

# **Bond Case Briefs**

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## **TAX - OHIO**

### **MacDonald v. Cleveland Income Tax Board of Review**

**Supreme Court of Ohio - September 26, 2017 - N.E.3d - 2017 WL 4296394 - 2017 -Ohio-7798**

City income tax board of review and tax administrator appealed determination of the Board of Tax Appeals determining that taxpayers' supplemental executive retirement plan (SERP) was not subject to income tax.

The Supreme Court of Ohio held that:

- SERP was "pension" within meaning of ordinance excluding "pensions" from taxable income;
- Definition of "pension" in pension exclusion ordinance was not limited by administrator's rules and regulations defining "pensions";
- City ordinance defining "qualifying wages" for income tax purposes did not override exclusion of SERP from taxable income under pension exclusion ordinance; and
- City's election to tax income on qualifying-wage basis under state law did not require city to impose income tax on SERP.

Supplemental executive retirement plan (SERP) received by married taxpayers upon husband's retirement as corporate executive was "pension," within meaning of city ordinance excluding "pensions, disability benefits, annuities, or gratuities not in the nature of compensation for services rendered" from taxable income, though city asserted pension was compensation for services rendered. SERP was sum of money regularly paid to taxpayers as retirement benefit, and stated purpose of SERP was to provide for payment of pension, disability, and survivor benefits in addition to benefits that might be payable under other plans of corporation.

City ordinance defining 'qualified wages' on which taxes would be imposed to include compensation attributable to nonqualified deferred compensation program, which included supplemental executive retirement plan (SERP) received by married taxpayers upon husband's retirement as corporate executive, did not override exclusion of SERP from taxable income under conflicting ordinance excluding 'pensions, disability benefits, annuities, or gratuities not in the nature of compensation for services rendered'; two ordinances were at odds, and more general definition of 'qualifying wages' was limited by more specific provision excluding pensions from the broad definition.

City's election to tax income on qualifying-wages basis under state law defining 'qualifying wages' did not require city to impose income tax on supplemental executive retirement plan (SERP) received by married taxpayers upon husband's retirement as corporate executive; SERP was specifically excluded from taxable income under city ordinance governing pension exclusion, and city could not be commanded to impose tax on specific income when it had chosen not to tax that income.