

Senate Bill No. 512

(By Senator Yost)

[Introduced March 13, 2013; referred to the Committee on
Finance.]

**FISCAL
NOTE**

10 A BILL to amend and reenact §11-21-12 of the Code of West Virginia,
11 1931, as amended, relating to the reduction of state income
12 taxes for certain state and federal retirees by increasing the
13 exemption on retirement income in calculating the federal
14 gross income for state personal income tax purposes.

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

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

18 **ARTICLE 21. PERSONAL INCOME TAX.**

19 PART II. RESIDENTS.

20 **§11-21-12. West Virginia adjusted gross income of resident**
21 **individual.**

22 (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~~ The following items are added to federal adjusted
6 gross income unless already included: ~~therein the following items:~~

7 (1) Interest income on obligations of any state other than
8 this state or of a political subdivision of any other state unless
9 created by compact or agreement ~~to which~~ with this state; ~~is a~~
10 ~~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~~ Deductions allowed when determining federal
16 adjusted gross income for federal income tax purposes for the
17 taxable year that is not allowed as a deduction under this article
18 for the 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

1 certificate ~~which is~~ allowed as an exclusion from federal gross
2 income under Section 128 of the Internal Revenue Code for the
3 federal taxable year;

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

8 (7) Amounts withdrawn from a medical savings account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

14 (c) *Modifications reducing federal adjusted gross income.* --
15 ~~There shall be~~ The following items are subtracted from federal
16 adjusted gross income: ~~to the extent included therein~~

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

20 (2) Interest or dividend income on obligations or securities
21 of any authority, commission or instrumentality of the United
22 States or of the State of West Virginia to the extent includable in
23 gross income for federal income tax purposes but exempt from state

1 income taxes under the laws of the United States or of the State of
2 West Virginia, including federal interest or dividends paid to
3 shareholders of a regulated investment company under Section 852 of
4 the Internal Revenue Code for taxable years ending after June 30,
5 1987;

6 (3) ~~Any amount~~ Amounts included in federal adjusted gross
7 income for federal income tax purposes for the taxable year that ~~is~~
8 are not included in federal adjusted gross income under this
9 article for the taxable year;

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

14 (5) Annuities, retirement allowances, returns of contributions
15 and any other benefit received under the West Virginia Public
16 Employees Retirement System, the West Virginia State Teachers'
17 Retirement System and all forms of military retirement, including
18 regular Armed Forces, Reserves and National Guard, including any
19 survivorship annuities, ~~derived therefrom~~ to the extent includable
20 in gross income for federal income tax purposes. ~~Provided, That~~
21 Notwithstanding any contrary provisions in this code, ~~to the~~
22 ~~contrary~~ this modification ~~shall be~~ is limited to the first ~~\$2,000~~
23 \$20,000 of benefits received under the West Virginia Public

1 Employees Retirement System, the West Virginia State Teachers'
2 Retirement System, ~~and,~~ including any survivorship annuities,
3 ~~derived therefrom~~ to the extent includable in gross income for
4 federal income tax purposes for taxable years beginning after
5 December 31, ~~one thousand nine hundred eighty-six~~ 2013 and the
6 first ~~two thousand dollars~~ \$20,000 of benefits received under any
7 federal retirement system to which Title 4 U.S.C. §111 applies.
8 ~~Provided, however, That~~ However, the total modification under this
9 ~~paragraph shall~~ subdivision may not exceed ~~two thousand dollars~~
10 \$20,000 per person receiving retirement benefits and this
11 limitation ~~shall~~ applies to all returns or amended returns filed
12 for taxable years beginning after December 31, ~~one thousand nine~~
13 ~~hundred eighty-eight~~ 2013;

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

22 (7) (A) For taxable years beginning after December 31, 2000,
23 and ending prior to January 1, 2003, an amount equal to two percent

1 multiplied by the number of years of active duty in the Armed
2 Forces of the United States of America, ~~with the product thereof~~
3 multiplied by the first \$30,000 of military retirement income,
4 including retirement income from the regular Armed Forces, Reserves
5 and National Guard paid by the United States or by this state after
6 December 31, 2000, including any survivorship annuities, to the
7 extent included in gross income for federal income tax purposes for
8 the taxable year. For taxable years ending after December 31,
9 2013, persons claiming a modification for military retirement
10 pursuant to subdivision (5), subsection (c) of this section and
11 modification under this subdivision may receive a combined
12 modification of \$22,000 total under the two subdivisions.

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~~ If any of the ~~provisions~~ provision of
20 this subdivision ~~are~~ is found by a court of competent jurisdiction
21 to violate ~~either~~ the Constitution of this state or of the United
22 States or is ~~held to be~~ extended to persons other than specified in
23 this subdivision, this subdivision ~~shall become~~ becomes null and

1 void. ~~by 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~~ However:

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~~ is 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~~ is limited to the
21 difference between \$8,000 and the sum of modifications under
22 subdivisions (1), (2), ~~(5)~~, (6) and (7) of this subsection;

23 (9) Federal adjusted gross income in the amount of \$8,000

1 received from any source after December 31, 1986, by the surviving
2 spouse of any person who had attained the age of sixty-five or who
3 had been certified as permanently and totally disabled, to the
4 extent includable in federal adjusted gross income for federal tax
5 purposes. ~~Provided, That~~ However:

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

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

15 (10) Contributions from any source to a medical savings
16 account established by or for the individual pursuant to ~~section~~
17 sections fifteen and twenty, article fifteen, chapter thirty-three
18 of this code ~~or section fifteen, article sixteen, of said chapter,~~
19 plus interest earned on the account, to the extent includable in
20 federal adjusted gross income for federal tax purposes. ~~Provided,~~
21 ~~That~~ However, the amount subtracted pursuant to this subdivision
22 for any one taxable year may not exceed \$2,000 plus interest earned
23 on the account. For married individuals filing a joint return, the

1 maximum deduction is computed separately for each individual;

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

1 company or association and any business conducted by a trustee or
2 trustees wherein interest or ownership is evidenced by a
3 certificate of interest or ownership or similar written instrument;
4 and

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

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

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

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

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

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

7 (3) Changes in the language of this section enacted in the
8 year 2013 apply to taxable years beginning after December 31, 2013.

NOTE: The purpose of this bill is to reduce state income taxes for state and federal retirees by increasing the exemption on retirement income in calculating the federal gross income for state personal income tax purposes.

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