

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2580**

BY DELEGATE RODIGHIERO

[Introduced January 22, 2019; 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 the reduction of state income taxes for certain state and federal retirees by increasing  
 3 the exemption on retirement income in calculating the federal gross income for state  
 4 personal income tax purposes.

*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~~ The following  
 5 items are added to federal adjusted gross income, unless already included: ~~therein, the following~~  
 6 ~~items~~

7 (1) Interest income on obligations of any state other than this state or of a political  
 8 subdivision of any other state unless created by compact or agreement ~~to which~~ with this state;  
 9 ~~is a party~~

10 (2) Interest or dividend income on obligations or securities of any authority, commission  
 11 or instrumentality of the United States, which the laws of the United States exempt from federal  
 12 income tax but not from state income taxes;

13 (3) Any deduction allowed when determining federal adjusted gross income for federal  
 14 income tax purposes for the taxable year that is not allowed as a deduction under this article for  
 15 the taxable year;

16 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or  
 17 securities the income from which is exempt from tax under this article, to the extent deductible in  
 18 determining federal adjusted gross income;

19 (5) Interest on a depository institution tax-exempt savings certificate which is allowed as

20 an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the  
21 federal taxable year;

22 (6) The amount of a lump sum distribution ~~for which~~ the taxpayer has elected under  
23 Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for  
24 federal income tax purposes; and

25 (7) Amounts withdrawn from a medical savings account established by or for an individual  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

28 (c) *Modifications reducing federal adjusted gross income.* -- ~~There shall be~~ The following  
29 items are subtracted 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 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~~ Amounts included in federal adjusted gross income for federal income tax  
39 purposes for the taxable year that ~~is~~ are 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, and the West Virginia

46 State Teachers Retirement System, including any survivorship annuities derived therefrom, to the  
47 extent includable in gross income for federal income tax purposes. ~~Provided, That~~  
48 Notwithstanding any contrary provisions in this code ~~to the contrary~~ this modification shall be  
49 limited to the first \$2,000 of benefits received under the West Virginia Public Employees  
50 Retirement System, the West Virginia State Teachers Retirement System ~~and~~ including any  
51 survivorship annuities derived therefrom, to the extent includable in gross income for federal  
52 income tax purposes for taxable years beginning after December 31, ~~1986~~ 2019 and the first  
53 ~~\$2,000~~ \$20,000 of benefits received under any federal retirement system to which Title 4 U.S.C.  
54 §111 applies. ~~Provided, however, That~~ However, the total modification under this ~~paragraph shall~~  
55 subdivision may not exceed ~~\$2,000~~ \$20,000 per person receiving retirement benefits and this  
56 limitation ~~shall apply~~ applies to all returns or amended returns filed ~~after December 31, 1988~~ for  
57 taxable years beginning after December 31, 2019;

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, 2000, 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) For taxable years beginning after December 31, 2017, military retirement income,  
77 including retirement income from the regular Armed Forces, Reserves and National Guard paid  
78 by the United States or by this state after December 31, 2017, including any survivorship  
79 annuities, to the extent included in federal adjusted gross income for the taxable year.

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

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

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

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

98 and the sum of modifications under subdivisions (1), (2), ~~(5)~~, (6) and (7) of this subsection;

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

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

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

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

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

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

122 (ii) The term "reduction in force" means a net reduction in the number of employees  
123 employed by the employer in West Virginia, determined based on total West Virginia employment

124 of the employer's controlled group;

125 (iii) The term "controlled group" means one or more chains of corporations connected  
126 through stock ownership with a common parent corporation if stock possessing at least 50 percent  
127 of the voting power of all classes of stock of each of the corporations is owned directly or indirectly  
128 by one or more of the corporations and the common parent owns directly stock possessing at  
129 least 50 percent of the voting power of all classes of stock of at least one of the 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) 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 A~~ 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, is added to or subtracted from federal adjusted gross income, as the case may  
139 be.

140 (e) *Partners and S corporation shareholders.* -- The amounts of modifications required to  
141 be made under this section by a partner or an S corporation shareholder, which relate to items of  
142 income, gain, loss or deduction of a partnership or an S corporation, ~~shall be~~ is determined under  
143 §11-21-17 of this code.

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

148 (g) *Effective date.* --

149 (1) Changes in the language of this section enacted in the year 2000 shall apply to taxable

150 years beginning after December 31, 2000.

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

153 (3) Changes in the language of this section enacted in the year 2019 apply to taxable  
154 years beginning after December 31, 2019.

NOTE: The purpose of this bill is to reduce state income taxes for state and federal retirees by increasing the exemption on retirement income in calculating the federal gross income for state personal income tax purposes.

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