

1 **H. B. 4557**

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

5  
6 [Introduced February 16, 2012; referred to the  
7 Committee on 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 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.**

25 (a) *General.* -- The West Virginia adjusted gross income of a

1 resident individual means his or her federal adjusted gross income  
2 as defined in the laws of the United States for the taxable year  
3 with the modifications specified in this section.

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

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

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

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

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

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

22 (5) Interest on a depository institution tax-exempt savings  
23 certificate which is allowed as an exclusion from federal gross  
24 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       (c) *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 its  
15 possessions to the extent includable in gross income for federal  
16 income tax purposes;

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

1 1987;

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

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

10 (5) (A) Annuities, retirement allowances, returns of  
11 contributions and any other benefit received under the West Virginia  
12 Public Employees Retirement System, the West Virginia State Teachers  
13 Retirement System and all forms of military retirement, including  
14 regular Armed Forces, Reserves and National Guard, including any  
15 survivorship annuities derived therefrom, to the extent includable  
16 in gross income for federal income tax purposes: *Provided*, That  
17 notwithstanding any provisions in this code to the contrary this  
18 modification shall be limited to the first \$2,000 of benefits  
19 received under the West Virginia Public Employees Retirement System,  
20 and the West Virginia State Teachers Retirement System ~~and~~,  
21 including any survivorship annuities derived therefrom, to the  
22 extent includable in gross income for federal income tax purposes  
23 for taxable years beginning after December 31, 1986; and the first  
24 \$2,000 of benefits received under any federal retirement system to

1 which Title 4 U.S.C. §111 applies: *Provided, however,* That the  
2 total modification under this paragraph shall not exceed \$2,000 per  
3 person receiving retirement benefits and this limitation shall apply  
4 to all returns or amended returns filed after December 31, 1988;

5 (B) Notwithstanding any provision of paragraph (A) of this  
6 subdivision to the contrary, the modification provided under  
7 paragraph (A) of this subdivision shall be limited to the first  
8 \$4,000 of benefits received under the West Virginia Public Employees  
9 Retirement System and the West Virginia State Teachers Retirement  
10 System, including any survivorship annuities derived therefrom, to  
11 the extent includable in gross income for federal income tax  
12 purposes for taxable years beginning after December 31, 2012; and  
13 to the first \$4,000 of benefits received under any federal  
14 retirement system to which Title 4 U.S.C. §111 applies to the extent  
15 includable in gross income for federal income tax purposes for  
16 taxable years beginning after December 31, 2012. The total  
17 modification under this paragraph shall not exceed \$4,000 per person  
18 receiving retirement benefits;

19 (6) Retirement income received in the form of pensions and  
20 annuities after December 31, 1979, under any West Virginia police,  
21 West Virginia Firemen's Retirement System or the West Virginia State  
22 Police Death, Disability and Retirement Fund, the West Virginia  
23 State Police Retirement System or the West Virginia Deputy Sheriff  
24 Retirement System, including any survivorship annuities derived from

1 any of these programs, to the extent includable in gross income for  
2 federal income tax purposes;

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

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

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

24       (8) (A) Federal adjusted gross income in the amount of \$8,000

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

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

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

21 The provisions of this paragraph remain applicable for taxable  
22 years beginning prior to January 1, 2013, for all persons otherwise  
23 eligible, and the provisions of paragraph (B) of this subdivision  
24 are applicable for taxable years beginning after December 31, 2012,

1 exclusively for all persons described in paragraph (B) of this  
2 subdivision in lieu of the provisions of this paragraph, and as to  
3 those persons, no modification shall be allowed under this paragraph  
4 for taxable years beginning after December 31, 2012;

5 (B) Notwithstanding any provisions of paragraph (A) of this  
6 subdivision to the contrary, federal adjusted gross income in the  
7 amount of \$16,000 received from any source after December 31, 2012,  
8 by any person who has attained the age of sixty-five on or before  
9 the last day of the taxable year, or by any person certified by  
10 proper authority as permanently and totally disabled, regardless of  
11 age, on or before the last day of the taxable year, where the person  
12 during the taxable year receives benefits under the West Virginia  
13 Public Employees Retirement System or 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 purposes for taxable years beginning after December  
17 31, 2012, or where the person during the taxable year receives  
18 benefits under any federal retirement system to which Title 4 U.S.C.  
19 §111 applies to the extent includable in gross income for federal  
20 income tax purposes for taxable years beginning after December 31,  
21 2012: *Provided*, That if a person has a medical certification from  
22 a prior year and he or she is still permanently and totally  
23 disabled, a copy of the original certificate is acceptable as proof  
24 of disability. A copy of the form filed for federal disability



1 income tax exclusion is acceptable: *Provided, however, That:*

2 (i) Where the total modification under subdivisions (1), (2),  
3 (5), (6) and (7) of this subsection is \$16,000 per person or more,  
4 no deduction shall be allowed under this paragraph; and

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

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

17 (i) Where the total modification under subdivisions (1), (2),  
18 (5), (6), (7) and (8) of this subsection is \$8,000 or more, no  
19 deduction shall be allowed under this subdivision; and

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

1 (6), (7) and (8) of this subsection;

2 The provisions of this paragraph remain applicable for taxable  
3 years beginning prior to January 1, 2013, for all persons otherwise  
4 eligible, and the provisions of paragraph (B) of this subdivision  
5 are applicable for taxable years beginning after December 31, 2012,  
6 exclusively for all persons described in paragraph (B) of this  
7 subdivision in lieu of the provisions of this paragraph, and as to  
8 those persons, no modification shall be allowed under this paragraph  
9 for taxable years beginning after December 31, 2012;

10 (B) Notwithstanding any provision of paragraph (A) of this  
11 subdivision to the contrary, federal adjusted gross income in the  
12 amount of \$16,000 received from any source after December 31, 2012,  
13 by the surviving spouse of any person who had attained the age of  
14 sixty-five or who had been certified as permanently and totally  
15 disabled, where the surviving spouse during the taxable year  
16 receives survivorship annuities under the West Virginia Public  
17 Employees Retirement System or the West Virginia State Teachers  
18 Retirement System, to the extent includable in gross income for  
19 federal income tax purposes for taxable years beginning after  
20 December 31, 2012, or where the surviving spouse during the taxable  
21 year receives survivorship annuities under any federal retirement  
22 system to which Title 4 U.S.C. §111 applies to the extent includable  
23 in gross income for federal income tax purposes for taxable years  
24 beginning after December 31, 2012: *Provided, That:*

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

4       (ii) Where the total modification under subdivisions (1), (2),  
5 (5), (6), (7) and (8) of this subsection is less than \$16,000 per  
6 person, the total modification allowed under this paragraph for all  
7 gross income received by that person shall be limited to the  
8 difference between \$16,000 and the sum of subdivisions (1), (2),  
9 (5), (6), (7) and (8) of this subsection;

10       (10) Contributions from any source to a medical savings account  
11 established by or for the individual pursuant to section twenty,  
12 article fifteen, chapter thirty-three of this code or section  
13 fifteen, article sixteen of said chapter, plus interest earned on  
14 the account, to the extent includable in federal adjusted gross  
15 income for federal tax purposes: *Provided*, That the amount  
16 subtracted pursuant to this subdivision for any one taxable year may  
17 not exceed \$2,000 plus interest earned on the account. For married  
18 individuals filing a joint return, the maximum deduction is computed  
19 separately for each individual;

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

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

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

9 (iii) The term "controlled group" means one or more chains of  
10 corporations connected through stock ownership with a common parent  
11 corporation if stock possessing at least fifty percent of the voting  
12 power of all classes of stock of each of the corporations is owned  
13 directly or indirectly by one or more of the corporations and the  
14 common parent owns directly stock possessing at least fifty percent  
15 of the voting power of all classes of stock of at least one of the  
16 other corporations;

17 (iv) The term "corporation" means any corporation, joint-stock  
18 company or association and any business conducted by a trustee or  
19 trustees wherein interest or ownership is evidenced by a certificate  
20 of interest or ownership or similar written instrument; and

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

23 (d) *Modification for West Virginia fiduciary adjustment.* --  
24 There shall be added to or subtracted from federal adjusted gross

1 income, as the case may be, the taxpayer's share, as beneficiary of  
2 an estate or trust, of the West Virginia fiduciary adjustment  
3 determined under section nineteen of this article.

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

9 (f) *Husband and wife.* -- If husband and wife determine their  
10 federal income tax on a joint return but determine their West  
11 Virginia income taxes separately, they shall determine their West  
12 Virginia adjusted gross incomes separately as if their federal  
13 adjusted gross incomes had been determined separately.

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

17 (2) Changes in the language of this section enacted in the year  
18 2002 shall apply to taxable years beginning after December 31, 2002.

19 (3) Changes in the language of this section enacted in the year  
20 2012 shall apply to taxable years beginning after December 31, 2012.

NOTE: The purpose of this bill is to reduce state income tax liability for certain retired public employees who are permanently and totally disabled, and their surviving spouses; increase the amount of retirement income received from certain state and federal retirement systems that is excluded from the calculation of income subject to state personal income taxes.

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