contact OPM" for detailed instructions.

Useful IRS Publications

You may find the following IRS Federal income tax publication useful in answering your Federal lax questions:

IRS Publication 721 Tax Guide to U.S. Civil Service Retirement Benefits

To ask for this and other publications, you can call the IRS at 1-800-829-3676.

State Income Tax

We cannot provide specific information on the tax treatment of your retirement benefits for state tax purposes. You should contact your state tax office for further assistance.

We can, however, withhold West Virginia income tax from your retirement benefit. You will need to provide us with the specific dollar amount you want withheld each month. To start, stop, or change your state income tax withholding, call our toll-free automated telephone line at 1-888-767-6738. See chapter on "How To Contact OPM" for detailed instructions.

RETROACTIVE BENEFITS EXPLANATION

Adjustment Payment Information

You are due a net retroactive payment of $2,752.07.

That amount represents the difference between the interim payments already made to you, and the full amount you were due. The following explains the computation of this adjustment payment.

Gross Benefits due from 04/01/2008 through 05/31/2008:	$7,852.00
Less:/Plus:	
Health Insurance Premium	-$628.94
Gross Interim Pay	-$5,144.00
Family Life Insurance	-$19.50
Standard Optional Life Insurance	-$6.06
Federal Income Tax	-$810.47
Basic Life Insurance	-$92.96
FHRS Benefit Supplement	+$1,602.00
Net adjustment due you	$2,752.07

A direct deposit payment in that amount has been, sent to your financial institution.

HOW TO CONTACT OPM

Contacting Us On The Internet

Our email address is: retire@opm.gov

Our website is www.opm.gov/retire

We provide benefit information and assistance on our web site 24 hours a day, 365 days a year. You will find retirement brochures, forms, and other information at this site.

You can take the following actions over the internet at our web site. You will need your civil service annuity (CSA) claim number and the Personal Identification Number (PIN) which we will send shorty.

*View a statement describing your annuity payment;

*Change your correspondence address;

*Start, stop, or change your Federal and state income tax withholding;

*Request a duplicate tax-filing statement (1099R);

*Change your PIN number;

*Report a lost or missing payment;

*Sign up for direct deposit, or change where your payment is sent;

*Sign up for, change or stop a U.S. Savings Bond allotment, or;

*Make a health benefits open season change.

Please be sure to write your PIN in the space provided on Page 2 of this booklet when you receive it so you will have it when you need it.

Changes By Telephone

You can also make most of the changes listed above over the telephone. When you call us at the number(s) shown on the following page, you will be greeted by an automatic answering system which will guide you through a menu listing the topics our customers call about most frequently.

Calling About Your Benefits

You may call our
Retirement Information Office at:

1-88 US OPM RET
(1-888-787-6738) or
1-800-878-5707(TDD)*

Customers within the Washington, DC,
calling area must call: **(202) 606-0500 or**
(202) 606-0551 TDD)*

We are committed to providing you with the best customer service possible. Please have your Civil Service annuity (CSA) claim number available when you call.

*Telecommunications Device for the Deaf

Using The Automated System

To use the telephone system's automated features, you will need your Civil Service Annuity (CSA) claim number and Personal Identification Number (PIN). Although the automated system is available to you, you have the option of talking to a Customer Service Specialist.

If you call on a rotary telephone, you will not be able to use the automated features. However, you can stay on the line, and your call will be sent to a Customer Service Specialist. The automated system is available seven days a week. Customer Service Specialists are available from 7:30 am to 7:45 pm Eastern time, Monday through Friday. They are not available on Federal holidays.

Contact Us In Writing

We are arranging to handle more and more retirement business based on telephone calls from our customers. This is because there are many things you can do for yourself without assistance. More importantly, most of the business you will ever need to conduct with us can be done by telephone without the need to write.

If you need to write, our mailing address for general correspondence is:

U.S. Office of Personal Management
Retirement Operations Center
Post Office Box 45
Boyen, PA 16017-0045

Visiting Us In Person

You are also welcome to visit us in person. Our Retirement Information Office is located at:

U.S. Office of Personnel Management
Central Retirement Information Office
Room E323
1900 E Street NW
Washington, DC 20415

You will need to bring some form of identification to enter the building.

Other Useful Telephone Numbers

In addition to contacting OPM, you may also need to contact the following Federal agendas and programs:

Thrift Savings Plan:	1-877-968-3778 (Thrift line & Information)
	1-877-847-4385 (TDD)
	1-404-233-4400 (International not toll free)

Social Security Administration:	1-800-772-1213 1-800-325-0778 (TDD)
Centers for Medicare and Medicaid Services (formerly HCFA):	1-800-633-4227 (MEDICAR)
Internal Revenue Service:	1-800-829-1040 (General Tax) 1-800-829-3676 (Publications and Forms)
Federal Long Term Care Insurance Program (FLTCIP)	1-800-582-3337 1-800-843-3557 (TDD)
www.LTCFEDS.com	Call or visit the website to find out if you're eligible to apply for this insurance, or if you have questions about existing coverage.

COST OF LIVING, ADJUSTMENTS AND NOTICES

COLA Increases

We will periodically increase your annuity based on Cost of Living Adjustments (COLA's) provided by law. Shortly before you receive your new payment amount, we will send you a Notice of Annuity Adjustment showing the payment change.

The first COLA you receive will be prorated based on how many months you were retired during the period covered by the COLA. If you receive a prorated COLA, we will tell you at that time what portion you received. You will then be eligible for the full amount of any subsequent COLA.

Future Check Adjustments

As your various monthly deductions change for any reason, we will send you a Notice of Annuity Adjustment explaining the change.

Your health insurance premium can change each year, effective January l. Any change to premiums will appear in your February l payment, which represents your annuity and insurance premium deduction for the month of January.

If your spouse dies before you do, we will recompute your annuity to eliminate the reduction we made to provide for the survivor benefit. You should contact us if this is necessary.

The premiums you pay for your life insurance depend on your age. The premiums we have already described will continue until you turn age 55.

Other OPM Notices

Each October, we will send you information about the upcoming Health Insurance Open Season (see Health Benefits chapter). That material will explain what kind of changes you can make in your coverage, what your new premiums will be, and if you do make a change in coverage, we will send you a confirmation that the change has been made.

By the end of each January, we will send you a form 1099R, Statement of Annuity Paid. This statement will report how much you received form OPM, any Federal and state taxes withheld, and should be used to file your tax return(s). If you do not receive the statement, please call our Retirement Information Office at **1-888-767-6738**. Customers within the

Washington, DC, calling area, must call **(202) 606-0500**.

Each time we update your address (either your direct deposit information, or your correspondence address), we will send you a confirmation of that change and let you know which will be the first payment to go to the new address, if applicable.

We have recently sent you an Identification Card, to keep as a permanent record of your retirement claim number.

PAMPHLETS AVAILABLE

These are some of the pamphlets and forms available by calling OPM:

RI 38-126	Life Events And Your Retirement And Insurance Benefits
RI 84-1	Court Ordered Benefits For Former Spouses
RI 90-8	Information For FERS Annuitants
RI 90-16	Applying For Death Benefits
SF 3102	Designation Of Beneficiary - FERS
RI 90-12	Information For FERS Survivor Annuitants
RI 70-9	FEHB Enrollment Guide - CSRS & FERS Annuitants
RI 79-2	FEHB Information For Retirees and Survivor Annuitants
RI 79-27	Temporary Continuation of Coverage Under FEHB
FE6	FEGLI Claim For Death Benefits
RI 76-10	Assignments Of Life Insurance

RI 76-12	Information For Retirees About FEGLI
RI 76-14	Cancellation Of Family Optional Life Insurance
SF 2823	Designation Of Beneficiary - FEGLI
FE6 DEP	Statement Of Claim - Option C - Family Life Insurance

KEEPING YOUR ADDRESS UPDATED

JAMES D DAWSON
134 COTTONWOOD COURT
PRINCETON WV 24740

It is very important that you keep your correspondence address up-to-date, We will be sending a wide variety of important information to you, and it is important that you let us know each time your correspondence address changes.

Although your payments will be sent by direct deposit to your financial institution, we will send all other material to you at the address shown above.

Providing your new address to us is easy. Just call our Retirement Information Office at 1-888-767-6738 (202-606-0500, Washington, DC area). We will be happy to take the information over the phone.

IN THE WEST VIRGINIA OFFICE OF TAX APPEALS

JAMES D. and ELAINE F. DAWSON,

Petitoners,

v.

OTA DOCKET No. 14-026 RPD

MARK W. MATKOVICH, STATE TAX COMMISSIONER OF WEST VIRGINIA,

Respondent.

STATE TAX DEPARTMENT'S EXHIBIT 1

STATE OF WEST VIRGINIA RETIREMENT PLANS

As of 7/1/2010	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
Year implemented	1961	1941	1991	1935	1994	1949	1998	2008	2010
Active Members	35,977	35,670	4,778	147	498	71	958	525	6
Retirees	22,040	30,127	N/A	684	17	56	260	0	0
Covered by Soc Sec.	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Unknown
Out of State. Svc. Credit	Yes	Yes	No	No	No	No	No	No	No
% of Employee Contributions	12.50%	Per Actuary (NC+ UAAL) 29.2% TRS Pay FY 2011	7.50%	Per Actuary (NC+ UAAL) above 15% Statutory (248.2% FY 2011)	19.5% of Base Pay	Per Actuary (NC + UAAL) 37.9% pay FY 2011	10.50% plus Fee Deposits (1.34% fees FY 2011)	10.50%	8.50%
% of Employee Contributions	4.50%	6.00%	4.50%	9.00%	13% of Base Pay	10.50%	8.50%	8.50%	8.50%

As of 7/1/2010	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
Unfunded Accrued Liability (UAL)	$1,351,221,000	$4,760,772,000	N/A	$186,285,000	$16,436,000	($6,806,000)	$46,946,000	$7,841,000	$717
% Funded	74.6%	46.5%	100%	68.5%	76.2%	107.1%	66.4%	75.1%	79.7%
Normal Retirement	Age 60 and 5 Years of Service or Age 55 and Age plus Service equals 80	Age 60 and 5 Years of Service or Age 55 and 30 Years or Any Age and 35 Years	Age 55 and 12 Years of Service for Full Benefits	25 Years of Service or Age 50 and 20 Years or Age 62 and 10 Years	Age 50 and 25 Years of Service or Age 52 and 20 Years or Age 62 and 10 Years	24 Years of Service or Age 65 and 16 Years	Age 50 with 20 Years of Service or Age 60 with 5 Years	Age 50 and Age plus Service equals 70 or Age 60 and 10 Years or Age 62 and 5 Years	Age 50 and Age plus Service equals 70 Points or Age 60 and 10 Years or Age 62 and 5 Yrs.
Retirement Benefits	(2.0% of FAS) x (Years of Service) FAS = 36 highest consecutive months out of last 10 years of earnings	(2.0% of FAS) x (Years of Service) FAS = 5 highest out of last 15 years of earnings	Vested Funds in Both EE & ER Contributions plus Net Earnings Vesting: ⅓ at 6 years ⅔ at 9 years	5.5% of Total Salary during Maximum of 25 Years of Service	(2.75% of FAS) x (Years of Service) FAS = 5 highest calendar years out of last 10	Judges on bench on/or before 7-1-05 75% of Current Salary of Sitting Judges	(2.25% of FAS) x (Yeats of Service) FAS = 5 highest consecutive plan years out of last 10	2.75% of FAS for 1-20 years of svc. - 2.0% of FAS for 21-25 years of svc. 1.0% of FAS for 26-30 years of svc.	2.6% of FAS for | 1-20 years of svc. 2.0% of FAS for 1 21-25 years of svc. 1.0% of FAS V H 26-30 years of svc.

As of 7/1/2010	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
			100% at 12 years		years of earnings	Judges on bench after 7-1-05 75% of FAS FAS=3 highest yrs	years of earnings	FAS = 5 highest consecutive plan years out of last 10 years of earnings	FAS = 5 highest consecutive plan years out of last 10 years of earnings
COLA	No	No	No	3.75%	1.0%	No	No	No	No
Credit for Military Service	Yes - After 5 Years of Service - Credit for up to 5 Years	Yes - Up to 25% of Total Service with Maximum 10 Years	Service under USERRA only	Yes - Credit for up to 5 Years after 20 Years of Service	Yes- Credit for up to 5 Years after 20 Years of Service	Yes - Credit for up to 5 Years	Yes - After 5 Years of Service - Credit up to 5 Years	Yes - After 5 Years of Service - Credit up to 5 Years	Yes - After 5 Years of Service- Credit up to 2 Years
Disability Benefits	Yes - After 10 Yrs. Of Svc. for Non-Work Related Disability	Any Age & 10 Years of Svc. or 5 Years of Svc. for Student Violence	Yes - No Minimum Service	Any Age & Any Service	Any Age & Any Service	Yes - After 10 Years of Service or Age 65 with 6 yrs	Any Age & Any Service	Any Age & Any Service	Any Age & Any Service
Interest Rate Assumption	7.5%	7.5%	N/A	7.5%	7.5%	7.5%	7.5%	7.5%	7.5%

As of 7/1/2010	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
Projected Amortization	by 6/30/2035	by 6/30/2034	N/A	by 6/30/2025	by 6/30/2030	N/A	by 6/30/2029	by 6/30/2038	by 6/30/2040

IN THE WEST VIRGINIA OFFICE OF TAX APPEALS

JAMES D. and ELAINE F. DAWSON,

Petitoners,

v.

OTA DOCKET No. 14-026 RPD

MARK W. MATKOVICH, STATE TAX COMMISSIONER OF WEST VIRGINIA,

Respondent.

STATE TAX DEPARTMENT'S EXHIBIT 2

CONSOLIDATED PUBLIC RETIREMENT BOARD (CPRB) PLAN STATISTICS

As of 7/1/2011	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
Year Implemented	1961	1941	1991	1935	1994	1949	1998	2008	2010
Active Members	36,254	35,855	4,554	133	523	70	954	535	9
Retirees	22,793	31,043	N/A	689	17	56	272	20	0
Covered by Soc. Sec.	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Unknown
Out of State Svc. Credit	Yes	Yes	No	No	No	No	No	No	No
% of Employer Contributions	14.5%	Per Actuary (NC+ UAAL) 27.66% TRS Pay FY 2012	7.50%	Per Actuary (NC+ UAAL) above 15% Statutory (247.4 % FY 2012)	17.5% of Base Pay	Per Actuary (NC + UAAL) 30.9% Pay FY 2012	13% plus Fee Deposits (1.30 % fees FY 2012)	10.50%	8.50%
% of Employee Contribution?	4.50%	6.00%	4.50%	9.00%	13% of Base Pay	10.50%	8.50%	8.50%	8.50%

As of 7/1/2011	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
Unfunded Accrued Liability (UAL)	$1,192, 584,000	$4,370, 483,000	N/A	$124,251,0 00	$8,280, 000	($28,992,0 00)	$35,888, 000	$6,859,000	($42,000)
% Funded	78.4%	53.7%	100%	79.5%	89.5%	130.3%	76.0%	82.5%	282.6%
Normal Retirement	Age 60 and 5 Years of Service or Age 55 and Age plus Service equals 80	Age 60 and 5 Years of Service or Age 55 and 30 Years or Any Age and 35 Years	Age 55 and 12 Years of Service for Full Benefits	25 Years of Service or Age 50 and 20 Years or Age 62 and 10 Years	Age 50 and 25 Years of Service or Age 52 and 20 Years or Age 62 and 10 Years	24 Years of Service or Age 65 and 16 Years	Age 50 with 20 Years of Service or Age 60 with 5 Years	Age 50 and Age plus Service equals 70 or Age 60 and 10 Years or Age 52 and 5 Years	Age 50 and Age plus Service equals 70 Points or Age 60 and 10 Years or Age 62 and 5 Yrs.
Retirement Benefits	(2.0% of FAS) x (Years of Service) ——— FAS = 36 highest consecutive months out	(2.0% of FAS) x (Years of Service) ——— FAS = 5 highest out of last 15	Vested Funds in Both EE & ER Contributions plus Net Earnings ——— Vesting: ⅓ at	5.5% of Total Salary during Maximum of 25 Years of Service	(2 75% of FAS) x (Years of Service) ——— FAS = 5 highest calendar years out	Judges on bench on/or before 7-1-05 75% of Current Salary of Sitting Judges	(2.25% of FAS) x (Years of Service) ——— FAS = 5 highest consecutive plan years	2.75% of FAS for 1-20 years of svc. 2.0% of FAS for 21-25 years of svc. 1.0% of FAS for 26 30 years of svc.	2.6% of FAS for 1-20 years of svc. 2.0% of FAS for 21-25 years of svc. 1.0% of FAS for 26-30 years of svc.

As of 7/1/2011	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
	of last 15 years of earnings	years of earnings	6 years ⅔ at 9 years 100% at 12 years		of last 10 years of earnings	Judges on bench after 7-1-05 75% of FAS FAS=3 highest yrs	out of last 10 years of earnings	FAS = 5 highest consecutive plan years out of last 10 years of earnings	FAS = 5 highest consecutive plan years out of last 10 years of earnings
COLA	No	No	No	3.75%	1.0%	No	No	No	No
Credit for Military Service	Yes - After 5 Years of Service - Credit for up to 5 Years	Yes-Up to 25% of Total Service with Maximum 10 Years	Service under USERRA only	Yes-Credit for up to 5 Years after 20 Years of Service	Yes-Credit for up to 5 Years after 20 Years of Service	Yes - Credit for up to 5 Years	Yes - After 5 Years of Service-Credit up to 5 Years	Yes - After 5 Years of Service - Credit up to 5 Years	Yes - After 5 Years of Service - Credit up to 2 Years
Disability Benefits	Yes-After 10 Yrs. Of Svc. for Non-Work	Any Age & 10 Years of Svc. or 5 Years of Svc. for	Yes No Minimum Service	Any Age & Any Service	Any Age 8 Any Service	Yes - After 10 Years of Service or	Any Age & Any Service	Any Age & Any Service	Any Age & Any Service

As of 7/1/2011	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
	Related Disability	Student Violence				Age 65 with 6 yrs.			
Interest Rate Assumption	7.5%	7.5%	N/A	7 5%	7.5%	7.5%	7.5%	7.5%	7.5%
Projected Amortization	by 6/30/2035	by 6/30/2034	N/A	by 6/30/2025	by 6/30/2030	N/A	by 6/30/2029	by 6/30/2038	N/A

IN THE WEST VIRGINIA OFFICE OF TAX APPEALS

JAMES D. and ELAINE F. DAWSON, Petitoners,	
v.	OTA DOCKET No. 14-026 RPD
MARK W. MATKOVICH, STATE TAX COMMISSIONER OF WEST VIRGINIA, Respondent.	

STATE TAX DEPARTMENT'S EXHIBIT 3

CONSOLIDATED PUBLIC RETIREMENT BOARD (CPRB) PLAN STATISTICS

As of 7/1/2012	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
Year Implemented	1961	1941	1991	1935	1994	1949	1998	2008	2010
Active Members	36,573	35,807	4,376	108	566	70	979	494	27
Retirees	23,460	31,913	69	710	18	55	283	34	0
Covered by Soc. Sec.	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Unknown
Out of State Svc. Credit	Yes	Yes	No	No	No	No	No	No	No
% of Employer Contributions	14.0%	Per Actuary (NC+ UAAL) 26.79% TRS Pay FY 2013	7.50%	Per Actuary (NC+ UAAL) above 15% Statutory (177.7% FY 2013)	15.5% of Base Pay	Per Actuary (NC + UAAL) 27.3% Pay FY 2013	13% plus Fee Deposits (1.26% fees FY 2013)	10.50%	8.50%
% of Employee Contribution?	4.50%	6.00%	4.50%	9.00%	13% of Base Pay	10.50%	8.50%	8.50%	8.50%

As of 7/1/2012	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
Unfunded Accrued Liability (UAL)	1,283, 380,000	4,568, 185,000	N/A	185,996,00 0	10,823, 000	(28,150,00 0)	39,481, 000	8,665,000	(112,000)
% Funded	77.6%	53.0%	100%	72.0%	87.9%	128.7%	74.9%	80.4%	224.4%
Normal Retirement	Age 60 and 5 Years of Service or Age 55 and Age plus Service equals 80	Age 60 and 5 Years of Service or Age 55 and 30 Years or Any Age and 35 Years	Age 55 and 12 Years of Service for Full Benefits	25 Years of Service or Age 50 and 20 Years or Age 62 and 10 Years	Age 50 and 25 Years of Service or Age 52 and 20 Years or Age 62 and 10 Years	24 Years of Service or Age 65 and 16 Years	Age 50 and Age plus Service	Age 50 and Age plus Service equals 70 or Age 60 and 10 Years or Age 52 and 5 Years	Age 50 and Age plus Service equals 70 Paints or Age 60 and 10 Years or Age 62 and 5 Yrs.
Retirement Benefits	(2.0% of FAS) x (Years of Service) FAS = 36 highest consecutive months out	(2.0% of FAS) x (Years of Service) FAS = 5 highest out of last 15	Vested Assets in Both EE & ER Contributions plus Net Earnings Thereon	5.5% of Total Salary during Maximum of 25 Years of Service	(2 75% of FAS) x (Years of Service) FAS = 5 highest calendar years out	Judges on bench on/or before 7-1-05 75% of Current Salary of Sitting Judges	(2.25% of FAS) x (Years of Service) FAS = 5 highest consecutive plan years	2.75% of FAS for 1-20 years of svc. 2.0% of FAS for 21-25 years of svc. 1.0% of FAS for 26-30 years of svc.	2.6% of FAS for 1-20 years of svc. 2.0% of FAS for 21-25 years of svc. 1.0% of FAS for 26-30 years of svc.

As of 7/1/2012	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
	of last 15 years of earnings	years of earnings	Vesting: 33.33% at 6 years 66.67% at 9 years 100% at 12 years		of last 10 years of earnings	Judges on bench after 7-1-05 75% of FAS FAS=3 highest yrs	out of last 10 years of earnings	FAS = 5 highest consecutive plan years out of last 10 years of earnings	FAS = 5 highest consecutive plan years out of last 10 years of earnings
COLA	No	No	No	3.75%	1.0%	No	No	No	No
Credit for Military Service	Yes – Credit for up to 5 Years after 5 Years of Service	Yes-Up to 25% of Total Service with Maximum 10 Years	Service under USERRA only	Yes-Credit for up to 5 Years after 20 Years of Service	Yes-Credit for up to 5 Years after 20 Years of Service	Yes - Credit for up to 5 Years	Yes – Credit for up to 5 Years after 5 Years of Service	Yes – Credit for up to 5 Years after 5 Years of Service	Yes – Credit for up to 2 Years after 5 Years of Service
Disability Benefits	Yes-After 10 Yrs. Of Svc. for Non-Work	Any Age & 10 Years of Svc. or 5 Years of Svc. for	Yes No Minimum Service	Any Age & Any Service	Any Age & Any Service	Yes - After 10 Years of Service or	Any Age & Any Service	Any Age & Any Service	Any Age & Any Service

As of 7/1/2012	Public Employees (PERS)	Teachers' Defined Benefit (TRS)	Teachers' Defined Contribution (TDC)	State Police (Plan A)	State Police (Plan B)	Judges' System (JRS)	Deputy Sheriffs' (DSRS)	Emergency Medical Services (EMSRS)	Municipal Police & Firefighters (MPFRS)
	Related Disability	Student Violence				Age 65 with 6 yrs.			
Interest Rate Assumption	7.5%	7.5%	N/A	7 5%	7.5%	7.5%	7.5%	7.5%	7.5%
Projected Amortization	by 6/30/2035	by 6/30/2034	N/A	by 6/30/2025	by 6/30/2030	N/A	by 6/30/2029	by 6/30/2038	N/A

West Virginia

Consolidated Public Retirement Board

Serving Those Who Serve West Virginia

Annual Report For:
Fiscal Year Ending June 30, 2010
and
Fiscal Year Ending June 30, 2011

4101 MacCorkle Avenue SE
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Plan Provisions

* * *

PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)

SUMMARY OF PLAN PROVISIONS 2010 / 2011

MEMBERSHIP The Public Employees Retirement System (PERS) was established on July 1, 1961 for the purpose of providing retirement benefits for employees of the State and other participating political sub-divisions. PERS is funded by employee and employer contributions.

ELIGIBILITY FOR RETIREMENT BENEFITS

Age	Years of Service	Benefit
55 and actively employed	**Rule of 80 = Age plus contributing service equals 80 or more.**	**Full Benefits**
60 and actively employed	**5 or more years of contributing service**	**Full Benefits**
55 and actively employed	**10 or more years of credited service**	**Reduced Benefits**
62 and not actively employed	**If a member prior to July 1, 2002, 5 or more years of <u>credited</u> service (may include military); if a member on or after July 1, 2002, 5 or more years of <u>contributory</u>**	**Full Benefits**

	service (military may not be included)	
55 and not actively employed	**Rule of 80 = Age plus contributing service equals 80 or more.**	**Full Benefits**
55 and not actively employed	**Between 20 and 24 years of service**	**Reduced Benefits**
Less than 55	**30 or more years of credited service**	**Reduced Benefits**

BENEFIT FORMULA

Final Average Salary x Years of Service x 2%

Final Average Salary is the average annual salary from the highest 36 consecutive months within the last 10 years of employment. Effective June 6, 2011 Final Average Salary is the average annual salary from the highest 36 consecutive months within the last 15 years of employment.

CONTRIBUTION RATES

An active member contributes 4.5% of his or her gross monthly salary to the plan. The employer contributes an additional 11.0% of the member's gross monthly salary for a total combined contribution equal to 15.5%. Current employee contributions are tax deferred. Contributions as a percentage of payroll for members and employers are established by the CPRB, and the employee contribution is subject to legislative limitations. The expected contributions are reviewed to assure that they result in actuarially sound funding for the plan.

11.0%	7/1/2009 – 6/30/2010
12.5%	7/1/2010 – 6/30/2011

INTEREST

Interest accrues at 4%.

ANNUITY OPTIONS

Option	**Description**
Straight Life	A lifetime annuity payable monthly to the retiree determined under the full benefit formula without adjustment. There are no death benefits under this option.
Option A – 100% Joint and Survivor	An actuarially reduced annuity payable monthly to retiree for his or her lifetime. At the member's death, the named survivor will receive

	the same amount for his or her lifetime.
Option B – 50% Joint and Survivor	An actuarially reduced annuity payable monthly to the retiree for his or her lifetime. At the retiree's death, the named survivor will receive one-half of the monthly payment for his or her lifetime.

DISABILITY BENEFITS

WORK RELATED DISABILITY – A member of PERS may apply for a work related total and permanent disability retirement with no minimum years of service required. He or she must be receiving (or have received) Workers' Compensation benefits on account of such disability.

NON-WORK RELATED DISABILITY – A member must have 10 or more years of credited service to apply for a non-work related total and permanent disability retirement.

Disability benefits shall not be less than 50% of a member's Final Average Salary. At age 65, the benefits are calculated on actual years of service, and may be reduced, but the straight life benefit may not be less than 20% of the member's Final Average Salary.

PRE-RETIREMENT DEATH BENEFITS

CATEGORY 1: LESS THAN 10: YEARS OF CREDITED SERVICE REGARDLESS OF ORIGINAL DATE OF HIRE OR MARITAL STATUS:

A member who has less than 10 years of credited service, regardless of marital status and regardless of original date of hire, may elect to name a beneficiary(ies) to receive a lump sum payment of his or her employee contributions plus 4% interest.

CATEGORY 2: HIRED FOR THE FIRST TIME BEFORE OR ON JUNE 9, 2006, HAS 10 OR MORE YEARS OF CREDITED SERVICE, AND IS MARRIED AT THE TIME OF DEATH:

A member of PERS who has 10 or more years of credited service, is married and was hired for the first time in PERS before or on June 9, 2006, may elect one of the following options on the Pre-Retirement Beneficiary form:

(A) The member may elect a 100% Joint and Survivor, calculated as if the member had retired the day preceding the date of his or her death, paid to his or her surviving spouse. The member may also elect to name an alternative beneficiary, who has an insurable interest in the life of the member, to receive the 100% Joint and Survivor annuity if the surviving spouse pre-deceases the member OR the member may elect to name a beneficiary to receive a lump sum payment of his or her employee contributions plus 4% interest if the surviving spouse pre-deceases the member.

(B) If the "Spouse's Waiver of Survivorship Annuity" section is completed, the member may elect to have the 100% Joint and Survivor annuity, calculated as if the member had retired the day preceding the date of his or her death, paid to a named survivor who has an insurable interest in the life of the member OR the member may elect to name a beneficiary to receive a lump sum payment of his or her employee contributions phis 4% interest.

CATEGORY 3: HIRED FOR THE FIRST TIME BEFORE OR ON JUNE 9, 2016, HAS 10 OR MORE YEARS OF CREDITED SERVICE AND IS NOT MARRIED AT THE TIME OF DEATH:

A member of PERS who has 10 or more years of credited service, is not married and was hired for the first time in PERS before or on June 9, 2006, may elect one of the following options on the Pro-Retirement Beneficiary form:

(A) The member may elect to name a beneficiary(ies) to receive a lump sum payment of his or her employee contributions plus 4% interest.

(B) The member may elect to have a 100% Joint and Survivor annuity, calculated as if the member had retired the day preceding the date of his or her death, paid to a named survivor who has an insurable interest in the life of the member.

(C) The member may elect not to name a beneficiary and have his or her pre-retirement death benefit paid as a monthly annuity, calculated as though the member had retired as of the date of his or her death and elected a Straight Life annuity, to a minor child or children until the minor child or children attains age 21 or sooner marries or becomes emancipated.

**In no event shall any child or children receive more than $250.00 per month.*

CATEGORY 4: HIRED FOR THE FIRST TIME AFTER JUNE 9, 2006, HAS 10 OR MORE YEARS OF CREDITED SERVICE AND IS MARRIED AT THE TIME OF DEATH:

A member of PERS who has 10 or more years of credited service, is married and was hired after June 9, 2006, may elect one of the following options on the Pre-Retirement Beneficiary form:

(A) The member may elect a 100% Joint and Survivor annuity, calculated as if the member had retired the day preceding the date of his or her death, paid to his or her surviving spouse. The member may also elect to name a beneficiary to receive a refund of his or her employee contributions plus 4% interest in the event the surviving spouse pre-deceases the member.

(B) If the "Spouse's Waiver of Survivorship Annuity" section is completed, the member may elect to have the 100% Joint and Survivor annuity, calculated as if the member had retired the day preceding the date of his or her death, paid to a child who is financially dependent upon the member by virtue of a permanent mental or physical disability, OR the member may elect to name a beneficiary to receive a lump sum payment of his or her employee contributions plus 4% interest.

**Evidence of disability must be provided and the disabled child must be named sole beneficiary.*

CATEGORY 5: HIRED FOR THE FIRST TIME AFTER JUNE 9, 2006, HAS 10 OR MORE YEARS OF CREDITED SERVICE AND IS NOT MARRIED AT THE TIME OF DEATH:

A member of PERS who has 10 or more years of credited service, is not married and was hired after June 9, 2006, may elect one of the following options on the Pre-Retirement Beneficiary form:

(A) The member may elect to name a beneficiary(ies) to receive a lump sum payment of his or her employee contributions plus 4% interest.

(B) The member may elect to have a 100% Joint and Survivor annuity, calculated as if the member had retired the day preceding the date of his or her death, paid to a child who is financially dependent upon the member by virtue of a permanent mental or physical disability.

**Evidence of disability must be provided and the disabled child must be named sole beneficiary.*

(C) The member may elect not to name a beneficiary and have his or her pre-retirement death benefit paid as a monthly annuity, calculated as though the member had retired as of the date of his or her death and elected a Straight Life annuity, to a minor child or children until the minor child or children attains age 21 or sooner marries or becomes emancipated.

**In no event shall any child or children receive more than $250.00 per month.*

TEACHERS' RETIREMENT SYSTEM (TRS)

SUMMARY OF PLAN PROVISIONS 2010 / 2011

MEMBERSHIP

The State Teachers' Retirement System (TRS) was established on July l, 1941 for the purpose of providing retirement benefits for teachers and school service personnel of the State's 55 county public school systems, the State Department of Education, and the School for the Deaf and Blind. An active member contributes 6% of his or her gross monthly salary into the retirement plan. The employer contributes an additional 15% of the member's gross monthly salary into the plan for employees hired before July 1, 2005; 7.5% for employees hired for the first time on or after July 1, 2005 and for employees who transferred to TRS pursuant to WV Code §18-7D. Chapter 18, Article 7A of the West Virginia Code establishes the plan provisions for TRS.

ELIGIBILITY FOR RETIREMENT BENEFITS

Age	Years of Service	Benefit
55 and currently working	**30 or more years of credited service**	**Full Benefits**
Any age and	**35 years of credited service**	**Full Benefits**

currently working		
60 and currently working	**5 or more years of service**	**Full Benefits**
Less than 55 and currently working	**30 years of credited service**	**Reduced Benefit**
60 and not currently working	**20 or more years of service**	**Full Benefits**
62 and not currently working	**Less than 20 years of service**	**Full Benefits**

Members can retire with reduced benefits before age 55 after completing 30 years of credited service. An individual with 5 or more years of contributing service who terminates employment prior to retirement, but does not withdraw his or her employee contributions, will be eligible for retirement benefits at age 62, or at age 60 with 20 years of contributing service.

BENEFIT FORMULA — Final Average Salary x Years of Service x 2%

	Final average salary refers to the average of the 5 highest years out of the last 15 years of contributing service.
LOANS	A member hired prior to July 1, 2005, may borrow up to 50% of his or her contributions, but the total existing loan may not exceed $8,000. Any outstanding loan balance must be paid in full before a member can receive retirement benefits or a member may elect to receive a lifetime actuarial reduction of their monthly retirement benefit to pay off their outstanding loan balance. Refinancing existing loans is not permitted. Loans are not available to members who are hired for the first time on or after July 1, 2005.
CONTRIBUTION RATES	TRS funding policy provides for member contributions based on 6% of members' annual compensation, tax deferred. Contributions as a percentage of payroll for members and employers are established by State law and are not actuarially determined. The employers make the following contributions: The State, county boards of education and other employers contribute 15% of gross salary of their TRS covered employees hired prior to July 1, 1991.

The State, county boards of education and other employers contribute 7.5% of gross salary of TRS covered employees hired for the first time on or after July 1, 2005, and for those TDC members who selected to transfer to TRS effective July 1, 2008. The other employers and county boards of education, utilizing funds made available through the State's School Aid Formula (SAF), also contribute 7.5% of the gross salary of their TDC covered employees. In addition, the State contributes a certain percentage of fire insurance premiums paid by the State residents and an amount determined by the State actuary as being needed to extinguish the TRS unfunded liability within 40 years as of June 30, 1994.

INTEREST

Refund interest accrues at 4%.

ANNUITY OPTIONS

Option	Description
Straight Life	A lifetime annuity payable to the member determined under the regular benefit formula without adjustment.
100% Joint and Survivor	A reduced annuity payable monthly to the member for his or her lifetime. At the member's death, the named survivor will receive the same amount for his or her lifetime.

50% Joint and Survivor	A reduced annuity payable monthly to the member for his or her lifetime. At the member's death, the named survivor will receive one-half amount for his or her lifetime.
Ten Year Certain and Life Annuity	A reduced annuity payable monthly to the member for his or her lifetime. If the member dies before receiving 120 payments, the remainder of the 120 monthly payments shall be payable to the member's named beneficiary or the member's estate.

DISABILITY BENEFITS

A member may qualify for disability retirement benefits if he or she has at least 10 years of service credit, left employment because of disability, and has been unable to work because of the disability for at least 6 months. Only 5 years of service credit is necessary if the disability is a direct and total result of an act of student violence directed toward the member. All disability retirement applications must be approved by the West Virginia Consolidated Public Retirement Board.

PRE-RETIREMENT DEATH BENEFITS	If a member 50 years of age or older with 25 years of credited service dies, the surviving spouse, if named as sole beneficiary, will receive a 100% Joint & Survivor annuity for life. If a member does not meet these age and service requirements, then payment of employee contributions and refund interest, and a like amount of employee contributions, will be paid to the designated beneficiary(ies).

TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM (TDC)

SUMMARY OF PLAN PROVISIONS 2010 / 2011

MEMBERSHIP	The Teachers' Defined Contribution Retirement System (TDC Plan) is a multiple employer governmental defined contribution money purchase pension plan, qualified under section 401(a) and made tax-deferred under section 414(h) of the Internal Revenue Code. The TDC Plan covers full time employees of the State's 55 county public school systems, the State Department of Education, certain Higher Education employees and the Schools for the Deaf and Blind who were hired between July 1, 1991 and June 30, 2005 when the Plan

	closed for new membership. TDC Plan members may also include former TRS members, including Higher Education employees, who elected to transfer membership to the TDC Plan. Plan establishment and provisions are located under Chapter 18, Article 7B of the West Virginia State Code.
CONTRIBUTIONS	In accordance with West Virginia State Code §18-7B-9, TDC Plan members are required to contribute 4.5% of their gross compensation, made on a tax-deferred basis through payroll deduction. The employer is required to contribute 7.5% of their gross compensation for a total of 12% annually.
INVESTMENTS	Investment of the combined employee and employer contributions in the TDC Plan is participant directed. Members select among the Plan's wide array of investment options, comprised mostly of mutual funds, target date funds or any combination thereof. Investment services are available at various levels ranging from guidance, which is free, to managed accounts, which has a fee structure based upon the member's account balance.

VESTING

Vesting is the percentage of the employer portion of the member's account, if any, they are entitled to at the time of retirement or termination of employment. A member's vesting is determined by their total service credit in the TDC Plan and the Plan's Vesting Schedule, ranging from 0% to 100% vesting as follows:

PLAN VESTING SCHEDULE	
Years of TDC Plan Service	**% Vested in the Employer Portion**
Less than 6 years	0%
6 years – 8.999 years	33.33%
9 years – 11.999	66.67%
12 years or more	100%

BENEFITS

Benefits in the TDC Plan are based solely upon the member's vested account balance, comprised of the accumulated employee contributions and the vested employer contributions, if any, plus the net earnings thereon, at the time of retirement or termination of employment.

Members of the TDC Plan become eligible for full retirement benefits at the minimum age of 55 with at least 12 full years of service credit in the TDC Plan. Members may also become eligible for full benefits if they are granted a disability retirement upon award by the Consolidated Public Retirement Board or upon death.

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JUDGES' RETIREMENT SYSTEM (JRS)

SUMMARY OF PLAN PROVISIONS 2010 / 2011

MEMBERSHIP — The Judges' Retirement System (JRS) was established on June 5, 1949 for judges and justices of the State of West Virginia who elect to participate. JRS is a single employer defined benefit employee retirement system, providing retirement, death and disability benefits. Chapter 51, Article 9 of the West Virginia Code establishes the plan provisions for JRS.

ELIGIBILITY FOR RETIREMENT BENEFITS

Age	Years of Service	Benefit
65	**At least 16 years of credited service, of which at least 12 years is as a sitting judge and/or justice ***	**Full Benefits**

Any age	**24 years of credited service, of which at least 12 years is as a sitting judge and/or justice ***	**Full Benefits**
After 65	**Any judge and/or justice who serves at least 8 full years ****	**Full Benefits**
62	**At least 16 years of credited service, of which at least 12 years is as a sitting judge and/or justice ***	**Early Retirement with an actuarially reduced benefit**
Defer until 65	**At least 16 years of credited service, of which at least 12 years is as a sitting judge and/or justice ***	**Full Benefits**

** Provided, That every individual who is appointed or elected for the first time as a judge or justice after July l, 2005, must serve a minimum of 14 years as a sitting judge or justice.*
** Provided, That no individual who is appointed or elected for the first time as a judge or justice after July 1, 2005, is eligible for retirement benefits under this criteria*

BENEFIT FORMULA

A regular retirement benefit is an amount equal to 75% of the current salary of the office from which the member retires. Individuals who are appointed or elected for the first time as a judge or justice after July 1, 2005, shall receive retirement benefits in an amount equal to 75% of the individual's final average salary. *Final average salary* is the average of the highest thirty-six consecutive months of compensation.

CONTRIBUTION RATES	Active members contribute 10.5% of their gross salary, tax deferred, into JRS. The Supreme Court contributes annually the amount necessary to actuarially fund JRS based on annual actuarial valuations completed by the CPRB for JRS out of the Supreme Court budget.
INTEREST	JRS accounts do not accrue interest.
PROSECUTING ATTORNEY	A judge or justice of a court of record who has served for a period of not less than 12 full years may receive credit for time served as a prosecuting attorney if the service was earned prior to 1987 and the member was a sitting judge or justice on March 14, 1987. Assistant Prosecuting Attorney service does not qualify as eligible years of service under JRS.

Disability Benefits

Any judge or justice who has served for ten full years, or any judge or justice over the age 65 who has served for at least six full years, who becomes physically or mentally incapacitated and cannot perform the duties of his or her office during the remainder of his or her term may be eligible for a disability retirement. The judge or justice shall make both a written application and resignation to the Governor setting forth the nature and extent of his or her disability. If the Governor determines through recommendation of the Governor's Judicial Disability Review Board that such disability exists and that public service is suffering and will continue to suffer by reason of such disability, the Governor shall submit an official written order awarding retirement benefits.

A judge or justice who retires because of disability and accepts the benefits payable under JRS because of such disability shall not, while receiving said benefits, be permitted to practice law. If a judge or justice receiving benefits for disability retirement enters the practice of law, his or her disability benefits shall be suspended for the time he or she shall be engaged in the practice of law.

The benefit payable to a judge or justice who became a member of JRS prior to April 1, 1987 and who is granted disability retirement shall be an annual retirement benefit equal to the salary he or she was receiving at the time of his or her disability retirement. This benefit is payable to the judge or justice for the remainder of his or her unexpired term. At the end of the term of office for which the judge or justice would have served, the benefit payable to the judge or justice for the remainder of his or her life is an amount equal to 75% of the current salary of the office from which the member retires. The benefit payable to a judge or justice who became a new member of JRS on or after April 1, 1987 and who is granted disability retirement is an annual retirement benefit equal to 75% of his or her highest annual salary, with allowable salary increases. This benefit is payable to the judge or justice for the remainder of his or her life.

DEATH BENEFITS

The surviving spouse of a judge or justice who dies while in office after having served five or more years as a sitting judge or justice, or a judge or justice who has already retired, shall receive 40% of the annual salary of the office which said judge or justice held at his or her death or from which said judge or justice resigned or retired. This benefit is payable to the surviving spouse until his or her death or remarriage. Should the active salary of sitting judges or justices be increased or decreased, the benefits paid to the surviving spouse shall amount to 40% of the new salary; provided, that the annuity paid to a surviving spouse of an individual who was appointed or elected for the first time as a judge or justice after July 1, 2005, shall be an amount equal to 40% of the judge or justice's final average salary. The surviving spouse of a judge or justice who was appointed or elected for the first time after July 1, 2005, is not entitled to an increase in benefits by virtue of any increase in the salaries of active sitting judges or justices.

If there is no surviving spouse of a judge or justice who dies after having served five years or more and such judge or justice leaves surviving him or her a dependent child or children, such dependents shall receive an amount equal to 20% of the annual salary of the office which said judge or justice held at the time of his or her death: Provided, that the total of all such annuities payable to each dependent child shall not exceed in the aggregate an amount equal to 40% of such salary. This benefit is payable to each dependent child until he or she attains the age of 18 or until he or she attains the age of 23 as long as such dependent(s) remain(s) a full-time student. Should the active salary of a sitting judge or justice be increased or decreased, the benefit payable to a dependent child or children shall amount to 20% of the new salary; provided, that the benefit of a dependent child or children of a judge or justice who is appointed or elected for the first time after July 1, 2005, shall be calculated with respect to the judge or justice's final average salary. Depended children of a judge or justice who is appointed or elected for the first time after July 1, 2005, are not entitled to an increase in benefits by virtue of any increase in the salaries of active judges or justices.

If a judge or justice dies while in office before having served five full years as a sitting judge or justice, the surviving spouse or dependent children will receive a refund of contributions paid into the retirement system.

PUBLIC SAFETY DEATH, DISABILITY, AND RETIREMENT SYSTEM (PLAN A)

SUMMARY OF PLAN PROVISIONS 2010 / 2011

MEMBERSHIP

The Public Safety Death Disability and Retirement System, commonly referred to as Plan A, was established for all state troopers on July 1, 1935. Chapter 15, Article 2 of the West Virginia Code establishes the plan provisions for Plan A. State Troopers hired on or after March 12, 1994 are not eligible for membership in Plan A. Civilian employees of West Virginia State Police are members of the Public Employees Retirement System.

ELIGIBILITY FOR RETIREMENT BENEFITS

Age	Years of Service	Benefit
50	**20 years contributory service (excluding military)**	**Full Benefits**
Any age	**25 years of credited service (including military)**	**Fall Benefits**
62	**10 years of service.**	**Full Benefits**
Less than 50	**20 years of credited service (excluding military)**	**Deferred Benefit at age 50**

BENEFIT FORMULA

The regular retirement benefit, paid in equal monthly installments, is equal to 5.5% of the member's

	aggregate salary during his or her whole period of service in the Department. This benefit is payable during the lifetime of the retired member.
COST OF LIVING ALLOWANCE	Every retiree of the fund who is 55 years of age or older and who is retired under normal retirement criteria will receive an annual retirement annuity adjustment of 3.75% payable on July 1 of each year after the retiree is 55 years of age. Every retiree of the fund who is retired under disability retirement criteria and every surviving spouse or other beneficiary receiving a benefit under the provisions of this retirement system is eligible to receive the annual retirement annuity adjustment of 3.75% payable on July 1 of each year.
CONTRIBUTION RATES	Active members of Plan A contribute 9% of their total gross salary, tax deferred, into the retirement plan for the member Normal Cost. The employer contributes an additional amount sufficient to fund the Plan benefits on an actuarially determined basis including both the employer Normal Cost plus amortizing the unfunded actuarial accrued liability as a level dollar amount through

	Fiscal Year 2025 (the ARC). For Fiscal Year 2010, this requirement was $12,416,000. For Fiscal Year 2011, this requirement was $25,940,000.00. The State funds part of their ARC contribution to the system through arrest fees, accident report fees, criminal investigation reports, etc.
INTEREST	Interest accrues at 4%.
DISABILITY BENEFITS	**TOTAL DUTY DISABILITY** – Any employee of the fund who has not yet entered retirement status on the basis of age and service and who becomes permanently and totally disabled as the result of a physical or mental impairment resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the member was engaged in the performance of his or her duties as an employee of the agency shall qualify for a total disability, if, in the opinion of the Board, he or she is probably permanently unable to engage in substantial gainful activity by reason of such medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a

continuous period of not less than 12 months. The benefit payable for a total duty related disability is a lifetime benefit in an annual amount equal to 8.5% of the total salary which would have been earned by the employee during 25 years, or during actual service if more than 25 years of service in the fund, based on the average earnings of the retirant while employed as an employee of the agency, but not less than $15,000 annually.

PARTIAL DUTY DISABILITY – Any employee of the fund who has not yet entered retirement status on the basis of age and service and who becomes partially disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the employee was engaged in the performance of his or her duties as an employee of the agency shall qualify for a partial duty disability, if, in the opinion of the Board, he or she is by reason of that cause probably permanently unable to perform adequately the duties required of him or her as an employee of the agency, but is able to engage in any other gainful employment in a field other than law enforcement. The benefit payable for a partial duty related disability is a lifetime benefit in an amount equal to 5.5% of the total salary which would have been earned during 25 years, or during actual service if more than 25 years in the fund, based on the average earnings of the retiree while employed as an employee of the agency, but not less than $6,000 annually.

NON-DUTY DISABILITY – Any employee while in active service of the agency may qualify for a non-duty disability if the employee has, in the opinion of the Board, become permanently partially or totally disabled and is unable to adequately perform the duties required of an employee of the agency from any cause other than those set forth in the duty related disability provisions, and not due to vicious habits, intemperance or willful misconduct on his or her part

a.) If the employee at the time of such retirement has served less than 20 years, the benefit payable shall be paid in equal monthly installments during a period equal to ½ the time he or she has served as an employee of the agency a sum equal to 5.5% of the total salary which would have been earned during 25 years of service. At the end of the ½ time period of service, the benefit payable for the remainder of the retiree's life is an annual sum paid in monthly installments equal to ½ the base salary received by the retiree from the agency in the preceding 12 month period immediately prior to the disability award.

b.) If the employee, at the time of such retirement has served 20 years or longer, the employee is entitled to receive annually in equal monthly installments a lifetime benefit in an amount equal to 5.5% of the aggregate of salary paid to the retiree through the day immediately preceding his or her disability award.

CONTINUED DISABILITY – The Board may require subsequent medical evaluations to determine if a disability retiree has fully or partially recovered from such disability. The Board shall also require a disability benefit recipient to file an annual statement of earnings and any other information required in rules adopted by the Board.

DEATH BENEFITS

DUTY RELATED – The benefits payable to the surviving spouse for a duty related pre-retirement death, or to the surviving spouse of a member who dies after having been retired with a duty related disability are monthly payments for his or her lifetime in which the annual benefit is equal to 5.5% of the total salary which would have been earned by the deceased member during twenty-five years of service in the Department, but not less than $6,000 annually. A surviving spouse will also receive $100 per month for each dependent child. If there is no surviving spouse, each surviving dependent child will receive 25% of the spouse's benefit. If there is no surviving spouse or dependent children, then the surviving dependent parents each receive 50% of what would have been paid to the spouse.

DEPENDENT CHILD SCHOLARSHIP – Any person qualified as a surviving dependent child of a member who died in the performance of duty or of a member who dies after having been retired with a duty related disability shall be entitled to receive a scholarship to be applied to the career development education of that dependent at a West Virginia institution.

NON-DUTY RELATED – The benefit payable to the surviving spouse of a member who dies after a normal or a non-duty related disability retirement, or after the member has served twenty years, is an amount equal to

75% of the retirement benefits the deceased member was receiving while in retirement status, or would have been entitled to receive to the same effect as if such member had been retired immediately prior to the time of his or her death, but not less than $5,000 annually. A surviving spouse will also receive $100 per month for each dependent child. If there is no surviving spouse, or the surviving spouse remarries, each surviving dependent child will receive 25% of the spouse's benefit. If there is no surviving spouse or dependent children, then the surviving dependent parents each receive 30% of what would have been paid to the spouse.

The benefits payable to the surviving spouse of a member for a non-duty related death with less than twenty years of service are monthly payments in which the annual benefit is equal to 2.75% of the total salary which would have been earned by said member during twenty-five years of service in the Department. If there is no surviving spouse, or the surviving spouse remarries, each surviving dependent child will receive 25% of the spouse's benefit. If there is no surviving spouse or dependent children, then the surviving dependent parents each receive 50% of what would have been paid to the spouse.

STATE POLICE RETIREMENT SYSTEM (PLAN B)

SUMMARY OF PLAN PROVISIONS 2010 / 2011

MEMBERSHIP The West Virginia State Police Retirement System, commonly referred to as Plan B, was established by the enactment of Chapter 15, Article 2A of the West Virginia Code during the 1994 Legislative Session for all state troopers hired on or after March 12, 1994. Civilian employees of the West Virginia State Police are members of the Public Employees Retirement System. State troopers hired before March 12, 1994 are not eligible for membership in Plan B.

ELIGIBILITY FOR RETIREMENT BENEFITS

Age	Years of Service	Benefit
50	**25 or more years of credited service (excluding military service)**	**Full Benefits**
52	**20 or more years of credited service (excluding military service)**	**Full Benefits**

Less than 52	**20 or more years of credited service (excluding military service)**	**Reduced Benefits**
62	**10 or more years of credited service**	**Full Benefits**

BENEFIT FORMULA

Final Average Salary x Credited Years of Service x 2.75%

Final Average Salary is the average highest annual compensation received for employment with the West Virginia State Police, including compensation paid for overtime service, received by the employee during any five calendar years within the employee's last ten years of service. This benefit is payable during the lifetime of the retiree.

CONTRIBUTION RATES

Active members of Plan B contribute 13% of then base salary, tax deferred, into the retirement plan.

For Fiscal Year 2010, the employer contributed 15% of base salary into the plan.

For Fiscal Year 2011, the employer contributed 19.50% of base salary into the plan.

Members of this retirement system are not covered by Social Security or Workers' Compensation.

INTEREST	Interest accrues at 4%.
COST OF LIVING ADJUSTMENT	Every retiree of the system who is 63 years of age or older and who is retired under normal retirement criteria will receive an annual retirement annuity adjustment of 1% payable on July 1 of each year. If the retiree is retired for less than one year on that July 1, the first annuity adjustment will be a pro rata share of the full year's annuity adjustment. Every retiree of the system who is retired under disability retirement criteria and every surviving spouse receiving a benefit under the provisions of this retirement system is eligible to receive the annual retirement annuity adjustment of 1%, payable on July 1 of each year following commencement of benefits.
DISABILITY BENEFITS	**TOTAL DUTY DISABILITY** – Any employee of the Agency may qualify for a total duty disability if, in the opinion of the Board, the employee has become physically or mentally permanently disabled and incapacitated from all types of gainful employment by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required

of employees of the Agency, and such disability was incurred pursuant to or while the employee was engaged in the performance of his or her duties as an employee of the Agency. The benefit payable during the lifetime of the retiree for a total duty related disability is an amount equal to the base salary received by the employee in the preceding twelve-month employment period.

PARTIAL DUTY DISABILITY – Any employee of the Agency may qualify for a partial duty disability if, in the opinion of the Board, the employee has become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the Agency, and such disability was incurred pursuant to or while the employee was or shall be engaged in the performance of his or her duties as an employee of the Agency and is by reason of such cause unable to perform adequately the duties required of him or her as an employee of the Agency, but is able to engage in other gainful employment in a field other than law enforcement. The benefit payable during the lifetime of the retiree for a partial duty related disability, or until the retiree attains the age of fifty-five or until such disability shall sooner terminate, is an amount equal to six-tenths of the base salary received in the preceding twelve-month employment period. At age fifty-five, the retiree shall receive a regular retirement benefit as it would apply to his or her final average salary based on earnings from the Agency through the day immediately preceding his or her disability.

NON-DUTY DISABILITY – Any employee while in active service of the Agency may qualify for a non-duty disability if, in the opinion of the Board, the employee becomes permanently disabled and is unable to adequately perform the duties required of an employee of the Agency from any cause other than those set forth in the duty related disability provisions, and not due to vicious habits, intemperance or willful misconduct on the employee's part. The benefit payable during the lifetime of the retiree for a non-duty related disability, or until the retiree attains the age of 55, is an amount equal to one-half the base salary received in the preceding twelve-month employment period, At age 55, the retiree shall receive a-regular retirement benefit as n would apply to his or her final average salary based on earnings from the Agency through the day immediately preceding his or her disability.

CONTINUED DISABILITY – The Board may require subsequent medical evaluations to determine if a disability retiree has fully or partially recovered from such disability. The Board may also require a disability retiree to file an annual statement of earnings and any other information required in rules adopted by the Board.

DEATH BENEFITS

DUTY RELATED – The benefits payable to the surviving spouse for a duty related pre-retirement death, or to the surviving spouse of a retiree who dies after having been retired with a duty related disability are monthly payments for his or her lifetime in an amount equal to nine-tenths of the base salary received in the preceding twelve-month period by the deceased member, but not less than $10,000 annually. A surviving spouse will also receive $150 per month for each dependent child. If there is no surviving spouse, each surviving dependent child will receive one-third of the spouse's benefit. If there is no surviving spouse or dependent children, then the surviving dependent parents each receive one-half of what would have been paid to the spouse.

DEPENDENT CHILD SCHOLARSHIP – Any person qualified as a surviving dependent child of an employee who died in the performance of duty or of a retiree who dies after having been retired with a duty related disability shall be entitled to receive a scholarship to be applied to the career development education of that dependent at a West Virginia institution.

NON-DUTY RELATED – The benefits payable to the surviving spouse of a retiree who dies after a normal or a non-duty related disability retirement, or after the employee served twenty years, is an amount equal to two-thirds of the retirement benefit the deceased member was receiving while in retirement status, or would have been entitled to receive to the same effect as if such member had been retired immediately prior to the time of his or her death, but not less than $5,000 annually. A surviving spouse will also receive $100 per month for each dependent child. If there is no surviving spouse, or the surviving spouse dies or remarries, each surviving dependent child will receive one-fourth of the spouse's benefit. If there is no surviving spouse or dependent children, then the surviving dependent parents each receive one-half of what would have been paid to the spouse.

The benefits payable to the surviving spouse of an employee for a non-duty related death with less than twenty years of service are monthly payments in which the annual benefit is a sum equal to one-half of the base salary received in the preceding twelve-month employment period by the deceased employee. If there is no surviving spouse, or the surviving spouse dies or remarries, each surviving dependent child will receive one-fourth of the spouse's benefit. If there is no surviving spouse or dependent children, then the surviving dependent parents each receive one-half of what would have been paid to the spouse.

DEPUTY SHERIFF RETIREMENT SYSTEM (DSRS)

SUMMARY OF PLAN PROVISIONS 2010 / 2011

MEMBERSHIP

The Deputy Sheriff Retirement System (DSRS), a multiple-employer defined benefit employee retirement system, was established for all deputy sheriffs hired on or after July 1, 1998. Deputy Sheriffs employed prior to July 1, 1998 were eligible to transfer their PERS service to DSRS. Service as a sheriff may also be considered covered employment under certain circumstances. Chapter 7, Article 14D of the West Virginia Code establishes the plan provisions for DSRS.

ELIGIBILITY FOR RETIREMENT BENEFITS

Age	Years of Service	Benefit
50 while still in covered employment	**Rule of 70 = Age plus service equal 70 (excluding military service)**	**Full Benefits**
60 while still in covered employment	**Completion of 5 years of service (excluding military service)**	**Full Benefits**
62	**Completion of 5 or more years or service (excluding military service)**	**Full Benefits**

50 and not in covered employ-ment	**20 years of service (excluding military service)**	**Full Benefits**
40	**20 years of service (excluding military service)**	**Reduced Benefits**

BENEFIT FORMULA

Final Average Salary x Years of Credited Service x 2.25%

Final average salary refers to the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service.

CONTRIBUTION RATES

Active members contribute 8.5% of their monthly salary, tax deferred, and the Sheriff's Office of the county in which the member is employed in covered employment contributes an additional 10.5% of the member's monthly salary. In addition, the Sheriff's Office contributes certain fees charged for reports and other services provided by the Sheriff's Offices. A member is vested after completion of 60 months covered employment.

INTEREST Interest accrues at 4%.

ANNUITY OPTIONS

Option	Description
Straight Life Annuity	A lifetime annuity payable monthly to the member determined under the regular benefit formula without adjustment.
Option A – True Joint and Survivor Annuity	A reduced annuity payable monthly to the member. Upon the death of either the member or the beneficiary, the annuity is further reduced to either 50%, 66⅔%, 75% or 100% of the original monthly amount dependent on the original option elected by the member. The reduced benefit is payable to the surviving member or beneficiary for the remainder of their life.
Option B – Joint and Survivor Annuity	A reduced annuity payable monthly to the member. Upon death of the member, a reduced annuity of either 50%, 66⅔%, 75% or 100% of the original monthly amount, dependent on the original option elected by the member, is payable to the named beneficiary. There is no change in the original monthly amount if the beneficiary dies first.
Option C – Ten Years Certain and Life Annuity	A reduced annuity payable monthly to the member. If the member dies before receiving 120 monthly payments, the remainder of the 120 monthly payments shall be payable to the

	member's beneficiary or the member's estate.
Option D – Level Income Annuity	An increased annuity payable monthly to the member until the member attains Social Security Retirement Age. After Social Security Retirement Age, the benefit is reduced by the estimated Primary Insurance Amount determined at retirement. The reduced benefit is payable monthly for the remaining lifetime of the member. There are no death benefits under this option.

DISABILITY BENEFITS

TOTALLY DISABLED means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member is totally disabled only if his/her physical or mental impairment is so severe that he/she is not only unable to perform his/her previous work as a deputy sheriff but also cannot, considering the member's age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state.

PARTIALLY DISABLED means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him/her to earn an amount at least equal to ⅔ of the average annual compensation earned by all active members of this plan during the plan year ending the most recent 30th day of June.

DUTY RELATED DISABILITY BENEFITS:

TOTAL DUTY: 90% of the member's average full monthly compensation for the 12 month contributory period preceding his/her disability payable for life.

PARTIAL DUTY: 45% of the member's average full monthly compensation for the 12 month contributory period preceding his/her disability award until age 60, then reverts to normal retirement, plus ½ time disability service.

NON DUTY RELATED DISABILITY BENEFITS:

TOTAL NON-DUTY: 66⅔% of the member's average full monthly compensation for the 12 month contributory period preceding his/her disability award until age 60, then reverts to normal retirement, plus ½ time disability service.

PARTIAL NON-DUTY: 33⅓% of the member's average full monthly compensation for the 12 month contributory period preceding his/her disability award until age 60, then reverts to normal retirement, plus ½ time disability service.

DEATH BENEFITS

DUTY RELATED – The surviving spouse of any member who, while in covered employment, has died or dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his/her duties as a deputy sheriff, or the surviving spouse of a member who dies from any cause after having been retired with a duty related disability shall be entitled to receive the greater of ⅔ of the annual compensation received in the preceding 12 month period by the deceased member or; if the member dies after his/her early or normal retirement age the monthly amount the spouse would have received had the member retired the day before his/her death and elected a 100% Joint and Survivor annuity with the spouse as the joint annuitant, and then died.

NON-DUTY RELATED – The surviving spouse of any member who has been a member for at least 10 years, while in covered employment, who has died or dies from non-duty related causes and not due to vicious habits, intemperance, or willful misconduct on his/her part shall receive the greater of 50% of the annual compensation received in the preceding 12 month period by the deceased member; or if the member dies after his/her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his/her death, elected a 100% Joint and Survivor annuity with the spouse as the joint annuitant, and then died

DEPENDENT BENEFITS – A surviving spouse of a member who dies of a duty or non-duty related death is also entitled to receive $100 monthly for each dependent child. If the surviving spouse dies, or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to ¼ of the surviving spouse's entitlement. If there is neither a surviving spouse nor a dependent child, the fund shall pay to the dependent parents of the deceased member a sum equal to what the surviving spouse would have received without children. When there is only one dependent parent surviving, that parent is entitled to receive ½ the amount which both parents would have been entitled to receive.

DEPENDENT CHILD SCHOLARSHIP – Any person qualifying as a dependent child of a deceased member or retirant of this retirement system shall be entitled to receive scholarship monies to be applied to the career development education of that dependent at a West Virginia institution.

BURIAL BENEFITS – Any member who dies as a result of any duty-related illness or injury is entitled to receive a lump sum burial benefit of $5,000, to be paid to the member's spouse, or to the member's estate if not married. Any unspent balance shall be distributed as part of the member's estate.

EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM (EMSRS)

SUMMARY OF PLAN PROVISIONS 2010 / 2011

MEMBERSHIP

The Emergency Medical Services Retirement System (EMSRS) was established January 1, 2008 for the purpose of providing retirement benefits for emergency medical services officers employed on or after January 1, 2008 by participating public employers who voluntarily elected to participate.

Emergency medical services officers employed and participating in PERS prior to January 1, 2008, were eligible to transfer their PERS service to EMSRS if their employer elected to participate in EMSRS. Emergency medical services officers employed by Non-PERS participating political subdivisions were eligible to purchase service worked prior to joining EMSRS. Chapter 16, Article 5V of the West Virginia Code established the plan provisions for EMSRS.

ELIGIBILITY FOR

Age	**Years of Service**	**Benefit**
50	**20 or more years contributory service**	**Full Benefits**

RETIREMENT BENEFITS

50 while still in covered employment	**When age plus contributory service equals 70 while still in covered employment**	**Full Benefits**
60 while still in covered employment	**10 years contributory service while still in covered employment**	**Full Benefits**
62	**5 years contributory service**	**Full Benefits**
45	**20 years contributory service**	**Reduced Benefits**

BENEFIT FORMULA

2.75% x FAS x Years of Service for years 1–20

2.0% x FAS x Years of Service for years 21–25

1.0% x FAS x Years of Service for years 26–30

Final Average Salary refers to the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service.

CONTRIBUTION RATES

An active member of EMSRS contributes 8.5% of his or her monthly gross salary, tax deferred, to the plan. The employer contributes an additional 10.5% of the member's gross monthly salary for total combined contributions equal to 19%.

INTEREST

Interest accrues at 4%.

ANNUITY OPTIONS

Option	Description
Straight Life Annuity	A lifetime annuity payable monthly to the member determined under the regular benefit formula with no adjustment.
Option A-Contingent Joint and Survivor Annuity	A life annuity payable during the joint lifetime of the member and his or her named survivor. Upon the death of the member, the named survivor shall receive a lifetime annuity in a reduced amount equal to 50%, 66⅔%, 75% or 100% of the amount paid while both were living, as selected by the member.
Option B-Ten Years Certain and Life Annuity	A reduced annuity payable monthly to the member. If the member dies before receiving 120 monthly payments, the remainder of the 120 monthly payments shall be payable to the member's beneficiary or the member's estate.

DISABILITY BENEFITS

TOTALLY DISABLED means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member is totally disabled only if his or her physical or mental impairment is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the State.

DUTY RELATED DISABILITY – Any member of EMSRS who becomes totally disabled while in covered employment by injury, illness or disease as a result of an occupational risk or hazard while performing the services required of an emergency medical services officer is entitled to receive a duty disability benefit, provided that it is determined by two physicians, one of whom shall be named by the CPRB, that he or she is not only unable to perform adequately the duties required of an emergency medical services officer, but also cannot engage in any other kind of substantial gainful employment.

NON DUTY RELATED DISABILITY – Any member of EMSRS who becomes totally disabled while in covered employment from any cause other than a duty related injury, illness or disease and which cause is not due to vicious habits or willful misconduct is entitled to receive a non-duty disability benefit, provided that it is determined by two physicians, one of whom shall be named by the CPRB, that he or she is not only unable to perform adequately the duties required of an emergency medical services officer, but also cannot engage in any other kind of substantial gainful employment.

DEATH BENEFITS

DUTY RELATED – The surviving spouse of any member who, while in covered employment, has died or dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as an emergency medical services officer, or the surviving spouse of a member who dies from any cause after having been retired with a duty related disability, will be entitled to receive the greater of ⅔ of the annual compensation received in the preceding 12 month period by the deceased member; or if the member dies after his or her early or normal retirement age, the monthly amount the spouse would have received had the member retired the day before his or her death and elected a 100% Joint and Survivor annuity with the spouse as the joint annuitant, and then died

NON DUTY RELATED – The surviving spouse of any member who has been a member for at least 10 years who, while in covered employment, has died or dies from non-duty related causes and not due to vicious habits, intemperance or willful misconduct on his/her part shall receive in equal monthly installments during his or her lifetime an amount equal to the greater of ½ of the annual compensation received in the preceding 12 month period by the deceased member; or if the member dies after his/her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his/her death, elected a 100% Joint and Survivor annuity with the spouse as joint annuitant, and then died.

DEPENDENT BENEFITS – A surviving spouse of a member who dies of a duty or non-duty related death is also entitled to receive $100 monthly for each dependent child. If the surviving spouse dies, or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to 100% of the surviving spouse's entitlement divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay to the dependent parents of the deceased member a sum equal to what the surviving spouse would have received without children. When there is only one dependent parent surviving, that parent is entitled to receive ½ the amount which both parents would have been entitled to receive.

DEPENDENT CHILD SCHOLARSHIP – Any person qualifying as a dependent child of a deceased member or retirant of this retirement system shall be entitled to receive scholarship monies to be applied to the career development education of that dependent at a West Virginia institution.

BURIAL BENEFITS – Any member who dies as a result of any duty-related illness or injury is entitled to receive a lump sum burial benefit of $5,000 to be paid to the member's spouse, or to the member's estate if not married. Any unspent balance shall be distributed as a part of the member's estate.

MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM (MPFRS)

SUMMARY OF PLAN PROVISIONS 2010 / 2011

MEMBERSHIP The MPFRS Act was passed by the Legislature in November 2009, and became effective January 1, 2010. The legislation provided for any municipality or municipal subdivision employing municipal police officers or firefighters to elect to become a participating employer. MPFRS is a multiple employer defined benefit retirement system. If there are fewer than 100 members on January 1, 2014, all members will be merged into the Emergency Medical Services Retirement System. All police officers and firefighters first employed in covered employment after the date the municipality or municipal subdivision elected to join MPFRS are required to be members of MPFRS. Chapter 8 Article 22A of the West Virginia Code establishes the provisions for MPFRS.

ELIGIBILITY FOR RETIREMENT BENEFITS

Age	Years of Service	Benefit
Age 50	**20 or more years contributory service**	**Full Benefits**
Age 50 while still in covered employment	**When age plus contributory service equals 70**	**Full Benefits**
Age 60 while still in covered employment	**10 years contributory service**	**Full Benefits**
Age 62	**5 years contributory service**	**Full Benefits**

BENEFIT FORMULA

The accrued benefit on behalf of any member is calculated as follows, not to exceed 67%:

Final Average Salary x Years of Credited Service x Benefit Percentage

2.6% x FAS x Years of Credited Service for years 1–20
2.0% x FAS x Years of Credited Service for years 21–25
1.0% x FAS x Years of Credited Service for years 26–30

Final Average Salary refers to the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service.

CONTRIBUTION RATES Currently, the MPFRS employee contribution rate is 8.5% of gross monthly salary and the employer contribution rate is 8.5% of gross monthly salary. As provided in statute, the Board may recommend the employee contribution rate be increased to 10.5% if the MPFRS plan does not reach a 70% funded level by July 1, 2014.

INTEREST Interest accrues at 4%.

ANNUITY OPTIONS

Option	Description
Straight Life Annuity	A lifetime annuity payable monthly to the member determined under the regular benefit formula with no adjustment.
Option A- Contingent Joint and Survivor Annuity	A life annuity payable during the joint lifetime of the member and his or her named beneficiary. Upon the death of the member, the named beneficiary shall receive a lifetime annuity in a reduced amount equal to 50%, 66 ⅔%, 75% or 100% of the amount paid while both were living, as selected by the member.
Option B- Ten Years Certain and Life Annuity	A reduced annuity payable monthly to the member. If The member dies before receiving 120 monthly payments, the remainder of the 120 monthly

	payments shall be payable to the ,member's beneficiary or the member's estate.

BENEFITS	No member is entitled to retirement, disability or death benefits under this retirement system until January 1, 2013.
DISABILITY BENEFITS	**TOTALLY DISABLED** means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member is totally disabled only if his or her physical or mental impairment is so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state. **DUTY RELATED DISABILITY** – Any member of MPFRS who becomes totally disabled while in covered employment by injury, illness or disease as a result of an occupational risk or hazard while performing the

services required of a police officer or firefighter is entitled to receive a duty disability benefit, provided that it is determined by two physicians, one of whom shall be named by the CPRB, that he or she is not only unable to perform adequately the duties required of a police officer or firefighter, but also cannot engage in any other kind of substantial gainful employment. The benefit payable for a duty related disability is an amount equal to 90% of the member's last 12 full months average salary until age 65, and then "normal retirement" plus ½ time disability service.

NON DUTY RELATED DISABILITY – Any member of MPFRS who becomes totally disabled while in covered employment from any cause other than a duty related injury, illness or disease and which cause is not due to vicious habits or willful misconduct is entitled to receive a non-duty disability benefit, provided that it is determined by two physicians, one of whom shall be named by the CPRB, that he or she is not only unable to perform adequately the duties required of a police officer or firefighter, but also cannot engage in any other kind of substantial gainful employment. The benefit payable for a non-duty related disability is an amount equal to 66⅔% of the member's last 12 months average salary until age 60 and then normal retirement plus ½ time disability service.

DEATH BENEFITS

DUTY RELATED – The surviving spouse of any member who, while in covered employment, has died or dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a police officer or firefighter, or the surviving spouse of a member who dies from any cause after having been retired with a duty related disability, is entitled to receive in equal monthly installments during his or her lifetime an amount equal to the greater of ⅔% of the annual compensation received in the preceding 12 month period by the deceased member; or if the member dies after his or her normal retirement age the monthly amount the spouse would have received had the member retired the day before his or her death and elected a 100% Joint and Survivor annuity with the spouse as the joint annuitant, and then died.

Non-Duty Related – The surviving spouse of any member who has been a member for at least 10 years who, while in covered employment, has died or dies from non-duty related causes and not due to vicious habits, intemperance or willful misconduct on his or her part shall receive in equal monthly installments during his or her lifetime an amount equal to the greater of ½ of the annual compensation received in the preceding 12 month period by the deceased member; or if the member dies after his or her normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100% Joint and Survivor annuity with the spouse as joint annuitant, and then died.

Dependent Benefits – A surviving spouse of a member who dies of a duty or non-duty related death is also entitled to receive $100 monthly for each dependent child. If the surviving spouse dies, or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to 100% of the surviving spouse's entitlement divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay to the dependent parents of the deceased member a sum equal to what the surviving spouse would have received without children. When there is only one parent surviving, that parent is entitled to received ½ the amount which both parents would have been entitled to receive.

DEPENDENT CHILD SCHOLARSHIP – Any person qualifying as a dependent child of a deceased member or retirant of this retirement system shall be entitled to receive scholarship monies to be applied to the career development education of that dependent at a West Virginia institution.

BURIAL BENEFITS – Any member who dies as a result of any duty-related illness or injury is entitled to receive a lump sum burial benefit of $5,000 to be paid to the member's spouse, or to the member's estate if not married. Any unspent balance shall be distributed as a part of the member's estate.

Plan Provisions

Actuarial Information

Valuation Date – All valuations were completed as of July 1, 2009 for the 2010 Fiscal Year and July 1, 2010 for the 2011 Fiscal Year.

Actuarial Cost Method – All Valuations were completed applying the Entry Age Past Service with Aggregate Normal Cost actuarial cost method.

Asset Valuation Method – All plan assets are valued at reported Market Value as of July 1, 2009 or July 1, 2010 and adjusted for accrued amounts.

Amortization Methodology and Remaining Past Service Amortization Period – Differs by plan based on statutory funding or targeted funding and is summarized below:

Public Employees (PERS) – Normal Cost is amortized as a level percentage of future payrolls of the active membership group as of the Valuation date. Employer contributions of 11% for Fiscal Year 2010 and 12.5% for Fiscal Year 2011 are first applied to the normal Cost with the remaining contributions applied to amortize the unfunded past service. Contributions are sufficient if the unfunded past service will be fully amortized on level dollar funding basis through June 30, 2035. As of the Valuation date, contributions were sufficient to cover unfunded past service amortization and will meet the funding sufficiency test.

Teachers' Defined Benefit (TRS) – Normal Cost is amortized as a level percentage of future payrolls of the active membership group as of the Valuation date. Unfunded past service is amortized as a level dollar amount through June 30, 2034.

JUDICIAL SYSTEM (JRS) – Normal Cost is amortized as a level percentage of future payrolls of the active membership group plus the PERS members eligible to elect a transfer to JRS as of the Valuation date. Past service was fully funded in Fiscal Year 2010.

PSDDRS (PLAN A) – The total of the normal Cost plus the amortization of the unfunded past service is calculated to be paid as a level dollar amount, through June 30, 2025.

SPRS (PLAN B) – Normal Cost is amortized as a level percentage of future base payroll of the active membership group as of the Valuation date. Employer contributions of 15.0% of base payroll for Fiscal Year 2010 and 19.5% for Fiscal Year 2011 are first applied to pay the Normal Cost with the remaining contributions applied to amortize the unfunded past service. Contributions are sufficient if the unfunded past service will be fully amortized by June 30, 2030 based on level dollar funding. As of the valuation date, contributions were sufficient to cover the funding required to meet the sufficiency test.

DEPUTY SHERIFF (DSRS) – Normal Cost is amortized as a level percentage of future payrolls of the active membership group as of the Valuation date. Employer contribution of 10.5% of base payroll plus certain dedicated fees are first applied to pay the Normal Cost with the remaining contributions applied to amortize the unfunded past service. Contributions are sufficient if the unfunded past service will be fully amortized by June 30, 2029. Payments are based on a level percentage of future payroll funding, including anticipated future hires. As of the Valuation date, contributions were not sufficient to meet the sufficiency test. Based on the current contribution rate, the unfunded past service will not be funded by June 20, 2029.

EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM (EMSRS) – Normal Cost is amortized as a level percentage of future payrolls of the active membership group as of the Valuation date. Employer contribution of 10.5% of payroll are first applied to pay the employer Normal Cost with the remaining contributions applied to amortize the unfunded past service. Contributions are sufficient to fully fund the unfunded past service by June 30, 2038 applying level dollar amortization.

MUNICIPAL POLICE AND FIRE RETIREMENT SYSTEM (MPFRS) Normal Cost is amortized as a level percentage of future payrolls of the active membership group as of the Valuation date. Employer contribution of 8.5% of payroll are first applied to pay the employer Normal Cost with the remaining contributions applied to amortize the unfunded past service. Contributions are sufficient to fully fund the unfunded past service by June 30, 2041 applying level dollar amortization.

Retirement Plan Running Statistics as of June 30, 2010

	PERS	TRS	JRS	PSDDRS Plan A	SPRS Plan B	DSRS	EMSRS
Actives	35,717	35,701	71	163	472	926	511
Retirees	21,499	29,245	58	669	14	248	0
Vested Termination	3,884	1,636	2	5	4	64	16
UAL (in millions)	$999.5	$5,053.1	$4.9	$210.7	$21.3	$51.0	9.8
Percent Funded	79.7%	41.3%	94.8%	63.3%	65.4%	60.5%	63.7%
Actuarial Value of Assets (in millions)	$3,930.7*	$3,554.8	$88.3	$362.9	$40.3	$78.2	17.2

** Actuarial value based on 4 year smoothing method*

DEFINED BENEFIT RETIREMENT PLAN FIGURES AS OF JUNE 30, 2010

	PERS	TRS	JRS	PSDDRS Plan A	SPRS Plan B	DSRS	EMSRS
NEW RETIREES							
Number of New Retirements	1,257	1,773	0	18	2	12	0
Average Years of Service	22.87	29.95	0	28.32	27.5	26.47	0
Average Monthly Benefit	$1,485	$2,290	$0	$5,534	$3,684	$2,349	0
Average Age	60.42	60.42	0	48.72	55	53.83	0
Average Monthly Salary Receiving at Retirement	$3,125	$3,801	N/A	N/A	$4,737	$3,659	0
ALL RETIREES							
Number of Retirees	23,413	31,771	60	687	17	260	0
Average Years of Service	21.02	29.95	19.64	25.16	11.30	26.46	0
Average Monthly Benefit	$1,013	$2,289	$6,025	$3,779	$2,260	$2,349	0

	PERS	TRS	JRS	PSDDRS Plan A	SPRS Plan B	DSRS	EMSRS
ACTIVE MEMBERS	35,938	36,611	53	146	498	958	525
INACTIVE MEMBERS	15,355	3,089	1	5	109	192	102
WITHDRAWALS							
Number of Withdrawals	1,766	489	2	0	6	39	27
Amount of Withdrawals	$8,489,769	$7,515,683	$86,435	$0	$201,729	$540,390	$171,074

RETIREMENT PLAN RUNNING STATISTICS AS OF JUNE 30, 2011

	PERS	TRS	JRS	PSDDRS Plan A	SPRS Plan B	DSRS	EMSRS	PERS
Active	35,977	35,670	71	147	498	958	525	6
Retirees	22,040	30,127	56	684	17	260	0	0
Vested Termination	3,883	1,621	0	3	8	65	27	0
UAL (in millions)	$1,351.2	$4,760.8	($6.8)	$186.3	$16.4	$46.9	7.8	$0.0
Percent Funded	76.6%	46.5%	107.1%	68.5%	76.2%	66.4%	75.1%	79.7%
Actuarial Value of Assets (in millions)	$3,974.6*	$4,143.5	$102.8	$404.4	$52.7	$92.7	$23.7	$0.0

** Actuarial value based on 4 year smoothing method*

DEFINED BENEFIT RETIREMENT PLAN FIGURES AS OF JUNE 30, 2011

	PERS	TRS	JRS	PSDDRS Plan A	SPRS Plan B	DSRS	EMSRS	PERS
NEW RETIREES								
Number of New Retirements	1,410	1,808	2	15	0	17	8	0
Average Years of Service	24	29.80	35.29	28.03	N/A	24.30	22.33	0
Average Monthly Benefit	$1,582	$2,300	$7,875	$5,695	N/A	$2,195	$2,406	0
Average Age	60.75	60.59	67	49.20	N/A	55.29	53.94	0

	PERS	TRS	JRS	PSDDRS Plan A	SPRS Plan B	DSRS	EMSRS	PERS
Average Monthly Salary Receiving at Retirement	$3,288	$3,820	N/A	N/A	N/A	$3,722	$3,844	0
ALL RETIREES								
Number of Retirees	23,978	32,113	61	693	17	269	19	0
Average Years of Service	21.63	27.58	20.30	25.25	11.75	26.48	21.70	0
Average Monthly Benefit	$1,054	$1,481	$6,429	$3,964	$2,275	$1,826	$2,324	0
ACTIVE MEMBERS	36,254	35,883	50	131	522	954	535	9

	PERS	TRS	JRS	PSDDRS Plan A	SPRS Plan B	DSRS	EMSRS	PERS
INACTIVE MEMBERS	16,045	3,256	1	6	116	212	105	4
WITHDRAWALS								
Number of Withdrawals	2,054	585	2	0	15	56	42	0
Amount of Withdrawals	$9,877,760	$8,377,574	$86,435	$0	$482,054	$680,713	$376,382	0

West Virginia

Consolidated Public Retirement Board

Component Unit of the State of West Virginia

Comprehensive
Annual
Financial
Report

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FINANCIAL SECTION

WEST VIRGINIA CONSOLIDATED
PUBLIC RETIREMENT BOARD NOTES TO
FINANCIAL STATEMENTS

1 – DESCRIPTION OF ORGANIZATION

Reporting Entity

During fiscal year 1991, the West Virginia State Legislature created the Consolidated Public Retirement Board (the Board) to administer nine of the State of West Virginia's ten retirement plans. The nine retirement plans included within these financial statements are the Public Employees' Retirement System (PERS), the Teachers' Retirement System (TRS), the Public Safety Death, Disability and Retirement System (PSDDRS), the State Police Retirement System (SPRS), the Deputy Sheriff Retirement System (DSRS), the Judges' Retirement System (JRS), the Emergency Medical Services Retirement System (EMSRS), Municipal Police Officers and Firefighters Retirement System (MPFRS) and the Teachers' Defined Contribution Retirement System (TDCRS). The Total Pension Funds column included in the statement of plan net assets and statements of changes in plan net assets is for informational purposes only. The net assets of each plan are only available to satisfy the obligations of that plan. The Board is a component unit of the State of West Virginia (the State). The Governmental Employees Deferred Compensation Plan is administered by the West Virginia State Treasurer's Office and has been excluded from these financial statements in accordance with Governmental Accounting Standards Board (GASB) Statement No. 32, *Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*.

The Internal Service Fund (the Fund) is used for the administration of all plans administered by the Board. The Fund receives a service fee from each plan based upon the number of participants included in the plan. These fees are legally restricted for the purpose of administering the plans and are not available for any other purpose.

The Board is managed by a Board of Trustees, which consists of, by virtue of their position, the Governor, State Auditor, State Treasurer, and Secretary of the Department of Administration, together with the following gubernatorial appointments that are subject to the advice and consent of the State Senate: four residents of the State who are not participants in the retirement plans, one State and one non-State employee participant in PERS, and one participant each from TRS, PSDDRS, SPRS, DSRS, EMSRS, MPFRS and TDCRS.

Pursuant to the West Virginia Code, the Board submits a detailed budgetary schedule of administrative expenses to the Secretary of the Department of Administration prior to the beginning of each fiscal year. The fundamental purpose of budgetary control is to plan for the expected level of operations and to provide management with a tool to control deviation from such plan but does not constitute a legally adopted budget.

Basis of Accounting

The financial statements of the Board have been prepared in conformity with accounting principles generally accepted in the United States of America as applied to governmental units. The GASB is the accepted standard setting body for establishing governmental accounting and financial reporting principles for governmental units. The accompanying pension fund financial statements have been prepared using the flow of economic resources measurement focus and the accrual basis of accounting. Plan member contributions are recognized in the period when contributions are due. Employer contributions to the plan are recognized when due and the employer has made a formal commitment to provide contributions. Benefits and refunds are recognized when due and payable in accordance with the terms of each plan. The Internal Service Fund financial statements have also been prepared using the flow of economic resources measurement focus and the accrual basis of accounting. The Board's assets are held primarily in accounts maintained by the State Treasurer, the West Virginia Investment Management Board (the IMB), and the third-party administrator of its defined contribution plan.

Cash

The State Treasurer has statutory responsibility for the daily cash management activities of the state's agencies, departments, boards and commissions. The amounts on deposit with the State Treasurer are available for immediate withdrawal and, accordingly, are presented as cash and cash equivalents in the accompanying financial statements.

Investments

All defined benefit plan funds not required to meet disbursement needs are invested in accordance with the West Virginia Code, as well as policies established by the IMB. The IMB has established various investment pools to provide for the investment of the defined benefit plan assets. These investment pools are structured as multiparticipant variable net asset funds.

Investments of the IMB Short-term Fixed Income pool are carried at amortized cost, which approximates fair value. The investments in the other IMB pools, except as noted below, are carried at fair value, which is determined by a third party pricing service based on asset portfolio pricing models and other sources. The IMB invests in private equity, real estate, and hedge funds, which are not publicly traded, and are carried at estimated fair value as provided by the IMS funds' management. The IMB may, in addition, consider other factors in assessing the fair value of these investments. Because these investments are not marketable, the estimated value is subject to uncertainty, and therefore, may differ from the value that would have been used had a ready market for the investment existed. Futures and option contracts are valued at the last settlement price established each day by the exchange on which they are traded. Interest rate swap values are based on market values received From third parties or are determined by valuation models. Foreign currency forward contracts are valued at either spot or forward month-end exchange rates. Investments in commingled investment pools are valued at the reported unit values of the individual funds as provided to the IMB fund's management.

The TDCRS investments are held by an investment company which also serves as the third party administrator for the plan. As prescribed by West Virginia Code, the TDCRS investments are allocated to·participant accounts and the participants direct the investment of their individual account balances by selecting from a list of plan mutual funds or a long term fixed investment option.

The TDCRS investments are carried at fair value as determined by a third-party pricing service utilized by an investment management company. Investment income for the TDCRS is determined monthly and distributed to the individual participant accounts.

Contributions Receivable

Contributions receivable represent funds owed to the Board from other government employer entities participating in the various retirement plans.

Participant Loans Receivable

The TRS makes loans to its members, hired prior to July 1, 2005, up to the lesser of one-half of a member's accumulated contributions or $8,000, at an interest rate indexed to the interest rate used by the Board for determining actuarial contributions levels. TRS loans require repayment over varying terms, with a maximum term of five years.

During the 2008 First Special Session, the West Virginia Legislature passed House Bill 101 regarding retirement benefits for teachers and educational service personnel which became effective Sunday, March 16, 2008. The legislation provided an opportunity for members of the Teachers' Defined Contribution Retirement System (TDCRS) to elect to transfer to the West Virginia Teachers' Retirement System (TRS). The transfer occurred on July 1, 2008 and a total of 15,152 TDCRS members transferred to TRS. These members were granted 75% service created under TRS for their years of service in TDCRS. These members were also granted a one time opportunity to receive a loan in order to purchase the additional 25% service credit at a 7.5% interest rate and with a maximum term of five years. The last day to receive such a loan was June 30, 2010.

The DSRS also makes loans to its members, hired prior to July 1, 2005, up to the lesser of one-half of a member's accumulated contributions or $8,000, at an interest rate indexed to the interest rate used by the Board for determining actuarial contributions levels. DSRS loans require repayment over varying terms, with a maximum term of five years.

Accrued Expenses and Other Payables

Accrued expenses and other payables primarily represent retirement annuity amounts due to new retirees.

Compensated Absences

Liabilities for compensated absences (annual leave) are recorded for an employees' right to receive compensation for future absences. When an employee is separated from employment with the Board for reasons other than retirement, all sick leave credited to that employee is considered nonvested and no reimbursement to the employee is provided. Accrued sick leave, if any, existing for employees upon their retirement, may be used either to extend benefits provided by the West Virginia Public Employees Insurance Agency or to increase retirement benefits. Other post-employment benefits other than pensions are described in Note 5.

Capital Assets

The Board does not record any capital assets with a value of less than $5,000 per asset. The only asset currently capitalized consists of agency developed software, which has an estimated useful life of ten years.

Accounting Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and disclosure of actuarial accrued liabilities, contingent assets, and contingent liabilities as of the financial statement date, and the reported amounts of additions and deductions for the reporting period. Actual amounts could differ from those estimates.

The various retirement plans utilize various investment instruments. Investment securities, in general, are exposed to various risks, such as interest rate, credit, and overall market volatility. Due to the level of risk associated with certain investment securities, it is reasonably possible that changes in the value of investment securities will occur in the near term and that such change could materially affect the amounts reported in the statements of plan net assets. Changes in the value of investment securities could affect the future funding status of the plans or require additional contributions to maintain the current funding status.

2 – PLAN DESCRIPTIONS AND CONTRIBUTION INFORMATION

Funding policies for all plans have been established by and are changed from time-to-time by action of the State Legislature. While contribution rates are legislatively determined, actuarial valuations are performed to assist the Board and the State Legislature in determining contribution rates. The following information is provided for general information purposes only. Plan participants should refer to the respective West Virginia State Code Section for more complete information.

Defined Benefit Plans

Public Employees' Retirement System

Plan Description – PERS is a multiple employer defined benefit cost sharing public employee retirement system covering substantially all employees of the State and its component units, as well as employees of participating non-State governmental entities who are not participants of another state or municipal retirement system. The number of participating local government employers as of June 30, 2012 and 2011, are as follows:

	2012	2011
Cities and towns	105	105
Counties	55	55
Special districts	371	370
	531	530

PERS provides retirement benefits as well as death and disability benefits. Qualification for normal retirement is age 60 with five years of service or at least age 55 with age and service equal to 80 or greater. The straight-life annuity retirement benefit is equivalent to 2% of average salary multiplied by years of service. Average salary is the average of the three consecutive highest annual earnings out of the last fifteen years of earnings. Terminated members with at least five years of contributory service who do not withdraw their accumulated contributions may elect to receive their retirement annuity beginning at age 62.

Chapter 5, Article 10 of the West Virginia State Code assigns the authority to establish and amend the provisions of the plan to thoe State Legislature. In certain circumstances, this Article also permits members of TRS to transfer accumulated service credit and member contributions into PERS.

Contributions – Per Chapter 5, Article 10, members contribute 4.5% of annual earnings. State and non-state governmental employers' contribution rates were 14.5% and 12.5% of covered employees' annual earnings for fiscal years ending June 30, 2012 and 2011, respectively. Effective July 1, 2012 employer contribution rates will be reduced to 14% of members annual earnings. Contributions as a percentage of payroll for members are established by statutes, subject to legislative limitations and are not actuarially determined. Contributions as a percentage of payroll for employers are established by the Board. In addition, certain additional contributions of approximately $908,000 and $0 were made during the years ended June 30, 2012 and 2011, respectively, representing extra appropriations to pay off the unfunded liability. Employer contributions from State and non-State agencies for the fiscal years ended June 30, 2012 and 2011, were (in thousands):

	2012	**2011**
State	$ 130,831	$ 109,448
Non-State	60,181	51,045
	$ 191,012	$ 160,493

Teachers' Retirement System

Plan Description – TRS is a multiple employer defined benefit cost sharing public employee retirement system covering all full-time employees of the 55 county public school systems in the State and certain personnel of the 13 State-supported institutions of higher education, State Department of Education and the Higher Education Policy Commission hired prior to July 1, 1991. Employees of the State-supported institutions of higher education and the Higher Education Policy commission hired after June 30, 1991, are required to participate in the Higher Education Retirement System. TRS closed membership to new hires effective July 1, 1991. However, effective July 1, 2005, all new employees hired for the first time are required to participate in TRS.

During the 2008 First Special Session, the West Virginia Legislature passed House Bill 101 regarding retirement benefits for teachers and educational service personnel which became effective Sunday, March 16, 2008. The legislation provided an opportunity for members of the Teachers' Defined Contribution Retirement System (TDCRS) to elect to transfer to the West Virginia Teachers' Retirement System (TRS). The transfer occurred on July 1, 2008 and a total of 15,152 TDCRS members transferred to TRS.

TRS provides retirement benefits as well as death and disability benefits. A member is eligible for normal retirement at age 60 with five years of service, age 55 with 30 years of service or any age with 35 years of service. A member may retire with 30 years of credited service at any age with the pension reduced actuarially if the member retires before age 55. Terminated members with at least five, but less than 20, years of credited service who do not withdraw their accumulated contributions are entitled to a deferred retirement commencing at age 62. Retirement benefits are equivalent to 2% of average annual salary multiplied by years of service. Average salary is the average of the 5 highest fiscal years of earnings during the last 15 fiscal years of earnings.

Chapter 18, Article 7A of the West Virginia State Code assigns the authority to establish and amend the provisions of the plan to the State Legislature.

Contributions – A member who withdraws from service for any cause other than death or retirement may request that the accumulated employee contributions plus interest be refunded.

TRS funding policy provides for member contributions based·on 6% of members' gross salary. Contributions as a percentage of payroll for members and employers are established by State law and are not actuarially determined. Employers make the following contributions:

The State, county boards of education, and other employers contribute 15% of gross salary of their TRS members hired prior to July 1, 1991. The State, county boards of education, and other employers contribute 7.5% of the gross salary of their TRS covered employees hired for the first time after July 1, 2005 and for those TDCRS members who selected to transfer to TRS effective July 1, 2008. The other employers and county boards of education, utilizing funds made available through the State's School Aid Formula (SAF) contribute 7.5% of the gross salary of their TDCRS covered employees. In addition, the State contributes a certain percentage of fire insurance premiums paid by State residents to assist in extinguishing the TRS unfunded liability within 40 years of June 30, 1994. In addition, certain additional contributions of approximately $374,711,708 and $378,671,497 were made during the years ended June 30, 2012 and 2011, respectively, representing extra appropriations to pay off the unfunded liability.

<u>Public Safety Death, Disability and Retirement System</u>

Plan Description – PSDDRS is a single employer defined benefit public employee retirement system covering all West Virginia State Police (State Police) hired on or before March 11, 1994. This plan is closed to new entrants.

PSDDRS provides retirement benefits as well as death and disability benefits. A member is eligible for normal retirement at age 50 after 20 years of contributory service, or at any age upon completion of

25 years of service. There is no vesting in the State's contributions prior to ten years of service. Benefits payable to members retiring prior to age 50 are deferred until the normal retirement date. The annual retirement benefit is 5.5% of the members' aggregate salary, but not less than $6,000 per year. Total service related disability benefits are equal to the member's annual salary, but not less than $15,000 per year. Aggregate salary is the total salary paid to a member during his or her period of service, which may include up to 5 years of active military service credited at the average departmental salary. Aggregate salary for purposes of determining disability benefits may include salary that would have been earned had the participant served at least 25 years notwithstanding the disability. An annual cost-of-living adjustment of 3.75% is granted to retirees and beneficiaries. For service-connected total disability retirees, the adjustment begins at age 65. A member who terminates employment is entitled to a refund of his or her contributions plus interest.

Contributions – PSDDRS funding policy provides for member contributions based on 9% of their annual earnings. The State makes contributions based on 15% of the annual payroll of State Police, as well as contributing all revenue generated by the sale of traffic accident reports, criminal investigation reports and other fees. In addition, certain additional contributions of approximately $22,051,000 and $23,605,000 were made during the years ended June 30, 2012 and 2011, respectively, representing extra appropriations to pay off the unfunded liability. Contributions, as a percentage of payroll for members and the employer, are established by State law and are not actuarially determined.

State Police Retirement System

Plan Description – SPRS is a single employer defined benefit public employee retirement system that was established for all State Police hired on or after March 12, 1994. SPRS provides retirement, death, and disability benefits. A member is eligible for normal retirement at age 50 with 25 years of service or age 52 with 20 years of credited service. A member is eligible for a reduced benefit with 20 years of credited service and retiring before age 52. The annual regular retirement benefit, paid monthly, is equal to 2.75% of the final average salary multiplied by the years of service. Final average salary is the average of the five highest calendar years of earnings during the last ten years of earnings. Annual retirement annuity adjustments are 1.0% for regular retirement and are payable on July 1 of each year after the member reaches 63 years of age.

Contributions – Members contribute 13% of annual base salary. Employer contribution rates were 17.5% and 19.5% of covered employees' annual base salary for fiscal years ending June 30, 2012 and 2011, respectively. Effective July 1, 2012 employer contribution rates will be reduced to 15.5% of members' annual earnings.

Chapter 15, Article 2 and Article 2A of the West Virginia State Code assigns the authority to establish and amend the provisions of the PSDDRS and SPRS plans to the State Legislature.

Deputy Sheriff Retirement System

Plan Description – DSRS, a multiple employer defined benefit cost sharing public employee retirement system, was established for all deputy sheriffs hired by all 55 county governments on or after July 1, 1998. The DSRS was also made available to any deputy sheriff employed in covered employment participating in PERS on the effective date so long as he/she made notification in writing before January 31, 1999, to both the County Commission in the county in which he/she was employed and the Board of his/her desire to transfer to the DSRS. Approximately 600 deputy sheriffs elected such transfer and as a result, approximately $28,638,000 of accumulated member and employer contributions and interest were transferred from PERS to DSRS in fiscal year 1999, in accordance with Chapter 7, Article 14D of the West Virginia State Code.

DSRS provides retirement as well as death and disability benefits. A member is eligible for normal retirement under the following circumstances:

1. Attainment of the age of 50 years and completion of 20 or more years of service
2. Member is in covered employment, has attained the age of 60 years, and has completed five or more years of service
3. Attainment of the age of 62 years and has completed five or more years of service

The annual regular retirement benefit is equal to 2.25% of a member's final average salary multiplied by the member's years of credited service. Final average salary refers to the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service. A member may elect to receive retirement income payments equal to his/her accrued benefit in the normal form or in a variety of annuity options. The normal form signifies a monthly annuity which is 1/12 of the amount of a members accrued benefit which is payable for the member's life.

Benefit payments did not begin prior to January 1, 2000, except benefit payments resulting from disability.

Chapter 7, Article 14D of the West Virginia State Code assigns the authority to establish and amend the provisions of the plan to the State Legislature.

Contributions – Members contribute 8.5% of monthly base salary, and the Sheriff's Office/County Commission of the County in which the member is employed contributed an additional 13% and 10.5% of the member's monthly salary during years ended June 30, 2012 and 2011, respectively. Employer contributions will remain at 13% of the member's monthly salary during the fiscal year ending June 30, 2013. In addition, the Sheriff's Office/County Commissions contribute certain fees charged for reports and other services provided by the sheriff's offices.

<u>Judges' Retirement System</u>

Plan Description – JRS is a single employer defined benefit public employee retirement system covering State judges and justices who elect to participate. JRS provides retirement as well as death and disability benefits. A member who was appointed or elected to the bench prior to July 2, 2005 is eligible for normal retirement upon the attainment of 24 years of service of which at least 12 years is as a sitting judge or justice, 16 years of service at age 65 of which at least 12 years is as a sitting judge or justice, or 8 full years of service after age 65. A member who was appointed or elected to the bench on or after July 2, 2005 is eligible for normal retirement upon the attainment of 24 years of service of which at least 14 years is as a sitting judge or justice, or 16 years of service at age 65 of which 14 years is as a sitting judge or justice. A member on the bench prior to July 2, 2005 is eligible for a deferred benefit upon termination of service prior to normal retirement provided the member completes 16 years of service of which 12 years of service is as a sitting judge or justice. A member of the bench on or after July 2, 2005 is eligible for a deferred benefit upon termination of service prior to normal retirement provided the member completes 16 years of service of which 14 years of service are as a sitting judge or justice.

The annual benefit paid to judges and justices on the bench prior to July 2, 2005 is 75% of the current annual salary of the office from which the participant retires, with surviving spouse and dependent child benefits. This benefit is proportionally increased upon increase in salary for active sitting judges and justices.

The annual benefit paid to judges and justices on the bench on or after July 2, 2005 is 75% of the member's final average salary. Final average salary means the average of the highest thirty-six consecutive month's compensation received as a judge or justice. No increases in benefits are given by virtue of increase in salary of active sitting judges or justices.

Chapter 51, Article 9 of the West Virginia State Code assigns the authority to establish and amend the provisions of the plan to the State Legislature.

Contributions – JRS funding policy provides for member contributions based on 10.5% of their annual earnings. This policy also provides for periodic employer contributions at varying amounts appropriated annually by the State Legislature. However, annual appropriations are determined in consideration of the most recent actuarial valuation. Any participant who terminates before becoming eligible for benefits may elect to withdraw his or her contributions without interest.

Emergency Medical Services Retirement System (EMSRS)

Plan Description – The EMSRS Act was passed by the Legislature in March 2007. The legislation provided for a voluntary participation election of eligible emergency medical service offices and mandated that certain participation levels be reached by December 31, 2017, in order for the provisions of the Emergency Medical Services Retirement System to become effective. At the close of the election period, fifteen licensed EMS public employers, consisting of twelve eligible Public Employees Retirement System (PERS) political subdivisions and three eligible Non-PERS political subdivisions, passed corporate resolutions to become participating public employers of this retirement system. Statewide, over five hundred eligible Emergency Medical Services Officers elected to opt into this new retirement plan. The WV Emergency Medical Services Retirement System (EMSRS) became effective January 1, 2008.

The statute prohibited any payout of benefits from the EMSRS fund prior to January 1, 2011, with the exception of duty disability retirement. An EMSRS member is eligible for "normal" retirement when one of the following occurs:

- Attainment of age 50 and the completion of 20 years of contributory service; or
- Attainment of age 50 when age plus contributory service equals 70 while still in covered employment; or
- Attainment of age 60 and completion of 10 years contributory service while still in covered employment; or
- Attainment of age 62 and completion of 5 years of contributory service.

An EMSRS member is eligible for "early retirement" when they reach age 45 and have completed 20 years of service.

Final Average Salary (FAS) is the average of the highest annual compensation received by the member during covered employment for any 5 consecutive plan years (Jan. 1–Dec. 31) within the last 10 years of service. The accrued benefit on behalf of any member is calculated as follows:

Final Average Salary x Years of Credited Service x Benefit Percentage

<u>Annual Retirement Benefit Formula</u>

2.75% x FAS x Years of Service for years 1–20
2.0% x FAS x Years of Service for years 21–25
1.0% x FAS x Years of Service for years 26–30

In accordance with provisions in statute, upon reaching a 75% funded level as of an actuarial valuation date, the Board shall increase the annual retirement benefit multiplier from 2.6% of final average salary to 2.75% of final average salary for years one through twenty of service credited.

Chapter 16, Article 5V of the West Virginia State Code assigns the authority to establish and amend the provisions of the plan to the State Legislature.

Contributions – Currently, the EMSRS employee contribution rate is 8.5% of gross monthly salary and the employer contribution rate is 10.5% of gross monthly salary.

<u>Municipal Police Officers and Firefighters Retirement System (MPFRS)</u>

Plan Description – The MPFRS Act was passed by the Legislature in November 2009, and become effective January 1, 2010. The legislation provided for any municipality or municipal subdivision employing municipal police officers or firefighters to elect to become a participating employer. MPFRS is a multiple employer defined benefit retirement system. The MPFRS had 12 participating members as of June 30, 2012. If there are fewer than 100 members on January 1, 2014, all members will be merged into the Emergency Medical Services Retirement System. All police officers and firefighters first employed in covered employment after the date the municipality or municipal subdivision elected to join MPFRS are required to be members of MPFRS.

A MPFRS member is eligible for "normal" retirement when one of the following occurs:

- Attainment of age 50 and the completion of 20 years of contributory service; or
- Attainment of age 50 when age plus contributory service equals 70 while still in covered employment; or
- Attainment of age 60 and completion of 10 years contributory service while still in covered employment; or
- Attainment of age 62 and completion of 5 years of contributory service.

Final Average Salary (FAS) is the average of the highest annual compensation received by the member during covered employment for any 5 consecutive plan years (Jan. 1–Dec. 31) within the last 10 years of service. The accrued benefit on behalf of any member is calculated as follows, not to exceed 67%:

Final Average Salary x Years of Credited Service x Benefit Percentage

Annual Retirement Benefit Formula

2.6% x FAS x Years of Credited Service for years 1–20
2.0% x FAS x Years of Credited Service for years 21–25
1.0% x FAS x Years if Credited Service for years 26–30

Chapter 8, Article 22A of the West Virginia State Code assigns the authority to establish and amend the provisions of the plan to the State Legislature.

Contributions – Currently, the MPFRS employee contribution rate is 8.5% of gross monthly salary and the employer contribution rate is 8.5% of gross monthly salary. As provided in statute, the Board may recommend the employee contribution rate be increased to 10.5% if the MPFRS plan does not reach a 70% funded level by July 1, 2014.

Plan Membership

Membership in the above plans consisted of the following as of the plan valuation dates, July 1, 2011 and 2010:

[see next page]

As of July 1, 2011:	PERS	TRS	PSDDRS	SPRS	DSRS	JRS	EMSRS	MPFRS
Retirees and beneficiaries currently receiving benefits	22,793	31,043	689	17	272	56	20	–
Terminated members entitled to benefits but not yet receiving them	3,859	1,579	4	7	70	–	22	–
Terminated nonvested members	12,172	1,669	2	109	143	2	81	3
Active members:								
Vested	23,420	25,534	133	227	613	23	259	–
Nonvested	12,834	10,321	–	296	341	47	276	9
Total	75,078	70,146	828	656	1,439	128	658	12

As of July 1, 2010:	PERS	TRS	PSDDRS	SPRS	DSRS	JRS	EMSRS	MPFRS
Retirees and beneficiaries currently receiving benefits	22,040	30,127	684	17	260	56	–	–
Terminated members entitled to benefits but not yet receiving them	3,883	1,621	3	8	65	–	27	–
Terminated nonvested members	11,481	1,420	2	101	127	2	75	–
Active members:								
Vested	23,436	25,491	147	225	586	24	251	–
Nonvested	12,541	10,179	–	273	372	47	274	6
Total	73,381	68,838	836	624	1,410	129	627	6

Plan Funded Status and Funding Progress – Defined Benefit Pension Plans

Plan Funded Status – The funded status of each plan as of July 1, 2011 (unless otherwise noted), the most recent actuarial valuation date, is as follows (dollar amounts in thousands):

[see next page]

	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) Entry Age (b)	Unfunded AAL (UAAL) (b–a)	Funded Ratio (a/b)	Covered Payroll (c)	UAAL as Percentage of Covered Payroll ((b–a)/c)
PERS	$4,322,668	$5,515,252	$1,192,584	78.4%	$1,327,717	89.8%
TRS	5,074,665	9,445,148	4,370,483	53.7%	1,505,749	290.3%
PSDDRS	481,994	606,245	124,251	79.5%	8,001	1,552.9%
SPRS	70,756	79,036	8,280	89.5%	24,725	33.5%
DSRS	113,574	149,462	35,888	76.0%	42,366	84.7%
JRS	124,583	95,591	(28,992)	130.3%	8,860	0.0%
EMS	32,366	39,225	6,859	82.5%	22,488	30.5%
MPFRS	65	23	(42)	282.6%	343	(12.2)%

Plan Funding Progress – The schedules of funding progress, presented as required supplemental information (RSI) following the notes to the financial statements, present multiyear trend information about whether the actuarial values of plan assets are increasing or decreasing over time relative to the AALs for benefits. Significant exemptions used in determining funding progress are as follows:

[see next page]

	PERS	TRS	PSDDRS
Valuation date	July 1, 2011	July 1, 2011	July 1, 2011
Actuarial cost method	Entry age normal	Entry age	Entry age
Asset valuation method	4 Year Smoothing	Fair value	Fair value
Amortization method	Level dollar	Level dollar	Level dollar
Amortization period	Through FY 2035	Through FY 2034	Through FY 2024
Actuarial assumptions:			
Investment rate of return	7.5%	7.5%	7.5%
Projected salary increases:			
PERS:			
State	4.25–6.0%	–	–
Nonstate	4.25–6.0%	–	–
TRS:			
Teachers	–	3.75–5.25%	–
Non Teachers	–	3.4–6.50%	–
PSDDRS:	–	–	6.5% for first 2 yrs of service 6.0% for first 3 yrs of service 5.5% for the next 5 yrs and 4.75% thereafter
Inflation rate	3.0%	3.0%	3.0%

	SPRS	DSRS	JRS
Valuation date	July 1, 2011	July 1, 2011	July 1, 2011
Actuarial cost method	Entry age normal	Entry age normal cost-aggregate level percent of payroll	Entry age
Asset valuation method	Fair value	Fair value	Fair value
Amortization method	Level percentage of payroll payroll	Level percentage of open group payroll plus fee deposits	Level dollar
Amortization period	Through FY 2030	Through FY 2029	Not applicable
Actuarial assumptions:			
Investment rate of return	7.5%	7.5%	7.5%
Projected salary increases	6.5% for first 2 yrs of service,	6.5% for first 2 yrs of service,	4.5%
	6.0% for next 3 yrs of service,	6.0% for next 3 yrs of service,	Annual increase to benefits
	5.5% for the next 5 yrs, and	5.5% for the next 5 yrs, and	4.5%
	4.75% thereafter	5.0% thereafter	
Inflation rate	3.0%	3.0%	3.0%

	EMSRS	MPFRS
Valuation date	July 1, 2011	July 1, 2011
Actuarial cost method	Entry age normal with aggregate normal cost level percentage of payroll	Entry age cost with aggregate normal cost level percent
Asset valuation method	Fair value	Fair value
Amortization method	Level dollar	Level dollar
Amortization period	Through FY 2038	Through FY 2040
Actuarial assumptions:		
Investment rate of return	7.5%	7.5%
Projected salary increases	By age from 5.0% at age 30	By age from 5.0% at age 30
	Declining to 3.5% at age 65	Declining to 3.5% at age 65
Inflation rate	3.0%	3.0%

Teachers' Defined Contribution Retirement System

Plan Description – TDCRS is a multiple employer defined contribution retirement system, which is a money purchase pension plan covering primarily full-time employees of the State's 55 county public school systems, the State Department of Education, and the Schools for the Deaf and Blind who were hired between July 1, 1991 and June 30, 2005. TDCRS members also include former TRS plan members, including higher education employees, who have elected to transfer into or participate in TDCRS. TDCRS benefits depend solely on amounts contributed to the plan plus investment earnings. Employees are eligible to participate from the date of employment. TDCRS closed participation to new members effective June 30, 2005.

During the 2008 First Special Session, the West Virginia Legislature passed House Bill 101 regarding retirement benefits for teachers and educational service personnel which became effective Sunday, March 16, 2008. The legislation provided an opportunity for members of the Teachers' Defined Contribution Retirement System (TDCRS) to elect to transfer to the West Virginia Teachers' Retirement System (TRS). The transfer occurred on July 1, 2008 and a total of 15,152 TDCRS members transferred to TRS.

The TDCRS provides members with a choice of 16 separate investment options made up of fixed income, balanced, large cap, mid cap, small cap, and international mutual funds, a money market fund and a fixed annuity.

Contributions – State law requires employees to contribute 4.5% of their gross compensation and the employers to contribute 7.5% of covered members' gross compensation. Employer contributions are comprised from amounts allocated to the employers through the State's School Aid Formula, forfeitures allotted from the TDC Plan and county contributions. Employer contributions for each employee (and interest allocated to the employee's account) become partially vested after six years and fully vested after 12 complete years of service. If a terminated employee does not return to active participant status within five years, the nonvested employer contributions and earnings thereon are forfeited to reduce the employer's current period contribution requirement. Any such forfeitures arising from contributions, plus earnings thereon, will be used to reduce future employer contributions.

3 – INVESTMENTS

The Board has adopted investment guidelines that are consistent with those specified in the West Virginia Code. Those guidelines authorize the Board to invest with IMB in obligations of the United States and certain of its agencies, certificates of deposit, direct and general obligations of states, repurchase agreements relating to certain securities, equity securities, real estate, and guaranteed investment contracts. Plan assets of defined benefit plans are invested by the IMB. Investments are managed by a third party administrator as the trustee for the TDCRS.

The IMB invests plan assets in accordance with West Virginia Code and policies established by the

IMB. Individual defined benefit plan assets are invested by the IMB in the various IMB pools. Following is a summary of investments held by IMB for each plan as of June 30, 2012 and 2011 (in thousands):

[see next page]

June 30, 2012	PERS	TRS	PSDDRS	SPRS	DSRS	JRS	EMSRS	MPOF
Large cap equity	$ 795,984	$ 908,381	$ 86,640	$14,200	$ 21,171	$ 23,121	$ 6,359	$ 32
Non-large cap equity	269,212	307,418	29,507	4,779	7,158	7,802	2,147	10
International qualified	343,311	393,701	37,412	5,717	9,036	9,901	2,593	14
International equity	742,277	851,090	82,434	13,451	19,898	21,657	6,056	27
Private equity	435,948	503,734	48,464	7,821	11,695	12,702	3,525	17
Real estate	273,496	312,255	29,722	4,829	7,273	7,928	2,177	11
Total return fixed income	612,542	632,244	68,306	11,174	16,678	17,947	5,113	25
Core fixed income	294,910	300,128	32,860	5,393	8,043	8,645	2,470	11
Hedge fund	443,916	509,625	48,974	7,950	11,851	12,917	3,579	16
TRS annuity	–	53,023	–	–	–	–	–	–
Short term fixed income	26,949	210,217	718	1,417	468	367	230	22
TIPS	113,597	129,741	12,349	2,004	3,010	3,278	904	4
Total investments	$4,352,142	$5,111,557	$477,386	$78,735	$116,281	$126,265	$35,153	$189

* * *

STATE OF WEST VIRGINIA

CERTIFICATE

I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that

the following is a true and correct copy of Senate Bill 65 as filed from the 2013 Regular Session of the West Virginia Legislature as it appears in the records of my office.

Given under my hand and the Great Seal of the State of West Virginia on ***January 13, 2015***

/s/ Natalie E. Tennant
Secretary of State

ENROLLED

Senate Bill No. 65

(BY SENATORS TUCKER, MILLER, SYPOLT AND WILLIAMS)

[Passed April 12, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-7-1 of said code, all relating to pension benefits exempt from state income taxation; and including Division of Natural Resources police into the class of law-enforcement officer exempted.

Be it enacted by the Legislature of West Virginia:

That §11-21-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §20-7-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) *General.* The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) *Modifications increasing federal adjusted gross income.* — There shall be added to federal adjusted gross income unless already included therein the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institutional tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under section twenty, article fifteen, chapter thirty-three of

this code or section fifteen, article sixteen of said chapter that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) *Modifications reducing federal adjusted gross income.* — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System,

the West Virginia State Teachers Retirement System and all forms of military retirement, including regular armed forces, reserve and National Guard, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first &2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after December 31, 1986; and the first $2,000 of benefits received under any federal retirement system to which Title 4 U. S. C,§111 applies: *Provided*, *however*, That the total modification under this paragraph shall not exceed $2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(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, the West Virginia Deputy Sheriff Retirement System or the West Virginia Public Employees Retirement System if paid to police officers retired from the Department of Natural Resources, including those formerly classified as conservation officers, including any survivorship annuities derived from any of these

programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years begging after December 31, 2000, and ending prior to January 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the armed forces of the United States of America with the product thereof multiplied by the first $30,000 of military retirement income, including retirement income from the regular armed forces, reserve and National Guard paid by the United States or by this state after December 31, 2000, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after December 31, 2002, the first $20,000 of military retirement income, including retirement income from the regular armed forces, reserve and National Guard paid by the United States or by this state after December 31, 2002, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the Constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.

(8) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by

any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: *Provided*, *however*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of the subsection is $8,000 per person or more, no deduction shall be allowed under- this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 and the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

(9) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent included in federal adjusted gross income for federal tax purposes: *Provided*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is $8,000 or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is less $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be entitled to the difference between $8,000 and the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

(10) Contributions from any source to a medical savings account established by or for the individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*,

That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed $2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual;

(11) For the 2006 taxable year only, severance wages received by a taxpayer from an employer as the result of the taxpayer's permanent termination from employment through a reduction in force and through no fault of the employee, not to exceed $30,000. For purposes of this subdivision:

(i) The term "severance wages" means any monetary compensation paid by the employer in the taxable year as a result of permanent termination from employment in excess of regular annual wages or regular annual salary;

(ii) The "reduction in force" means a net reduction in the number of employers employed by the employer in West Virginia, determined based on total West Virginia employment of the employer's controlled group;

(iii) The term "controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock grossing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations;

(iv) The term "corporation" means any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States.

(d) *Modification for West Virginia fiduciary adjustment*. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) *Partners and S corporation shareholders*. – The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain —

loss or deduction of a partnership or an S corporation, shaft be determined under section seventeen of this article.

(f) *Husband and wife.* — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) *Effective Date.* (1) Changes in the language of this section enacted in the year 2000 shall apply to taxable years beginning after December 31, 2000.

(2) Changes in the language of this section enacted in the year 2002 shall apply to taxable years beginning after December 31, 2002.

(3) Changes in the language of this section enacted in the year 2013 shall apply to taxable years beginning after December 31, 2013.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§ 20-7-1. Chief natural resources police officer; natural resources police officers; special and emergency natural resources police officers; subsistence allowance; expenses.

(a) The division's law enforcement policies, practices and programs are under the immediate supervision and direction of the division law enforcement officer selected by the director and designated as chief natural resources police officer as provided in section thirteen, article one of this chapter.

(b) Under the supervision of the director, the chief natural resources police officer shall organize, develop and maintain law enforcement practices, means and methods geared, timed and adjustable to seasonal, emergency and other needs and requirements of the division's comprehensive natural resources program. All division personnel detailed and assigned to law enforcement duties and services under this section shall be known and designated as natural resources police officer and are under the immediate supervision and direction of the chief natural resources police officer except as otherwise provided. All natural resources police officers shall be trained, equipped and conditioned for duty and services wherever and whenever required by division law-enforcement needs.

(c) The chief natural resources police officers, acting under supervision of the director, is authorized to select and appoint emergency natural resources police officers for a limited period for effective enforcement of the provisions of this chapter when considered necessary because of emergency or other unusual circumstances. The emergency natural resources police officers shall be selected from qualified civil service personnel of the division, except in emergency situations and circumstances when the director may designate officers, without regard to civil service requirements and qualifications, to meet law-enforcement needs. Emergency natural resources police officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried natural resources police officers except the provisions of subdivision (8) of said section.

(d) The chief natural resources police officer, acting under supervision of the director, is also authorized to select and appoint as special natural resource police officers any full-time civil service employee who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the division and who has satisfactorily completed a course of training established and administered by the chief natural resources police officer, when the action is considered necessary because of law enforcement needs. The powers and duties of a special natural resources police officer, appointed under this provision, is the same within his or her assigned area as prescribed for full-time salaried natural resources police officers. The jurisdiction of the person appointed a special natural resources police officer, under this provision, shall be limited to the division area or areas to which he or she is assigned and directly manages.

(e) The Director of the Division of Forestry is authorized to appoint and revoke Division of Forestry special natural resources police officers who are full-time civil service personnel who have satisfactorily completed a course of training as required by the Director of the Division of Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources police officers are set forth by the Director of the Division of Forestry pursuant to article three of this chapter, and articles one-a and one-b, chapter nineteen of this code.

(f) The chief natural resources police officer, with the approval of the director, has the power and authority to revoke any appointment of an emergency natural resources police officer or of a special natural resources police officer at any time.

(g) Natural resources police officers are subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the division.

(h) The chief natural resources police officer shall designate the area of primary residence of each natural resources police officer, including himself or herself. Since the area of business activity of the division is actually anywhere within the territorial confines of the State of West Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the area of primary assignment and still within the state.

(i) Natural resources police office shall receive, in addition to their base pay salary, a minimum monthly subsistence allowance for their required telephone service, dry cleaning or required uniforms and meal expenses while performing their regular duties in their area of primary assignment in the amount of $130 each month. This subsistence allowance does not apply to special or emergency natural resources police officers appointed under this section.

(j) After June 30, 2010, all those full-time law-enforcement officers employed by the Division of Natural Resources as conservation officers shall be titled and known as natural resources police officers. Wherever used in this code the term “conservation officer”, or its plural, means “natural resources police officer”, or its plural, respectively.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

/s/ [signature]

Chapman Senate Committee

/s/ [signature]

Chairman House Committee

Originated to the Senate.

In effect ninety days from passage.

/s/ [signature]

Clerk of the Senate

/s/ [signature]

Clerk of the House of Delegates

/s/ [signature]

President of the Senate

/s/ [signature]

Speaker of the House of Delegates

The within is disapproved, this the 3rd Day of May, 2013.

/s/ [signature]

Governor

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305
(304) 556-2000

EARL RAY TOMBLIN
GOVERNOR

May 3, 2013

VIA HAND DELIVERY
The Honorable Natalie E. Tennant
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Secretary Tennant:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill No. 65. This bill would authorize the Division of Natural Resources police officers in the Public Employees Retirement System "PERS") to deduct their retirement income in calculating their personal income taxes. I have various concerns about providing disparate tax treatment to a very narrow class of retirees within PERS. Moreover, the bill creates a risk that the class will be expanded through litigation to include other retirees within PERS seeking the same tax treatment.

For the aforementioned reasons, I hereby disapprove of Enrolled Senate Bill No. 65.

Sincerely,

/s/ Earl Ray Tomblin
Earl Ray Tomblin
Governor

cc: The Honorable Richard Thompson
Speaker, West Virginia House of Delegates

The Honorable Jeffrey V. Kessler
President, Senate of West Virginia

BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS

	)	**DOCKET**
	)	**NO.:**
	)	14-026 RPD
	)	
JAMES D. AND ELAINE F.	)	
DAWSON	)	
Petitioners,	)	
	)	
v.	)	
	)	
MATKOVICH, MARK W., as	)	
STATE TAX COMMISSIONER	)	
OF WEST VIRGINIA,	)	
	)	
Respondent	)	

OFFICIAL TRANSCRIPT OF THE EVIDENTIARY HEARING HELD ON January 23, 2015 AT 9:30 a.m., E.S.T. IN CHARLESTON, WEST VIRGINIA BASED UPON THE OFFICIAL DIGITAL AUDIO RECORDING

PRESIDING ADMINISTRATIVE LAW JUDGE:	A.M. "Fenway" Pollack Chief Administrative Law Judge

APPEARING FOR THE PETITIONER:

COUNSEL:	David R. Pogue, Esq.
REPRESENTATIVE(S):	NONE
WITNESS(ES):	James D. Dawson, Retired U.S. Marshal and West Virginia Deputy Sheriff

	Direct	*Cross*	*Redirect*	*Recross*	*Judge*
Name: James D. Dawson Title: Retired U.S. Marshal and West Virginia Deputy Sheriff	10	28	—	—	—

EXHIBITS:		*Marked*	*Received*
No. 1	Payroll Records	14	14
No. 2	Social Security Statement	15	15
No. 3	Federal Wage and Tax Statements	17	17
No. 4	Retirement Certification	18	18
No. 5	Retirement Benefit Packet	19	19
No. 6	10/24/13 Dawson Letter to Tax Department	20	21
No. 7	2010 Amended West Virginia Form IT-140	21	21
No. 8	2011 Amended West Virginia Form IT-140	23	23
No. 9	11/15/13 Tax Department Letter to Dawsons	24	24
No. 10	11/15/13 Return Change, Tax Year 2010	24	25

No. 11	11/15/13 Return Change, Tax Year 2010	26	26
No. 12	9/24/14 Hearing Transcript	41	41
No. 13	10/22/14 Hearing Transcript	41	41
No. 14	*Dodson v. Palmer* decision	41	42
No. 15	Redacted the Office of Tax Appeals Decisions	43	43

APPEARING FOR THE RESPONDENT:

COUNSEL:	Katherine A. Schultz, Esq, Senior Deputy Attorney General L. Wayne Williams, Esq. Assistant Attorney General Timothy S. Waggoner, Esq. Staff Attorney
TAX COMMISSIONER'S REPRESENTATIVE(S) :	NONE
WITNESS(ES):	Teresa Miller CPRB Deputy Director

		Direct	*Cross*	*Redirect*	*Recross*	*Judge*
Name:	Teresa Miller	45	68	—	—	—
Title:	CPRB Deputy Director					

EXHIBITS:		*Marked*	*Received*
No. 1	Summary Sheet	47	50
No. 2	Summary Sheet	54	54
No. 3	Summary Sheet	56	56

No. 4	Annual Report 2010/2011	58	58
No. 5	Annual Report 2011/2012	63	64
No. 6	Copy of West Virginia Senate Bill 65 and Certificate	73	74
No. 7	Governor's Veto Message	74	74

JOINT EXHIBITS:	*Marked*	*Received*

NONE

* * *

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violative of the law. And so we're here to show this court that the class here, the magnitude is even smaller, and therefore, we're squarely within *Brown v. Mierke*. And so, the refund should be denied.

JUDGE POLLACK: Okay. All right. Well, go ahead and call your first witness.

ATTORNEY POGUE: My first and only witness that I'm aware of Mr. Jim Dawson, right here.

JUDGE POLLACK: Okay. Mr. Dawson, would you raise your right hand, please?

MR. DAWSON: Yes.

JAMES D. DAWSON, HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

JUDGE POLLACK: Okay. Here's what we're going to do. Mr. Williams, why don't you give Mr. Dawson your mic?

ATTORNEY WILLIAMS: Certainly.

JUDGE POLLACK: So that both Mr. Pogue and Mr. Dawson have their own mics? You know, budget cuts. We can't afford any more mics.

OFF RECORD DISCUSSION

JUDGE POLLACK: All right. Go ahead.

ATTORNEY POGUE: Okay. Mr. Dawson, could you please just State your full name for the record?

MR. DAWSON: For the record, my name is James D. Dawson.

ATTORNEY POGUE: How old are you?

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MR. DAWSON: I'm 60 years old.

ATTORNEY POGUE: Okay. Where do you live?

MR. DAWSON: I live in Princeton, West Virginia.

ATTORNEY POGUE: And how long have you lived there?

MR. DAWSON: Since 1987.

ATTORNEY POGUE: Are you married?

MR. DAWSON: I am.

ATTORNEY POGUE: Who is your wife?

MR. DAWSON: Elaine Dawson.

ATTORNEY POGUE: Is she sitting right next to you, right now?

MR. DAWSON: She is.

ATTORNEY POGUE: Okay. Do you and your file your taxes jointly?

MR. DAWSON: We do.

ATTORNEY POGUE: Did you file your taxes jointly for the years 2010 and 2011?

MR. DAWSON: Yes, sir.

ATTORNEY POGUE: And at some point, you were employed as a West Virginia deputy sheriff; correct?

MR. DAWSON: Correct.

ATTORNEY POGUE: Where were you a West Virginia deputy sheriff?

MR. DAWSON: Nicholas County, West Virginia.

ATTORNEY POGUE: And how long?

MR. DAWSON: I started working there in 1976 and left there in 1987.

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ATTORNEY POGUE: And you were also employed in the U.S. Marshals Service; correct?

MR. DAWSON: Correct.

ATTORNEY POGUE: What years were you employed in the U.S. Marshals Service?

MR. DAWSON: 1987 through to 2008, at which time, I retired.

ATTORNEY POGUE: Okay. Were you a deputy marshal during part of that service?

MR. DAWSON: Yes. I was — the first 15 years, I was deputy supervisor, chief deputy. And then my last six years, I was appointed — presidentially appointed U.S. Marshal.

ATTORNEY POGUE: Okay. And where in the State were you primarily operating, when you were a U.S. Marshal?

MR. DAWSON: Well, while I was the appointed marshal, I was the marshal for the Southern District of West Virginia.

ATTORNEY POGUE: Okay. What about when you were a deputy marshal?

MR. DAWSON: I was assigned to the Southern District of West Virginia.

ATTORNEY POGUE: Now, tell us a little bit about your duties when you were a West Virginia deputy sheriff?

MR. DAWSON: Well, as a deputy sheriff, of course, you're tasked with crimes that are committed against the State of West Virginia. And you were obligated to execute the warrants and orders of both the magistrate and circuit courts of that time. And that could be a wide variety of crimes against persons or property. You made arrests, fugitive warrants, fugitive from justice warrants, assault warrants. Just any crime that is a criminal offense that is within the West Virginia State Criminal Code, we were pretty much obligated and had the authority to investigate.

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ATTORNEY POGUE: Okay. Now, tell us about your duties. Let's start with your duties as a deputy U.S. Marshal?

MR. DAWSON: Well, the deputy U.S. Marshal, — and of course, actually as the U.S. Marshal, both, you are tasked with, again, executing the warrants and orders that were sent down from the circuit courts or district courts — U.S. district courts and magistrate courts within the Southern District of West Virginia. And, actually, from any U.S. court in the land that was sent to you, you could execute those, as well.

Also pursuant to West Virginia law, we were recognized as law enforcement officers and through West Virginia statute, we were given the authority to make arrests for crimes that were State crimes in the State that were felony State crimes. And we also had a U.S. Marshal Violent Criminal Fugitive Task Force in which we adopted State, and federal — or State, federal and local cases to help them apprehend various criminals that violated State offenses.

ATTORNEY POGUE: In your employment with the United States Marshals Service, did you ever work in conjunction with State law enforcement — or local enforcement?

MR. DAWSON: Oh, all the time. They were part of the fugitive task force that was operated by the U.S. Marshals Service. And so, we would adopt State cases for the purposes of helping them track them down, because it was easier for us. We had more resources and, of course, we could cross jurisdictional boundaries to assist them, as well, in doing that. And also they had officers that were assigned to the U.S. Attorney's office. They made cases and then we were tasked with — on indictments, to track these people down, as well as DEA cases after ten days, became our responsibility to apprehend those criminals, as well.

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ATTORNEY POGUE: Okay. Now, when you were a deputy sheriff for Nicholas County, did you participate in Social Security?

MR. DAWSON: Yes, sir.

OFF RECORD DISCUSSION

JUDGE POLLACK: Okay, I'm being handed a large pile of Sheriff Nicholas County payroll records payroll records; correct?

ATTORNEY POGUE: Yes.

JUDGE POLLACK: Approximately, how many pages? Do you know?

ATTORNEY POGUE: I'm not sure.

JUDGE POLLACK: It doesn't matter. Okay, I'm marking this as Petitioner's Exhibit One. And I —.

ATTORNEY POGUE: Thank you.

JUDGE POLLACK: I presume Tax Commissioner's Counsel have seen these documents previously?

ATTORNEY WILLIAMS: These are the same documents you had at the previous hearing; correct?

ATTORNEY POGUE: Yes.

ATTORNEY WILLIAMS: We have them.

JUDGE POLLACK: Any objection to their admission?

ATTORNEY WILLIAMS: No objection to these being admitted in the record.

JUDGE POLLACK: Okay. Petitioner's Exhibit One is admitted.

ATTORNEY POGUE: Okay. Mr. Dawson, do you recognize this document?

MR. DAWSON: Yes, sir, I do.

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ATTORNEY POGUE: Okay. Can you just briefly tell us what it is?

MR. DAWSON: It is the portion of my paychecks that was attached to it, that we took off and kept. And it lists all the withholdings that came out of our paychecks, while I was there as a deputy sheriff, working for the Sheriff's Department.

ATTORNEY POGUE: Okay. Do these documents show deductions for Social Security?

MR. DAWSON: Yes, sir, they do.

ATTORNEY POGUE: Can you show us where?

MR. DAWSON: The fourth line down, where it says FICA deduction. And then, just to the left where it says FICA deduction, is a monetary amount —

ATTORNEY POGUE: Sure —.

MR. DAWSON: — placed in there that shows —.

ATTORNEY POGUE: And I'm not going to make you go through all of these right now. But to your knowledge, does that deduction appear on each one of these paystubs?

MR. DAWSON: To my knowledge, it does.

ATTORNEY POGUE: Okay. That's all for that one.

JUDGE POLLACK: Okay. I am being handed a Social Security Statement for James D. Dawson, which I'm marking as Petitioner's Exhibit Two. Has the Tax Commissioner seen that exhibit previously?

ATTORNEY WILLIAMS: Was this exhibit part of the previous record?

ATTORNEY POGUE: Yes. This is one of the ones we introduced at the summary judgment hearing.

ATTORNEY WILLIAMS: Okay. No objection to it coming into the record.

JUDGE POLLACK: Okay. Petitioner's Exhibit Two is admitted.

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ATTORNEY POGUE: Mr. Dawson, you've been handed Exhibit Two. Can you just tell us briefly what this is?

MR. DAWSON: Yes, sir. This is a Social Security Statement that is mine. It was submitted to me on September 2nd, 2010.

ATTORNEY POGUE: Does this document indicate —?

JUDGE POLLACK: Off —.

BRIEF INTERRUPTION

JUDGE POLLACK: I'm sorry to interrupt. The computer paused itself for a second. But we are back to the extent — I can't tell if it stopped. It looked like it did. To the extent we had a brief break in the recording, we're back on the record. And I would ask you to repeat your last question.

ATTORNEY POGUE: Sure. Can you tell us what this document is?

MR. DAWSON: Yes, sir, I can. It is a Social Security Statement that is issued to me, James D. Dawson, on September 2nd — it's dated September 2nd, 2010.

ATTORNEY POGUE: And just for clarity of the record, in case we missed it, he's referring to Exhibit Number Two. Does this document indicate that you paid Social Security taxes while you were a deputy sheriff?

MR. DAWSON: Yes, sir. It reflects Social Security payments during the years in which I was a deputy sheriff.

ATTORNEY POGUE: Okay. And what years are those?

MR. DAWSON: Well, beginning in 1976, that'll be part of those years. Part of that will be from June on. The earlier part will be when I was in the military and a construction

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worker after I got out the military and then from June of 1976 all the way down through March of 1987.

ATTORNEY POGUE: And just for the record —.

MR. DAWSON: So about 11 years.

ATTORNEY POGUE: Just for the record, you're referring to page three of this exhibit; correct?

MR. DAWSON: Yes, sir.

ATTORNEY POGUE: Okay. That's all for that.

JUDGE POLLACK: Okay. Now, I've been handed what appear to be federal tax W-2s and other wage and tax Statements; correct, —

ATTORNEY POGUE: Correct.

JUDGE POLLACK: — for Mr. Dawson, which I am marking these Petitioner's Exhibit Three.

ATTORNEY WILLIAMS: No objection to this being admitted.

JUDGE POLLACK: Okay.

ATTORNEY POGUE: Mr. Dawson, can you identify Exhibit Three for us?

MR. DAWSON: Yes, sir, I can.

ATTORNEY POGUE: Just tell us what it is, briefly?

MR. DAWSON: It is a W-2 Wage and Tax Statement issued from the Nicholas County Commission, Summersville, West Virginia, to me, James D. Dawson. And it reflects the amounts and withholdings that I was paid while I was a deputy sheriff for each of those years, reflected on this page.

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ATTORNEY POGUE: Okay. Do these documents show withholdings for Social Security?

MR. DAWSON: Yes, sir. They do.

ATTORNEY POGUE: Okay. Can you tell us where — and I apologize, I know some of these are very difficult to read. We do have the originals, if anyone wants to see them. But for the ones on here, that you can read, can you show us where it shows Social Security?

MR. DAWSON: Yes, sir. The one that's dated for 1979, if you go to box 11, it is stated there the amount that was withheld. The next one under it is, again, in box 11. And —.

ATTORNEY POGUE: You don't need to go through all of them, but is it your understanding that a deduction for Social Security appears on each one of these W-2s?

MR. DAWSON: Yes, sir.

ATTORNEY POGUE: Okay. When did you retire from the United States Marshals Service?

MR. DAWSON: The last day of March, 2008.

JUDGE POLLACK: Now, I've been handed a certification regarding Mr. Dawson's retirement; correct?

ATTORNEY POGUE: Correct.

JUDGE POLLACK: Which I am marking as Petitioner's Exhibit Four.

ATTORNEY WILLIAMS: No objection.

JUDGE POLLACK: Okay. Petitioner's Exhibit Four is admitted.

ATTORNEY POGUE: Mr. Dawson, do you recognize Exhibit Four?

MR. DAWSON: Yes, sir, I do.

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ATTORNEY POGUE: Can you briefly just tell us what it is?

MR. DAWSON: This is a photocopy of my original retirement credentials that was issued to me upon my retirement in 2008. And this reflects that I am a retired U.S. Marshal and it states that as a U.S. Marshal, I was a duly commissioned federal law enforcement officer of the United States Marshal Service, who was authorized to carry firearms, execute warrants, make arrests for offenses against the United States of America and to perform other law enforcement duties as authorized by law.

ATTORNEY POGUE: Thank you. Mr. Dawson, what federal retirement system were you enrolled in?

MR. DAWSON: I was enrolled under the Federal Employees Retirement System, also known as FERS.

JUDGE POLLACK: Okay. Now we have a federal retirement's benefit packet. I presume it involves FERS. And I'm marking that as Petitioner's Exhibit Five.

ATTORNEY WILLIAMS: No objection to this being admitted.

JUDGE POLLACK: Okay. Thank you. Petitioner's Exhibit Five is admitted.

ATTORNEY POGUE: Mr. Dawson, can you briefly identify this document for us?

MR. DAWSON: Yes. I can. This is a photocopy of my retired benefits booklet that is issued to me at the time that I retired from the U.S. Marshal Service. And it sets forth the benefits and various different items that reflect what they would be upon my retirement.

JUDGE POLLACK: And does this document indicate what retirement system you're in?

MR. DAWSON: Yes, sir, it does.

ATTORNEY POGUE: Can you just show us where?

MR. DAWSON: Well, it's marked as page 2 of 28.

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ATTORNEY POGUE: Just for the record, it's actually the third page of the document. But it's marked as page 2 of 28.

JUDGE POLLACK: Okay.

MR. DAWSON: And it states on that page that the retirement system, which I'm under, they call it FERS, which is the short for the Federal Employees Retirement System.

ATTORNEY POGUE: Okay. Now at some point, Mr. Dawson, you attempted to exempt your federal retirement income from State taxation under West Virginia Code 11-21-12(c)(6); correct?

MR. DAWSON: That's correct.

ATTORNEY POGUE: When was that?

MR. DAWSON: Well, I sent in two, for the 2010, 2011, amended forms and to have amended to reflect that exemption for that particular code that you just cited.

ATTORNEY POGUE: Why did you believe you were entitled to that exemption?

MR. DAWSON: Well, I did that pursuant to the Monongalia County, West Virginia case, *Palmer — Dobson versus Palmer*. It was Judge Stone's case, in which he ruled in that that the *Davis v. Michigan* was the deciding case, and pursuant to that, other federal law enforcement officers had filed. And I knew there was other federal law enforcements that were granted that exemption, so I filed it.

ATTORNEY POGUE: Okay.

JUDGE POLLACK: Okay. Now, I've been given a letter from Mr. Dawson to the West Virginia State Tax Department dated October 24, 2013. I'm marking that as Petitioner's Exhibit Six.

ATTORNEY WILLIAMS: No objection.

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JUDGE POLLACK: Okay. Thank you. So Petitioner's Exhibit Six is admitted.

ATTORNEY POGUE: Mr. Dawson, you've been handed Exhibit Six, can you please tell us what that document is?

JUDGE POLLACK: It is a letter that I sent to the West Virginia State Department, dated October 24, 2013, explaining to them that I sent in the forms and what — who I had talked to, even within the Tax Department, and what my purpose was for sending them in, more or less.

ATTORNEY POGUE: Okay.

JUDGE POLLACK: Okay. Now I've been given a West Virginia Form IT-140 for tax year —. Just tax year 2010?

ATTORNEY POGUE: This one is just 2010, yes.

JUDGE POLLACK: Okay. For Mr. and Mrs. Dawson. And I'm marking that as Petitioner's Exhibit Seven.

ATTORNEY WILLIAMS: I believe that technically this would be classified as an amended return, because that's the box that Mr. Dawson checked on the front page. And so we have no objection to the amended return being admitted into the record for 2010.

JUDGE POLLACK: Petitioner's Exhibit Seven is admitted.

ATTORNEY POGUE: Okay. Now, Mr. Dawson, you've been handed Exhibit Seven. Could you just briefly identify it?

MR. DAWSON: Yes, sir. It is a 2010 Form IT-140. It is a West Virginia Income Tax Return. And it is an amended return.

ATTORNEY POGUE: Is this the document you sent in, claiming the exemption under 11-21-12(c)(6) for the year 2010?

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MR. DAWSON: Yes, sir, it is.

ATTORNEY POGUE: Okay.

OFF RECORD DISCUSSION

ATTORNEY POGUE: Can you show me where on this document, it shows the amount you were trying to exempt?

MR. DAWSON: Yes. If you will go to the third page back listed as Schedule M and go down to Line 36, that is the — my income, my retirement income, for being a U.S. Marshal.

ATTORNEY POGUE: Okay.

MR. DAWSON: And that's what I listed on that line as being what I believe to be an exempted amount.

ATTORNEY POGUE: Can you show us where on this document it shows the amount of taxes that you paid, that you were trying to recover?

MR. DAWSON: Yes, sir. If you will go to the second page of the IT-140 and go down to line 16, it states that I paid $2,440. They refunded $286 of that, which left a balance of $2,174 that I was attempting to have returned to me.

ATTORNEY POGUE: And does that amount represent State income tax that you paid on your federal law enforcement officer retirement income for 2010?

MR. DAWSON: Yes. The $2,440 is what I — was withheld and paid to the State.

ATTORNEY POGUE: But the $2,174 is what ultimately —?

MR. DAWSON: Is the balance that I was trying to get back.

ATTORNEY POGUE: Okay.

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JUDGE POLLACK: Okay. Thank you. Now I've been given an IT-140 for tax year 2011 for Mr. and Mrs. Dawson, which I presumed is also amended?

ATTORNEY POGUE: Excuse me. I don't mean to interrupt. I actually gave you my copy. I've written on that. Can I trade you?

JUDGE POLLACK: Sure. So I'm marking this as Petitioner's Exhibit Eight.

ATTORNEY WILLIAMS: No objection.

JUDGE POLLACK: Okay. Petitioner's Exhibit Eight is admitted.

ATTORNEY POGUE: Mr. Dawson, you've been handed Exhibit Number Eight. Can you please identify that for us?

MR. DAWSON: Yes, sir. It is an IT-140, a West Virginia Personal Income Tax Return, for the year of 2011. It is an amended return and it possesses information with my name on it. It's just a copy of the same one that I submitted to the State Tax Department.

ATTORNEY POGUE: Okay. Can you show us where on this document it shows the amount you were trying to exempt?

MR. DAWSON: Yes, sir, again, if you will go to Schedule M, which is the third page back, line 36, it reflects the amount of what my income was as a U.S. Marshal.

ATTORNEY POGUE: Okay. And can you show us where on this document it shows the amount of taxes you've paid, that you were attempting to recover?

MR. DAWSON: Yes, sir. On line 15, the amount paid was $2,400. Overpayment was $289, they gave me back on the original return. I was attempting to gain back $2,111.

ATTORNEY POGUE: Okay. That's all for that exhibit. Mr. Dawson, what was the result of your attempt to claim these exemptions for 2010 and 2011?

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MR. DAWSON: Well, it was denied. And I was notified by letter along with some further documents with the figures that they outline on what they — what was on the original. And I think what's on the amended and what they believe and what I believe, so —. And so they sent me that and also in the instructions that if I wanted to appeal it, it told you within so many days. And it gives you the — I suppose you call it a petition to fill out to send — submit back to the Office of Tax Appeals.

ATTORNEY POGUE: Okay.

JUDGE POLLACK: Okay. Now I've been given a letter to Mr. and Mrs. Dawson from the Tax Department, dated November 15, 2013. I'm marking that as Petitioner's Exhibit Nine.

ATTORNEY POGUE: Mr. Dawson, you've been handed Exhibit Nine. Is this the letter you received from the Tax Department denying your claim for the exemption?

MR. DAWSON: Yes, sir. It is.

ATTORNEY POGUE: And does this letter refer to both your 2010 and 2011 taxes?

MR. DAWSON: Yes, sir, it does.

JUDGE POLLACK: And any objection to —?

ATTORNEY WILLIAMS: No objection to this document being admitted into the record.

JUDGE POLLACK: Petitioner's Exhibit Nine is admitted. Okay. Now, we have a return change from the Tax Department, issued to Mr. and Mrs. Dawson on November 15, 2013.

ATTORNEY WILLIAMS: No objection to that being admitted.

JUDGE POLLACK: Okay. And that will be Petitioner's Exhibit Ten.

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ATTORNEY POGUE: Okay. Mr. Dawson, you've been handed Exhibit Ten. Do you recognize this document?

MR. DAWSON: Yes, sir, I do. It was from the West Virginia State Tax Department. And it's titled Reference Return Change. And it's dated period 12/31/2010 at the top. It was issued to me on November 15th, 2013.

ATTORNEY POGUE: Okay.

JUDGE POLLACK: And I'm sorry, I don't think I said Petitioner's Exhibit Ten is admitted.

ATTORNEY POGUE: Thank you. Are there any mistakes on this document, to your knowledge?

MR. DAWSON: Yes, sir, there is.

ATTORNEY POGUE: Can you show us what that is?

MR. DAWSON: Well, on the front, it says the amount of the —. I'm sorry. On the very front of the page, the bottom line, it says the amount of the refund due to you has changed $4,614. Well, that's not correct. That's not at all what I was supposed to get back for that. And I think that's probably pursuant to some — they probably improperly added something on the back here.

ATTORNEY POGUE: What was the amount that you were reporting, that you were entitled to get back?

MR. DAWSON: Well, that was for the 2010 —?

ATTORNEY POGUE: Yes.

MR. DAWSON: That would have been — well, it should have been $2,174.

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ATTORNEY POGUE: So just for the record, you were not ever trying to say that the government owed you $4,614?

MR. DAWSON: Not from my 2010 or even the other one. It's — no. What I submitted here is the figures I sent in. That's what I'm — felt that I was entitled to receive back.

ATTORNEY POGUE: Sure. Okay.

MR. DAWSON: And I did call about this to a person, to let them know that it was wrong. I talked to a lady and told her it was just, I'm sure, a boo-boo, and they could fix it.

JUDGE POLLACK: Now we have another return change issued to the Dawsons on the same day, November 15, 2013. But presumably regarding tax year 2011?

ATTORNEY POGUE: Correct.

JUDGE POLLACK: And I'm marking that as Petitioner's Exhibit 11.

ATTORNEY WILLIAMS: No objection to that being admitted.

JUDGE POLLACK: Okay. Petitioner's Exhibit 11 is admitted.

ATTORNEY POGUE: Mr. Dawson, could you just briefly identify for us what Petitioner's Exhibit 11 is?

MR. DAWSON: Yes, sir. It's a letter from the West Virginia State Tax Department, addressed to myself and my wife, Ms. Dawson. And it references a return change, and it sets forth the figures that have been submitted for my amended return and what they computed on it, as well.

ATTORNEY POGUE: Okay. Now, unlike the one of these for 2010, does Exhibit 11 accurately reflect the amount of taxes you believe you were owed for 2011?

MR. DAWSON: Yes, sir, it does.

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ATTORNEY POGUE: Okay. And just for the record, this document does not allow you that exemption; correct?

MR. DAWSON: No. That's just their outline of what they believe the change is to be, and that's what they submitted to me.

ATTORNEY POGUE: Okay. Now, Mr. Dawson, do you know of any other federal law enforcement officers who have been granted the exemption in 11-21-12(c)(6)?

MR. DAWSON: Several.

ATTORNEY POGUE: Okay. And what is your understanding of why they were granted the exemption and you were not?

MR. DAWSON: Well, it appears in reading now some of the redacted versions that's been submitted by the Office of Tax Appeals, is that they read Judge Stone's Order to be that if you paid into Social Security, as we did in FERS, that you weren't entitled to it. Like the gentleman and the ladies did, that were under the CSRS program, that were — who did the same exact job, it's just that he stated in there that it was his belief that probably the legislation did that because they couldn't draw Social Security income upon retirement.

ATTORNEY POGUE: And just — I know you've already testified to this, but just one more time for the record? When you were a West Virginia Deputy Sheriff, you did pay into Social Security, correct?

MR. DAWSON: Yes, sir.

ATTORNEY POGUE: I have no further questions. Pass the witness.

JUDGE POLLACK: Okay. Mr. Williams?

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ATTORNEY WILLIAMS: Okay. Thank you. Thank you. Mr. Dawson, let me ask you this while I'm thinking about it, when you filed your original return with the Tax Department for 2010, —

MR. DAWSON: Yes, sir?

ATTORNEY WILLIAMS: — did you claim the exemption for $2,000?

MR. DAWSON: Correct.

ATTORNEY WILLIAMS: And that was the exemption available to any federal retiree?

MR. DAWSON: Correct.

ATTORNEY WILLIAMS: And again, on 2011, you claimed the $2,000 exemption; correct?

MR. DAWSON: That's correct.

ATTORNEY WILLIAMS: Now, on both of those years were you given credit for that exemption?

MR. DAWSON: Yes. That's why I got the —.

ATTORNEY WILLIAMS: That was honored both years?

MR. DAWSON: It was.

ATTORNEY WILLIAMS: And you received that exemption?

MR. DAWSON: I did.

ATTORNEY WILLIAMS: And if I understand your argument correctly, what we're arguing about here is the remainder of the income that you received from your pension as a retired United States Marshal?

MR. DAWSON: Not the income received —. The tax return, other words, I'm saying —. Oh, I see what you're saying, —

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ATTORNEY WILLIAMS: Yes.

MR. DAWSON: — I apologize.

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: Did it get it right? I felt that it — according to that, case submitted there, that it should have encompassed the entire amount and not just —

ATTORNEY WILLIAMS: Not just the $2,000?

MR. DAWSON: — all but $2,000. Right.

ATTORNEY WILLIAMS: You believe that your entire retirement income should be exempt from tax? Not just the $2,000?

MR. DAWSON: Correct.

ATTORNEY WILLIAMS: Okay. Thank you. I just have a few questions I'd like to ask you. And I believe you may have most of this before. But you did work for the Nicholas County Sheriff's Department; correct?

MR. DAWSON: That is correct.

ATTORNEY WILLIAMS: And when did you say you left?

MR. DAWSON: I left in 1987.

ATTORNEY WILLIAMS: And when you left, you began working at — you went straight from there to the United States Marshal's Service; correct?

MR. DAWSON: That's correct.

ATTORNEY WILLIAMS: Now, I assume you did that because you felt it would be a better —.

JUDGE POLLACK: I'm sorry, Mr. Williams. Bear with me a sec, here.

ATTORNEY WILLIAMS: Okay.

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BRIEF INTERRUPTION

ATTORNEY WILLIAMS: And I assume you made that decision to leave because you felt it would be a better job at the United States Marshals Service and you'd have better job and career opportunities?

MR. DAWSON: Well, I felt that I would probably be more satisfied being a U.S. Marshal or deputy U.S. Marshal, more so than as a deputy sheriff.

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: So I took the job.

ATTORNEY WILLIAMS: Now, do you receive a pension from the Nicholas County Sheriff's Office?

MR. DAWSON: No.

ATTORNEY WILLIAMS: And I believe you testified that you retired from the United States Marshal Service in 2008?

MR. DAWSON: Correct.

ATTORNEY WILLIAMS: And I think, according to your retirement booklet, that you had 25 years of service?

MR. DAWSON: Correct.

ATTORNEY WILLIAMS: And I think that included four years of military service in that?

MR. DAWSON: Yes, sir.

ATTORNEY WILLIAMS: Now, I think that the factors that determine what a person receives in a pension, the primary — the two primary factors, the first being the salary that you earn during your working career; is that correct?

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MR. DAWSON: You mean that they base your retirement off of?

ATTORNEY WILLIAMS: Yes.

MR. DAWSON: They take your highest three years.

ATTORNEY WILLIAMS: Your highest three years?

MR. DAWSON: That's it. It's not your total salary over the whole thing. It's just your highest three years.

ATTORNEY WILLIAMS: During the 25 that you had in service?

MR. DAWSON: Correct.

ATTORNEY WILLIAMS: Okay. And that's the highest average salary during any three-year period?

MR. DAWSON: Right. Which is normally your last three years.

ATTORNEY WILLIAMS: Right, —.

MR. DAWSON: It was for me. It was my last three years, obviously.

ATTORNEY WILLIAMS: I understand. And the other factor is the number of years of service you have with the federal government?

MR. DAWSON: That is correct.

ATTORNEY WILLIAMS: Do you know of any other significant factors that would affect the pension income that you woul0d receive? Or would it be primarily those two?

MR. DAWSON: Well, that's what they base your overall off of. That's how they come to the figure of your pension.

ATTORNEY WILLIAMS: Okay. Okay. That's what I thought, that, it was basically just those two factors?

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MR. DAWSON: Right. And then when you reach a certain age, they take part of your pension away from you.

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: Social Security comes in.

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: Because our pension is greatly reduced from the guides under CSRS is. It's —.

ATTORNEY WILLIAMS: Understand. Understand. You're in a totally different retirement system from the federal government than CSRS?

MR. DAWSON: Right. Our percentages that they use are much less for a FERS than they are for CSRS guys.

ATTORNEY WILLIAMS: Okay. Percentages of contributions you make into the pension —?

MR. DAWSON: Well, contributions. But like the CSRS guys would get — say, they put 20 years in and at age 50 they retire, they get 50 percent.

ATTORNEY WILLIAMS: Like the military?

MR. DAWSON: We get 34.

ATTORNEY WILLIAMS: Okay. Now, let me ask you this question about the FERS retirement system —

MR. DAWSON: Yes.

ATTORNEY WILLIAMS: — that you are in? Does your pension plan include a cost of living adjustment?

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MR. DAWSON: You get cost of living adjustments, say, if Social Security gets one, you get one. But again, now, don't confuse that with the same cost of living that CSRS guys get.

ATTORNEY WILLIAMS: Right.

MR. DAWSON: Okay? Totally different. If they get —.

ATTORNEY WILLIAMS: But you do get a cost of living adjustment?

MR. DAWSON: They call it a consumer something index or something. Other words, if those guys get four percent, we're only going to get three.

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: They always bump us down. We don't get what they get. We don't get the retirement they get. We don't get the raises they get.

ATTORNEY WILLIAMS: Okay. Now, let me ask you this question, when you began your career as a United States Marshal, —

MR. DAWSON: Yes.

ATTORNEY WILLIAMS: — could you tell me what the entry level position was? Would that be like a — I think, now, it would be a GS-7? Does that sound about right?

MR. DAWSON: Well, factors went into that. Okay?

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: When I came in, okay, we were bumped out at age 55. You had to get in —.

ATTORNEY WILLIAMS: Bumped out, you mean —?

MR. DAWSON: At age 55, you were mandatoried out.

ATTORNEY WILLIAMS: Okay. Had to retire?

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MR. DAWSON: And they extended it two years. Okay.

ATTORNEY WILLIAMS: All right.

MR. DAWSON: Then, you came in —. When I came in, you either came in at a GS-5 or a GS-7. And it depended on your experience, as to which one of those that you received.

ATTORNEY WILLIAMS: Okay. And I think there were periodic raises and promotions that you would receive in the U.S. Marshals Service; if you earned them?

MR. DAWSON: If you earned them, yes. And step increases, like —.

ATTORNEY WILLIAMS: Now, what's a step increase?

MR. DAWSON: Okay. Like, one year later, you may get a raise, okay?

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: And but then they started stretching out. You had to stay in so many years. Now, as far as promotions go, those are all meritoriously done and that is not an automatic thing. That is the Merit Promotion Board decides. If you apply for a promotion, they review it, they decide whether you get it or not. It's not an automatic, you know, —.

ATTORNEY WILLIAMS: Okay. But there was the opportunity for promotion and pay raises within the U.S. Marshals Service, if you earned them?

MR. DAWSON: If you earned them, yes.

ATTORNEY WILLIAMS: Okay. Now, I think you've testified earlier that your highest three-year average salary is the basis for computing your pension; correct?

MR. DAWSON: They take your highest three. Right.

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ATTORNEY WILLIAMS: And I believe in your retirement booklet, it stated that your highest three-year-average was $134,244? Is that correct?

MR. DAWSON: That's correct.

ATTORNEY WILLIAMS: And let me ask you this question, taking a look at your retirement booklet, I believe that your initial gross monthly pension would be $3,926 per month?

MR. DAWSON: That's correct.

ATTORNEY WILLIAMS: And that was when you retired, and I think those payments began July of 2008?

MR. DAWSON: Yes.

ATTORNEY WILLIAMS: Now, you also have on there something called a FERS annuity supplement?

MR. DAWSON: Correct.

ATTORNEY WILLIAMS: Can you tell me what that is?

MR. DAWSON: I certainly can. As a matter of fact, I'll read it to you, so you get it exactly right for the record.

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: The FERS annuity supplement. Because you retire under FERS, but are not yet eligible for Social Security retirement benefits, you will receive a FERS annuity supplement of $801 in addition to your monthly annuity benefits shown above. The benefit supplement may continue until you become eligible for Social Security, generally at age 62, subject to data provided in the annual annuity supplement survey.

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And at age 62, that supplement disappears whether you sign up on Social Security or not. It's gone.

ATTORNEY WILLIAMS: But when that supplement goes away, and you're not quite 62 yet, you can collect Social Security at age 62?

MR. DAWSON: At age 62. Right.

ATTORNEY WILLIAMS: If you choose to?

MR. DAWSON: If you choose to. If you don't, you just lose your supplement and just —.

ATTORNEY WILLIAMS: I understand. Understand. Now, so then if my math is correct, based upon your pension payment and your FERS supplemental annuity, that you would have received a monthly income of $4,727 when you retired? That would be a gross figure? Does that sound about right?

MR. DAWSON: Give me a calculator and I can tell you in just a moment. Because it has my current gross monthly benefit of $3,926 less or plus your —.

ATTORNEY WILLIAMS: I understand all those deductions, but I'm just talking about the gross number here.

MR. DAWSON: And what figure did you come up with?

ATTORNEY WILLIAMS: $4,727.

MR. DAWSON: You're right.

ATTORNEY WILLIAMS: Okay. And then in a year, that would be approximately $56,700? If my calculator was correct?

MR. DAWSON: $56, —?

ATTORNEY WILLIAMS: I said $56,700.

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MR. DAWSON: Twenty-four (24). Right.

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: I think something else I need to clarify here, too, —

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: — that — and I'm not sure if it's reflected in here. There's also a 10 percent reduction on my income for survivors. My wife, right.

ATTORNEY WILLIAMS: Right.

MR. DAWSON: For survivorship for her.

ATTORNEY WILLIAMS: But after that 10 percent deduction was taken, you still got the $3,926 —

MR. DAWSON: That's it.

ATTORNEY WILLIAMS: — a month?

MR. DAWSON: That's it.

ATTORNEY WILLIAMS: Now, when you filed your tax returns and your amended tax returns, you included your 1099-R with that return; correct? Instead of a W-2, you had a 1099 from the Office of Personnel Management?

MR. DAWSON: And put it on which return?

ATTORNEY WILLIAMS: On both of them? When you filed your return —?

MR. DAWSON: I don't think so, because the new instructions now tell you not to submit your 1099, but to fill out the Form IT-140W, West Virginia Withholding Tax Schedule. And they don't have you send it in anymore.

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ATTORNEY WILLIAMS: Okay. Bear with me, one moment, just to make sure I'm looking at all this correctly. Because I know I saw one in here somewhere. If I can just have a moment?

JUDGE POLLACK: Take your time, Mr. Williams.

ATTORNEY WILLIAMS: Thank you. Okay, I think I found it. Now, all I've got to do is find it in here. Can we take a break for just a moment, while I —

JUDGE POLLACK: Sure.

ATTORNEY WILLIAMS: — find it?

JUDGE POLLACK: Sure. We're going to go off the record for five minutes. That way, anyone who needs to use the restroom can. And we'll reconvene in five minutes.

SHORT BREAK TAKEN

JUDGE POLLACK: Okay. We're back on the record in James D. and Elaine F. Dawson, Docket Number 14-026 RPD after a brief restroom break. And when we left, Mr. Williams was cross examining Mr. Dawson.

ATTORNEY WILLIAMS: Thank you. I just have a couple more questions. I was unable to find the document I was looking for, before the break. And I found it, and Mr. Dawson has found it as well. Mr. Dawson, let me ask you on your amended 2010 — that's Taxpayer's Exhibit Seven?

MR. DAWSON: Yes, sir.

ATTORNEY WILLIAMS: The last page on that, I believe, was a 1099-R. Is that correct?

MR. DAWSON: Right. It's attached to the amended, — not to the original ones that I've sent in, but to the amended.

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ATTORNEY WILLIAMS: But to the amended one? And I believe your gross distribution for that year was $58,224?

MR. DAWSON: Right.

ATTORNEY WILLIAMS: And that's what you had on your amended return? Yeah, it is.

MR. DAWSON: Okay.

ATTORNEY WILLIAMS: And also, Taxpayer's Exhibit A, the 1099-R, shows a gross distribution of $58,224 for the 2011 calendar year?

MR. DAWSON: I'm sorry. Let me, —

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: — so there is no —. The first one you asked me about, what was on my amended return?

ATTORNEY WILLIAMS: Yes.

MR. DAWSON: It's $50, —.

ATTORNEY WILLIAMS. I stand corrected.

MR. DAWSON: $57,590. That's your taxable amount is $57,590. Your gross distribution is $58,224. Your taxable amount off of this 1099 is $57,590.

ATTORNEY WILLIAMS: And so I ask you the gross distribution and then I asked the wrong question. Because you've reported taxable income —

MR. DAWSON: Right,

ATTORNEY WILLIAMS: — from your federal income tax returns? Yes.

MR. DAWSON: Right. Your tax Statement that you get, your gross distribution at the top has —.

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ATTORNEY WILLIAMS: And that's what I want.

MR. DAWSON: It has to do with — you had already paid taxes on it and it has to do with your retirement. And so, as you — it's paid out over a period of time. How they compute that, I wish I could tell you. I do not know.

ATTORNEY WILLIAMS: I wouldn't want to know.

MR. DAWSON: And they always tell you, your taxable amount. And that's what you have to put on your federal income tax, is your taxable amount.

ATTORNEY WILLIAMS: Okay. Thank you.

MR. DAWSON: Okay. It's in the instructions, —

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: — that you record your taxable amount.

ATTORNEY WILLIAMS: But the 1099s are correct on your gross distribution?

MR. DAWSON: On gross in block one, and taxable in two. Yeah.

ATTORNEY WILLIAMS: Okay.

MR. DAWSON: Yes, sir.

ATTORNEY WILLIAMS: Thank you. No further questions.

JUDGE POLLACK: Okay. I don't think I have any questions for Mr. Dawson.

ATTORNEY POGUE: Okay.

JUDGE POLLACK: Do you have any other witnesses, Mr. Pogue?

ATTORNEY POGUE: I do not. But I do have a couple of exhibits I just want to put in, that were exhibits before in the previous proceeding. Well, some of them were not, actually.

OFF RECORD DISCUSSION

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JUDGE POLLACK: Well, okay. Mr. Pogue, I'll think about that. I'm fairly certain our procedural rules don't have any provision for redaction. And I know there's no statutory provision for redaction. But that doesn't mean that I'm rejecting that request out of hand. Frankly, it's not going to be up to me. I promise you this, leave a note on the file, —

ATTORNEY POGUE: Okay.

JUDGE POLLACK: — that in addition to it being in the record for anybody who reads this transcript. Okay?

ATTORNEY POGUE: I appreciate that. Thank you.

JUDGE POLLACK: No problem. Now, you're resting?

ATTORNEY POGUE: We are resting.

JUDGE POLLACK: Okay. Ms. Schultz.

ATTORNEY SCHULTZ: We would like to call our witness, Teresa Miller:

JUDGE POLLACK: Why don't we give Mr. Dawson's microphone to Ms. Miller. Do you have enough cord there, Ms. Miller.

MS. MILLER: I do.

JUDGE POLLACK: Okay. Go ahead and raise your right hand?

TERESA MILLER, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

ATTORNEY SCHULTZ: Could you State your name for the record; please?

MS. MILLER: Teresa Miller.

ATTORNEY SCHULTZ: And your education?

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MS. MILLER: I have a degree in finance from WVU.

ATTORNEY SCHULTZ: And what is your position at the Consolidated Public Retirement?

MS. MILLER: I am the deputy director and chief operating officer.

ATTORNEY SCHULTZ: Could you briefly explain what those positions entail?

MS. MILLER: Sure. Our agency administers nine retirement plans for State and Political subdivisions. And our job — my job entails daily administration, administrative hearings, legislative proposals dealing with the legislature.

ATTORNEY SCHULTZ: So is it fair to say then that you are very familiar with all eight State pension plans?

MS. MILLER: Yes. There are nine.

ATTORNEY SCHULTZ: Oh, nine? I miscounted.

MS. MILLER: Yes, ma’am.

ATTORNEY SCHULTZ: I'm going to be introducing exhibits that we sent to Mr. Pogue. I'm looking for Two and Three.

ATTORNEY WILLIAMS: Two and Three? One, —

ATTORNEY SCHULTZ: Oh, they're right here. They're just wrong.

ATTORNEY WILLIAMS: Two and Three.

ATTORNEY SCHULTZ: Okay. I'm going to show you what they are, so maybe we can get them admitted in one full swoop. If that's all right with you?

ATTORNEY POGUE: Are these the same things you sent me previously?

ATTORNEY SCHULTZ: Yes. Yes, sir.

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ATTORNEY POGUE: Okay. I don't think I need additional copies of them. It they're identical to what you sent —?

ATTORNEY SCHULTZ: They are identical.

ATTORNEY POGUE: Okay.

ATTORNEY WILLIAMS: And you've got One through —?

ATTORNEY POGUE: I have eight here. Is that —?

ATTORNEY WILLIAMS: Eight? I think we're only doing seven.

ATTORNEY POGUE: Okay.

ATTORNEY WILLIAMS: We're not doing Number Eight.

ATTORNEY POGUE: Okay.

ATTORNEY SCHULTZ: So do you want me to lay a foundation or will you stipulate to their admission?

ATTORNEY POGUE: Just because I don't know what some of them are, if you'd just briefly —? I mean, it doesn't have to be the most through thing, but —?

ATTORNEY SCHULTZ: Okay. Let me show you Exhibit One.

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JUDGE POLLACK: Okay. So —.

ATTORNEY SCHULTZ: We're going to look at Exhibit One, first.

JUDGE POLLACK: Okay. Which is —? Oh, I see you've already got it. Do you have a cover sheet like that on all of them? They're already marked. Okay. Well, I'm going to be putting State's exhibit stickers on the bottom.

ATTORNEY SCHULTZ: That's fine.

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JUDGE POLLACK: All right. So I am marking State's Exhibit One, which is a — it looks like an Excel spreadsheet.

ATTORNEY SCHULTZ: Uh-huh (yes).

JUDGE POLLACK: Okay, now. We're going to wait and admit these after Ms. Schultz lays a brief foundation?

ATTORNEY POGUE: Yes, because I don't what this is or who made it, or — so —.

JUDGE POLLACK: Okay.

ATTORNEY SCHULTZ: Okay. Well, we'll do that. Could you describe and identify what Exhibit One is?

MS. MILLER: Exhibit One is what we refer to as a summary sheet of all of the nine plans that we administer. We use it routinely in our daily business with the legislature and participating employers. Just it's a brief overview of what the employee contribution rate is, employer contribution rate, what the benefits are, when someone can retire. And on the second page, is a list of the active members, retirees, unfunded liability, percent funding and assets.

ATTORNEY SCHULTZ: Does the Board have a legal obligation to keep this information?

MS. MILLER: We do.

ATTORNEY SCHULTZ: And is it something that you keep in the regular course of running your agency?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: And is this information relied upon by the Governor and the members of the legislature?

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MS. MILLER: Yes,

ATTORNEY SCHULTZ: As well as by all retirees who report to these Boards?

MS. MILLER: Yes.

JUDGE POLLACK: Let me interpret you, one second. Mr. Pogue, I think I've sort of misspoke. By statute, we don't follow the rules of evidence. And at the prehearing conferences, we advise all parties that they're to share all documents prior to the evidentiary hearing, so that there's no, you know, trial by ambush.

ATTORNEY POGUE: Uh-huh (yes).

JUDGE POLLACK: Given that unless the Tax Commissioner's going to introduce a document that you have not seen, I'm not going to require the Tax Commissioner to set a foundation for every —

ATTORNEY POGUE: Okay.

JUDGE POLLACK: — document prior to admission.

ATTORNEY POGUE: I mean, I can always ask on Cross, —

JUDGE POLLACK: Sure.

ATTORNEY POGUE: — if I want to know what something is. So that's fine.

JUDGE POLLACK: Okay. So given that, we can go through and mark these one at a time, Ms. Schultz. —

ATTORNEY SCHULTZ: Okay.

JUDGE POLLACK: — or in one fell swoop. What would you prefer?

ATTORNEY SCHULTZ: I think we'll start one at a time. And I may regret that and I may change my course —

JUDGE POLLACK: All right. Well, if you —.

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ATTORNEY SCHULTZ: — of action.

JUDGE POLLACK: You have the option to change. But, as of now, State's Exhibit One is admitted.

ATTORNEY POGUE: Sure.

ATTORNEY SCHULTZ: All right.

ATTORNEY POGUE: And I'll say right now, I — because I don't want to object to it. I'd like to know what these things are. But I don't object to any of them. Because, frankly, I don't want to get sent back down here because there was something that they wanted to put in the record that they didn't get it to, so —

JUDGE POLLACK: Well, I won't take that personally.

ATTORNEY POGUE: No, please don't. Please don't.

JUDGE POLLACK: So go ahead, Ms. Schultz.

ATTORNEY SCHULTZ: All right. And this is public information; isn't it?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: And is this information verified?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: Who verifies this information?

MS. MILLER: We have an in-house actuary. And it is also peer reviewed by an outside actuary.

ATTORNEY SCHULTZ: Okay. And looking at Exhibit One, does it identify the nine State plans?

MS. MILLER: Yes, ma'am.

ATTORNEY SCHULTZ: Could you briefly tell us what the nine State plans are?

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MS. MILLER: Public Employees Retirement Systems, Teachers' Retirement System, Teachers' Defined Contribution Retirement System, State Police Plan A, State Police Plan B, Judge's Retirement System, Deputy Sheriff's Retirement System, EMS Retirement System and Municipal Police and Firefighters Retirement System.

ATTORNEY SCHULTZ: All right. And when this information is verified, you can say then that the information contained on this piece of paper is accurate?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: All of it?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: Okay. What is the plan that has the biggest number of active employees that participate in the pension plan?

MS. MILLER: The Public Employees Retirement System as of 7/1/2010. These plans are valued annually, and so you'll note the date in that left-hand corner.

ATTORNEY SCHULTZ: So they report on fiscal years; is that right?

MS. MILLER: Yes, ma' am.

ATTORNEY SCHULTZ: And then the next highest plan, at least for this year, with active members, was then which plan?

MS. MILLER: The Teachers' Defined Benefit Retirement System.

ATTORNEY SCHULTZ: And when you look down this column, it tells us how many active member we have and how many retired members each of the plans have?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: Now, when you look over at the Deputy Sheriff's Retirement Plan, how many retired members did it have for the year in question?

MS. MILLER: 260.

ATTORNEY SCHULTZ: Now, are all deputy sheriffs members of the deputy sheriffs' plan?

MS. MILLER: No.

ATTORNEY SCHULTZ: What other plan can some of the deputy sheriffs belong to?

MS. MILLER: The Public Employees Retirement System.

ATTORNEY SCHULTZ: And is true that all of the employees who participated in these plans, they make contributions to the plan?

MS. MILLER: Yes. There are employee contributions made in all nine plans administered.

ATTORNEY SCHULTZ: And then there are correspondingly employer contributions, as well?

MS. MILLER: Yes. Some of the plans have different ways of remitting the employer contribution. It's not necessarily a flat percentage of payroll.

ATTORNEY SCHULTZ: So there are some differences in how it's done, —

MS. MILLER: Yes, ma'am.

ATTORNEY SCHULTZ: — which is enumerated on the columns that talk about their respective categories?

MS. MILLER: Yes.

JUDGE POLLACK: Ms. Schultz. If you're going to be facing Ms. Miller, put the mic so you're talking into it. Scoot it over towards Wayne.

ATTORNEY SCHULTZ: I'll just do that.

JUDGE POLLACK: And face it towards you.

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ATTORNEY SCHULTZ: Okay. Tell me if I'm doing better, now? It's hard for me to —. It's hard for me here. Is that better? Or no?

JUDGE POLLACK: Go ahead, please —.

ATTORNEY SCHULTZ: Would you like me to try again?

JUDGE POLLACK: No, that's good.

ATTORNEY SCHULTZ: Okay. I'll try to talk louder. Do any retirees in any of the State plans receive a cost of living increase?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: And what plans is that true for?

MS. MILLER: The State Police Plan A and State Police Plan B, and also the — it's not really a cost-of-living annual increase, but sitting judges, if they're in what we would refer to as tier one. Whenever a sitting judge gets a pay raise, then in essence, the retiree gets a pay raise.

ATTORNEY SCHULTZ: Now, do deputy sheriffs who are in the deputy sheriffs' plan receive a cost-of-living increase?

MS. MILLER: No.

ATTORNEY SCHULTZ: Do deputy sheriffs who are in the Public Employees Retirement Fund get a cost-of-living increase.

MS. MILLER: No.

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ATTORNEY SCHULTZ: Okay. Okay. I think that's all the questions I have with regard to Exhibit One. I may move to it, but for now —. Now, we're going to move to Exhibit Two.

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JUDGE POLLACK: Okay. I'm marking State's Exhibit Two, which is another Excel spreadsheet, although this one is brown.

ATTORNEY SCHULTZ: Yes.

JUDGE POLLACK: Mr. Pogue, any objection to the admission of State's Exhibit Two?

ATTORNEY POGUE: No objection.

JUDGE POLLACK: Okay. State's Exhibit Two is admitted.

ATTORNEY SCHULTZ: Does State's Exhibit Two have the same basic information that State's Exhibit One contains?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: Are there any differences that you want to identify?

MS. MILLER: Yes. The actuarial valuation date is as of 7/1/2011. And so this information has been updated with that fiscal year information.

ATTORNEY SCHULTZ: And this chart two is a fiscal year summary?

MS. MILLER: Yes, ma'am.

ATTORNEY SCHULTZ: And again, with regard to this, the plan with the highest number of active members is who?

MS. MILLER: The Public Employees Retirement System.

ATTORNEY SCHULTZ: Followed next by which plan?

MS. MILLER: The Teachers' Defined Benefit Retirement System.

ATTORNEY SCHULTZ: And in this particular year, how many active members were in the deputy sheriff's plan?

MS. MILLER: 954.

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ATTORNEY SCHULTZ: For this year, were deputy sheriffs able to also be in the public employee's retirement plan? Or do they all now fall in the deputy sheriff's plan?

MS. MILLER: How a deputy sheriff could potentially be in the Public Employees Retirement System, is back in 1998, when the Deputy Sheriff Retirement System was enacted, the deputy sheriffs at that time had the option of whether to go to the Deputy Sheriff plan or to remain in Public Employees. And so, those people who elected to remain would still be in PERS, if they're still employed.

ATTORNEY SCHULTZ: And as I understand it, that's the deputy sheriff's election?

MS. MILLER: That's correct. If they were a deputy sheriff in 1998.

ATTORNEY SCHULTZ: If they qualify to be in the PERS plan?

MS. MILLER: Yes. And then, all new hires after that date go into the deputy sheriff retirement plan.

ATTORNEY SCHULTZ: Okay. And which plan had the largest number of retirees for this particular year?

MS. MILLER: The Teachers' Defined Benefit Retirement System.

ATTORNEY SCHULTZ: Followed by which plan?

MS. MILLER: The Public Employees Retirement System.

ATTORNEY SCHULTZ: And how many retirees do we have in the deputy sheriffs' plan for this year?

MS. MILLER: 272.

ATTORNEY SCHULTZ: And again, are some employees in the State's retirement plan eligible to get a cost-of-living increase?

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MS. MILLER: The State Police Plan A, State Police Plan B receive an annual increase. And then the judges, if they were on the bench prior to 7/1/2005.

ATTORNEY SCHULTZ: And the deputy sheriffs do not receive a cost-of-living increase, do they?

MS. MILLER: Correct.

ATTORNEY SCHULTZ: And with regard to the State Police in both plans for this year and the previous year, isn't true that those State Policemen are not eligible to receive Social Security?

MS. MILLER: That is correct. They opted out of Social Security.

ATTORNEY SCHULTZ: And that's reflected on both of these charts?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: Okay. Now we're going to move to Exhibit Three.

JUDGE POLLACK: Okay. Petitioner's Exhibit Three — I mean, State's Exhibit Three, pardon me, is again an Excel spreadsheet, red, and then dated 7/1/2012. I'm marking that as State's Exhibit Three. Mr. Pogue, any objection to its admission?

ATTORNEY POGUE: No objection.

JUDGE POLLACK: Okay. State's Exhibit Three is admitted.

ATTORNEY SCHULTZ: And is it correct here, as well, that it has the same basic information as the previous two summaries?

MS. MILLER: Yes, ma'am.

ATTORNEY SCHULTZ: Obviously, the numbers have changed depending upon the factual change from fiscal year to fiscal year?

MS. MILLER: Correct.

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ATTORNEY SCHULTZ: And with regard to this summary page, who is the largest employer with active members — plan?

MS. MILLER: The Public Employees' Retirement System.

ATTORNEY SCHULTZ: Followed by who?

MS. MILLER: The Teachers' Defined Benefit Retirement System.

ATTORNEY SCHULTZ: And how many active employees do we have for the Deputy Sheriffs'?

MS. MILLER: 979.

ATTORNEY SCHULTZ: And again, depending upon the date of hire, some deputy sheriffs might still belong in the Public Employees Retirement System?

MS. MILLER: Yes, ma'am.

ATTORNEY SCHULTZ: And what is the plan with the largest number of retirees for this year?

MS. MILLER: The Teachers' Defined Benefit Retirement System.

ATTORNEY SCHULTZ: Followed by —?

MS. MILLER: The Public Employees Retirement System.

ATTORNEY SCHULTZ: And how many retirees does the deputy sheriff's pension plan have for this particular year?

MS. MILLER: 283.

ATTORNEY SCHULTZ: And again, on this chart we see that it appears that the State Police continue to be eligible for a cost-of-living increase?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: And the deputy sheriffs are not?

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MS. MILLER: Correct.

ATTORNEY SCHULTZ: And public employees are not?

MS. MILLER: Correct,

ATTORNEY SCHULTZ: And teachers are not?

MS. MILLER: Correct.

ATTORNEY SCHULTZ: Now, we're going to move to Exhibit Four.

JUDGE POLLACK: Okay. Which is an annual report for the Consolidated for the Consolidated Public Retirement Board for the fiscal years ending June 30th, 2010 and June 30th, 2011. Which I'm marking as State's Exhibit Four. Mr. Pogue, any objection —

ATTORNEY POGUE: No objection.

JUDGE POLLACK: — to admission? Okay. State's Exhibit Four is admitted.

ATTORNEY SCHULTZ: And can you generally describe what is contained in this document?

MS. MILLER: Yes, this is our annual report for all of the nine retirement plans that we administer.

ATTORNEY SCHULTZ: I'd like you to turn to the actuarial figures and statistics section, which I think starts on page 28.

JUDGE POLLACK: Okay.

ATTORNEY SCHULTZ: No. Actually, it starts a little before that. It's an unnumbered page 26. A big black piece of paper that says actuary figures and statistics.

JUDGE POLLACK: All right. We should probably —.

ATTORNEY SCHULTZ: It's right after page 25. But it happens to not be numbered.

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JUDGE POLLACK: Right. There's a black heading page, as Ms. Schultz identified. And it's the next page after that?

ATTORNEY SCHULTZ: Well, we're actually going to 28, which is two pages after that, if my math's working for me today.

JUDGE POLLACK: Okay.

ATTORNEY SCHULTZ: Are you on that page?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: Can you —?

JUDGE POLLACK: Mr. Pogue, are you with us?

ATTORNEY SCHULTZ: Yes.

JUDGE POLLACK: Okay.

ATTORNEY SCHULTZ: You're with me. Okay.

RIDGE POLLACK: Go ahead, Ms. Schultz.

ATTORNEY SCHULTZ: Good job. I'm going to look at what is the second column, which is titled Defined Benefit Retirement Plan Figures as of June 30, 2010. Do you see that second —?

OFF RECORD DISCUSSION

MS. MILLER: Yes.

ATTORNEY SCHULTZ: Okay. And then looking at that, can you tell me what the average monthly benefit —.

JUDGE POLLACK: Wait, Ms. Schultz. You better face that way.

ATTORNEY SCHULTZ: Oh, okay. Sorry.

JUDGE POLLACK: Go ahead. Just ask that question, again.

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ATTORNEY SCHULTZ: I'm sorry. I apologize. Could you tell me, in looking at the column Average Monthly Benefit, as you're going horizontally down, going across, what was the — what is reflected as the average monthly retirement benefit for deputy sheriffs?

MS. MILLER: $2,349.

ATTORNEY SCHULTZ: And if you go down, I think two more columns, what is that column titled?

MS. MILLER: Average Monthly Salary Receiving at Retirement.

ATTORNEY SCHULTZ: And what is the average monthly salary of deputy sheriffs at the time of their retirement?

MS. MILLER: $3,659.

ATTORNEY SCHULTZ: Okay. Okay. And then the very next page, if you go to the second column, I'm looking at Defined Benefit Retirement Plan Figures as a June 30th, 2010. Is everybody with me?

ATTORNEY POGUE: You turn to the next page?

ATTORNEY SCHULTZ: It's the next page.

ATTORNEY POGUE: Is it 2011?

ATTORNEY SCHULTZ: 2011. I misspoke. It's 2011.

ATTORNEY POGUE: Okay.

ATTORNEY SCHULTZ: I apologize.

ATTORNEY POGUE: That's all right. Just trying to make it clear for the record.

ATTORNEY SCHULTZ: Make sure we're right.

ATTORNEY POGUE: Yes.

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ATTORNEY SCHULTZ: Yes, in 2011. Okay. And can you tell me the average monthly salary at the time of retirement for deputy sheriffs?

MS. MILLER: $3,722.

ATTORNEY SCHULTZ: Okay. And what's the average monthly benefit for the deputy sheriffs?

MS. MILLER: If I might clarify, because there's actually two columns —

ATTORNEY SCHULTZ: Uh-huh (yes).

MS. MILLER: — for average monthly benefit?

ATTORNEY SCHULTZ: Uh-huh (yes).

MS. MILLER: There is a section, the top portion of that chart, is for new retirees.

ATTORNEY SCHULTZ: Okay.

MS. MILLER: That average monthly benefit is $2,195.

ATTORNEY SCHULTZ: Okay.

MS. MILLER: But down when you go to the bottom half of that chart for all retirees, —

ATTORNEY SCHULTZ: And this is deputy sheriffs we're talking about?

MS. MILLER: Deputy sheriffs. The average monthly for all retirees is $1,826. And if I can clarify in my testimony, previous on page 28 —?

ATTORNEY SCHULTZ: Okay.

MS. MILLER: I believe I was — I believe I cited the new retiree numbers, not the all-retiree numbers.

ATTORNEY SCHULTZ: Okay. So tell us first — we're going to go back to the 2010 chart, just so we can clear up the record, which is the page before. And tell me what the average monthly salary was for all retirees?

MS. MILLER: That number is not tracked by our actuary.

ATTORNEY SCHULTZ: Okay.

MS. MILLER: It is only in the top portion of this box, because they only track it for the new retirees.

ATTORNEY SCHULTZ: Okay.

MS. MILLER: So the 12 new retirees that occurred in fiscal year 2010, their average monthly salary at retirement was $3,659.

ATTORNEY SCHULTZ: Okay.

MS. MILLER: That number is not averaged for all retirees.

ATTORNEY SCHULTZ: I understand. And what can you tell us about the average salary numbers that are on this page, for the deputy sheriffs?

MS. MILLER: Do you mean the average monthly benefit or the average salary at retirement?

ATTORNEY SCHULTZ: I'm going to ask both. So answer the average monthly benefit first, for all retirees, if we have that number?

MS. MILLER: The average monthly benefit for all retirees under the deputy sheriff retirement plan is $2,349.

ATTORNEY SCHULTZ: And so to clarify, that includes all retirees; is that right?

MS MILLER: Yes.

ATTORNEY SCHULTZ: And then the average monthly salary, what does this chart tell us, for deputy sheriffs?

MS. MILLER: $3,659.

ATTORNEY SCHULTZ: And is there a qualification with regard to what that information spans?

MS. MILLER: That would span just those retired in that fiscal year.

ATTORNEY SCHULTZ: Have we clarified what you wanted to, with —

MS. MILLER: Yes, ma'am.

ATTORNEY SCHULTZ: — regard to that page? Okay. Let's look at the next page? And we're looking at Defined Benefit Retirement Plan figures as of June 30, 2011. And what was the average monthly salary received at the time of the retirement?

MS. MILLER: $3,722.

ATTORNEY SCHULTZ: And does that just reflect the most recent retirees, when we're looking at the average salary?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: Okay. With regard to average monthly benefit, what is that number for deputy sheriffs?

MS. MILLER: The average monthly benefit for all deputy sheriffs is $1,826.

ATTORNEY SCHULTZ: Okay.

MS. MILLER: The average monthly benefit for the new retirees that retired in that fiscal year is $2,195.

ATTORNEY SCHULTZ: Okay. Now I'm going to move to my next exhibit.

JUDGE POLLACK: Okay. Which is another annual financial report from the Public Retirement Board for fiscal year ending June 30th, 2012; correct?

ATTORNEY SCHULTZ: That's correct.

JUDGE POLLACK: And I'm marking that as State's Exhibit Five. And Mr. Pogue?

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ATTORNEY POGUE: No objection.

JUDGE POLLACK: All right. State's Exhibit Five is admitted.

ATTORNEY SCHULTZ: And can you generally describe what is contained in this document?

MS. MILLER: Yes. This is a comprehensive annual financial report, or what many refer to as a CAFR. It's structured a little bit differently than the previous report, which was just a regular annual report. But this is something that we provide and get the GFOA CAFR certification on.

ATTORNEY SCHULTZ: Could you tell us what GFOA certification is?

MS. MILLER: I believe it's Government Financial Accounting — or, Oversight on Accounting Board. It's the accounting gurus.

ATTORNEY SCHULTZ: Okay. I presume it's something that we have to have for our plan?

MS. MILLER: We do not have to have a CAFR. This was actually the first year in which we obtained a CAFR. It's a certification verifying your financial records

ATTORNEY SCHULTZ: Okay. So we decided to take an extra step than is required?

MS. MILLER: Yes. Correct.

ATTORNEY SCHULTZ: For this year?

MS. MILLER: Correct.

ATTORNEY SCHULTZ: Okay. I'm turning now to page 205. Could you describe what this page reflects?

MS. MILLER: It reflects the Deputy Sheriff Retirement System, and the average monthly benefit and the number of active retireants.

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ATTORNEY POGUE: I'm sorry, what page are we on, again?

ATTORNEY SCHULTZ: I'm so sorry, 205.

ATTORNEY POGUE: 205? I'm sorry. I was on 25. I was wondering —.

ATTORNEY SCHULTZ: It would make my questions even harder to follow.

ATTORNEY POGUE: Okay.

ATTORNEY SCHULTZ: So tell us again what this page generally reflects.

MS. MILLER: For years 2005 through 2011, it reflects the average monthly benefit, broken down based upon years of credited service and the number of active retireants.

ATTORNEY SCHULTZ: And as I understand, a deputy sheriff's pension amount is derived by a combination of his salary and his years of service; is that correct?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: Those are the factors that go into calculating the deputy sheriff's salary?

MS. MILLER: Yes, if you're under the deputy sheriff retirement plan.

ATTORNEY SCHULTZ: And if you're under the public employees retirement plan, does it as well reflect an average of the certain number of years of your service, plus years of service?

MS. MILLER: It's the same components, but at different rates.

ATTORNEY SCHULTZ: That's right.

MS. MILLER: The final average salary in PERS is your three high years out of last 15.

ATTORNEY SCHULTZ: Right.

MS. MILLER: Under the deputy sheriff retirement plan, it's your five highest out of the last 10.

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ATTORNEY SCHULTZ: Now, —

MS. MILLER: And the multiplier is also different.

ATTORNEY SCHULTZ: Now, as I understand it, deputy sheriffs have an earlier age at which they can retire, than public employees; is that right?

MS. MILLER: Yes.

ATTORNEY SCHULTZ: And what is their earliest time to be able to retire for a deputy sheriff?

MS. MILLER: Age 50, with 20 years of service.

ATTORNEY SCHULTZ: Now, do our deputy sheriffs have a mandatory retirement age in West Virginia?

MS. MILLER: I believe they do. I believe it's 65.

ATTORNEY SCHULTZ: And are you familiar with the salary ranges for the deputy sheriffs, since that's a component piece of the contributions that come into your plans?

MS. MILLER: On a broad scale.

ATTORNEY SCHULTZ: On a broad scale, can you tell us what you believe the average salary for a deputy sheriff is in the State of West Virginia?

MS. MILLER: I could guess. But I'm sure that our actuary would have that information as to what the average salary is. If I had to take a guess at the average, I would guess somewhere $50,000 range.

ATTORNEY SCHULTZ: Do you know of any of our deputy sheriffs that make $100,000 a year?

MS. MILLER: I actually did check prior to this hearing to see if there was anyone in the deputy sheriff retirement system over $100,000, and there is not.

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ATTORNEY SCHULTZ: Can I confer with Mr. Williams for five minutes, just to make sure I travelled through all my numbers?

JUDGE POLLACK: Sure. Sure. We're going to go off the record, so Counsel can confer.

ATTORNEY SCHULTZ: Thank you.

SHORT BREAK TAKEN

JUDGE POLLACK: Okay. We're back on the record in of James D. and Elaine F. Dawson, Docket Number 14-026 RPD, after a brief restroom break. And when we left, Ms. Schultz was directly examining Ms. Miller; correct?

ATTORNEY SCHULTZ: Yes. And I am done and — with my Direct Examination. And we'll see if Mr.

Pogue has anything to whet my interests after his finished with his Cross.

JUDGE POLLACK: All right. Wait —

ATTORNEY POGUE: Okay.

JUDGE POLLACK: I'm sorry to interrupt. Before you start, though, we have marked five State's exhibits. I have two exhibits that I was handed that I'm going to give back to you.

ATTORNEY SCHULTZ: You'll be needing them.

JUDGE POLLACK: Oh, okay.

ATTORNEY SCHULTZ: I just want to finish with this witness, and then address those.

JUDGE POLLACK: Okay, fine. I'll hold onto them for the time being. Mr. Pogue. It's your witness.

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ATTORNEY POGUE: Okay. Thank you. I'm going to hand her a copy of the statute. We don't need to introduce this as an exhibit. But if anyone wants it, —.

JUDGE POLLACK: It's 11-21-12, I presume?

ATTORNEY POGUE: Yes.

JUDGE POLLACK: Okay.

ATTORNEY POGUE: Now, Ms. Miller, I would like for you to turn to the second page of this, and look down at paragraph six. And what I'd like to do with you, is walk through each one of the retirement systems that are mentioned in this paragraph six, and ask you a couple of questions about them. Okay?

MS. MILLER: Yes.

ATTORNEY POGUE: So the first one that it mentions specifically, it says any West Virginia police, but then it says West Virginia Firemen's Retirement System. Is there such a thing as the West Virginia Firemen's Retirement System; to your knowledge?

MS. MILLER: If I can talk here, just for a minute. The municipal police and fire plan that we administer was created in 2010. So there's kind of what I'll call old plan, and then our new plan. The Consolidated Public Retirement Board does not administer the old plans. Those are administered by each of the cities that have those, such as the City of Charleston, the City of Huntington, the City of Wheeling. We do not administer those. So I would interpret, you know, that that would mean — because it says under any of the Police or Firemen's Retirement Systems, I would interpret that to definitely mean the old plans.

ATTORNEY POGUE: Okay.

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MS. MILLER: And possibly the new plan that we administer, in which we have no retirees.

ATTORNEY POGUE: Okay. So you don't have any knowledge of any plan that you administer that is entitled West Virginia Firemen's Retirement System?

MS. MILLER: Potentially, the new retirement that was created in 2010.

ATTORNEY POGUE: What retirement plan is that?

MS. MILLER: On the summary sheets, it's the last column, the Municipal Police and Firefighters Retirement System.

ATTORNEY POGUE: Well, let me just ask you about that then? I noticed in the — on the first one of these, the 2010 chart for covered by Social Security, under that column from Municipal Police and Firefighters Retirement System, it says unknown?

MS. MILLER: Yes, sir.

ATTORNEY POGUE: So —?

JUDGE POLLACK: And, I'm sorry, let's just clarify. You're referring to State's Exhibit One?

ATTORNEY POGUE: State's Exhibit One, yes. So it's the case that whoever prepared this document, did not know whether enrollees in that retirement system paid Social Security or not?

MS. MILLER: No. The participants in the municipal police and retirement system have until October 1st of 2015 to present a plan to the State auditor, as to whether — for them to have an election on whether or not to vote up or down participation in Social Security.

ATTORNEY POGUE: Okay. So the individual enrollees can choose whether they participate in Social Security or not?

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MS. MILLER: No, sir.

ATTORNEY POGUE: Oh, I'm sorry.

MS. MILLER: So the employers that participate in this plan —

ATTORNEY POGUE: Okay.

MS. MILLER: — have to provide a plan to the State auditor by October 1, 2015 to talk about how they're going to have this election.

ATTORNEY POGUE: I understand.

MS. MILLER: And the participants in that plan are going to elect as a whole either to participate in Social Security or not to.

ATTORNEY POGUE: Okay.

MS. MILLER: Similar to what the State Police did many years ago, when they opted out of Social Security.

ATTORNEY POGUE: So it may be the case that the Wheeling Police Department participates in Social Security and the Charleston Police Department does not?

MS. MILLER: Do you mean in the old plan that we do not administer?

ATTORNEY POGUE: I mean in the new system, that you do administer?

MS. MILLER: It's my understanding that currently they're not participating in Social Security.

ATTORNEY POGUE: Okay.

MS. MILLER: But they soon may have the option to participate in Social Security.

ATTORNEY POGUE: Okay. So currently, under this Municipal Police and Firefighters Retirement System, nobody is participating in Social Security?

MS. MILLER: I don't know that for a fact.

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ATTORNEY POGUE: Okay. Okay. Now, the next retirement system that is specifically mentioned in this statute is the West Virginia State Police Death, Disability and Retirement Fund. Is that something that you administer? Is that either State Plan A or State Plan B?

MS. MILLER: Yes, that is State Police Plan A.

ATTORNEY POGUE: Okay. And the enrollees in that system do not participate in Social Security; correct?

MS. MILLER: Correct.

ATTORNEY POGUE: And the same for State Plan B?

MS. MILLER: Correct.

ATTORNEY POGUE: And is State Plan B the West Virginia State Police Retirement System?

MS. MILLER: Yes.

ATTORNEY POGUE: Okay. And the last thing here is — the last retirement system, specifically mentioned in this statute in paragraph six, is West Virginia Deputy Sheriff Retirement System. Now, deputy sheriffs do participate in Social Security; correct?

MS. MILLER: Yes.

ATTORNEY POGUE: Okay. And so Social Security taxes are deducted from their paychecks; correct?

MS. MILLER: Yes.

ATTORNEY POGUE: And when they reach the age of eligibility, they can collect Social Security benefits; correct?

MS. MILLER: Yes.

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ATTORNEY POGUE: Okay. So if I understand you correctly, the only people in this paragraph six, that you can say for certain do not collect — do not participate in Social Security are the West Virginia State Police retirement systems?

MS. MILLER: Correct.

ATTORNEY POGUE: Okay. And you testified earlier when the Tax Department was questioning you about some of the formulas or factors in the formulas for eligibility and computation of benefits under these various retirement systems that are in the exhibits that you discussed; correct?

MS. MILLER: Yes.

ATTORNEY POGUE: Okay. Would it be fair to say that the formulas and the factors for determining the amount of benefits and the time of eligibility are set forth in either a statute or a regulation?

MS. MILLER: Yes.

ATTORNEY POGUE: Do you know which? Is it a statute or is it a regulation?

MS. MILLER: Statute.

ATTORNEY POGUE: Okay. And would it be fair to say that nothing in your testimony today would be any different than what would be in the statute, if I were to look it up?

MS. MILLER: Correct.

ATTORNEY POGUE: Okay. So if you testified to the way that a certain benefit is calculated today, your testimony is based off the formula and the statute?

MS. MILLER: Yes.

ATTORNEY POGUE: Okay. I don't think I have anything else.

ATTORNEY SCHULTZ: I have nothing further.

* * *

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JUDGE POLLACK: Right.

ATTORNEY POGUE: Okay.

JUDGE POLLACK: I'm doing the certificate and the bill. A copy of the bill.

ATTORNEY POGUE: Okay.

JUDGE POLLACK: Then, I'm turning to a letter from the Governor to Secretary of State Tennant, dated May 3rd, 2013. I presume the Tax Commissioner wants that to be State's Exhibit Seven?

ATTORNEY SCHULTZ: Yes, that's the veto message from the Governor.

JUDGE POLLACK: Okay. So I'm marking that as State's Exhibit Seven. Any objection to its admission?

ATTORNEY SCHULTZ: No objection.

JUDGE POLLACK: Okay. So in case I didn't say it properly, State's Exhibit Six and Seven are admitted.

ATTORNEY SCHULTZ: That's fine. That's all we have.

JUDGE POLLACK: Okay. Well, then, here's what I think we need to do. First of all, let's just proceed to closing — any closing arguments the parties want to make.

ATTORNEY POGUE: Yes.

JUDGE POLLACK: And then we'll do the housekeeping stuff. Go ahead, Mr. Pogue.

ATTORNEY POGUE: Sounds good to me. Well, Petitioner Jim Dawson is a former United States Marshal, who retired in — or on March 31st, 2008 after 25 years of service. He tried to claim the exemption in West Virginia Code 11-21-(c)6 (sic). He was denied. Now, on its face, that statutory section only applies to State and local law enforcement officers — and firefighters, excuse me. But, in 2000, the Monongalia County Circuit

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Court decided the case of *Dodson v. Palmer* and determined that the statute was unconstitutional to the extent that it did not offer the same tax treatment to similarly situated federal law enforcement officers. Ever since Dodson, I believe it's been this office's position, that federal law enforcement officers are entitled to the exemption in 11-21-12(c)6, as long as they do not collect Social Security. I think the Tax Department has through the Tax Commissioner — has acquiesced to this for close to 14 years, if not longer, to this point.

Now, in this case, Petitioner Jim Dawson is a FERS retiree and not a CSRS retiree, meaning that he is eligible to receive Social Security when he reaches the appropriate age. And that's why we're here today. If he were a CSRS guy, I assume he would have just been granted the exemption and this whole thing would be over by now.

Now, Dodson was based on the premise that all of the law enforcement officers and firefighters mentioned in 11-21-12(c)6 could not recover Social Security benefits. I think we've establish pretty conclusively that that is incorrect. I think the Tax Department has essentially acknowledged this, but to the extent that their acknowledgments are not enough, Mr. Dawson has testified that he is a former

West Virginia deputy sheriff and that he paid into and participated in Social Security during that time. And we introduced various documents, including his paystubs and W-2s supporting that.

Furthermore, West Virginia Code §7-14-4(a), which established the West Virginia Deputy Sheriffs' Retirement System, specifically states that nothing in this article may be construed to permit a county to substitute this plan for federal Social Security. And lastly, Ms. Miller here today, from the West Virginia Consolidated Public

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Employees Retirement Board, testified that deputy sheriffs participate in Social Security. So I think, hopefully, that issue is concluded. So it's the fact that Petitioner Jim Dawson is not — or is capable of collecting of Social Security, is not a basis for denying him the exemption in 11-21-12(c)6.

But in order to understand why he should be given the exemption, even though he is not a state or local law enforcement officer, I'll have to talk about the constitutional doctrine of intergovernmental tax immunity. Now, the United States Supreme Court held in *Davis v. Michigan* and reiterated in subsequent cases that a State tax violates the federal constitutional doctrine of intergovernmental tax immunity if it treats State employees more favorably than similarly situated federal employees, unless the inconsistent tax treatment is directly related to and justified by significant differences between the two classes.

Now, in *Dodson*, I believe Judge Stone — or, he opined that there were no significant differences between State and federal law enforcement officers, other than this Social Security distinction that he came up with, without citing to anything. And I believe that the Office of Tax Appeals has more or less adopted that position for the past 14 or so years. I don't believe that in that time, the Tax Department has ever seriously contended that there are significant differences that justify differential tax treatment. I know they never appealed the Dodson decision. They never appealed any of the various Office of Tax Appeal decisions that gave this exemption to CSRS federal law enforcement officers. So I don't believe that they credibly argue at this point that there are significant differences beyond this phantom Social Security issue, that justified a

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significant — or a different tax treatment for federal law enforcement officers and State law enforcement officers.

And I think it's pretty clear that there are significant differences. As Petitioner testified, his duties as both, you know, as a U.S. Marshal and deputy U.S. Marshal, and as a West Virginia deputy sheriff involved investigating crimes, apprehending criminals or suspected criminals, you know, the same type of general law enforcement duties. And 28 USC §564 provides that United States Marshals, deputy marshals, and such other officials of the service as maybe designated by the director in executing the laws of the United States within its State, may exercise the same powers, which a sheriff of the State may exercise in executing the laws thereof.

Similarly, West Virginia Code §15-10-5 gives federal law enforcement officers, including United States Marshals and deputy marshals the authority to enforce the laws of the State of West Virginia, where a felony is committed in their presence or where they're asked to provide assistance via State or local law enforcement agency or officer. Finally, at page 16 of the Tax Department's brief to Judge Swope in previous proceeding, I believe they stated that the Tax Department admits that the U.S. Marshals and deputy sheriffs have similar job descriptions. So I don't think there's any real issue there.

Let's see — I don't think this office has ever found significant differences between the State and federal law enforcement officers that justify inconsistent tax treatment. And I think because the preferential tax treatment afforded to State and local law enforcement officers by 11-21-12(c)(6) is not directly related to and justified by significant differences between .State, local and federal law enforcement officers, the statute is unconstitutional on its face.

* * *

WEST VIRGINIA OFFICE OF TAX APPEALS

1012 Kanawha Blvd., East Suite #300 P.O. Box 2751 Charleston, WV 25330-2751	EARL RAY TOMBLIN GOVERNOR	Telephone: (304) 558-1666 Fax: (304) 558-1670 HEATHER G. HARLAN CHIEF ADMIN. LAW JUDGE

BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS

DAWSON, JAMES D., and ELAINE F.,	)	**DOCKET NO. 14-026 RPD**
Petitioners,	)	
v.	)	
MATKOVICH, MARK W., as **STATE TAX COMMISSIONER** of WEST VIRGINIA	)	
Respondent	)	

PRESIDING ADMINISTRATIVE LAW JUDGE:	A.M. “Fenway” Pollack
PETITIONERS’ COUNSEL:	David R. Pogue, Esq.
RESPONDENT’S COUNSEL:	Katherine A. Schultz, Esq. Senior Deputy Attorney General

L. Wayne Williams, Esq.
Assistant Attorney General

Timothy S. Waggoner, Esq.
West Virginia State Tax Department

EVIDENTIARY HEARING HELD:	January 23, 2015
SUBMITTED FOR DECISION:	February 20, 2015

SYNOPSIS

OFFICE OF TAX APPEALS CONCLUSION OF LAW

In hearings conducted by the West Virginia Office of Tax Appeals, the taxpayer has the burden of proof.

WEST VIRGINIA SUPREME COURT OF APPEALS CASE LAW

It is well settled that all tax exemptions are strictly construed against the taxpayer claiming the exemption. *Wooddell v. Dailey*, 160 W. Va. 65, 230 S.E.2d 466 (1976); *RGIS Inventory Specialists v. Palmer*, 209 W.Va. 152, 544 S.E.2d 79 (2001).

UNITED STATES SUPREME COURT OF APPEALS CASE LAW

Under the principles of intergovernmental immunity, the United States Supreme Court struck down as discriminatory, under 4 U.S.C. § 111, a tax scheme that taxed all federal pensions, which at the same time exempted all state pensions. *Davis v.*

Michigan Department of Treasury, 489 U.S. 803 (1989).

WEST VIRGINIA SUPREME COURT OF APPEALS CASE LAW

In *Dodson v. Palmer*, C.A. No. 00-C-AP-10 (Monongalia County Circuit Court W. Va. 2000), the Court applied *Davis v. Michigan Department of Treasury*, 489 U.S. 803 (1989), finding that West Virginia Code Section 11-21-12(c)(6) was unconstitutional as applied to that appellant.

WEST VIRGINIA SUPREME COURT OF APPEALS CASE LAW

The West Virginia Supreme Court of Appeals did not find *Davis* controlling according to the circumstances presented in *Brown v. Mierke*, 191 W. Va. 120, 443 S.E.2d 462 (1994). The test to determine whether the tax scheme is discriminatory against an officer or employee is not merely because the source of the compensation is different, but rather, because of the totality of the circumstances which arc present. Those circumstances determine whether the intent of the scheme is to discriminate against employees and former employees of the federal government.

WEST VIRGINIA SUPREME COURT OF APPEALS CASE LAW

In *Brown*, "totality of the circumstances" meant that there was no intent to discriminate where military retirees, who constituted less than four percent of all State government retirees, were treated more favorably than those retired from civilian occupations, as well as retired state employees and teachers, and where such retirees were treated substantially more favorably than those persons retired from the West Virginia Judicial Retirement System.

WEST VIRGINIA SUPREME COURT OF APPEALS CASE LAW

Retired U.S. Marshals, like the military retirees in *Brown*, were treated more favorably than retirees from the West Virginia civilian workforce, as equally as persons retired from the West Virginia Public Employees Retirement System and the West Virginia Teachers Retirement System, and more favorably than retirees from the West Virginia Judicial Retirement System. Therefore, the intent of the West Virginian scheme was not to discriminate against federal retirees but rather to give a very narrow benefit to former state and local employees.

OFFICE OF TAX APPEALS CONCLUSION OF LAW

Mr. Dawson's source of pay or compensation alone, absent a showing of other circumstances required by *Brown v. Mierke*, do not provide sufficient evidence that the exemption at issue is discriminatory as applied to the Petitioner.

WEST VIRGINIA SUPREME COURT OF APPEALS CASE LAW

Based upon the specialized circumstances as set forth in *Brown*, we do not find that our decision conflicts with the holding in *Davis*, where a blanket exemption of all state and local employee pensions, while at the same time taxing federal retiree pensions, evidenced Michigan's intent to discriminate.

OFFICE OF TAX APPEALS
CONCLUSION OF LAW

West Virginia Code Section 11-21-12(c)(6), as applied to the Petitioners, complies with Syl. Pt. 2 of the West Virginia Supreme Court decision in *Brown v Mierke*.

OFFICE OF TAX APPEALS
CONCLUSION OF LAW

Petitioners have not met their burden of proof, as set forth in W. Va. Code § 11-10A-10(e), which requires a showing that they are entitled to the strictly construed tax exemption contained in West Virginia Code Section 11-21-12(c)(6).

FINAL DECISION

On November 15, 2013, the Tax Account Administration Division of the West Virginia State Tax Commissioner's Office, (hereafter, the "Respondent"), denied James and Elaine Dawson's (hereafter, the "Petitioners") Schedule M modifications on their 2010 and 2011 amended personal income tax returns. Thereafter, on January 10, 2014, the Petitioners timely filed their "petition for refund" with this Tribunal, The West Virginia Office of Tax Appeals (sometimes referred to herein as "OTA"). *See* W. Va. Code §§ 11-10A-8(2) and 11-10A-9(a)-(b).

PROCEDURAL HISTORY

In their petition for refund, the Petitioners argued that Mr. Dawson's pension as a United States Marshal should be exempt under West Virginia Code Section 11-21-12(c)(6) because that same code section exempts pensions paid to retired West Virginia law enforcement officials, retired West Virginia firefighters, retired West Virginia state police and retired West Virginia deputy sheriffs.

Prior to the hearing, Petitioners filed a "Motion for Summary Judgment" with this Tribunal, asking us to declare that income to be tax exempt. Because we concluded that this Tribunal, as a part of the executive branch of government, lacked subject-matter jurisdiction to declare a statute unconstitutional, we denied Petitioners' "Motion for Summary Judgment" and dismissed the matter from our docket. The Petitioners, by counsel, timely appealed this Tribunal's "Order of Dismissal" to the Circuit Court of Mercer County, West Virginia.

On October 28, 2014, the Honorable Derek C. Swope, Judge of the Circuit Court of Mercer County, West Virginia, ordered that this matter be remanded to this Tribunal. Because of the detailed nature of Judge Swope's findings and directives, we have recited the pertinent portions of that Order, to wit:

> 16. The Dawsons have argued before this Court that the refund issue will be determined by the United States Supreme Court decision in *Davis v. Michigan Department of Treasury*, 489 U.S. 803 (1989) and similar cases based on the intergovernmental tax immunity doctrine codified as 4 U.S.C. § 111. The Tax Department has argued that the refund issue will be determined by the West Virginia Supreme Court decision in *Brown v. Mierke*, 191 W. Va. 120,443 S.E.2d 462 (1994) *cert, denied* 513 U.S. 877 (1994) *sub nom Brown v. Paige*, which reviewed W. Va.

Code § 1 l-21-12(c)(6) in a *Davis v. Michigan* challenge.

17. At this time, the Court concludes that the applicable law governing this case is the West Virginia Supreme Court decision in *Brown v. Mierke* and, in particular, Syl. Pt. 2 which states:

> Challenges to a state tax scheme under 4 U.S.C. § 111 can succeed only when one purpose of the challenged scheme is shown to discriminate against the officer or employee because of the source of pay or compensation. In determining whether such discrimination exists, a court will look to the totality of the circumstances to ascertain whether the intent of the scheme is to discriminate against employees or former employees of the federal government.

(Emphasis in original.) The record from the Office of Tax Appeals contains no factual development whatsoever regarding the totality of the circumstances concerning whether the intent behind W. Va. Code § 11-21 -12(c)(6) discriminates against federal retirees based upon the source of the pay.

18. It is well settled that when a circuit court conducts judicial review of a decision issued by an administrative agency, the reviewing court is limited to the evidentiary record developed before the administrative agency. *See Frymier-Halloran v. Paige*, 193 W. Va. 687, 458 S.E.2d 780 (1995) at Syl. Pt. 3 ("...the focal point for judicial review should be the administrative record, not some new record made initially in the reviewing

court") *see also Delmer Workman v. Workmen's Compensation Commission, et al.*, 160 W.Va. 656, 662, 236 S.E.2d 236, 240 (1977) (Without such record findings of an administrative agency, the Court, on judicial review, is greatly at sea without a chart or compass in making its determination and adjudication as to whether the agency decision is plainly right or clearly wrong.)

WHEREFORE, the Court:

1. Remands this matter to the West Virginia Office of Tax Appeals for further proceedings pursuant to W. Va. Code § 29A-5-4(g).

2. The Office of Tax Appeals is directed to conduct an evidentiary hearing on the *Petition for Refund* as required pursuant to W. Va. Code §§11-10A-10(a) and 29A-5-1.

3. The Office of Tax Appeals shall make detailed findings of fact and set forth conclusions of law regarding whether W.Va. Code § 11-21-12(c)(d) complies with Syl. Pt. 2 of the West Virginia Supreme Court decision in *Brown v. Mierke*.

4. The Office of Tax Appeals shall decide all issues related to the *Petition for Refund* except for the constitutionality of W. Va. Code § 11-21-12(c)(6).

5. If either party believes that a decision on the *Petition for Refund* should **not** be governed by *Brown v. Mierke*, then that party shall put forth the argument and support its alternative legal theory at the OTA hearing.

6. Once the final decision is issued, then both parties shall be able to seek judicial review, if

they choose to do so, as set forth in W. Va. Code §§ 11-10A-18 and 11-10A-19.

On January 23, 2015, an evidentiary hearing was held, at the conclusion of which the Tax Commissioner, by counsel, requested the opportunity to file post-hearing briefs. Petitioners' counsel consented to that request. Both parties then agreed to submit simultaneous briefs within fourteen (14) days with responses due within ten (10) business days thereafter.

While this Tribunal does not have jurisdiction to deem the statute in question unconstitutional, we are called upon here to answer the question of whether the statute is discriminatory as applied to Petitioners. We hold that it is not for the reasons set forth herein.

FINDINGS OF FACT

1. Petitioner James Dawson is a former Nicholas County Deputy Sheriff, a Deputy' U.S. Marshal, and a U.S. Marshal who retired from the U.S. Marshals Service on March 31, 2008. He began his federal employment in 1987.

2. During his tenure with the U.S. Marshals Service, Mr. Dawson was enrolled in the Federal Employee Retirement System (hereafter, the "FERS"). Under FERS, Mr. Dawson paid into social security and therefore, can receive social security benefits.

3. In October of 2013, Petitioners submitted amended tax returns for tax years 2010 and 2011, claiming a Schedule M adjustment exempting Mr. Dawson's retirement income for income tax purposes pursuant to West Virginia Code Section 11-21-12(c)(6).

4. On November 19, 2013, Respondent denied Petitioners the exemption. This refusal was predicated upon the Respondent's acquiescence to the ruling in the case of *Dodson v. Palmer* C.A. No. 00-C-AP-10 Monongalia County, West Virginia Circuit Court (2000).

5. In the *Dodson* decision, the Circuit Court of Monongalia County applied *Davis v. Michigan Department of Treasury*, 489 U. S. 803 (1989), and determined that under the doctrine of intergovernmental tax immunity, federal law enforcement officers, whose duties were not significantly different than those of a small group of retirees, namely West Virginia State police officers and firefighters, should receive the same tax exemption since both were unable to collect social security benefits. The Circuit Court of Monongalia County found that the only significant difference between Mr. Dodson and the state police officers and firefighters was the source of the pension payments or compensation.

6. Since the *Dodson* decision, this Tribunal has granted the exemption to only those federal law enforcement officers who retired and could not receive social security benefits. Those law enforcement officers, like Mr. Dawson, who retired under FERS and paid into social security were denied the exemption.

7. It has been shown in this proceeding that some of the state and local law enforcement officers who qualified for the tax exemption on their pensions, as set forth in West Virginia Code Section 11-21-12(c)(6), paid into social security and can collect social security benefits.

8. Petitioner began working as a West Virginia deputy sheriff in 1976 and left that employment in 1987. Mr. Dawson paid into social security while employed as a deputy sheriff.

9. Teresa Miller, Deputy Executive Director and Chief Operating Officer for the Consolidated Public Retirement Board (the "CPRB"), testified on behalf of the Respondent.

10. Mrs. Miller testified that the CPRB oversees nine (9) pension plans for the benefit of all State employees and some municipal employees.

11. Based upon the testimony of Mrs. Miller and the exhibits submitted by the Respondent, deputy sheriffs account for one-half of one-percent of all retired State employees for plan years 2010, 2011, and 2012.

12. Retired deputy sheriff's received an average monthly pension payment in the amount of $2,349.00 as of June 30, 2010, and $2,195.00 as of June 30, 2011. The average monthly salary paid to deputy sheriffs at the time of retirement was $3,659.00 as of June 30, 2010, and $3,722 as of June 30, 2011.

13. Mr. Dawson received an initial gross monthly retirement benefit of $3,926.00 when he retired in 2008 as a U.S. Marshal.

14. Deputy Sheriffs who retired under the Deputy Sheriffs' Retirement System in 2008 with comparable service, here twenty five (25) years, received an average monthly retirement benefit of $1,611.00.

15. According to the Petitioners, Mr. Dawson also receives a FERS Annuity Supplement of $801.00 per month since he retired prior to age 62. This

supplement will be discontinued once Mr. Dawson becomes eligible for social security benefits.

16. Mr. Dawson's monthly pension and FERS supplement total $56,724.00 per year.

17. Mr. Dawson testified that his pension was based upon the highest three-year average salary (also known as the "high-3") during his employment in the U.S. Marshal Service, which was $134,244.00 per year; however, that amount was adjusted downward due to his election to provide survivor benefits to his wife.

18. Mrs. Miller testified that to the best of her knowledge, no deputy sheriff was paid $100,000.00 or more per year.

19. Mr. Dawson receives more in pension benefits than West Virginia deputy sheriffs earn on average while on active duty. Further, Mr. Dawson receives more in retirement than do all West Virginia State troopers with the rank of first lieutenant and below while serving on active duty.

20. The parties have agreed that should Petitioners receive the pension exemption set forth in West Virginia Code Section 11-21-12(c)(6), the amount of their combined refund for tax years 2010 and 2011 would total $4,285.00. Applicable interest would be computed on that from the date the original claim for refund was received.

BURDEN OF PROOF

The governing law provides that in a hearing before the West Virginia Office of Tax Appeals, the taxpayer has the burden of proof. Further, it is well established that exemptions from taxation are strictly construed against the person claiming the exemption. *See RGIS Inventory Specialists v. Palmer*, 209 W. Va. 152, 433 S.E.2d 79, Syl. Pt. 1 (2001).

DISCUSSION

As directed by Judge Swope's remand order, the primary issue for determination is whether West Virginia Code Section 11-21-12(c)(6) is consistent with Syl. Pt. 2 of the West Virginia Supreme Court's decision in *Brown v. Mierke*, 191 W. Va. 120 (1994), *cert denied sub nom Brown v. Paige*, 513 U.S. 877 (1994). The tax exemption under consideration is as follows:

> (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 pension and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, 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 § 11-21-12(c)(6).

In its remand Order, the Circuit Court found that *Brown v. Mierke*, is the applicable law governing this case. Specifically, the Circuit Court, quoting *Brown*, held that:

> Challenges to a state tax scheme under 4 U.S.C. § 111 can succeed only when one purpose of the challenged scheme is shown to discriminate against the officer or employee because of the source of pay or compensation. In determining whether such discrimination exists, a court will look to the totality of the circumstances to ascertain whether the intent of the scheme is to discriminate against employees or former employees of the federal government.

Remand Order at, *4–5, Par. 5 (quoting *Brown v. Mierke*, 191 W. Va. 120, Syl. Pt. 2 (1994)) (Emphasis in original).

At the outset, this Tribunal finds that the plain language of West Virginia Code § 11-21-12(c)(6) does not permit the Petitioner to take the above exemption because as the record reflects, Mr. Dawson is a retired United States Marshal rather than a retired West Virginia law enforcement official and thus, is not, under a plain reading of the statute, entitled to an exemption on his personal tax return.[1]

The Circuit Court of Mercer County directed this Tribunal to instruct that if either party believes that *Brown v. Mierke* is not determinative to the outcome of this matter, that party shall put forth the argument and support its alternative theory at the hearing before this Tribunal. Urging the Court to rely upon

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[1] Mr. Dawson, like most retirees from state employment, is entitled to a $2,000.00 exemption from State income tax. In addition to receiving equal treatment as compared with most retired State employees, Mr. Dawson receives better treatment than members of the judicial retirement plan and public sector employees.

Davis v. Michigan, 489 U.S. 803 (1989), the Petitioners here argue that the Respondent's denial of the exemption above to Petitioner amounts to a violation of 4 U.S.C. § 111 and the doctrine of intergovernmental tax immunity.

In essence, the Petitioners here argue that *Brown* conflicts with *Davis*, and thus, should be overruled. To the contrary, *Brown*, which involves the same exemption before this Tribunal, was decided nearly five years after *Davis* and in that case, the taxpayers there, who were unsuccessful, attempted to seek judicial review by the United States Supreme Court, which was denied. While this Tribunal is mindful that the denial of certiorari is not tantamount to an endorsement of the lower ruling, it tends to bolster the Respondent's argument that *Brown* does not conflict with *Davis*, and accordingly, should remain intact on appellate review.

Indeed, the Court's holding in *Davis* comports with the holding of the West Virginia Supreme Court in *Brown*. To that end, the *Davis* Court examined Michigan's blanket exemption of state worker's retirement income, in contrast with the lack of an exemption for state retirees. Michigan's exemption for state retirees, with no exemption for federal retirees, is quite different from the personal income tax exception under review sub judice, inasmuch as Michigan's blanket exemption for retirement income of state workers, in contrast with the lack of exemption for federal workers, evidences a clear intent to discriminate *against* federal workers, which is the primary reason that the Court struck down Michigan's statue in *Davis*. Thus, the totality of the circumstances in *Davis* demonstrated a clear intent to discriminate against all federal employees. In contrast, such intent to discriminate was lacking in the tax scheme in *Brown* based on the statutory and factual differences. Accordingly, *Brown* neither ignores nor contradicts *Davis*.

More specifically, in the *Davis* case, unlike this case, the issue involved whether it is discriminatory to tax pensions paid to all federal employees where similarly situated state and local government retirees were exempt from such tax. The United States Supreme Court ruled in the affirmative, holding that the Michigan Income Tax Act violated the principles of intergovernmental tax immunity because it favored state and local retirees at the expense of federal retirees. *See Davis*, 489 U.S. 803, 817 (1989).

Subsequent to *Davis*, the West Virginia Supreme Court addressed this issue in *Brown v. Mierke*, 191 W. Va. 120, 443 S.E.2d 462 (1994), cert. denied *sub nom Brown v. Paige*, 513 U.S. 877 (1994).[2] In *Brown*, several retired United States military officers and enlisted personnel challenged the exemption in W. Va. Code §11-21-12(c)(6). The plaintiffs in *Brown* wanted the full amount of their pension income to be exempt from West Virginia state income tax in the same manner as retired state law enforcement officers and firefighters. The West Virginia Supreme Court of Appeals viewed the statutory framework in its

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[2] In 1994, Deputy Sheriffs were not members of the law enforcement class who received a total exemption from personal income tax of their pension benefits. The State created the Deputy Sheriffs Retirement System in 1998 and added Deputy Sheriffs to the exception in West Virginia Code Section 11-21-12(c)(6) in 1998.

entirety when deciding the issue of intergovernmental tax immunity. To reiterate:

> Challenges to a state tax scheme under 4 U.S.C. § 111 can succeed only **when one purpose of the challenged scheme is shown to discriminate against the officer or employee because of the source of pay or compensation**. In determining whether such discrimination exists, a court will look to the totality of the circumstances to ascertain whether the intent of the scheme is to discriminate against employees or former employees of the federal government.

Brown v. Mierke, 191 W. Va. 120 (1994), Syl. Pt. 2. (Emphasis supplied). The Court went on to hold that:

> However, West Virginia's scheme differs from the Michigan and Kansas schemes invalidated by the Supreme Court in that there is no intent in the West Virginia scheme to discriminate against federal retirees; rather, the intent is to give a benefit to a very narrow class of former state and local employees.

Brown, at 124,467. (Emphasis in original).

The *Brown* Court focused on a very narrow class of "favored" retirees. In the case at hand, Teresa Miller, Deputy Executive Director and Chief Operating Officer for the Consolidated Public Retirement Board (the "CPRB"), testified that some deputy sheriffs belong to the Public Employee Retirement Plan, while the remainder are members of the West Virginia Deputy Sheriffs Retirement System. According to Respondent's Exhibits admitted to evidence in the hearing on this matter, the West Virginia Deputy

Sheriffs Retirement System had 250 retirees in the 2010 Plan Year, 272 retirees in the 2011 Plan Year, and 283 in the 2012 Plan Year. According to Mrs. Miller's testimony and the Respondent's Exhibits, deputy sheriffs constitute quite a small percentage of State retirees. More specifically, the testimony here reveals that retired deputy sheriffs comprise less than one half of one percent of all West Virginia State government retirees for the three plan years, while in *Brown*, the retirees comprised approximately four percent of all State retirees. *See Brown*, at 123, 465. Thus, the percentage of "favored" State retirees at issue here is less than half the percentage present in *Brown v. Mierke*.

Importantly, the Court's decision in *Brown* was based primarily upon three factors. As the Court explained,

> In the case before us, three facts conclusively demonstrate that no calculated plan exists to discriminate against retired military personnel based upon the source of their income: (1) retired military personnel are treated more favorably than West Virginians who have retired from civilian occupations; (2) retired military personnel are treated equally with all persons from the West Virginia Public Employees Retirement System and the West Virginia Teachers Retirement System; and (3) along with state employees and teachers, military retirees are treated substantially more favorably than persons retired from the West Virginia Judicial Retirement System.

Brown v. Mierke, 191 W. Va. 123, 125, 443 S.E.2d 462, 467 (1994) (emphasis added in bold; italics emphasis in original).

As the Respondent demonstrated through testimony and in briefing, the exemption here meets the three (3)-factor test enunciated by the West Virginia Supreme Court of Appeals. First, retired United State Marshals and all federal retirees are treated more favorably than State residents who retire from the civilian workforce. To be clear, West Virginia Code Section 11-21-12(c)(6) contains no exemption from personal income tax for individuals who retire from private industry. Further, U.S. Marshals and all federal retirees can exempt $2,000.00 in pension income from State taxation under West Virginia Code Section 11-21-12(c)(5). At the hearing in this matter, Mr. Dawson admitted that the Respondent allowed him to claim the exemption of $2,000.00 in pension income received by all federal retirees. Indeed, the Respondent notified the Petitioners, by letter dated November 15, 2013, that their request for an exemption of all income paid to Mr. Dawson was denied but that Mr. Dawson can exempt $2,000.00 from income as a federal retiree. Accordingly, Mr. Dawson was treated more favorably than all retirees from the civilian workforce.

Secondly, retired U.S. Marshals receive identical tax treatment as retired employees of the Public Employees Retirement System ("PERS) and Teachers Retirement System ("TRS") under State law. All federal retirees and all West Virginia State and local government retirees receive an exemption from State income tax for the first $2,000.00 of pension income. *See* W. Va. Code §11-21-12(c)(5). The Respondent's

Exhibit showing the Notice of Return Change from the Tax Department to the Petitioners reveals that the Respondent permitted a deduction of $2,000.00 in each year as a modification to Schedule M. Respondent's counsel represented to this Tribunal that lines 37 and 38 of the West Virginia personal income tax return, found on Schedule M, contain parallel exemptions, which authorize a deduction from income for $2,000.00 paid to West Virginia retirees and $2,000.00 paid to federal retirees. Thus, Mr. Dawson received the same deduction under the West Virginia income tax law as every State retiree receives under PERS and TRS.

Third, Mr. Dawson receives more in pension benefits than West Virginia deputy sheriffs earn on average while on active duty. Moreover, Mr. Dawson receives more in retirement than do all West Virginia State troopers with the rank of first lieutenant and below while serving on active duty. Finally, retired U.S. Marshals receive more favorable tax treatment than retirees from the West Virginia Judicial Retirement System who cannot claim the $2,000.00 exemption under West Virginia Code Section 11-21-12(c)(5). Additionally, unlike the facts in *Barker v. Kansas*, 203 U.S. 594 (1994), cited by Petitioners in their brief West Virginia adopted an exemption subsequent to *Brown*, which exempts the first $2,000.00 in retirement income paid to all members of the federal armed forces. *See* W. Va. Code §1 l-21-12(c)(7). Accordingly, the Tax Department has met the three factors, which the West Virginia Supreme Court of Appeals found to be conclusive in *Brown*.

Notably, Mr. Dawson testified at the hearing before this tribunal that his pension from the U.S. Marshal Service is calculated based upon the highest three-year average salary he earned while working. The Petitioners' Exhibits reflect that Mr. Dawson's "high-3" average salary was $134,244.00 per year. Further, Mrs. Miller's uncontroverted testimony is that no active duty West Virginia deputy sheriff earns $100,000 or more per year.[3]

The West Virginia Supreme Court determined in *Brown v. Mierke*, 191 W. Va. 120 (1994), that whether a tax statute discriminates against an officer or employee based upon the source of that pay must be determined by an examination of the totality of the circumstances. *Brown*, at Syl. Pt. 2. As the Respondent aptly noted, the totality of circumstances before this Tribunal demonstrates that the exemption set forth in Code Section 11-21-12(c)(6) does not violate the principle of intergovernmental immunity or the *Davis* decision. The Taxpayers have failed to prove any intent by West Virginia to discriminate against federal retirees as espoused by the West Virginia Supreme Court in *Brown v. Mierke*.

It is well settled that Petitioners alone have the burden of proof to show that they are entitled to the exemption concerning the federal pension received by Mr. Dawson. *See* W. Va. Code § 11-10A-10(e). Further, it is a well-settled law that tax exemptions are strictly construed against the taxpayer claiming such exemption. *See Wooddell v. Dailey*, 160 W. Va. 65, 230 S.E.2d 466 (1976); *RGIS Inventory Specialists v. Palmer*, 209 W. Va. 152, 544 S.E.2d 79 (2001).

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[3] The Petitioners reliance upon and citation to the dicta contained in *Jefferson County, Alabama v. Acker*, 521 U.S. 423 (1999) is unpersuasive and easily distinguishable from the case at bar.

Petitioners argue that the tax exemption should be applicable to Mr. Dawson because of United States Supreme Court's decision in *Davis v. Michigan Department of Treasury*, 489 U.S. 803 (1989). The doctrine of intergovernmental tax immunity, as codified in 4 U.S.C. § 111, provides that "[t]he United States consents to the taxation of pay or compensation for personal service by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against its officer employee because of the source of the pay or compensation.[4] In the case at hand, an examination of the totality of circumstances, as required by Syllabus Point 2 of *Brown v. Mierke*, simply do not evidence any intent to discriminate against Mr. Dawson because of his source of pay. Petitioners have not met their burden of proof. Based upon examination of the entire record and for all of the reasons contained herein, the Respondent's denial of the claimed refunds to the Petitioners was proper and is hereby AFFIRMED.

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[4] The doctrine of inter-governmental immunity was also applied in *Barker v. Kansas*, 503 U.S. 594 (1992), to invalidate a *Kansas* tax scheme which sought to tax military retirees, while at the same time exempting all state and local pensions, as well as most federal pensions. The Court again found that the *Kansas* scheme failed to pass the test of "whether the inconsistent tax treatment is directly related to, and justified by significant differences between the two classes." *Id.*

CONCLUSIONS OF LAW

1. In hearings conducted by the West Virginia Office of Tax Appeals, the taxpayer has the burden of proof.

2. It is well settled that all tax exemptions are strictly construed against the taxpayer claiming the exemption. *Wooddell v. Dailey*, 160 W. Va. 65, 230 S.E.2d 466 (1976); *RGIS Inventory Specialists v. Palmer*, 209 W.Va. 152, 544 S.E.2d 79 (2001).

3. Under the principles of intergovernmental immunity, the United States Supreme Court struck down as discriminatory under 4 U.S.C. § 111, a tax scheme that taxed all federal pensions which at the same time exempted all state pensions. *Davis v. Michigan Department of Treasury*, 489 U.S. 803 (1989).

4. In *Dodson v. Palmer*, C.A. No. 00-C-AP-10 (Monongalia County Circuit Court W. Va. 2000), the Court applied *Davis*, finding that West Virginia Code Section 11-21-12(c)(6) was unconstitutional as applied to that appellant.

5. The West Virginia Supreme Court of Appeals did not find *Davis* controlling in *Brown v. Mierke*, 191 W. Va. 120,443 S.E.2d 462 (1994). The test to determine whether the tax scheme is discriminatory against an officer or employee is not merely because the source of the compensation is different, but rather, because of the totality of the circumstances which are present. Those circumstances determine whether the intent of the scheme is to discriminate against employees and former employees of the federal government.

6. In *Brown*, "totality of the circumstances" meant that there was no intent to discriminate where military retirees, who constituted less than four percent of all State government retirees, were actually treated more favorably than those retired from civilian occupations, as well as retired state employees and teachers, and where such retirees were treated substantially more favorably than those persons retired from the West Virginia Judicial Retirement System.

7. Retired U.S. Marshals, like the military retirees in *Brown*, were treated more favorably than retirees from the West Virginia civilian workforce, as equally as persons retired from the West Virginia Public Employees Retirement System and the West Virginia Teachers Retirement System, and more favorably than retirees from the West Virginia Judicial Retirement System. Therefore, the intent of the West Virginian scheme was not to discriminate against federal retirees but rather to give a very narrow benefit to former state and local employees.

8. Mr. Dawson's source of pay or compensation alone, absent a showing of other circumstances required by *Brown v. Mierke*, do not provide sufficient evidence that the exemption at issue is discriminatory as applied to Petitioners.

9. Based upon the specialized circumstances found in *Brown*, we do not find that our decision conflicts with the holding in *Davis*, where a blanket exemption of all state and local employee pensions, while at the same time taxing federal retiree pensions, evidenced Michigan's intent to discriminate.

10. West Virginia Code Section 11-21-12(c)(6), as applied to the Petitioners, complies with Syl. Pt. 2 of the West Virginia Supreme Court decision in *Brown v Mierke*.

11. Petitioners have not met their burden of proof, as set forth in W. Va. Code § 11-10A-10(e), which requires a showing that they are entitled to the strictly construed tax exemption contained in West Virginia Code Section 11-21-12(c)(6).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the Petitioners' petition for refund of West Virginia personal income tax for the tax years 2010 and 2011 in the amount of $4,285.00 should be and is hereby **DENIED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: /s/ Heather G. Harlan
Heather G. Harlan[5]
Chief Administrative Judge

By: /s/ George V. Piper
George V. Piper
Administrative Law Judge

August 7, 2015
Date Entered

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[5] Chief Administrative Law Judge, A. M. "Fenway" Pollack, heard this matter, however, he is no longer with the West Virginia Office of Tax Appeals. Judge Piper, who wrote portions of this decision, attended the January 23, 2015 evidentiary hearing. Chief Administrative Law Judge Heather G. Harlan was appointed subsequent to the evidentiary hearing on this matter and wrote the majority of this decision.

APPEAL PROCEDURES

Any aggrieved party may appeal from this decision with an appropriate West Virginia circuit court within sixty days of the date of service of the decision in accordance with the procedure set forth at West Virginia Code Section 11-10A-19. The Office of Tax Appeals may not be named as a party to the appeal, but must be provided with a copy of the filed petition for judicial review.

West Virginia Code Section 11-10A-19(e) also provides that if the appeal is of an assessment, except a jeopardy assessment for which security in the amount thereof was previously filed with the Tax Commissioner, then within ninety days after the petition for appeal is filed, or sooner if ordered by the circuit court, the petitioner shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk.

Within fifteen (15) days after receipt of this written notice of the appeal from the appellant, or within such further time as the circuit court may allow, the West Virginia Office of Tax Appeals will prepare and transmit to the circuit court a certified copy of the entire record in the matter. The West Virginia Office of Tax Appeals will, at the time of transmittal to the Circuit Court: (1) send to the parties a detailed index of the record; (2) send to the appellant a bill, payable within thirty days, for the reasonable costs of preparing the record; and (3) upon payment of such record preparation costs, send to the parties a certified copy of the entire record. Information about this procedure is available in the Rules of Practice of

Procedure before the West Virginia Office of Tax Appeals, at W.Va. C.S.R. § 121-1-86.

IN THE CIRCUIT COURT OF MERCER COUNTY,
WEST VIRGINIA

DAWSON, JAMES D. and ELAINE F., Petitioners,	
v.	Civil Action No. 15-C-326 Honorable William J. Sadler
MATKOVICH, MARK W., as ACTING STATE TAX COMMISSIONER of WEST VIRGINIA Respondent	

PETITIONERS' BRIEF

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* * *

seriously contended that § 11-21-12(c)(6) properly excludes all federal law enforcement officers due to significant differences between them and the listed state/local law enforcement officers. Indeed, the OTA has been awarding the exemption in § 11-21-12(c)(6) to some federal law enforcement officers (i.e. those who retire under CSRS) for over 14 years, and the Tax Department did not appeal any of these awards. The Tax Department and the OTA cannot credibly now take the position that there are significant differences between federal law enforcement officers and state/local law enforcement officers which justify excluding federal law enforcement officers from the benefits of § 11-21-12(c)(6). Thus, because § 11-21-12(c)(6) treats state and local law enforcement retirees more favorably than federal law enforcement retirees, but is not directly related to, and justified by, significant differences between the two classes, the statute violates the constitutional doctrine of intergovernmental tax immunity.

III. The OTA erred to the extent it found § 11-21 -12(c)(6) constitutional based on the purported income differential between state and local law enforcement officers and their federal counterparts.

In its final decision, the OTA found that state and local law enforcement officers make less money and receive less in retirement benefits than their federal counterparts, such as Petitioner Dawson. To the extent that this finding informed the OTA's ultimate decision, a substantially similar position was rejected by the United States Supreme Court in *Davis*. There, the State of Michigan argued that its retirement benefits are significantly less munificent than those offered by the federal government, and that this substantial difference should justify inconsistent tax treatment. *Davis*, 489 U.S. at 816. The Supreme Court rejected the state of Michigan's argument, observing that

> [w]hile the average retired federal civil servant receives a larger pension than his state counterpart, there are undoubtedly many individual instances in which the opposite holds true. A tax exemption truly intended to account for differences in retirement benefits would not discriminate on the basis of the source of those benefits, as Michigan's statute does; rather, it would discriminate on the basis of the amount of benefits received by individual retirees.

Id. at 817.

The same rationale holds true in the case at bar. First, while many federal law enforcement officers may earn more than their state counterparts, there are undoubtedly many individual state law enforcement officers who are paid more than some federal law enforcement officers. The OTA makes much out of the fact that Petitioner James Dawson earned over $100,000 per year towards the end of his career with the U.S. Marshals Service, but not every federal law enforcement officer earns that level of salary. Indeed, Petitioner himself earned far less for much of his career with the U.S. Marshals Service. Petitioner testified that he joined the U.S. Marshals Service in 1987. *See* Doc. No. 11, p. 12. As his Social Security Statement demonstrates, Petitioner only earned $29,131 in 1988. *See* Doc. No. 12 at Exhibit 2. Five years later in 1993, his salary was still just

$46,302. *See* id. There were undoubtedly state law enforcement officers who earned more than Petitioner during this time period.

Second, many retired West Virginia State Troopers actually collect *more* in retirement benefits than Petitioner Dawson collects.[1] When Petitioner Dawson retired in 2008, he received a gross pension of $3,926 per month, plus a temporary supplement of $801 per month (which will be discontinued once Mr. Dawson becomes eligible for Social Security), for a combined total gross amount of $4,727 per month. *See* Doc. No. 12 at Exhibit 5. According to the Tax Department's own exhibits, the average monthly retirement benefit for West Virginia State Troopers enrolled in Plan A was $5,534 in 2010. *See* Doc No. 13 at Exhibit 4, p. 28.[2] Not only that, but West Virginia State Troopers enrolled in Plan A get an annual increase of 3.75% in

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[1] In discussing the purported differences in pay and retirement benefits, the OTA focuses almost exclusively on the amounts received by deputy sheriffs. Again, § 11-21-12(c)(6) applies to more than just deputy sheriffs. Thus, to the extent that differences in pay and retirement benefits have any relevance, the amounts received by all retirees mentioned in § 11-21-12(c)(6) should be considered, not just the amounts received by deputy sheriffs.

[2] As indicated by the Tax Department's hearing exhibits 1-3, and set forth in W. Va. Code § 15-2-27, West Virginia State Troopers who retire under Plan A are entitled to an annual benefit equal to 5.5% of their aggregate salary during their entire period of service, payable in equal monthly installments. *See also* https://www.wvretirement.com/PlanA.html. To illustrate, a trooper who works at an average salary of $50,000 over the course of 25 years could collect an initial retirement benefit of $68,750 per year, or $5729.16 per month, which is substantially more than Petitioner receives in benefits.

their retirement benefits, meaning that they have the potential to collect substantially more in retirement benefits than Petitioner Dawson collects as years pass. *See* W.Va. Code§ 15-2-27a; *see also* Doc. No. 13 at Exhibits 1, 2, and 3.[3]

Third, as recognized in *Davis*, a tax exemption truly intended to account for differences in salary or retirement benefits would not discriminate on the basis of the source of income, but would discriminate on the basis of the amount of salary and/or benefits received by individual law enforcement officer retirees. The West Virginia Legislature chose to draft § 11-21-12(c)(6) so that eligibility was based on the source of a retiree's compensation, rather than on the amount of salary or benefits received. Thus, as in *Davis*, the statute violates the doctrine of intergovernmental tax immunity.

Finally, the notion that § 11-21-12(c)(6) is justified by the difference in pay scales between federal and state law enforcement officers is belied by the fact that the OTA allowed the benefits of § 11-21-12(c)(6) to many federal law enforcement officers (i.e. those who retired under CSRS) for over 14 years. Given that the OTA extended § 11-21-12(c)(6) to some federal law enforcement officers for over a decade, the OTA cannot credibly take the position that § 11-21-12(c)(6) is justified by the difference in pay scales between federal and state law enforcement officers.

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[3] Many of the Tax Departments hearing exhibits, as reproduced by the OTA in Doc. No. 13, are difficult if not impossible to read. Petitioners can produce readable copies of these documents upon request.

IV. In addition to the facial invalidity of W. Va. Code § 11-21-12(c)(6), the OTA has been applying the statute in an unconstitutional manner.

As the West Virginia Supreme Court of Appeals has recognized, even otherwise valid statutes can be unconstitutionally applied. *See Kolvek v. Napple*, 212 S.E.2d 614, 619 (W.Va. 1975)("[A] statute may be valid on its face but unconstitutionally applied."). Where economic rights are concerned, the West Virginia Supreme Court of Appeals has held that a classification violates the equal protection clause of the West Virginia Constitution where there is no rational basis for the classification. *See Whitlow v. Bd. of Educ. of Kanawha Cnty.*, 438 S.E.2d 15, 20 (W.Va. 1993).

Here, the OTA has long-treated federal law enforcement officers who retire under CSRS more favorably than federal law enforcement officers who retire under FERS without a rational basis. Since the Monongalia County Circuit Court's ruling in *Dodson*, the OTA has allowed the exemption in § 11-21-12(c)(6) to federal law enforcement officers who cannot collect Social Security benefits (CSRS retirees), but denied it to federal law enforcement officers who can collect Social Security benefits (FERS retirees). The OTA's basis for doing this was the *Dodson* court's unsupported observation that the purpose behind § 11-21-12(c)(6) was to benefit state law enforcement officers and firefighters who were unable to collect Social Security benefits.

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IN THE CIRCUIT COURT OF
MERCER COUNTY, WEST VIRGINIA

JAMES D. and ELAINE F. DAWSON,

Petitioners,

vs. **CIVIL ACTION NUMBER: 15-C-326-WS**

MARK W. MATKOVICH,
STATE TAX COMMISSIONER
OF WEST VIRGINIA,

Respondent.

TRANSCRIPT of proceedings in the above-styled action held on Monday, March 14, 2016, before Judge William J. Sadler, Mercer County Circuit Court, Princeton, West Virginia, as recorded in Electronic Recording by Margaret Bryant, Electronic Recording Operator of said court, commencing at 10:54 AM.

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Tax Division

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Mr. Pogue, you may proceed.

MR. POGUE: Well, Your Honor, I don't know if you have any questions. Our position is pretty much what is in our brief.

But, to summarize, uh, Mr. Dawson is a retired U. S. Marshall and Deputy Marshall. He tried to claim the exemption in West Virginia Code §11-21-12(c)(6), which applies to State and local law enforcement officers. He tried to exempt his retirement income under that section. And, he was denied.

Now, to understand why he attempted to claim this exemption that on it's face only applies to State and local law enforcement officers, I need to know little bit about the history of how this exemption has been handled in the past.

In the year 2000, the Circuit Court of Monongalia County decided a case called *Dodson v. Palmer*. And, in that case, Judge Stone up in Morgantown ruled that the statute, §11-21-12(c)(6) was unconstitutional in its exclusion of federal law enforcement officers who could collect Social Security. And, his reason for limiting it to federal law enforcement officers who cannot collect

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Social Security—

THE COURT: Is that the difference between the CSRS and the FERS?

MR. POGUE: Right. Essentially, CSRS guys, well retirees can, I'm sorry—

THE COURT: Do not collect Social Security.

MR. POGUE: Right, do not collect Social Security. And, FERS retirees can collect Social Security when they reach the appropriate age.

So, —

THE COURT: Now are both of these retirement systems open to federal employees other than law enforcement?

MR. POGUE: Yes.

THE COURT: Okay. Alright. You may proceed.

MR. POGUE: So, ever since that case was decided in the year 2000, the Office of Tax Appeals has basically granted the exemption to all federal law enforcement officers who do not participate in Social Security.

So, it's basically given it to all the CSRS

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guys and denied it to all the FERS retirees.

This has been going on, like I said, for over a decade. But, it's now undisputed I believe that section §11-21-12(c)(6) is not based on Social Security because deputy sheriff's are on the face of the statute entitled to that exemption, yet, they do participate in Social Security. So denying it to some federal law enforcement officers and giving it to others on the basis of Social Security can't continue because that's not the basis for the, not the criteria for the exemption.

So, we filed this action so that we could put a stop to this irrational discrimination basically against FERS retirees. And, the State is now or the Tax Department is now taking the position that no federal retirees are entitled to the exemption in §11-21-12(c)(6) regardless of whether they can collect Social Security or not.

Now, to understand why we think that all federal law enforcement officers should get this exemption, we needed to talk a little bit about the doctrine, the constitutional doctrine of inter-governmental tax immunity, in a case called *Davis versus Michigan*. It's United States Supreme Court

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Case discussed at length in our brief.

But, basically the supreme court ruled that in inter-governmental tax immunity cases, a tax that treats, a tax law that treats state employees more favorably than federal employees is unconstitutional unless the inconsistent tax treatment is directly related to and justified by significant differences between the two classes.

In our case, there really are no significant differences. They are all law enforcement officers. I know the Tax Department's position is there are some differences in the amount of income and benefits. And, I'll talk about that in a little more detail later. But, there is really no dispute that the job functions are essentially the same.

So, and like I said, over the past fourteen or fifteen years, the Office of Tax Appeals has given this exemption to all federal law enforcement officers except for the ones that can't, I'm sorry, that can participate in and recover Social Security benefits.

So, there is really no dispute but if you are a law enforcement officer, there is no big difference between duties between federal and state.

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The only issue are some of these income amounts and other things.

So, the Tax Department has basically taking the position that instead of following the Supreme Court's decision, the United States Supreme Court's decision in *Davis*, that this Court should follow the West Virginia Supreme Court of Appeals' decision in a case called *Brown v. Mierke*. That case essentially held that... it didn't apply the *Davis*, United States Supreme—

THE COURT: They were, the military folks, retired military was trying to get the law enforcement exemptions.

MR. POGUE: Correct.

And, that's essentially the distinction that we would make, Your Honor. In that case, you were not talking about state law enforcement officers versus federal law enforcement officers. You were talking military versus law enforcement. So, it's not, the reason those people in *Brown* weren't entitled to the exemption wasn't simply that they were federal employees instead of state employees. It was that they didn't fit within the general class. They weren't law enforcement officers. It

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is a completely different job description.

And, in fact, in *Brown*, the West Virginia Supreme Court of Appeals mentions twice the petitioners failed to demonstrate that their jab descriptions corresponded to the job descriptions of municipal firefighters, municipal police officers, and state police officers. They refer to that once in the body of the opinion and then later when they decide, that the Supreme Court of Appeals decides it's not going to *(inaudible due to cough) and a footnote that says if nothing else, none of the petitioners before us has asserted that his or her job description was in anyway close to the job description of firemen or state and local policemen.

So, again, *Brown* was comparing apples to oranges. In this case, what we are dealing with is state apples versus federal apples. The only reason that Mr. Dawson does not get this exemption is that he is a federal employee and not a state employee.

And, that is precisely what the doctrine of intergovernmental tax immunity forbids, is discrimination based on the source, the federal source of a person's income.

Now, I know that the Tax Department is also

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income of all law enforcement officers who make less than $60,000.00 or whatever. But, that is not what it does. What is does is exempt the retirement income of State people and not the federal people without any regard to what they are making.

And, as the Supreme Court noted in *Davis*, while maybe the average federal law enforcement officer does make more than the average State law enforcement officer. But, there are undoubtedly individual instances in which the opposite it true.

And, with regard to the amount of retirement benefits between State and federal retirees, law enforcement retirees, State troopers in plan A actually receive more benefits than petitioner Dawson. And, petitioner Dawson is a Presidential, well he is a retired, presidentially appointed United States Marshall. So, he was pretty high up the pay scale in terms of fellow law enforcement officers. There are obviously people that qualify as federal law enforcement officers that did not make it to that level, that did not make as much as petitioner Dawson, and did not get as much in terms of retirement benefits as Mr. Dawson.

So, Your Honor, the Tax Department has

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IN THE SUPREME COURT OF APPEALS OF
WEST VIRGINIA

No. 16-0441

MARK W. MATKOVICH, as
State Tax Commissioner of West Virginia,

Respondent Below, Petitioner,

v.

JAMES DAWSON and ELAINE F. DAWSON,

Petitioners Below, Respondents.

RESPONDENTS' BRIEF

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differences between the two classes." 489 U.S. at 816; *see also Barker*, 503 U.S. at 598. As demonstrated below, W. Va. Code § 11-21-12(c)(6) is neither directly related to, nor justified by, significant differences between state and federal law enforcement officers.

1. *There are no significant differences between the powers and duties of federal law enforcement officers, such as Mr. Dawson, and state and local law enforcement officers.*

The circuit court properly recognized that "it is undisputed in the present matter that there are no significant differences between Mr. Dawson's powers and duties as a U.S. Marshal and the powers and duties of the state and local law enforcement officers listed in § 11-21-12(c)(6)."App. Vol. I, pp. 4–5,[5] Indeed,

[5] To the extent any argument on this point is necessary, it is beyond dispute that there are no significant differences between the powers and duties of federal law enforcement officers, like Mr. Dawson, and those of the state and local law enforcement officers listed in § 11-21-12(0)(6). First,§ 11-21-12(c)(6) expressly includes West Virginia deputy sheriffs, and by federal statute, "United States marshals [and] deputy marshals . . . in executing the laws of the United States within a State, *may exercise the same powers which a sheriff of the State may exercise* in executing the laws thereof." *See* 28 U.S.C. § 564 (emphasis added). Second, W. Va. Code § 15-10-5 gives federal law enforcement officers, including U.S. Marshals and deputy marshals, the authority to enforce the laws of the State of West Virginia where a felony is committed in their presence or where they are asked to provide assistance by a state or local law enforcement agency and/or officer. *See* W. Va. Code § 15-10-5. Third, Mr. Dawson testified at the January 23, 2015 hearing that he has been employed both as a West Virginia deputy sheriff and as a member of the U.S. Marshals Service, and that his duties in both occupations involved the investigation, apprehension, and detention of people

the Tax Department has acknowledged that "Mr. Dawson performed the same job function as State law enforcement officers." *See* App. Vol. I, p. 42–43. Moreover, the Tax Department has never argued in this matter that § 11-21-12(c)(6) is related to, and/or justified by, significant differences in the powers and duties of federal and state law enforcement officers. Instead, the Tax Department relies solely on purported differences in the amount of salary and retirement benefits received by state and federal law enforcement officers to attempt to justify § 11-21-12(c)(6).

2. *The statute is not directly related to and/or justified by the purported income differential between state and local law enforcement officers and their federal counterparts.*

The Tax Department argues that § 11-21-12(c)(6) passes the *Davis* test in this case because Mr. Dawson earned a higher salary and receives more munificent retirement benefits than the state and local retirees who qualify for the exemption. However, as the circuit court correctly recognized, the United States Supreme Court rejected this very notion in *Davis*. There, the State of Michigan argued that its retirement benefits are significantly less munificent than those offered by the federal government, and that this substantial difference should justify inconsistent tax treatment.

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suspected or convicted of crimes. *See* App. Vol. III, pp. 11–13. It is axiomatic that the duties of other state and local law enforcement officers listed in § 11-21-12(c)(6), such as West Virginia State Troopers, also involve the investigation, apprehension, and detention of people suspected or convicted of crimes.

Davis, 489 U.S. at 816. The Supreme Court rejected this argument, observing that

> [w]hile the average retired federal civil servant receives a larger pension than his state counterpart, there are undoubtedly many individual instances in which the opposite holds true. A tax exemption truly intended to account for differences in retirement benefits would not discriminate on the basis of the source of those benefits, as Michigan's statute does; rather, it would discriminate on the basis of the amount of benefits received by individual retirees.

Id. at 817. Thus, the Tax Department cannot rely on purported differences in the *amount* of compensation and retirement benefits to justify a statute that, on its face, discriminates on the basis of the *source* of compensation and retirement benefits. As the circuit court observed, "[h]ad the West Virginia Legislature intended § 11-21-12(c)(6) to account for differences in income instead of differences in the source of income, it easily could have done so." App. Vol. I, p. 6.

The Tax Department attempts to get around this portion of *Davis* by arguing that the U.S. Supreme Court rejected reliance on the *average* difference in value between state and federal retirement benefits, whereas in the case at bar the Tax Department relies on difference between the retirement income of Mr. Dawson specifically (as the challenging taxpayer) and that of the class of state and local retirees listed in § 11-21-12(c)(6). There is no merit to this argument. The *Davis* test asks whether disparate tax treatment is "directly related to, and justified by, 'significant differences between the two classes,'" rather than focusing the on the specific challenging taxpayer. *See* 489 U.S. at 816 (emphasis added). It is absurd to say that the statute properly excludes Mr. Dawson because he, specifically, earned too much income or receives too much in retirement benefits, given that the statute says absolutely nothing about amount of income or retirement benefits.

Indeed, in the Tax Department's own words, the reason that Mr. Dawson (a retired federal law enforcement officer) does not qualify for the exemption in W. Va. Code § 11-21-12(c)(6) is that he is "not a retired *West Virginia* law enforcement official." *See* App. Vol. I, p. 31 (emphasis added). The statute, by its plain language, bases eligibility for the exemption on the *source* of a law enforcement officer's retirement benefits. As such, it is not Mr. Dawson's income level that disqualifies him; it is the federal (as opposed to state) source of his retirement benefits. Even if Mr. Dawson, as a federal law enforcement officer, had been paid less than many state law enforcement officers, and his retirement benefits were no more munificent than those of most state and local law enforcement officers, he still would not qualify for the exemption. Plainly, the criterion that determines a law enforcement officer's eligibility under the statute is the source of his or her retirement income, rather than the amount of his or her income.

In addition, the Tax Department's presentation of the data regarding the purported differences in the compensation and retirement benefits of state and federal law enforcement officers is misleading in several respects. First, the Tax Department argues that Petitioner Dawson's "high-3" average salary (the highest average salary during any three year period of federal employment) was $134,244, while no West Virginia deputy sheriff earns $100,000 or more per year. Even if a difference in *amount* of salary were a valid reason for discriminating based on the *source* of that salary (which it is not), the appropriate comparison would not be whether Mr. Dawson, individually, at the peak of his employment, earned more money than West Virginia deputy sheriffs. Again, the *Davis* test asks whether disparate tax treatment is "directly related to, and justified by, 'significant differences between the two ***classes***.'" *See* 489 U.S. at 816 (emphasis added). The classes at issue here are federal law enforcement officers, on the one hand, and the state and local law enforcement officers (and firefighters) whose retirement income is exempt from taxation under W. Va. Code § 11-21-12(c)(6), on the other hand.

Accordingly, the Tax Department cannot single out Mr. Dawson's income among all federal law enforcement officers, and cannot compare it solely to the income of deputy sheriffs, as opposed to the other state and local law enforcement officers included in § 11-2112(c)(6). While Mr. Dawson's former job as a U.S. Marshal and deputy marshal may be most analogous to that of a deputy sheriff out of all the law enforcement officers included in § 11-21-12(c)(6), the class of state law enforcement officers embraced by the statute includes far more than just sheriffs. For example, the statute also exempts the retirement income of state police, and state police have a higher average salary than deputy sheriffs. *See* App. Vol. I, p. 632.

Furthermore, to the extent that Mr. Dawson's "high-3" average salary also exceeds the salary of any

West Virginia State Trooper, Mr. Dawson's "high-3" average salary is not indicative of the income of all federal law enforcement officers. Mr. Dawson served as a deputy U.S. Marshal for 15 years before being presidentially appointed to the position of U.S. Marshal, which he held for an additional six years. App. Vol. III, p. 12. Not all deputy U.S. Marshals reach the position of U.S. Marshal and earn the level of salary and benefits that Mr. Dawson earned, and not all federal law enforcement officers in other branches of service reach positions equivalent to U.S. Marshal. Mr. Dawson himself earned far less than his "high-3" average salary for much of his federal law enforcement career. Mr. Dawson testified that he entered the U.S. Marshals Service in 1987, and as his Social Security statement demonstrates, during his first five full years as a federal law enforcement officer (1988–1992), he earned between $29,131 and $44,491. *See* App. Vol. I, p. 322; App. Vol. III, p. 12. There were undoubtedly state law enforcement officers who earned more than Mr. Dawson during this time period. Thus, the Tax Department's comparison between Mr. Dawson's "high-3" salary and the salaries of deputy sheriffs and/or state police does not paint an accurate picture of whatever difference exists, if any, between the compensation of federal law enforcement officers in general and the compensation of the state and local law enforcement officers included in § 11-21-12(c)(6).

Second, the Tax Department argues that Mr. Dawson receives substantially more in retirement benefits than any deputy sheriff receives under the West Virginia Deputy Sheriff Retirement System. Again, not all federal law enforcement officer's reach positions with salary and retirement benefits equivalent to those of Mr. Dawson's as a U.S. Marshal, and it is inappropriate to compare the retirement income of federal law enforcement officers solely with that of deputy sheriffs out of all of the state and local law enforcement officers who are covered by § 11-21-12(c)(6).

Third, in apparent recognition of the fact that it is inappropriate to focus solely on deputy sheriffs, the Tax Department argues that Mr. Dawson's retirement benefits are greater than the *active duty salary* of most West Virginia Troopers. This argument too ignores the fact that not all federal law enforcement officers reach positions with salary and benefits equivalent to those of Mr. Dawson's. However, the most notable thing about this argument is that Tax Department compares Mr. Dawson's *retirement benefits to the active duty salaries* of West Virginia State Troopers, rather than to the retirement benefits of West Virginia State Troopers.[6] Perhaps the reason for this is that many West Virginia State Troopers actually receive more in, retirement benefits than Mr. Dawson receives (and therefore substantially more than federal law enforcement officers whose careers never advanced as far as Mr. Dawson's receive).

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[6] While the Tax Department asserts in its Summary of Argument, on page seven of its brief, that "Dawson's retirement benefits under FERS are significantly more munificent than the retirement benefits received by any state retiree who qualifies for the exemption under (c)(6)," the body of the Tax Department's brief is wholly devoid of any data purporting to show that Mr. Dawson's retirement benefits under FERS are more munificent than the retirement benefits received by West Virginia State Troopers under their retirement systems.

To elaborate, when Mr. Dawson retired in 2008, he received a gross benefit of $3,926 per month plus a temporary supplement of $801 per month (which will be discontinued once he becomes eligible for Social Security), for a combined total gross amount of $4,727 per month. *See* App. Vol. I, p. 335. By 2010, that combined gross total had slightly increased to $4,852 per month. *See* App. Vol. III, pp. 38–39.[7] The Tax Department's own exhibits indicate that the *average* monthly benefit for West Virginia State Police retirees enrolled in Plan A was $5,534 in 2010, which is more than Mr. Dawson collected and undoubtedly more than other retired federal law enforcement officers who did not reach a position equivalent to U.S. Marshal collected. *See* App. Vol. I, p. 632. Furthermore, the fact that the average monthly benefit for West Virginia State Police retirees enrolled in Plan A was $5,534 means that some State Police retirees in Plan A receive a monthly benefit that is *higher* than $5,534.[8] If these state law enforcement

[7] Mr. Dawson testified that his gross distribution for the year 2010 was $58,224, which breaks down to $4,852 per month. App. Vol, III, pp. 38–39. If the $801 temporary supplement is subtracted, this means that Mr. Dawson's gross retirement benefit was $4,051 in 2010.

[8] Similarly, the *average* monthly benefit for West Virginia State Police retirees enrolled in Plan B was $3,684, meaning that some State Police retirees in Plan B receive a monthly benefit that is substantially higher than $3,684. App. Vol. I, p. 632. Given that this *average* amount of $3,684 is only about $360 less than Mr. Dawson's gross retirement benefit of $4,051, and that many retired federal law enforcement officers do not reach the level of salary and benefits attained by Mr. Dawson, there are undoubtedly State Police retirees in Plan B who receive more in

retirees receive more in retirement benefits than Mr. Dawson, who was presidentially appointed to the position of U.S. Marshal, then they undoubtedly receive more than many federal law enforcement retirees.[9]

Finally, the notion that § 11-21-12(c)(6) is directly related to and justified by the difference in pay scales between federal and state law enforcement officers is belied by the fact that the OTA has given exemption in § 11-21-12(c)(6) to many federal law enforcement officers (i.e. those who retired under CSRS) for over 15 years without any opposition from the Tax Department. Given that the Tax Department has passively allowed the OTA to extend § 11-21-12(c)(6) to some federal law enforcement officers for well over a decade, the Tax Department cannot credibly take the position that the statute properly excludes all federal law officers because they make too much money and/or receive too much in retirement benefits.

3. *The circuit court's ruling that § 11-21-12(c)(6) violates the doctrine of intergovernmental tax immunity is correct regardless of whether said ruling is consistent with the purpose of the statute.*

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retirement benefits than many retired federal law enforcement officers.

[9] In addition, it should be noted that West Virginia State Troopers enrolled in Plan A get an annual cost of living increase of 3.75% in their retirement benefits, meaning that they have the potential to collect *much more* in retirement benefits than Petitioner Dawson collects (and much more than other retired federal law enforcement officers collect) as years pass. *See* W. Va. Code § 15-2-27a; *see also* App. VoI. I, pp. 596, 599, 602.

The Tax Department argues that the circuit court's decision is inconsistent with the Legislature's, purpose in enacting § 11-21-12(c)(6). However, under the Tax Department's own interpretation, the Legislature's purpose in enacting the statute was to provide a benefit to state and local law enforcement officers to the exclusion of federal law enforcement officers like Mr. Dawson. Indeed, according to the Tax Department, a senate bill was introduced in the 2016 Legislative Session which would have expanded § 11-21-12(c)(6) to include federal law enforcement officers,

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Retirement System; and (3) retired military personnel are treated more favorably than persons retired from the West Virginia Judicial Retirement System. *Id*. at 125, 443 S.E.2d at 467. At the conclusion of its opinion, the Court again explained its decision not to apply the *Davis* test by stating that "[i]f nothing else, none of the petitioners before us has asserted that his or her job description was in any way close to the job description of firemen or state and local policemen." *Id*. at 125, 443 S.E.2d at 467, n. 2.

Thus, *Brown* dealt with inconsistent tax treatment between two classes of retirees that, in the Court's view, had completely different jobs: the state/local law enforcement officers listed in W. Va. Code § 11-21-12(0(6), and *military personnel*. As such, the reason that the petitioners in *Brown* did not qualify for the exemption in § 11-21-12(c)(6) was not simply that they were *federal* rather than *state* employees, but that they were *not law enforcement officers or firefighters*. By contrast, the case at bar addresses inconsistent tax treatment between state/local *law enforcement officers* and federal *law enforcement officers*. Mr. Dawson is a retired *law enforcement officer*, and the only reason he is not covered by the statute is that he is a retired *federal* law enforcement officers rather than a retired *state or local* law enforcement officer. This type of inconsistent tax treatment based on the *source* of Mr. Dawson's retirement income is *precisely* the type of discrimination that the doctrine of intergovernmental tax immunity forbids, and to which the test established in *Davis* and *Barker* applies[11]. Because the case at bar does not involve the same "specialized circumstances" as *Brown*, the circuit court correctly determined that *Brown* does not apply.

B. To the extent that *Brown* can be read to apply beyond the narrow circumstances of that case, *Brown* is superseded by clear U.S. Supreme Court precedent establishing the test for determining whether a statute violates the doctrine of intergovernmental tax immunity.

As the circuit court properly recognized, on issues of federal law (such as whether a statute violates the

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[11] The Tax Department argues that this was not the "key distinction" in *Brown*, yet the Court repeated *twice* in explaining why it was not applying the test from *Davis* and *Barker* that the military retirees at issue had not demonstrated or asserted that their job descriptions were similar to those of the state and local police and firefighters listed in W. Va. Code § 11-21-12(c)(6). *See* 191 W. Va. at 123, 125, n.2, 443 S.E.2d at 465, 467, n.2. Moreover, as set forth in greater detail *infra*, to the extent that this is not the "key distinction" in *Brown*, and *Brown* can be read to apply even to classes of federal and state employees with the same or similar job descriptions, *Brown* is superseded by *Davis* and its progeny.

federal constitutional doctrine of intergovernmental tax immunity), state courts are bound by the decisions of the United States Supreme Court, and the decisions of a state's highest court must yield to decisions of the United States Supreme Court. *See Marmet Health Care Ctr., Inc. v. Brown*, 132 S. Ct. 1201, 1202 (2012)("When this Court has fulfilled its duty to interpret federal law, a state court may not contradict or fail to implement the rule so established."); *Chesapeake & O. Ry. Co. v. Martin*, 283 U.S. 209, 220–21(1931)("The determination by this court of [a question of federal law] is binding upon the state courts, and must be followed, any state law, decision, or rule to the contrary notwithstanding."); *State ex rel Battle v. B. D. Bailey & Sons, Inc.*, 150 W. Va. 37, 42–43, 146 S.E.2d 686, 690 (1965)("Another principle we are required to bear in mind in this case is that, in considering whether a state law violates the commerce clause of the Constitution, this Court must yield to decisions of the Supreme Court of the United States. . . . The Supreme Court of the United States, therefore, is the final arbiter in relation to the constitutionality of state statutes in the light of the commerce clause of the Constitution.").

In the case at bar, United States Supreme Court precedent is clear that tax statutes cannot treat state employees more favorably than similarly situated federal employees based on the source of their compensation without running afoul of the doctrine of intergovernmental tax immunity. *See Davis*, 489 U.S. at 815–17; *Acker*, 527 U.S. at 442–43. United States Supreme Court precedent is equally clear that the inquiry to be applied in intergovernmental tax immunity cases is "whether the inconsistent tax treatment is directly related to, and justified by, significant differences between the two classes."' *See Davis*, 489 U.S. at 816; *Barker*, 503 U.S. at 598. However, as discussed above, this Court did not apply the *Davis* test in *Brown*. Instead, the Court concluded that the "specialized circumstances" present in *Brown*, including the fact that there was no similarity in the job duties of the two classes at issue, justified the application of a different test. *See* 191 W. Va. at 123–125, 443 S.E.2d at 465467.

To the extent the Tax Department is correct that *Brown* was intended to apply broadly to all intergovernmental tax immunity cases, including those (like the case at bar) involving state and federal employees with substantially similar job descriptions, *Brown* is superseded by *Davis* and its progeny. Again, the United States Supreme Court has announced, in no uncertain terms, the test to be applied in intergovernmental tax immunity cases, and the United States Supreme Court is the ultimate authority on this issue. Because a state court may not contradict or fail to implement a rule established by the United States Supreme Court on an issue of federal law, *Brown* cannot properly be read to broadly replace the test established by the United States Supreme Court in *Davis* and its progeny. As such, the circuit court correctly determined that the test established by the United States Supreme Court in *Davis* and its progeny, rather than the test set forth by this Court in Brown, controls the outcome of this case.[12]

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[12] It is true that *Brown* was decided after *Davis* and that United States Supreme Court denied certiorari with respect to

C. The *Brown* factors, as applied to the facts of this case, do not make sense, and would allow precisely the type of discrimination that the doctrine of intergovernmental tax immunity prohibits.

The Tax Department argues that, if the Dawsons cannot prove a legislative intent to discriminate *against* federal law enforcement officers (as opposed to an intent to *favor* a narrow class of state and local employees) by satisfying the factors discussed in *Brown*, then § 11-21-12(0)(6) is constitutional.[13] The fallacy of this argument becomes clear if one analogizes to other constitutionally prohibited classifications, such as gender. It is axiomatic that a statute would be unconstitutional if it exempted the retirement income of *male* law enforcement officers, but not the retirement income of *female* law

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Brown. However, as the Tax Department has acknowledged, this does not constitute a finding by the United States Supreme Court regarding the correctness of *Brown*. There could be many reasons why the Court denied certiorari. One obvious reason is that the ultimate outcome in *Brown* was correct under the facts of that case because, as discussed *supra*, § 11-21-12(c)6) only applies to law enforcement officers and firefighters, and the petitioners in *Brown* were neither law enforcement officers nor firefighters.

[13] With respect to the narrow class of beneficiaries at issue, the Tax Department notes that deputy sheriffs account for one half of one-percent of all retired State employees for the years 2010 through 2012. However, § 11-21-12(0(6) applies to more than just deputy sheriffs; it also exempts the retirement income of other branches of West Virginia raw enforcement officers, as well as firefighters. Thus, to the extent that the size of the class of retirees favored by the statute has any relevance, it is inappropriate to define the size of the class solely by the number of retired deputy sheriffs.

enforcement officers. It would not matter that male law enforcement officers are a small percentage of the population. It would not matter that female law enforcement officers are still treated more favorably than private sector employees or judges. It would not matter whether the specific intent was to favor male law enforcement officers, rather than to discriminate against female law enforcement officers. A statute drawn to favor those on one side of a prohibited classification necessarily discriminates against those on the other side.

The same rationale applies to a statute, such as § 11-21-12(c)(6), which treats state and local law enforcement officers more favorably than federal law enforcement officers based on the source of their compensation. While there may not be anything unlawful about providing favorable tax treatment to a narrow class of employees, the class must be drawn along constitutionally permissible lines. Just as a class cannot be drawn to favor one race or gender over another unless the classification passes a heightened level of scrutiny, the United States Supreme Court's decision in *Davis* and the principles discussed therein hold that a class cannot be drawn to favor retired state and local employees over retired federal employees unless the classification is directly related to, and justified by, significant differences between the two classes. *See* 489 U.S. 816–17. As the circuit court correctly recognized, even if the Legislature crafted § 11-21-12(0(6) specifically to benefit the narrow class of *state* law enforcement officers, this type of inconsistent tax treatment is "unquestionably based on the source their retirement income and precisely the type of favoritism the doctrine of intergovernmental tax immunity prohibits." App. Vol. I, p. 5.

Furthermore, the fact that a group of taxpayers does not receive the absolute worst tax treatment of all possible classifications does not mean that they are not being discriminated against for some impermissible reason, such as the federal source of their compensation. A group can be treated *less favorably* for an impermissible reason without being treated the *least* favorably. Indeed, in *Davis*, the dissent argued that the tax at issue was constitutional because it "draws no distinction between the federal employees or retirees and the vast majority of voters in the State," and the U.S. Supreme Court *rejected* this argument. 489 U.S. at 815, n.4. Here, the statute at issue completely exempts the retirement income of state and local law enforcement officers, while giving federal law enforcement officers only a partial exemption. *See* W. Va. Code § 11-21-12(c)(5), (6))[14] The only criterion under the statute for determining whether a law enforcement officer gets the complete exemption or the partial exemption is enrollment in a state and/or local law enforcement retirement system, rather than a federal law enforcement retirement

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[14] More specifically, the statute allows federal law enforcement officers to exempt the first $2,000 of their retirement income. *See* W.Va. Code § 1 l-21-12(c)(5). State law enforcement officers such as state troopers get to exempt their entire retirement income, which in many cases is over $50,0000. By allowing state law enforcement officers to exempt upwards of $50,000, while allowing federal law enforcement officers to exempt only $2000, the statute plainly treats state law enforcement officers *substantially* more favorably than federal law enforcement officers.

system. Thus, while the statute does give federal law enforcement officers a partial exemption; the statute quite plainly taxes federal law enforcement officers more heavily than state and local law enforcement officers based on the federal source of their compensation, which is precisely the type of discrimination that doctrine of intergovernmental tax immunity forbids.

Despite the Tax Department's efforts to complicate it, the doctrine of intergovernmental tax immunity is quite simple: it prohibits tax laws which discriminate against federal employees based on the source of their compensation. Applying the *Brown* test to this and other cases which, unlike *Brown*, involve tax discrimination between federal and state employees who perform substantially similar job functions, would effectively allow precisely this type of discrimination. For this and all of the foregoing reasons, the test announced by the United States Supreme Court in *Davis* and its progeny, rather than the test applied by the this Court in *Brown*, controls the outcome of this case.

IV. *DAVIS* SHOULD NOT BE OVERRULED.

In a footnote, the Tax Department states that to the extent the *Davis* test renders § 11-21-12(0(6) unconstitutional, the Tax Department wishes to preserve its argument that *Davis* should be overruled. According to the Tax Department, prohibiting a state from providing favorable tax treatment to a small group of state employees is contrary to the intent of the intergovernmental tax immunity doctrine and goes too far in hamstringing the taxing powers of the states. The Tax Department's focus on the size of the group is misplaced. The intent of the modern constitutional doctrine of intergovernmental tax immunity is to prevent tax discrimination against federal employees based on the source of their compensation. *See Davis*, 489 U.S. at 810–17. The Tax Department has cited no United States Supreme Court case holding that the doctrine is not violated where only a small group of federal employees are discriminated against based on the source of their compensation.[15]

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[15] Indeed, the size of a group has no bearing on whether favoring or disfavoring that group for an impermissible reason is discrimination. State and local law enforcement officers may make up only a

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