

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2529

FISCAL  
NOTE

BY DELEGATES SWARTZMILLER, DISERIO, LAVENDER-  
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[Introduced January 18, 2019; Referred  
to the Committee on Senior, Children, and Family  
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; and exempting social security benefits from state personal income  
 3 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 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 §33-15-20 of this code or §33-16-15 of said 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 from  
28 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 paragraph 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  
66 Forces, reserves and National Guard paid by the United States or by this state after December  
67 31, 2000, including any survivorship annuities, to the extent included in gross income for federal  
68 income tax 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 beginning after December 31, 2017, military retirement income,  
75 including retirement income from the regular Armed Forces, Reserves and National Guard paid  
76 by the United States or by this state after December 31, 2017, including any survivorship  
77 annuities, to the extent included in federal adjusted gross income for the taxable year.

78 (D) 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 65 on or before the last day of  
84 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 medical  
87 certification from a prior year and he or she is still permanently and totally disabled, a copy of the  
88 original certificate is acceptable as proof of disability. A copy of the form filed for the federal  
89 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 65 or

99 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 §33-15-20 of this code or §33-16-15 of said code, plus interest earned on  
109 the account, to the extent includable in federal adjusted gross income for federal tax purposes:  
110 *Provided*, That the amount subtracted pursuant to this subdivision for any one taxable year may  
111 not exceed \$2,000 plus interest earned on the account. For married individuals filing a joint return,  
112 the maximum deduction is computed separately for each individual;

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

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

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

123 (iii) The term "controlled group" means one or more chains of corporations connected  
124 through stock ownership with a common parent corporation if stock possessing at least 50 percent

125 of the voting power of all classes of stock of each of the corporations is owned directly or indirectly  
126 by one or more of the corporations and the common parent owns directly stock possessing at  
127 least 50 percent of the voting power of all classes of stock of at least one of the other corporations;

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

133 (13) For taxable years beginning after December 31, 2019, any social security benefits  
134 received pursuant to Title 42 U.S.C. Chapter 7.

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 §11-  
138 21-19 of this code.

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 §11-21-17 of this code.

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.* --

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

150 (2) Changes in the language of this section enacted in the year 2002 shall apply to taxable

151 years beginning after December 31, 2002.

NOTE: The purpose of this bill is to exempt social security benefits from West Virginia 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.