

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4202

BY DELEGATES ESTEP-BURTON, ROBINSON, ROWE,  
PUSHKIN, WALKER, DISERIO, LAVENDER-BOWE, CAPUTO,

C. THOMPSON AND ANGELUCCI

[Introduced January 14, 2020; Referred  
to the Committee on Finance]

1 A BILL to amend and reenact §11-21-16 of the Code of West Virginia, 1931, as amended, relating  
2 to allowing a personal income tax deduction for a stillborn child.

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

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-16. West Virginia personal exemptions of resident individual.**

1 (a) *General.* – For any tax imposed under the provisions of this article with respect to any  
2 taxable year prior to January 1, 1983, a resident individual shall be allowed a West Virginia  
3 exemption of \$600 for each exemption for which he or she is entitled to a deduction for the taxable  
4 year for federal income tax purposes. With respect to any taxable year beginning on or after  
5 January 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any  
6 taxable year beginning on or after January 1, 1984, said exemption shall be \$800; and with  
7 respect to any taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000.

8 (b) *Husband and wife.* – If the West Virginia income taxes of a husband and wife are  
9 separately determined but their federal income tax is determined on a joint return, each of them  
10 shall be separately entitled, with respect to any taxable year prior to January 1, 1983, to a West  
11 Virginia exemption of \$600 for each federal exemption to which he or she would be separately  
12 entitled for the taxable year if their federal income taxes had been determined on separate returns.  
13 With respect to any taxable year beginning on or after January 1, 1983, and prior to January 1,  
14 1984, said exemption shall be \$700; with respect to any taxable year beginning on or after January  
15 1, 1984, said exemption shall be \$800; and with respect to any taxable year beginning on or after  
16 January 1, 1987, said exemption shall be \$2,000.

17 (c) *Surviving spouse.* – For taxable years beginning after December 31, 1986, a surviving  
18 spouse shall be allowed one additional exemption of \$2,000 for the two taxable years beginning  
19 after the year of death of the deceased spouse.

20 For purposes of this section and section 12 of this article, a surviving spouse means a  
21 taxpayer whose spouse died during the taxable year prior to the taxable year for which the annual

22 return is being filed and who has not remarried at any time before the end of the taxable year for  
23 which the annual return is being filed.

24 (d) *Certain dependents.* – Notwithstanding any provisions in this section, for taxable years  
25 beginning after December 31, 1986, a resident individual whose exemption amount for federal  
26 tax purposes is zero by virtue of section 151(d)(2) of the Internal Revenue Code of 1986, shall be  
27 allowed a single West Virginia exemption in the amount of \$500.

28 (e) *Personal exemption deduction for stillborn children.*

29 (1) In general. -- §11-21-16(d) of this code of 1986 (defining certain dependents) shall be  
30 considered for purposes of state taxes to include:

31 Stillborn children.

32 (i) In General. — A stillborn child shall be treated as a dependent for the taxable year in  
33 which the child is extracted or delivered, if the child would be so treated had the child been alive.

34 (ii) Exception for aborted children. — §11-21-16(e)(A) (i) of this code may not apply to any  
35 child who is stillborn by reason of an abortion.

36 (iii) Verification. — This subparagraph may not apply to a stillborn child unless a state fetal  
37 death certificate is issued for the child.

38 (iv) Tax Identification Number (“TIN”) not required. — No TIN may be required in applying  
39 for tax exemption of a stillborn child.

40 (2) Effective date. — This section applies to stillborn children extracted or delivered after  
41 the date of the enactment of this legislation in taxable years ending after that date.

NOTE: The purpose of this bill is to allow the personal tax exemption deduction for a stillborn child.

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