

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **Senate Bill 472**

BY SENATORS SYPOLT AND BALDWIN

[Introduced January 30, 2019; Referred  
to the Committee on Pensions; and then to the Committee  
on Finance]



1 A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating  
2 to exempting retirement income of members of certain uniformed services from state  
3 income tax.

*Be it enacted by the Legislature of West Virginia:*

**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 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24 (7) Amounts withdrawn from a medical savings account established by or for an individual  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 §33-15-20 of this code or §33-16-15 of this code that are used for a purpose other than  
26 payment of medical expenses, as defined in those sections.

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

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

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

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

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

43 (5) Annuities, retirement allowances, returns of contributions, and any other benefit  
44 received under the West Virginia Public Employees Retirement System, and the West Virginia  
45 State Teachers Retirement System, including any survivorship annuities derived therefrom, to the  
46 extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding

47 any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of  
48 benefits received under the West Virginia Public Employees Retirement System, the West Virginia  
49 State Teachers Retirement System, and, including any survivorship annuities derived therefrom,  
50 to the extent includable in gross income for federal income tax purposes for taxable years  
51 beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal  
52 retirement system to which Title 4 U.S.C. §111 applies: *Provided, however,* That the total  
53 modification under this subdivision shall not exceed \$2,000 per person receiving retirement  
54 benefits and this limitation shall apply to all returns or amended returns filed after December 31,  
55 1988;

56 (6) Retirement income received in the form of pensions and annuities after December 31,  
57 1979, under any West Virginia police, West Virginia Firemen's Retirement System, or the West  
58 Virginia State Police Death, Disability, and Retirement Fund, the West Virginia State Police  
59 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any  
60 survivorship annuities derived from any of these programs, to the extent includable in gross  
61 income for federal income tax purposes;

62 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January  
63 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the  
64 armed forces of the United States of America with the product thereof multiplied by the first  
65 \$30,000 of military retirement income, including retirement income from the regular armed forces,  
66 reserves, and National Guard paid by the United States or by this state after December 31, 2000,  
67 including any survivorship annuities, to the extent included in gross income for federal income tax  
68 purposes for the taxable year.

69 (B) For taxable years beginning after December 31, 2000, the first \$20,000 of military  
70 retirement income, including retirement income from the regular armed forces, reserves, and  
71 National Guard paid by the United States or by this state after December 31, 2002, including any

72 survivorship annuities, to the extent included in gross income for federal income tax purposes for  
73 the taxable year.

74 (C) For ~~taxable years~~ the taxable year beginning after December 31, 2017, military  
75 retirement income, including retirement income from the regular armed forces, reserves, and  
76 National Guard paid by the United States or by this state after December 31, 2017, including any  
77 survivorship annuities, to the extent included in federal adjusted gross income for the taxable  
78 year. For taxable years beginning after December 31, 2018, retirement income from the  
79 uniformed services, including the Army, Navy, Marines, Air Force, Coast Guard, Public Health  
80 Service, National Oceanic Atmospheric Administration, reserves, and National Guard, paid by the  
81 United States or by this state after December 31, 2018, including any survivorship annuities, to  
82 the extent included in federal adjusted gross income for the taxable year.

83 (D) In the event that any of the provisions of this subdivision are found by a court of  
84 competent jurisdiction to violate either the Constitution of this state or of the United States, or is  
85 held to be extended to persons other than specified in this subdivision, this subdivision shall  
86 become null and void by operation of law;

87 (8) Federal adjusted gross income in the amount of \$8,000 received from any source after  
88 December 31, 1986, by any person who has attained the age of 65 on or before the last day of  
89 the taxable year, or by any person certified by proper authority as permanently and totally  
90 disabled, regardless of age, on or before the last day of the taxable year, to the extent includable  
91 in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical  
92 certification from a prior year and he or she is still permanently and totally disabled, a copy of the  
93 original certificate is acceptable as proof of disability. A copy of the form filed for the federal  
94 disability income tax exclusion is acceptable: *Provided, however*, That:

95 (i) Where the total modification under §11-21-12(c)(1), §11-21-12(c)(2), §11-21-12(c)(5),  
96 §11-21-12(c)(6), §11-21-12(c)(7), and §11-21-12(c)(8) of this code is \$8,000 per person or more,  
97 no deduction shall be allowed under this subdivision; and

98           (ii) Where the total modification under §11-21-12(c)(1), §11-21-12(c)(2), §11-21-12(c)(5),  
99 §11-21-12(c)(6), §11-21-12(c)(7), and §11-21-12(c)(8) of this code is less than \$8,000 per person,  
100 the total modification allowed under this subdivision for all gross income received by that person  
101 shall be limited to the difference between \$8,000 and the sum of modifications under §11-21-  
102 12(c)(1), §11-21-12(c)(2), §11-21-12(c)(5), §11-21-12(c)(6), and §11-21-12(c)(7) of this code;

103           (9) Federal adjusted gross income in the amount of \$8,000 received from any source after  
104 December 31, 1986, by the surviving spouse of any person who had attained the age of 65 or  
105 who had been certified as permanently and totally disabled, to the extent includable in federal  
106 adjusted gross income for federal tax purposes: *Provided*, That:

107           (i) Where the total modification under §11-21-12(c)(1), §11-21-12(c)(2), §11-21-12(c)(5),  
108 §11-21-12(c)(6), and §11-21-12(c)(7) of this code is \$8,000 or more, no deduction shall be  
109 allowed under this subdivision; and

110           (ii) Where the total modification under §11-21-12(c)(1), §11-21-12(c)(2), §11-21-12(c)(5),  
111 §11-21-12(c)(6), and §11-21-12(c)(7) of this code is less than \$8,000 per person, the total  
112 modification allowed under this subdivision for all gross income received by that person shall be  
113 limited to the difference between \$8,000 and the sum of §11-21-12(c)(1), §11-21-12(c)(2), §11-  
114 21-12(c)(5), §11-21-12(c)(6), and §11-21-12(c)(7) of this code;

115           (10) Contributions from any source to a medical savings account established by or for the  
116 individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account,  
117 to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That  
118 the amount subtracted pursuant to this subdivision for any one taxable year may not exceed  
119 \$2,000 plus interest earned on the account. For married individuals filing a joint return, the  
120 maximum deduction is computed separately for each individual;

121           (11) For the 2006 taxable year only, severance wages received by a taxpayer from an  
122 employer as the result of the taxpayer's permanent termination from employment through a

123 reduction in force and through no fault of the employee, not to exceed \$30,000. For purposes of  
124 this subdivision:

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

128 (ii) The term “reduction in force” means a net reduction in the number of employees  
129 employed by the employer in West Virginia, determined based on total West Virginia employment  
130 of the employer’s controlled group;

131 (iii) The term “controlled group” means one or more chains of corporations connected  
132 through stock ownership with a common parent corporation if stock possessing at least 50 percent  
133 of the voting power of all classes of stock of each of the corporations is owned directly or indirectly  
134 by one or more of the corporations and the common parent owns directly stock possessing at  
135 least 50 percent of the voting power of all classes of stock of at least one of the other corporations;

136 (iv) The term “corporation” means any corporation, joint-stock company or association and  
137 any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a  
138 certificate of interest or ownership or similar written instrument; and

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

141 (d) *Modification for West Virginia fiduciary adjustment.* — There shall be added to or  
142 subtracted from federal adjusted gross income, as the case may be, the taxpayer’s share, as  
143 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-  
144 21-19 of this code.

145 (e) *Partners and S corporation shareholders.* — The amounts of modifications required to  
146 be made under this section by a partner or an S corporation shareholder, which relate to items of  
147 income, gain, loss, or deduction of a partnership or an S corporation, shall be determined under  
148 §11-21-17 of this code.



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

153           (g) *Effective date.* —

154           (1) Changes in the language of this section enacted in the year 2000 shall apply to taxable  
155 years beginning after December 31, 2000.

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

NOTE: The purpose of this bill is to exempt retirement income of members of additional uniformed services from 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.