

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2110

(BY DELEGATES RODIGHIERO, AND HICKS AND ELDRIDGE)

[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, relating
 2 to personal income tax; increasing the amount of retirement income to be excluded from
 3 the gross income of individuals receiving retirement benefits under the West Virginia
 4 Public Employees Retirement System and the West Virginia State Teachers Retirement
 5 System; and providing an effective date.

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.

§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
 2 his or her federal adjusted gross income as defined in the laws of the United States for the
 3 taxable 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
25 individual under section twenty, article fifteen, chapter thirty-three of this code or section fifteen,
26 article sixteen of said chapter that are used for a purpose other than payment of medical
27 expenses, as defined in those sections.

28 (c) *Modifications reducing federal adjusted gross income.* -- There shall be subtracted
29 from 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
35 laws of the United States or of the State of West Virginia, including federal interest or dividends
36 paid to shareholders of a regulated investment company, under Section 852 of the Internal
37 Revenue Code for taxable years ending after June 30, 1987;

38 (3) Any amount included in federal adjusted gross income for federal income tax
39 purposes for the taxable year that is not included in federal adjusted gross income under this
40 article for the 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
47 Forces, Reserves and National Guard, including any survivorship annuities derived therefrom,
48 to the 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
50 the first ~~\$2,000~~ \$20,000 of benefits received under the West Virginia Public Employees
51 Retirement System, the West Virginia State Teachers Retirement System and, including any
52 survivorship annuities derived therefrom, to the extent includable in gross income for federal
53 income tax purposes for taxable years beginning after December 31, 1986; and the first \$2,000
54 of benefits received under any federal retirement system to which Title 4 U.S.C. §111 applies:
55 *Provided, however, That* the total modification under this paragraph shall not exceed \$2,000 per
56 person receiving federal retirement benefits and this limitation shall apply to all returns or
57 amended returns filed after December 31, 1988;

58 (6) Retirement income received in the form of pensions and annuities after December
59 31, 1979, under any West Virginia Police, West Virginia Firemen's Retirement System or the
60 West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police
61 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any
62 survivorship annuities derived from any of these programs, to the extent includable in gross
63 income for federal income tax purposes;

64 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to
65 January 1, 2003, an amount equal to two percent multiplied by the number of years of active
66 duty in the Armed Forces of the United States of America with the product thereof multiplied by

67 the first \$30,000 of military retirement income, including retirement income from the regular
68 Armed Forces, Reserves and National Guard paid by the United States or by this state after
69 December 31, 2000, including any survivorship annuities, to the extent included in gross income
70 for federal income tax purposes for the taxable year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

145 (g) *Effective date.* -- (1) Changes in the language of this section enacted in the year
146 2000 shall apply to taxable years beginning after December 31, 2000.

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

149 (3) Changes in the language of this section enacted in the year 2017 shall apply to
150 taxable years beginning after December 31, 2016.

NOTE: The purpose of this bill is to increase from \$2,000 to \$20,000 the amount of retirement income to be excluded from the gross income of individuals receiving retirement benefits under the West Virginia Public Employees Retirement System and the West Virginia State Teachers Retirement System. The bill also provides an effective date.

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