

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2253

**FISCAL
NOTE**

2015 Carryover

(BY DELEGATE RODIGHIERO)

[Introduced January 13, 2016; referred to the
Committee on Pensions and Retirement then
Finance.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

PART II. RESIDENTS.

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

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

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

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

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

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

the taxable year;

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

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

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

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

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

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

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

39 (3) ~~Any~~ Amounts included in federal adjusted gross income for federal income tax
40 purposes for the taxable year that ~~is~~ are not included in federal adjusted gross income under this
41 article for the taxable year;

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

45 (5) Annuities, retirement allowances, returns of contributions and any other benefit
46 received under the West Virginia Public Employees Retirement System, the West Virginia State
47 Teachers' Retirement System and all forms of military retirement, including regular Armed Forces,
48 Reserves and National Guard, including any survivorship annuities, ~~derived therefrom~~ to the
49 extent includable in gross income for federal income tax purposes. ~~—Provided, That~~
50 Notwithstanding any contrary provisions in this code, ~~to the contrary~~ this modification ~~shall be~~ is
51 limited to the first \$2,000 of benefits received under the West Virginia Public Employees
52 Retirement System, the West Virginia State Teachers' Retirement System, ~~and,~~ including any
53 survivorship annuities, ~~derived therefrom~~ to the extent includable in gross income for federal
54 income tax purposes for taxable years beginning after December 31, ~~one thousand nine hundred~~
55 ~~eighty-six~~ 2015 and the first ~~two thousand dollars~~ \$20,000 of benefits received under any federal
56 retirement system to which Title 4 U.S.C. §111 applies. ~~—Provided, however, That~~ However, the
57 total modification under this ~~paragraph shall~~ subdivision may not exceed ~~two thousand dollars~~
58 \$20,000 per person receiving retirement benefits and this limitation ~~shall~~ applies to all returns or
59 amended returns filed for taxable years beginning after December 31, ~~one thousand nine hundred~~
60 ~~eighty-eight~~ 2015;

61 (6) Retirement income received in the form of pensions and annuities after December 31,
62 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West

63 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police
64 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any
65 survivorship annuities, ~~derived from any of these programs,~~ to the extent includable in gross
66 income for federal income tax purposes;

67 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January
68 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the
69 Armed Forces of the United States of America, ~~with the product thereof~~ multiplied by the first
70 \$30,000 of military retirement income, including retirement income from the regular Armed
71 Forces, Reserves and National Guard paid by the United States or by this state after December
72 31, 2000, including any survivorship annuities, to the extent included in gross income for federal
73 income tax purposes for the taxable year. For taxable years ending after December 31, 2015,
74 persons claiming a modification for military retirement pursuant to subdivision (5), subsection (c)
75 of this section and modification under this subdivision may receive a combined modification of
76 \$22,000 total under the two subdivisions.

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

82 (C) ~~In the event that~~ If any of the provision of this subdivision ~~are~~ is found by a court of
83 competent jurisdiction to violate ~~either~~ the Constitution of this state or of the United States or is
84 ~~held to be~~ extended to persons other than specified in this subdivision, this subdivision ~~shall~~
85 becomes null and void. ~~by operation of law~~

86 (8) Federal adjusted gross income in the amount of \$8,000 received from any source after

87 December 31, 1986, by any person who has attained the age of sixty-five on or before the last
88 day of the taxable year or by any person certified by proper authority as permanently and totally
89 disabled, regardless of age, on or before the last day of the taxable year, to the extent includable
90 in federal adjusted gross income for federal tax purposes. ~~—Provided, That~~ If a person has a
91 medical certification from a prior year and he or she is still permanently and totally disabled, a
92 copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the
93 federal disability income tax exclusion is acceptable. ~~—Provided, however, That~~ However:

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

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

101 (9) Federal adjusted gross income in the amount of \$8,000 received from any source after
102 December 31, 1986, by the surviving spouse of any person who had attained the age of sixty-five
103 or who had been certified as permanently and totally disabled, to the extent includable in federal
104 adjusted gross income for federal tax purposes. ~~—Provided, That~~ However:

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

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

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

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

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

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

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

(iv) The term "corporation" means any corporation, joint-stock company or association and

any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument; and

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

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

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

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

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

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

(3) Changes in the language of this section enacted in the year 2015 apply to taxable years beginning after December 31, 2015.

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.