

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2208

**FISCAL
NOTE**

BY DELEGATES MCGEEHAN AND ROWE

[Introduced February 10, 2021; Referred 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 personal income tax; exempting social security benefits from personal income tax.

Be it enacted by the Legislature of West Virginia:

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24 (7) Amounts withdrawn from a medical savings account established by or for an individual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 §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of
26 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, the West Virginia State
45 Teachers Retirement System and all forms of military retirement, including regular Armed Forces,
46 reserves and National Guard, including any survivorship annuities derived therefrom, to the extent
47 includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any
48 provisions in this code to the contrary this modification shall be limited to the first \$2,000 of
49 benefits received under the West Virginia Public Employees Retirement System, the West Virginia
50 State Teachers Retirement System and, including any survivorship annuities derived therefrom,
51 to the extent includable in gross income for federal income tax purposes for taxable years
52 beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal
53 retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total
54 modification under this paragraph shall not exceed \$2,000 per person receiving retirement
55 benefits and this limitation shall apply to all returns or amended returns filed after December 31,
56 1988;

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

63 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January
64 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the
65 Armed Forces of the United States of America with the product thereof multiplied by the first
66 \$30,000 of military retirement income, including retirement income from the regular Armed
67 Forces, reserves and National Guard paid by the United States or by this state after December

68 31, 2000, including any survivorship annuities, to the extent included in gross income for federal
69 income tax purposes for the taxable year.

70 (B) For taxable years beginning after December 31, 2002, the first \$20,000 of military
71 retirement income, including retirement income from the regular Armed Forces, reserves and
72 National Guard paid by the United States or by this state after December 31, 2002, including any
73 survivorship annuities, to the extent included in gross income for federal income tax purposes for
74 the taxable year.

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

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

83 (8) For taxable years beginning after December 31, 2020, any social security benefits
84 received pursuant to Title 42 U.S.C., Chapter 7.

85 ~~(8)~~ (9) Federal adjusted gross income in the amount of \$8,000 received from any source
86 after December 31, 1986, by any person who has attained the age of 65 on or before the last day
87 of the taxable year, or by any person certified by proper authority as permanently and totally
88 disabled, regardless of age, on or before the last day of the taxable year, to the extent includable
89 in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical
90 certification from a prior year and he or she is still permanently and totally disabled, a copy of the
91 original certificate is acceptable as proof of disability. A copy of the form filed for the federal
92 disability income tax exclusion is acceptable: *Provided, however*, That:

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

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

100 ~~(9)~~ (10) Federal adjusted gross income in the amount of \$8,000 received from any source
101 after December 31, 1986, by the surviving spouse of any person who had attained the age of 65
102 or who had been certified as permanently and totally disabled, to the extent includable in federal
103 adjusted gross income for federal tax purposes: *Provided, That:*

104 (i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (9) of this
105 subsection is \$8,000 or more, no deduction shall be allowed under this subdivision; and

106 (ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (9) of this
107 subsection is less than \$8,000 per person, the total modification allowed under this subdivision
108 for all gross income received by that person shall be limited to the difference between \$8,000 and
109 the sum of subdivisions (1), (2), (5), (6), (7) and (9) of this subsection;

110 ~~(40)~~ (11) Contributions from any source to a medical savings account established by or
111 for the individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the
112 account, to the extent includable in federal adjusted gross income for federal tax purposes:
113 *Provided, That* the amount subtracted pursuant to this subdivision for any one taxable year may
114 not exceed \$2,000 plus interest earned on the account. For married individuals filing a joint return,
115 the maximum deduction is computed separately for each individual;

116 ~~(44)~~ (12) For the 2006 taxable year only, severance wages received by a taxpayer from
117 an employer as the result of the taxpayer's permanent termination from employment through a

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

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

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

126 (iii) The term "controlled group" means one or more chains of corporations connected
127 through stock ownership with a common parent corporation if stock possessing at least 50 percent
128 of the voting power of all classes of stock of each of the corporations is owned directly or indirectly
129 by one or more of the corporations and the common parent owns directly stock possessing at
130 least 50 percent of the voting power of all classes of stock of at least one of the other corporations;

131 (iv) The term "corporation" means any corporation, joint-stock company or association and
132 any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
133 certificate of interest or ownership or similar written instrument; and

134 ~~(12)~~ (13) Any other income which this state is prohibited from taxing under the laws of the
135 United States.

136 (d) *Modification for West Virginia fiduciary adjustment.* -- There shall be added to or
137 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
138 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-
139 21-19 of this code.

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