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**H. B. 2649**

(By Delegates McGeehan, Ihle, Hill, Howell, J. Nelson, Shott,  
Azinger, Lane, Faircloth, Moffatt and Frich)

[Introduced February 6, 2015; 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 personal income tax; exempting social security benefits from personal income tax.

*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.

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

(1) Interest income on obligations of any state other than this state or of a political

1 subdivision of any other state unless created by compact or agreement to which this state is a party;

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

5 (3) Any deduction allowed when determining federal adjusted gross income for federal  
6 income tax purposes for the taxable year that is not allowed as a deduction under this article for the  
7 taxable year;

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

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

14 (6) The amount of a lump sum distribution for which the taxpayer has elected under Section  
15 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income  
16 tax purposes; and

17 (7) Amounts withdrawn from a medical savings account established by or for an individual  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

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

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

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

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

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

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

1 includable in gross income for federal income tax purposes for taxable years beginning after  
2 December 31, 1986; and the first \$2,000 of benefits received under any federal retirement system  
3 to which Title 4 U.S.C. §111 applies: *Provided, however,* That the total modification under this  
4 paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation shall  
5 apply to all returns or amended returns filed after December 31, 1988;

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

12 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January 1,  
13 2003, an amount equal to two percent multiplied by the number of years of active duty in the Armed  
14 Forces of the United States of America with the product thereof multiplied by the first \$30,000 of  
15 military retirement income, including retirement income from the regular Armed Forces, reserves  
16 and National Guard paid by the United States or by this state after December 31, 2000, including any  
17 survivorship annuities, to the 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 first \$20,000 of military  
20 retirement income, including retirement income from the regular Armed Forces, reserves and  
21 National Guard paid by the United States or by this state after December 31, 2002, including any  
22 survivorship annuities, to the extent included in gross income for federal income tax purposes for

1 the taxable year.

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

6 (8) For taxable years beginning after December 31, 2015, any social security benefits  
7 received pursuant to Title 42 U.S.C., Chapter 7.

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

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

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

22 ~~(9)~~ (10) Federal adjusted gross income in the amount of \$8,000 received from any source

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

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

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

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

17 ~~(12)~~ (12) For the 2006 taxable year only, severance wages received by a taxpayer from an  
18 employer as the result of the taxpayer's permanent termination from employment through a reduction  
19 in force and through no fault of the employee, not to exceed \$30,000. For purposes of this  
20 subdivision:

21 (i) The term "severance wages" means any monetary compensation paid by the employer in  
22 the taxable year as a result of permanent termination from employment in excess of regular annual

1 wages or regular annual salary;

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to exempt social security benefits from personal income tax.

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