

1 **H. B. 4555**

2  
3 (By Delegates Duke, Sumner, Kump, Canterbury, C. Miller,  
4 Longstreth, Sobonya, Romine and Overington)

5  
6 [Introduced February 16, 2012; referred to the  
7 Committee on Pensions and Retirement then Finance.]

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9  
10 A BILL to amend and reenact §11-21-12 of the Code of West Virginia,  
11 1931, as amended, relating to exempting the first \$20,000 of  
12 state pensions and social security benefits from West Virginia  
13 personal income tax, to be phased in over five years.

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

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

17 **ARTICLE 21. PERSONAL INCOME TAX.**

18 **§11-21-12. West Virginia adjusted gross income of resident**  
19 **individual.**

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

24 (b) *Modifications increasing federal adjusted gross income.* --  
25 There shall be added to federal adjusted gross income unless

1 already included therein the following items:

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

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

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

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

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

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

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

6           (c) *Modifications reducing federal adjusted gross income.* --  
7 There shall be subtracted from federal adjusted gross income to the  
8 extent included therein:

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

12           (2) Interest or dividend income on obligations or securities  
13 of any authority, commission or instrumentality of the United  
14 States or of the State of West Virginia to the extent includable in  
15 gross income for federal income tax purposes but exempt from state  
16 income taxes under the laws of the United States or of the State of  
17 West Virginia, including federal interest or dividends paid to  
18 shareholders of a regulated investment company, under Section 852  
19 of the Internal Revenue Code for taxable years ending after June  
20 30, 1987;

21           (3) Any amount included in federal adjusted gross income for  
22 federal income tax purposes for the taxable year that is not  
23 included in federal adjusted gross income under this article for  
24 the taxable year;

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

5           (5) Annuities, retirement allowances, returns of contributions  
6 and any other benefit received under the West Virginia Public  
7 Employees Retirement System, the West Virginia State Teachers  
8 Retirement System and all forms of military retirement, including  
9 regular Armed Forces, reserves and National Guard, including any  
10 survivorship annuities derived therefrom, to the extent includable  
11 in gross income for federal income tax purposes: *Provided*, That  
12 notwithstanding any provisions in this code to the contrary this  
13 modification shall be limited to the first \$2,000 of benefits  
14 received under the West Virginia Public Employees Retirement  
15 System, and the West Virginia State Teachers Retirement System ~~and~~,  
16 including any survivorship annuities derived therefrom, to the  
17 extent includable in gross income for federal income tax purposes  
18 for taxable years beginning after December 31, 1986; and the first  
19 \$2,000 of benefits received under any federal retirement system to  
20 which Title 4 U.S.C. §111 applies: *Provided, however*, That the  
21 total modification under this paragraph shall not exceed \$2,000 per  
22 person receiving retirement benefits and this limitation shall  
23 apply to all returns or amended returns filed after December 31,  
24 1988;

1           (6) Retirement income received in the form of pensions and  
2 annuities after December 31, 1979, under any West Virginia police,  
3 West Virginia Firemen's Retirement System or the West Virginia  
4 State Police Death, Disability and Retirement Fund, the West  
5 Virginia State Police Retirement System or the West Virginia Deputy  
6 Sheriff Retirement System, including any survivorship annuities  
7 derived from any of these programs, to the extent includable in  
8 gross income for federal income tax purposes;

9           (7) (A) For taxable years beginning after December 31, 2000,  
10 and ending prior to January 1, 2003, an amount equal to two percent  
11 multiplied by the number of years of active duty in the Armed  
12 Forces of the United States of America with the product thereof  
13 multiplied by the first \$30,000 of military retirement income,  
14 including retirement income from the regular Armed Forces, reserves  
15 and National Guard paid by the United States or by this state after  
16 December 31, 2000, including any survivorship annuities, to the  
17 extent included in gross income for federal income tax purposes for  
18 the taxable year.

19           (B) For taxable years beginning after December 31, 2002, the  
20 first \$20,000 of military retirement income, including retirement  
21 income from the regular Armed Forces, reserves and National Guard  
22 paid by the United States or by this state after December 31, 2002,  
23 including any survivorship annuities, to the extent included in  
24 gross income for federal income tax purposes for the taxable year.

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

7 (8) (A) For the taxable year beginning after December 31,  
8 2012, annuities, retirement allowances, returns of contributions  
9 and any other benefit received under the West Virginia Public  
10 Employees Retirement System and the West Virginia State Teachers'  
11 Retirement Systems, shall be limited to the first \$4,000 of  
12 benefits received, including any survivorship annuities derived  
13 therefrom, to the extent includable in gross income for federal  
14 income tax purposes for the taxable year beginning after December  
15 31, 2012; and to the first \$4,000 of benefits received under any  
16 federal retirement system to which Title 4 U.S.C. §111 applies:  
17 Provided, That the total modification under this paragraph shall  
18 not exceed \$4,000 per person receiving retirement benefits and this  
19 limitation shall apply to all returns or amended returns filed for  
20 the taxable year beginning after December 31, 2012.

21 (B) Notwithstanding any provision of this subdivision to the  
22 contrary, for the taxable year beginning after December 31, 2013,  
23 annuities, retirement allowances, returns of contributions and any  
24 other benefit received under the West Virginia Public Employees

1 Retirement System and the West Virginia State Teachers' Retirement  
2 Systems, shall be limited to the first \$8,000 of benefits received,  
3 including any survivorship annuities derived therefrom, to the  
4 extent includable in gross income for federal income tax purposes  
5 for the taxable year beginning after December 31, 2013; and to the  
6 first \$8,000 of benefits received under any federal retirement  
7 system to which Title 4 U.S.C. §111 applies: *Provided, That the*  
8 total modification under this paragraph shall not exceed \$8,000 per  
9 person receiving retirement benefits and this limitation shall  
10 apply to all returns or amended returns filed for the taxable year  
11 beginning after December 31, 2013.

12 (C) Notwithstanding any provision of this subdivision to the  
13 contrary, for the taxable year beginning after December 31, 2014,  
14 annuities, retirement allowances, returns of contributions and any  
15 other benefit received under the West Virginia Public Employees  
16 Retirement System and the West Virginia State Teachers Retirement  
17 Systems, shall be limited to the first \$12,000 of benefits  
18 received, including any survivorship annuities derived therefrom,  
19 to the extent includable in gross income for federal income tax  
20 purposes for the taxable year beginning after December 31, 2014;  
21 and to the first \$12,000 of benefits received under any federal  
22 retirement system to which Title 4 U.S.C. §111 applies: *Provided,*  
23 That the total modification under this paragraph shall not exceed  
24 \$12,000 per person receiving retirement benefits and this

1 limitation shall apply to all returns or amended returns filed for  
2 the taxable year beginning after December 31, 2014.

3 (D) Notwithstanding any provision of this subdivision to the  
4 contrary, for the taxable year beginning after December 31, 2015,  
5 annuities, retirement allowances, returns of contributions and any  
6 other benefit received under the West Virginia Public Employees  
7 Retirement System and the West Virginia State Teachers Retirement  
8 Systems, shall be limited to the first \$16,000 of benefits  
9 received, including any survivorship annuities derived therefrom,  
10 to the extent includable in gross income for federal income tax  
11 purposes for the taxable year beginning after December 31, 2015;  
12 and to the first \$16,000 of benefits received under any federal  
13 retirement system to which Title 4 U.S.C. §111 applies: *Provided,*  
14 That the total modification under this paragraph shall not exceed  
15 \$16,000 per person receiving retirement benefits and this  
16 limitation shall apply to all returns or amended returns filed for  
17 the taxable year beginning after December 31, 2015.

18 (E) Notwithstanding any provision of this subdivision to the  
19 contrary, for taxable years beginning after December 31, 2016,  
20 annuities, retirement allowances, returns of contributions and any  
21 other benefit received under the West Virginia Public Employees  
22 Retirement System and the West Virginia State Teachers Retirement  
23 Systems, shall be limited to the first \$20,000 of benefits  
24 received, including any survivorship annuities derived therefrom,



1 to the extent includable in gross income for federal income tax  
2 purposes for the taxable years beginning after December 31, 2016;  
3 and to the first \$20,000 of benefits received under any federal  
4 retirement system to which Title 4 U.S.C. §111 applies: *Provided,*  
5 That the total modification under this paragraph shall not exceed  
6 \$20,000 per person receiving retirement benefits and this  
7 limitation shall apply to all returns or amended returns filed  
8 after last day of December, 2016.

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

21       (i) Where the total modification under subdivisions (1), (2),  
22 (5), (6) and (7) of this subsection is \$8,000 per person or more,  
23 no deduction shall be allowed under this subdivision; and

24       (ii) Where the total modification under subdivisions (1), (2),

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

6 ~~(9)~~ (10) Federal adjusted gross income in the amount of \$8,000  
7 received from any source after December 31, 1986, by the surviving  
8 spouse of any person who had attained the age of sixty-five or who  
9 had been certified as permanently and totally disabled, to the  
10 extent includable in federal adjusted gross income for federal tax  
11 purposes: *Provided, That:*

12 (i) Where the total modification under subdivisions (1), (2),  
13 (5), (6), (7) and (8) of this subsection is \$8,000 or more, no  
14 deduction shall be allowed under this subdivision; and

15 (ii) Where the total modification under subdivisions (1), (2),  
16 (5), (6), (7) and (8) of this subsection is less than \$8,000 per  
17 person, the total modification allowed under this subdivision for  
18 all gross income received by that person shall be limited to the  
19 difference between \$8,000 and the sum of subdivisions (1), (2),  
20 (5), (6), (7) and (8) of this subsection;

21 ~~(10)~~ (11) Contributions from any source to a medical savings  
22 account established by or for the individual pursuant to section  
23 twenty, article fifteen, chapter thirty-three of this code or  
24 section fifteen, article sixteen of said chapter, plus interest

1 earned on the account, to the extent includable in federal adjusted  
2 gross income for federal tax purposes: *Provided*, That the amount  
3 subtracted pursuant to this subdivision for any one taxable year  
4 may not exceed \$2,000 plus interest earned on the account. For  
5 married individuals filing a joint return, the maximum deduction is  
6 computed separately for each individual;

7 ~~(11)~~ (12) For the 2006 taxable year only, severance wages  
8 received by a taxpayer from an employer as the result of the  
9 taxpayer's permanent termination from employment through a  
10 reduction in force and through no fault of the employee, not to  
11 exceed \$30,000. For purposes of this subdivision:

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

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

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

1 the common parent owns directly stock possessing at least fifty  
2 percent of the voting power of all classes of stock of at least one  
3 of the other corporations;

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

9 ~~(12)~~ (13) Any other income which this state is prohibited from  
10 taxing under the laws of the United States.

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

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

21 (f) *Husband and wife.* -- If husband and wife determine their  
22 federal income tax on a joint return but determine their West  
23 Virginia income taxes separately, they shall determine their West  
24 Virginia adjusted gross incomes separately as if their federal

1 adjusted gross incomes had been determined separately.

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

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

8 (3) Changes in the language of this section enacted in the  
9 year 2012, shall apply to taxable years beginning after December  
10 31, 2012.

NOTE: The purpose of this bill is to provide for a phase in of  
exempting \$20,000 of retirement income to be phased in at \$4,000  
per year over five years.

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