FEBRUARY 23, 2019

Supreme Court Invalidates West Virginia Income Tax Scheme

Earlier this week the United States Supreme Court, in a per curium opinion, struck down a West Virginia income tax scheme that exempts from tax the retirement benefits of certain state officials while taxing the retirement benefits of similarly-situated federal officials. See our earlier blog post for additional information.

The Court determined that the tax scheme violates 4 USC § 111, which bars discriminatory taxation of federal officers and employees.

A lawsuit to challenge the differential tax treatment was brought by a retired U.S. Marshall living in West Virginia, who could not claim the exemption from retirement benefit income offered to West Virginia police, firefighters, and deputy sheriffs. *See* W. Va. Code Ann. § 11-21-12(c)(6).

Under the logic of the Court's opinion, any state tax scheme that exempts retirement benefits paid to state employees must also grant the same exemption for retirement benefits paid to federal employees. Where a state exemption only applies to a certain sub-set of state employees, a federal employee seeking equivalent treatment must show that he or she is part of the equivalent sub-set of federal employees. The lower courts made a factual finding, and the Court accepted, that petitioner's job responsibilities as a U.S. Marshall were substantially similar to those of West Virginia state law enforcement retirees who could claim the West Virginia exemption.

The case is *Dawson v. Steager*, 586 U.S. _____ (2019).