

1 **H. B. 3269**

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3 (By Delegates White, T. Campbell, M. Poling, Kominar, Marshall,  
4 Mahan, Williams, Varner, Anderson, Border and Ashley)

5

6 (Originating in the Committee on Finance)

7

8 [February 23, 2011]

9

10 A BILL to amend and reenact §11-21-12 of the Code of West Virginia,  
11 1931, as amended, relating to reducing state income tax  
12 liability for certain retired public employees, certified by  
13 proper authority as permanently and totally disabled, and  
14 surviving spouses; increasing the amount of retirement income  
15 received from certain state and federal retirement systems  
16 that is excluded from the calculation of income subject to  
17 state personal income taxes; and establishing an effective  
18 date for the increased exclusion.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §11-21-12 of the Code of West Virginia, 1931, as amended,  
21 be amended and reenacted, to read as follows:

22 **ARTICLE 21. PERSONAL INCOME TAX.**

23 **§11-21-12. West Virginia adjusted gross income of resident**  
24 **individual.**

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

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

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

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

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

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

23           (5) Interest on a depository institution tax-exempt savings  
24 certificate which is allowed as an exclusion from federal gross

1 income under Section 128 of the Internal Revenue Code, for the  
2 federal taxable year;

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

7 (7) Amounts withdrawn from a medical savings account  
8 established by or for an individual under section twenty, article  
9 fifteen, chapter thirty-three of this code or section fifteen,  
10 article sixteen of said chapter that are used for a purpose other  
11 than payment of medical expenses, as defined in those sections.

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

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

18 (2) Interest or dividend income on obligations or securities  
19 of any authority, commission or instrumentality of the United  
20 States or of the state of West Virginia to the extent includable in  
21 gross income for federal income tax purposes but exempt from state  
22 income taxes under the laws of the United States or of the state of  
23 West Virginia, including federal interest or dividends paid to  
24 shareholders of a regulated investment company, under Section 852

1 of the Internal Revenue Code for taxable years ending after the  
2 thirtieth day of June, one thousand nine hundred eighty-seven;

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

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

11 (5) (A) Annuities, retirement allowances, returns of  
12 contributions and any other benefit received under the West  
13 Virginia Public Employees Retirement System, the West Virginia  
14 State Teachers Retirement System and all forms of military  
15 retirement, including regular Armed Forces, reserves and National  
16 Guard, including any survivorship annuities derived therefrom, to  
17 the extent includable in gross income for federal income tax  
18 purposes: *Provided*, That notwithstanding any provisions in this  
19 code to the contrary this modification shall be limited to the  
20 first two thousand dollars of benefits received under the West  
21 Virginia Public Employees Retirement System, and the West Virginia  
22 State Teachers Retirement System ~~and~~, including any survivorship  
23 annuities derived therefrom, to the extent includable in gross  
24 income for federal income tax purposes for taxable years beginning

1 after the thirty-first day of December, one thousand nine hundred  
2 eighty-six; and the first two thousand dollars of benefits received  
3 under any federal retirement system to which Title 4 U.S.C. §111  
4 applies: *Provided, however,* That the total modification under this  
5 paragraph shall not exceed two thousand dollars per person  
6 receiving retirement benefits and this limitation shall apply to  
7 all returns or amended returns filed after the last day of  
8 December, one thousand nine hundred eighty-eight;

9 (B) Notwithstanding any provision of paragraph (A) of this  
10 subdivision to the contrary, the modification provided under  
11 paragraph (A) of this subdivision shall be limited to the first  
12 four thousand dollars of benefits received under the West Virginia  
13 Public Employees Retirement System and the West Virginia State  
14 Teachers Retirement System, including any survivorship annuities  
15 derived therefrom, to the extent includable in gross income for  
16 federal income tax purposes for taxable years beginning after the  
17 thirty-first day of December, two thousand eleven; and to the first  
18 four thousand dollars of benefits received under any federal  
19 retirement system to which Title 4 U.S.C. §111 applies to the  
20 extent includable in gross income for federal income tax purposes  
21 for taxable years beginning after the thirty-first day of December,  
22 two thousand eleven. The total modification under this paragraph  
23 shall not exceed four thousand dollars per person receiving  
24 retirement benefits;

1           (6) Retirement income received in the form of pensions and  
2 annuities after the thirty-first day of December, one thousand nine  
3 hundred seventy-nine, under any West Virginia police, West Virginia  
4 firemen's retirement system or the West Virginia State Police  
5 Death, Disability and Retirement Fund, the West Virginia State  
6 Police Retirement System or the West Virginia Deputy Sheriff  
7 Retirement System, including any survivorship annuities derived  
8 from any of these programs, to the extent includable in gross  
9 income for federal income tax purposes;

10           (7) (A) For taxable years beginning after the thirty-first day  
11 of December, two thousand, and ending prior to the first day of  
12 January, two thousand three, an amount equal to two percent  
13 multiplied by the number of years of active duty in the Armed  
14 Forces of the United States of America with the product thereof  
15 multiplied by the first thirty thousand dollars of military  
16 retirement income, including retirement income from the regular  
17 Armed Forces, reserves and National Guard paid by the United States  
18 or by this state after the thirty-first day of December, two  
19 thousand, including any survivorship annuities, to the extent  
20 included in gross income for federal income tax purposes for the  
21 taxable year.

22           (B) For taxable years beginning after the thirty-first day of  
23 December, two thousand two, the first twenty thousand dollars of  
24 military retirement income, including retirement income from the

1 regular Armed Forces, reserves and National Guard paid by the  
2 United States or by this state after the thirty-first day of  
3 December, two thousand two, including any survivorship annuities,  
4 to the extent included in gross income for federal income tax  
5 purposes for the taxable year.

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

12 (8) (A) Federal adjusted gross income in the amount of eight  
13 thousand dollars received from any source after the thirty-first  
14 day of December, one thousand nine hundred eighty-six, by any  
15 person who has attained the age of sixty-five on or before the last  
16 day of the taxable year, or by any person certified by proper  
17 authority as permanently and totally disabled, regardless of age,  
18 on or before the last day of the taxable year, to the extent  
19 includable in federal adjusted gross income for federal tax  
20 purposes: *Provided*, That if a person has a medical certification  
21 from a prior year and he or she is still permanently and totally  
22 disabled, a copy of the original certificate is acceptable as proof  
23 of disability. A copy of the form filed for the federal disability  
24 income tax exclusion is acceptable: *Provided, however, That:*

1 (i) Where the total modification under subdivisions (1), (2),  
2 (5), (6) and (7) of this subsection is eight thousand dollars per  
3 person or more, no deduction shall be allowed under this  
4 subdivision; and

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

12 The provisions of this paragraph remain applicable for taxable  
13 years beginning prior to the first day of January, two thousand  
14 twelve, for all persons otherwise eligible, and the provisions of  
15 paragraph (B) of this subdivision are applicable for taxable years  
16 beginning after the thirty-first day of December, two thousand  
17 eleven, exclusively for all persons described in paragraph (B) of  
18 this subdivision in lieu of the provisions of this paragraph, and  
19 as to those persons, no modification shall be allowed under this  
20 paragraph for taxable years beginning after the thirty-first day of  
21 December, two thousand eleven;

22 (B) Notwithstanding any provision of paragraph (A) of this  
23 subdivision to the contrary, federal adjusted gross income in the  
24 amount of sixteen thousand dollars received from any source after



1 the thirty-first day of December, two thousand eleven, by any  
2 person who has attained the age of sixty-five on or before the last  
3 day of the taxable year, or by any person certified by proper  
4 authority as permanently and totally disabled, regardless of age,  
5 on or before the last day of the taxable year, where the person  
6 during the taxable year receives benefits under the West Virginia  
7 Public Employees Retirement System or the West Virginia State  
8 Teachers Retirement System, including any survivorship annuities  
9 derived therefrom, to the extent includable in gross income for  
10 federal income tax purposes for taxable years beginning after the  
11 thirty-first day of December, two thousand eleven, or where the  
12 person during the taxable year receives benefits under any federal  
13 retirement system to which Title 4 U.S.C. §111 applies to the  
14 extent includable in gross income for federal income tax purposes  
15 for taxable years beginning after the thirty-first day of December,  
16 two thousand eleven: *Provided*, That if a person has a medical  
17 certification from a prior year and he or she is still permanently  
18 and totally disabled, a copy of the original certificate is  
19 acceptable as proof of disability. A copy of the form filed for  
20 the federal disability income tax exclusion is acceptable:  
21 *Provided, however, That:*

22 (i) Where the total modification under subdivisions (1), (2),  
23 (5), (6) and (7) of this subsection is sixteen thousand dollars per  
24 person or more, no deduction shall be allowed under this paragraph;

1 and

2 (ii) Where the total modification under subdivisions (1), (2),  
3 (5), (6) and (7) of this subsection is less than sixteen thousand  
4 dollars per person, the total modification allowed under this  
5 paragraph for all gross income received by that person shall be  
6 limited to the difference between sixteen thousand dollars and the  
7 sum of modifications under subdivisions (1), (2), (5), (6) and (7)  
8 of this subsection;

9 (9) (A) Federal adjusted gross income in the amount of eight  
10 thousand dollars received from any source after the thirty-first  
11 day of December, one thousand nine hundred eighty-six, by the  
12 surviving spouse of any person who had attained the age of  
13 sixty-five or who had been certified as permanently and totally  
14 disabled, to the extent includable in federal adjusted gross income  
15 for federal tax purposes: *Provided, That:*

16 (i) Where the total modification under subdivisions (1), (2),  
17 (5), (6), (7) and (8) of this subsection is eight thousand dollars  
18 or more, no deduction shall be allowed under this subdivision; and

19 (ii) Where the total modification under subdivisions (1), (2),  
20 (5), (6), (7) and (8) of this subsection is less than eight  
21 thousand dollars per person, the total modification allowed under  
22 this subdivision for all gross income received by that person shall  
23 be limited to the difference between eight thousand dollars and the  
24 sum of subdivisions (1), (2), (5), (6), (7) and (8) of this

1 subsection;

2 The provisions of this paragraph remain applicable for taxable  
3 years beginning prior to the first day of January, two thousand  
4 twelve, for all persons otherwise eligible, and the provisions of  
5 paragraph (B) of this subdivision are applicable for taxable years  
6 beginning after the thirty-first day of December, two thousand  
7 eleven, exclusively for all persons described in paragraph (B) of  
8 this subdivision in lieu of the provisions of this paragraph, and  
9 as to those persons, no modification shall be allowed under this  
10 paragraph for taxable years beginning after the thirty-first day of  
11 December, two thousand eleven;

12 (B) Notwithstanding any provision of paragraph (A) of this  
13 subdivision to the contrary, federal adjusted gross income in the  
14 amount of sixteen thousand dollars received from any source after  
15 the thirty-first day of December, two thousand eleven, by the  
16 surviving spouse of any person who had attained the age of  
17 sixty-five or who had been certified as permanently and totally  
18 disabled, where the surviving spouse during the taxable year  
19 receives survivorship annuities under the West Virginia Public  
20 Employees Retirement System or the West Virginia State Teachers  
21 Retirement System, to the extent includable in gross income for  
22 federal income tax purposes for taxable years beginning after the  
23 thirty-first day of December, two thousand eleven, or where the  
24 surviving spouse during the taxable year receives survivorship

1 annuities under any federal retirement system to which Title 4  
2 U.S.C. §111 applies to the extent includable in gross income for  
3 federal income tax purposes for taxable years beginning after the  
4 thirty-first day of December, two thousand eleven: *Provided, That:*

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

9 (ii) Where the total modification under subdivisions (1), (2),  
10 (5), (6), (7) and (8) of this subsection is less than sixteen  
11 thousand dollars per person, the total modification allowed under  
12 this paragraph for all gross income received by that person shall  
13 be limited to the difference between sixteen thousand dollars and  
14 the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this  
15 subsection;

16 (10) Contributions from any source to a medical savings  
17 account established by or for the individual pursuant to section  
18 twenty, article fifteen, chapter thirty-three of this code or  
19 section fifteen, article sixteen of said chapter, plus interest  
20 earned on the account, to the extent includable in federal adjusted  
21 gross income for federal tax purposes: *Provided, That* the amount  
22 subtracted pursuant to this subdivision for any one taxable year  
23 may not exceed two thousand dollars plus interest earned on the  
24 account. For married individuals filing a joint return, the

1 maximum deduction is computed separately for each individual;

2 (11) For the two thousand six taxable year only, severance  
3 wages received by a taxpayer from an employer as the result of the  
4 taxpayer's permanent termination from employment through a  
5 reduction in force and through no fault of the employee, not to  
6 exceed thirty thousand dollars. For purposes of this subdivision:

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

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

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

23 (iv) The term "corporation" means any corporation, joint-stock  
24 company or association and any business conducted by a trustee or

1 trustees wherein interest or ownership is evidenced by a  
2 certificate of interest or ownership or similar written instrument;  
3 and

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

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

11 (e) *Partners and S corporation shareholders.* -- The amounts of  
12 modifications required to be made under this section by a partner  
13 or an S corporation shareholder, which relate to items of income,  
14 gain, loss or deduction of a partnership or an S corporation, shall  
15 be determined under section seventeen of this article.

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

21 (g) *Effective date.* -- (1) Changes in the language of this  
22 section enacted in the year two thousand shall apply to taxable  
23 years beginning after the thirty-first day of December, two  
24 thousand.

1           (2) Changes in the language of this section enacted in the  
2 year two thousand two shall apply to taxable years beginning after  
3 the thirty-first day of December, two thousand two.

NOTE: The purpose of this bill is to

Strike-throughs indicate language that would be stricken from  
the present law, and underscoring indicates new language that would  
be added.