

**H. B. 4592**

(By Delegates Border, Hamrick, Pasdon  
and A. Evans)

[Introduced February 17, 2014; referred to the  
Committee on Senior Citizen Issues then Finance .]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-21-12 of the Code of West Virginia,  
1931, as amended, relating to exempting Social Security  
benefits and certain pension benefits from West Virginia  
personal income taxation.

*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  
with the modifications specified in this section.

1           (b) *Modifications increasing federal adjusted gross income.* --  
2 There shall be added to federal adjusted gross income unless  
3 already included ~~therein~~ the following items:

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

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

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

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

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

23           (6) The amount of a lump sum distribution for which the  
24 taxpayer has elected under Section 402(e) of the Internal Revenue

1 Code of 1986, as amended, to be separately taxed for federal income  
2 tax purposes; and

3 (7) Amounts withdrawn from a medical savings account  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

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

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

14 (2) Interest or dividend income on obligations or securities  
15 of any authority, commission or instrumentality of the United  
16 States or of the State of West Virginia to the extent includable in  
17 gross income for federal income tax purposes but exempt from state  
18 income taxes under the laws of the United States or of the State of  
19 West Virginia, including federal interest or dividends paid to  
20 shareholders of a regulated investment company, under Section 852  
21 of the Internal Revenue Code for taxable years ending after June  
22 30, 1987;

23 (3) Any amount included in federal adjusted gross income for  
24 federal income tax purposes for the taxable year that is not

1 included in federal adjusted gross income under this article for  
2 the taxable year;

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

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

1 ~~apply~~ applies to all returns or amended returns filed after  
2 December 31, 1988: Provided further, That for taxable years  
3 beginning after December 31, 2014, all retirement income in the  
4 form of pensions or annuities from the state Public Employees  
5 Retirement System, the state Teachers Retirement System and all  
6 forms of military retirement, including regular Armed Forces,  
7 Reserves and National Guard, and benefits received under any  
8 federal retirement system to which Title 4 U.S.C. §111 applies,  
9 shall be subtracted from federal adjusted gross income;

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,  
23 including retirement income from the regular Armed Forces, Reserves  
24 and National Guard paid by the United States or by this state after

1 December 31, 2000, including any survivorship annuities, to the  
2 extent included in gross income for federal income tax purposes for  
3 the taxable year;

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

10 (C) ~~In the event that~~ If any of the provisions of this  
11 subdivision are found by a court of competent jurisdiction to  
12 violate either the Constitution of this state or of the United  
13 States, or is held to be extended to persons other than specified  
14 in this subdivision, this subdivision shall become null and void by  
15 operation of law;

16 (8) Federal adjusted gross income in the amount of \$8,000  
17 received from any source after December 31, 1986, by any person who  
18 has attained the age of sixty-five on or before the last day of the  
19 taxable year, or by any person certified by proper authority as  
20 permanently and totally disabled, regardless of age, on or before  
21 the last day of the taxable year, to the extent includable in  
22 federal adjusted gross income for federal tax purposes: *Provided,*  
23 That if a person has a medical certification from a prior year and  
24 he or she is still permanently and totally disabled, a copy of the

1 original certificate is acceptable as proof of disability. A copy  
2 of the form filed for the federal disability income tax exclusion  
3 is acceptable: *Provided, however, That:*

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

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

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

19 (i) Where the total modification under subdivisions (1), (2),  
20 (5), (6), (7) and (8) of this subsection is \$8,000 or more, no  
21 deduction ~~shall be~~ is allowed under this subdivision; and

22 (ii) Where the total modification under subdivisions (1), (2),  
23 (5), (6), (7) and (8) of this subsection is less than \$8,000 per  
24 person, the total modification allowed under this subdivision for

1 all gross income received by that person ~~shall be~~ is limited to the  
2 difference between \$8,000 and the sum of subdivisions (1), (2),  
3 (5), (6), (7) and (8) of this subsection;

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

14 (11) For taxable years beginning after December 31, 2014, for  
15 a taxpayer who receives Social Security benefits paid by the Social  
16 Security Administration as Old Age, Survivors and Disability  
17 Insurance Benefits as provided in §42 U.S.C. 401 et. seq. or as  
18 Supplemental Security Income for the Aged, Blind, and Disabled as  
19 provided in §42 U.S.C. 1381 et. seq., to the extent included in  
20 gross income for federal income tax purposes for the taxable year;

21 ~~(11)~~ (12) For the 2006 taxable year only, severance wages  
22 received by a taxpayer from an employer as the result of the  
23 taxpayer's permanent termination from employment through a  
24 reduction in force and through no fault of the employee, not to



1 exceed \$30,000. For purposes of this subdivision:

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

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

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

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

23 ~~(12)~~ (13) Any other income which this state is prohibited from  
24 taxing under the laws of the United States.

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

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

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

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

19           (2) Changes in the language of this section enacted in the  
20 year 2002 ~~shall~~ apply to taxable years beginning after December 31,  
21 2002.

22           (3) Changes in the language of this section enacted in the  
23 year 2014, apply to taxable years beginning after December 31,  
24 2013.

NOTE: The purpose of this bill is to exempt Social Security benefits and certain pension benefits from West Virginia personal income tax.

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