

Senate Bill No. 4

(By Senators Yost, Unger, Jenkins, Plymale and Sypolt)

[Introduced January 12, 2011; referred to the Committee on
Military; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-21-12 of the Code of West Virginia,
1931, as amended, relating to exempting all military, National
Guard and reserve income from state income taxes.

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 to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

PART II. RESIDENTS.

**§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

1 with the modifications specified in this section.

2 (b) *Modifications increasing federal adjusted gross income.* --

3 There shall be added to federal adjusted gross income unless
4 already included therein the following items:

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

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

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

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

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

1 federal taxable year;

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

6 (7) Amounts withdrawn from a medical savings account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

11 © *Modifications reducing federal adjusted gross income.* --
12 There shall be subtracted from federal adjusted gross income to the
13 extent included therein:

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

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

1 shareholders of a regulated investment company, under Section 852
2 of the Internal Revenue Code for taxable years ending after June
3 30, 1987;

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

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

12 (5) Annuities, retirement allowances, returns of contributions
13 and any other benefit received under the West Virginia Public
14 Employees Retirement System, the West Virginia State Teachers
15 Retirement System and all forms of military retirement, including
16 regular Armed Forces, Reserves and National Guard, including any
17 survivorship annuities derived therefrom, to the extent includable
18 in gross income for federal income tax purposes: *Provided*, That
19 notwithstanding any provisions in this code to the contrary this
20 modification shall be limited to the first \$2,000 of benefits
21 received under the West Virginia Public Employees Retirement
22 System, the West Virginia State Teachers Retirement System and,

1 including any survivorship annuities derived therefrom, to the
2 extent includable in gross income for federal income tax purposes
3 for taxable years beginning after December 31, 1986; and the first
4 \$2,000 of benefits received under any federal retirement system to
5 which Title 4 U.S.C. §111 applies: *Provided, however,* That the
6 total modification under this paragraph shall not exceed \$2,000 per
7 person receiving retirement benefits and this limitation shall
8 apply to all returns or amended returns filed after December 31,
9 1988;

10 (6) Retirement income received in the form of pensions and
11 annuities after December 31, 1979, under any West Virginia police,
12 West Virginia Firemen's Retirement System or the West Virginia
13 State Police Death, Disability and Retirement Fund, the West
14 Virginia State Police Retirement System or the West Virginia Deputy
15 Sheriff Retirement System, including any survivorship annuities
16 derived from any of these programs, to the extent includable in
17 gross income for federal income tax purposes;

18 (7) (A) For taxable years beginning after December 31, 2000,
19 and ending prior to January 1, 2003, an amount equal to two percent
20 multiplied by the number of years of active duty in the Armed
21 Forces of the United States of America with the product thereof
22 multiplied by the first \$30,000 of military retirement income,

1 including retirement income from the regular Armed Forces, Reserves
2 and National Guard paid by the United States or by this state after
3 December 31, 2000, including any survivorship annuities, to the
4 extent included in gross income for federal income tax purposes for
5 the taxable year.

6 (B) For taxable years beginning after December 31, 2002, the
7 first \$20,000 of military retirement income, including retirement
8 income from the regular Armed Forces, Reserves and National Guard
9 paid by the United States or by this state after December 31, 2002,
10 including any survivorship annuities, to the extent included in
11 gross income for federal income tax purposes for the taxable year.

12 (C) For taxable years beginning after December 31, 2010, and
13 continuing every year thereafter all military income, including
14 income from regular Armed Forces, Reserves and National Guard paid
15 by the United States or by this state, to the extent included in
16 gross income for federal income tax purposes for all taxable years
17 after December 31, 2010.

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

1 operation of law.

2 (8) Federal adjusted gross income in the amount of \$8,000
3 received from any source after December 31, 1986, by any person who
4 has attained the age of sixty-five on or before the last day of the
5 taxable year, or by any person certified by proper authority as
6 permanently and totally disabled, regardless of age, on or before
7 the last day of the taxable year, to the extent includable in
8 federal adjusted gross income for federal tax purposes: *Provided,*
9 That if a person has a medical certification from a prior year and
10 he or she is still permanently and totally disabled, a copy of the
11 original certificate is acceptable as proof of disability. A copy
12 of the form filed for the federal disability income tax exclusion
13 is acceptable: *Provided, however,* That:

14 (i) Where the total modification under subdivisions (1), (2),
15 (5), (6) and (7) of this subsection is \$8,000 per person or more,
16 no deduction shall be allowed under this subdivision; and

17 (ii) Where the total modification under subdivisions (1), (2),
18 (5), (6) and (7) of this subsection is less than \$8,000 per person,
19 the total modification allowed under this subdivision for all gross
20 income received by that person shall be limited to the difference
21 between \$8,000 and the sum of modifications under subdivisions (1),
22 (2), (5), (6) and (7) of this subsection;

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

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

10 (ii) Where the total modification under subdivisions (1), (2),
11 (5), (6), (7) and (8) of this subsection is less than \$8,000 per
12 person, the total modification allowed under this subdivision for
13 all gross income received by that person shall be limited to the
14 difference between \$8,000 and the sum of subdivisions (1), (2),
15 (5), (6), (7) and (8) of this 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

1 may not exceed \$2,000 plus interest earned on the account. For
2 married individuals filing a joint return, the maximum deduction is
3 computed separately for each individual;

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

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

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

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

1 percent of the voting power of all classes of stock of at least one
2 of the other corporations;

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

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

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

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

20 (f) *Husband and wife.* -- If husband and wife determine their
21 federal income tax on a joint return but determine their West
22 Virginia income taxes separately, they shall determine their West

1 Virginia adjusted gross incomes separately as if their federal
2 adjusted gross incomes had been determined separately.

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

6 (2) Changes in the language of this section enacted in the
7 year 2002 shall apply to taxable years beginning after December 31,
8 2002.

NOTE: The purpose of this bill is to exempt all military,
National Guard and Reserve income from state income taxes.

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