

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2323**

BY DELEGATES MCGEEHAN, HOWELL, SHOTT AND FRICH

[Introduced February 10, 2017; Referred  
to the Committee on Senior Citizen Issues 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; exempting social security benefits from personal income tax.

*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 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 extent  
48 includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any  
49 provisions in this code to the contrary this modification shall be limited to the first \$2,000 of  
50 benefits received under the West Virginia Public Employees Retirement System, the West Virginia  
51 State Teachers Retirement System and, including any survivorship annuities derived therefrom,  
52 to the extent includable in gross income for federal income tax purposes for taxable years  
53 beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal  
54 retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total  
55 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, 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 January  
65 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the  
66 Armed Forces of the United States of America with the product thereof multiplied by the first  
67 \$30,000 of military retirement income, including retirement income from the regular Armed  
68 Forces, reserves and National Guard paid by the United States or by this state after December

69 31, 2000, including any survivorship annuities, to the extent included in gross income for federal  
70 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 any  
74 survivorship annuities, to the extent included in gross income for federal income tax purposes for  
75 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) For taxable years beginning after December 31, 2017, any social security benefits  
81 received pursuant to Title 42 U.S.C., Chapter 7.

82 ~~(8)~~ (9) Federal adjusted gross income in the amount of \$8,000 received from any source  
83 after December 31, 1986, by any person who has attained the age of sixty-five on or before the  
84 last day of the taxable year, or by any person certified by proper authority as permanently and  
85 totally disabled, regardless of age, on or before the last day of the taxable year, to the extent  
86 includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person  
87 has a medical certification from a prior year and he or she is still permanently and totally disabled,  
88 a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for  
89 the 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)~~ (10) Federal adjusted gross income in the amount of \$8,000 received from any source  
98 after December 31, 1986, by the surviving spouse of any person who had attained the age of  
99 sixty-five or who had been certified as permanently and totally disabled, to the extent includable  
100 in federal 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 ~~(40)~~ (11) Contributions from any source to a medical savings account established by or  
108 for the individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or  
109 section fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent  
110 includable in federal adjusted gross income for federal tax purposes: *Provided*, That the amount  
111 subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000 plus  
112 interest earned on the account. For married individuals filing a joint return, the maximum  
113 deduction is computed separately for each individual;

114 ~~(44)~~ (12) For the 2006 taxable year only, severance wages received by a taxpayer from  
115 an 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)~~ (13) 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.

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 a heading or the present law, and underscoring indicates new language that would be added.