

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2042

**FISCAL
NOTE**

BY DELEGATE CAPUTO

[Introduced February 8, 2017; 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; and to
 2 amend and reenact §20-7-1 of said code, all relating to pension benefits exempt from state
 3 income taxation; and including Division of Natural Resources police in the class of law-
 4 enforcement officers exempted.

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; 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 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 added to
 5 federal adjusted gross income unless already included therein the following items:

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

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

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

15 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or

16 securities the income from which is exempt from tax under this article, to the extent deductible in
17 determining federal adjusted gross income;

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

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

24 (7) Amounts withdrawn from a medical savings account established by or for an individual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

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

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

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

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

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

43 income tax purposes;

44 (5) Annuities, retirement allowances, returns of contributions and any other benefit
45 received under the West Virginia Public Employees Retirement System, the West Virginia State
46 Teachers Retirement System and all forms of military retirement, including regular Armed Forces,
47 Reserves and National Guard, including any survivorship annuities derived therefrom, to the
48 extent includable in gross income for federal income tax purposes: *Provided*, That
49 notwithstanding any provisions in this code to the contrary this modification shall be limited to the
50 first \$2,000 of benefits received under the West Virginia Public Employees Retirement System,
51 the West Virginia State Teachers Retirement System and, including any survivorship annuities
52 derived therefrom, to the extent includable in gross income for federal income tax purposes for
53 taxable years beginning after December 31, 1986; and the first \$2,000 of benefits received under
54 any federal retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the
55 total modification under this paragraph shall not exceed \$2,000 per person receiving retirement
56 benefits and this limitation shall apply to all returns or amended returns filed after December 31,
57 1988;

58 (6) Retirement income received in the form of pensions and annuities after December 31,
59 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West
60 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police
61 Retirement System, ~~or~~ the West Virginia Deputy Sheriff Retirement System, or the West Virginia
62 Public Employees Retirement System if paid to police officers retired from the Division of Natural
63 Resources, including those formerly classified as conservation officers, including any survivorship
64 annuities derived from any of these programs, to the extent includable in gross income for federal
65 income tax purposes;

66 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January
67 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the
68 Armed Forces of the United States of America with the product thereof multiplied by the first
69 \$30,000 of military retirement income, including retirement income from the regular Armed

70 Forces, Reserves and National Guard paid by the United States or by this state after December
71 31, 2000, including any survivorship annuities, to the extent included in gross income for federal
72 income tax purposes for the taxable year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 (3) Changes in the language of this section enacted in the year 2017 apply to taxable
152 years beginning after December 31, 2017.

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 and programs are under the
2 immediate supervision and direction of the division law-enforcement officer selected by the
3 director and designated as chief natural resources police officer as provided in section thirteen,
4 article one of this chapter.

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

14 (c) The chief natural resources police officer, acting under supervision of the director, is
15 authorized to select and appoint emergency natural resources police officers for a limited period
16 for effective enforcement of the provisions of this chapter when considered necessary because
17 of emergency or other unusual circumstances. The emergency natural resources police officers
18 shall be selected from qualified civil service personnel of the division, except in emergency
19 situations and circumstances when the director may designate officers, without regard to civil

20 service requirements and qualifications, to meet law-enforcement needs. Emergency natural
21 resources police officers shall exercise all powers and duties prescribed in section four of this
22 article for full-time salaried natural resources police officers except the provisions of subdivision
23 (8) of said section.

24 (d) The chief natural resources police officer, acting under supervision of the director, is
25 also authorized to select and appoint as special natural resources police officers any full-time civil
26 service employee who is assigned to, and has direct responsibility for management of, an area
27 owned, leased or under the control of the division and who has satisfactorily completed a course
28 of training established and administered by the chief natural resources police officer, when the
29 action is considered necessary because of law-enforcement needs. The powers and duties of a
30 special natural resources police officer, appointed under this provision, is the same within his or
31 her assigned area as prescribed for full-time salaried natural resources police officers. The
32 jurisdiction of the person appointed as a special natural resources police officer, under this
33 provision, shall be limited to the division area or areas to which he or she is assigned and directly
34 manages.

35 (e) The Director of the Division of Forestry is authorized to appoint and revoke Division of
36 Forestry special natural resources police officers who are full-time civil service personnel who
37 have satisfactorily completed a course of training as required by the Director of the Division of
38 Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources
39 police officers are set forth by the Director of the Division of Forestry pursuant to article three of
40 this chapter, and articles one-a and one-b, chapter nineteen of this code.

41 (f) The chief natural resources police officer, with the approval of the director, has the
42 power and authority to revoke any appointment of an emergency natural resources police officer
43 or of a special natural resources police officer at any time.

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

46 (h) The chief natural resources police officer shall designate the area of primary residence
47 of each natural resources police officer, including himself or herself. Since the area of business
48 activity of the division is actually anywhere within the territorial confines of the State of West
49 Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the
50 area of primary assignment and still within the state.

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

56 (j) After June 30, 2010, all those full time law-enforcement officers employed by the
57 Division of Natural Resources as conservation officers shall be titled and known as natural
58 resources police officers. Wherever used in this code the term "conservation officer," or its plural,
59 means "natural resources police officer," or its plural, respectively.

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

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

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