

Senate Bill No. 65

(By Senators Tucker, Miller, Sypolt and Williams)

[Introduced February 13, 2013;
referred to the Committee on Pensions;
and then to the Committee on Finance.]

A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-7-1 of said code, all relating to pension benefits exempt from state income taxation; and including Division of Natural Resources police into the class of law-enforcement officers exempted.

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; and that §20-7-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

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

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

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

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

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

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

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

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

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

34 (7) Amounts withdrawn from a medical savings account
35 established by or for an individual under section twenty,

36 article fifteen, chapter thirty-three of this code or section
37 fifteen, article sixteen of said chapter that are used for a
38 purpose other than payment of medical expenses, as defined
39 in those sections.

40 (c) *Modifications reducing federal adjusted gross*
41 *income.* – There shall be subtracted from federal adjusted
42 gross income to the extent included therein:

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

46 (2) Interest or dividend income on obligations or
47 securities of any authority, commission or instrumentality of
48 the United States or of the State of West Virginia to the
49 extent includable in gross income for federal income tax
50 purposes but exempt from state income taxes under the laws
51 of the United States or of the State of West Virginia,
52 including federal interest or dividends paid to shareholders
53 of a regulated investment company, under Section 852 of the

54 Internal Revenue Code for taxable years ending after June
55 30, 1987;

56 (3) Any amount included in federal adjusted gross
57 income for federal income tax purposes for the taxable year
58 that is not included in federal adjusted gross income under
59 this article for the taxable year;

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

64 (5) Annuities, retirement allowances, returns of
65 contributions and any other benefit received under the West
66 Virginia Public Employees Retirement System, the West
67 Virginia State Teachers Retirement System and all forms of
68 military retirement, including regular armed forces, reserve
69 and National Guard, including any survivorship annuities
70 derived therefrom, to the extent includable in gross income
71 for federal income tax purposes: *Provided, That*

72 notwithstanding any provisions in this code to the contrary
73 this modification shall be limited to the first \$2,000 of
74 benefits received under the West Virginia Public Employees
75 Retirement System, the West Virginia State Teachers
76 Retirement System and, including any survivorship annuities
77 derived therefrom, to the extent includable in gross income
78 for federal income tax purposes for taxable years beginning
79 after December 31, 1986; and the first \$2,000 of benefits
80 received under any federal retirement system to which Title
81 4 U. S. C. §111 applies: *Provided, however,* That the total
82 modification under this paragraph shall not exceed \$2,000
83 per person receiving retirement benefits and this limitation
84 shall apply to all returns or amended returns filed after
85 December 31, 1988;

86 (6) Retirement income received in the form of pensions
87 and annuities after December 31, 1979, under any West
88 Virginia police, West Virginia Firemen's Retirement System
89 or the West Virginia State Police Death, Disability and

90 Retirement Fund, the West Virginia State Police Retirement
91 System, ~~or~~ the West Virginia Deputy Sheriff Retirement
92 System or the West Virginia Public Employees Retirement
93 System if paid to police officers retired from the Department
94 of Natural Resources, including those formerly classified as
95 conservation officers, including any survivorship annuities
96 derived from any of these programs, to the extent includable
97 in gross income for federal income tax purposes;

98 (7) (A) For taxable years beginning after December 31,
99 2000, and ending prior to January 1, 2003, an amount equal
100 to two percent multiplied by the number of years of active
101 duty in the armed forces of the United States of America
102 with the product thereof multiplied by the first \$30,000 of
103 military retirement income, including retirement income
104 from the regular armed forces, reserve and National Guard
105 paid by the United States or by this state after December 31,
106 2000, including any survivorship annuities, to the extent
107 included in gross income for federal income tax purposes for
108 the taxable year.

109 (B) For taxable years beginning after December 31, 2002,
110 the first \$20,000 of military retirement income, including
111 retirement income from the regular armed forces, reserve and
112 National Guard paid by the United States or by this state
113 after December 31, 2002, including any survivorship
114 annuities, to the extent included in gross income for federal
115 income tax purposes for the taxable year.

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

122 (8) Federal adjusted gross income in the amount of
123 \$8,000 received from any source after December 31, 1986,
124 by any person who has attained the age of sixty-five on or
125 before the last day of the taxable year, or by any person
126 certified by proper authority as permanently and totally

127 disabled, regardless of age, on or before the last day of the
128 taxable year, to the extent includable in federal adjusted
129 gross income for federal tax purposes: *Provided*, That if a
130 person has a medical certification from a prior year and he or
131 she is still permanently and totally disabled, a copy of the
132 original certificate is acceptable as proof of disability. A
133 copy of the form filed for the federal disability income tax
134 exclusion is acceptable: *Provided, however*, That:

135 (i) Where the total modification under subdivisions (1),
136 (2), (5), (6) and (7) of this subsection is \$8,000 per person or
137 more, no deduction shall be allowed under this subdivision;
138 and

139 (ii) Where the total modification under subdivisions (1),
140 (2), (5), (6) and (7) of this subsection is less than \$8,000 per
141 person, the total modification allowed under this subdivision
142 for all gross income received by that person shall be limited
143 to the difference between \$8,000 and the sum of
144 modifications under subdivisions (1), (2), (5), (6) and (7) of
145 this subsection;

146 (9) Federal adjusted gross income in the amount of
147 \$8,000 received from any source after December 31, 1986,
148 by the surviving spouse of any person who had attained the
149 age of sixty-five or who had been certified as permanently
150 and totally disabled, to the extent includable in federal
151 adjusted gross income for federal tax purposes: *Provided,*
152 That:

153 (i) Where the total modification under subdivisions (1),
154 (2), (5), (6), (7) and (8) of this subsection is \$8,000 or more,
155 no deduction shall be allowed under this subdivision; and

156 (ii) Where the total modification under subdivisions (1),
157 (2), (5), (6), (7) and (8) of this subsection is less than \$8,000
158 per person, the total modification allowed under this
159 subdivision for all gross income received by that person shall
160 be limited to the difference between \$8,000 and the sum of
161 subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

162 (10) Contributions from any source to a medical savings
163 account established by or for the individual pursuant to

164 section twenty, article fifteen, chapter thirty-three of this
165 code or section fifteen, article sixteen of said chapter, plus
166 interest earned on the account, to the extent includable in
167 federal adjusted gross income for federal tax purposes:
168 *Provided*, That the amount subtracted pursuant to this
169 subdivision for any one taxable year may not exceed \$2,000
170 plus interest earned on the account. For married individuals
171 filing a joint return, the maximum deduction is computed
172 separately for each individual;

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

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

182 (ii) The term “reduction in force” means a net reduction
183 in the number of employees employed by the employer in
184 West Virginia, determined based on total West Virginia
185 employment of the employer’s controlled group;

186 (iii) The term “controlled group” means one or more
187 chains of corporations connected through stock ownership
188 with a common parent corporation if stock possessing at least
189 fifty percent of the voting power of all classes of stock of
190 each of the corporations is owned directly or indirectly by
191 one or more of the corporations and the common parent
192 owns directly stock possessing at least fifty percent of the
193 voting power of all classes of stock of at least one of the
194 other corporations;

195 (iv) The term “corporation” means any corporation,
196 joint-stock company or association and any business
197 conducted by a trustee or trustees wherein interest or
198 ownership is evidenced by a certificate of interest or
199 ownership or similar written instrument; and

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

202 (d) *Modification for West Virginia fiduciary adjustment.* –
203 There shall be added to or subtracted from federal adjusted
204 gross income, as the case may be, the taxpayer's share, as
205 beneficiary of an estate or trust, of the West Virginia
206 fiduciary adjustment determined under section nineteen of
207 this article.

208 (e) *Partners and S corporation shareholders.* – The
209 amounts of modifications required to be made under this
210 section by a partner or an S corporation shareholder, which
211 relate to items of income, gain, loss or deduction of a
212 partnership or an S corporation, shall be determined under
213 section seventeen of this article.

214 (f) *Husband and wife.* – If husband and wife determine
215 their federal income tax on a joint return but determine their
216 West Virginia income taxes separately, they shall determine
217 their West Virginia adjusted gross incomes separately as if

218 their federal adjusted gross incomes had been determined
219 separately.

220 (g) *Effective date.* – (1) Changes in the language of this
221 section enacted in the year 2000 shall apply to taxable years
222 beginning after December 31, 2000.

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

226 (3) Changes in the language of this section enacted in the
227 year 2013 shall apply to taxable years beginning after
228 December 31, 2013.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

**§20-7-1. Chief natural resources police officer; natural resources
police officers; special and emergency natural
resources police officers; subsistence allowance;
expenses.**

1 (a) The division's law-enforcement policies, practices
2 and programs are under the immediate supervision and
3 direction of the division law-enforcement officer selected by
4 the director and designated as chief natural resources police
5 officer as provided in section thirteen, article one of this
6 chapter.

7 (b) Under the supervision of the director, the chief
8 natural resources police officer shall organize, develop and
9 maintain law-enforcement practices, means and methods
10 geared, timed and adjustable to seasonal, emergency and
11 other needs and requirements of the division's
12 comprehensive natural resources program. All division
13 personnel detailed and assigned to law-enforcement duties
14 and services under this section shall be known and
15 designated as natural resources police officers and are under
16 the immediate supervision and direction of the chief natural
17 resources police officer except as otherwise provided. All
18 natural resources police officers shall be trained, equipped

19 and conditioned for duty and services wherever and
20 whenever required by division law-enforcement needs.

21 (c) The chief natural resources police officer, acting
22 under supervision of the director, is authorized to select and
23 appoint emergency natural resources police officers for a
24 limited period for effective enforcement of the provisions of
25 this chapter when considered necessary because of
26 emergency or other unusual circumstances. The emergency
27 natural resources police officers shall be selected from
28 qualified civil service personnel of the division, except in
29 emergency situations and circumstances when the director
30 may designate officers, without regard to civil service
31 requirements and qualifications, to meet law-enforcement
32 needs. Emergency natural resources police officers shall
33 exercise all powers and duties prescribed in section four of
34 this article for full-time salaried natural resources police
35 officers except the provisions of subdivision (8) of said
36 section.

37 (d) The chief natural resources police officer, acting
38 under supervision of the director, is also authorized to select
39 and appoint as special natural resources police officers any
40 full-time civil service employee who is assigned to, and has
41 direct responsibility for management of, an area owned,
42 leased or under the control of the division and who has
43 satisfactorily completed a course of training established and
44 administered by the chief natural resources police officer,
45 when the action is considered necessary because of
46 law-enforcement needs. The powers and duties of a special
47 natural resources police officer, appointed under this
48 provision, is the same within his or her assigned area as
49 prescribed for full-time salaried natural resources police
50 officers. The jurisdiction of the person appointed as a special
51 natural resources police officer, under this provision, shall be
52 limited to the division area or areas to which he or she is
53 assigned and directly manages.

54 (e) The Director of the Division of Forestry is authorized
55 to appoint and revoke Division of Forestry special natural
56 resources police officers who are full-time civil service
57 personnel who have satisfactorily completed a course of
58 training as required by the Director of the Division of
59 Forestry. The jurisdiction, powers and duties of Division of
60 Forestry special natural resources police officers are set forth
61 by the Director of the Division of Forestry pursuant to article
62 three of this chapter, and articles one-a and one-b, chapter
63 nineteen of this code.

64 (f) The chief natural resources police officer, with the
65 approval of the director, has the power and authority to
66 revoke any appointment of an emergency natural resources
67 police officer or of a special natural resources police officer
68 at any time.

69 (g) Natural resources police officers are subject to
70 seasonal or other assignment and detail to duty whenever and
71 wherever required by the functions, services and needs of the
72 division.

73 (h) The chief natural resources police officer shall
74 designate the area of primary residence of each natural
75 resources police officer, including himself or herself. Since
76 the area of business activity of the division is actually
77 anywhere within the territorial confines of the State of West
78 Virginia, actual expenses incurred shall be paid whenever the
79 duties are performed outside the area of primary assignment
80 and still within the state.

81 (i) Natural resources police officers shall receive, in
82 addition to their base pay salary, a minimum monthly
83 subsistence allowance for their required telephone service,
84 dry cleaning or required uniforms and meal expenses while
85 performing their regular duties in their area of primary
86 assignment in the amount of \$130 each month. This
87 subsistence allowance does not apply to special or
88 emergency natural resources police officers appointed under
89 this section.

90 (j) After June 30, 2010, all those full-time law-
91 enforcement officers employed by the Division of Natural
92 Resources as conservation officers shall be titled and known
93 as natural resources police officers. Wherever used in this
94 code the term “conservation officer”, or its plural, means
95 “natural resources police officer”, or its plural, respectively.

96 ~~(k) Notwithstanding any provision of this code to the~~
97 ~~contrary, the provisions of subdivision six, subsection c,~~
98 ~~section twelve, article twenty-one, chapter eleven of this~~
99 ~~code are inapplicable to pensions of natural resources police~~
100 ~~officers paid through the Public Employees Retirement~~
101 ~~System.~~

(NOTE: The purpose of this bill is to treat natural resources police like all other law enforcement and exempt them from state income tax.

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