

# Ohio BTA rules favorably on city individual taxation of SERP benefits

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## In brief

In *William E. MacDonald, III v. Shaker Heights and RITA*, BTA Case 2008-K-1883, 12/28/12, the Ohio Board of Tax Appeals concluded that certain supplemental executive retirement plan (SERP) income qualified as pension income, which was excludable from local income taxes. The decision may create refund opportunities.

## In detail

The taxpayer in this case had been a resident of Shaker Heights (the City) and worked in Cleveland prior to retiring in late 2006. Upon retiring the taxpayer qualified for certain SERP benefits from an employer supplemental executive retirement plan which they elected to receive in an annuity payment starting in 2007, and the present value of which was reported to them on a 1996 Form W-2. The taxpayer took the position on their resident return to exclude the SERP income as pension income under the municipal law, and the City challenged that position upon review arguing that it was a taxable wage.

Based on comprehensive testimony from industry, public accounting tax professional, and academia perspectives, the taxpayer supported that SERP is a form of pension income which was excludable from taxation. In the ruling, a pension was described as any plan sponsored by an employer that provides for post-retirement income that's designed to supplement their income for life. After reviewing a number of factors the BTA recognized that although SERP fell within the scope of a nonqualified deferred compensation plan, such designation did not preclude it from also being defined as pension income which is excludable under the subject municipal law.

## The takeaway

The ruling may represent a refund for open tax years or a future tax year savings opportunity depending on the local municipal law in a taxpayer's work and resident city. It is important to note that the ruling was appealed by Shaker Heights and RITA to the Franklin County Court of Appeals in late January.

Employers and individuals are encouraged to review their SERP plans and the local resident and work municipal law to determine if a refund should be pursued and/or future SERP amounts may qualify as excludable pension income.

## ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

### ***State and local tax services***

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