

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 662

FISCAL
NOTE

BY SENATORS NELSON, STOLLINGS, UNGER, ROMANO,

AND IHLENFELD

[Introduced March 18, 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 exemptions from personal income tax; providing for an exemption for members of
3 certain uniformed services; exempting Social Security benefits from personal income tax;
4 clarifying that tier one railroad retirement benefits are not subject to personal income tax;
5 specifying an effective date; and removing obsolete language.

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 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
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 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. For taxable
78 years beginning after December 31, 2018, retirement income from the uniformed services,
79 including the Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National
80 Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or
81 by this state after December 31, 2018, including any survivorship annuities, to the extent included
82 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) Decreasing modification for Social Security income.

88 (A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount
89 of Social Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not
90 limited to, Social Security benefits paid by the Social Security Administration as Old Age,
91 Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as
92 Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381
93 *et. seq.* included in federal adjusted gross income for the taxable year shall be allowed as a
94 decreasing modification from federal adjusted gross income when determining West Virginia
95 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-
96 12(c)(8)(D) of this code.

97 (B) For taxable years beginning on or after January 1, 2021, 65 percent of the Social
98 Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to,
99 Social Security benefits paid by the Social Security Administration as Old Age, Survivors and
100 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security
101 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in
102 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
103 from federal adjusted gross income when determining West Virginia taxable income subject to
104 the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

105 (C) For taxable years beginning on or after January 1, 2022, 100 percent of the Social
106 Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to,
107 Social Security benefits paid by the Social Security Administration as Old Age, Survivors and
108 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security
109 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in
110 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
111 from federal adjusted gross income when determining West Virginia taxable income subject to
112 the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

113 (D) The deduction allowed by §11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and §11-21-
114 12(c)(8)(C) of this code are allowable only when the federal adjusted gross income of a married
115 couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single individual
116 or a married individual filing a separate return: Provided, That for taxable years beginning on or
117 after January 1, 2022, this deduction is allowed without any income restrictions.

118 (9) Federal adjusted gross income in the amount of \$8,000 received from any source after
119 December 31, 1986, by any person who has attained the age of 65 on or before the last day of
120 the taxable year, or by any person certified by proper authority as permanently and totally
121 disabled, regardless of age, on or before the last day of the taxable year, to the extent includable
122 in federal adjusted gross income for federal tax purposes: *Provided, That if a person has a medical*

123 certification from a prior year and he or she is still permanently and totally disabled, a copy of the
124 original certificate is acceptable as proof of disability. A copy of the form filed for the federal
125 disability income tax exclusion is acceptable: *Provided, however, That:*

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

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

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

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

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

143 (11) Contributions from any source to a medical savings account established by or for the
144 individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account,
145 to the extent includable in federal adjusted gross income for federal tax purposes: *Provided, That*
146 the amount subtracted pursuant to this subdivision for any one taxable year may not exceed
147 \$2,000 plus interest earned on the account. For married individuals filing a joint return, the
148 maximum deduction is computed separately for each individual; and

149 (12) Any other income which this state is prohibited from taxing under the laws of the
150 United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4)
151 of the Internal Revenue Code.

152 (d) Modification for West Virginia fiduciary adjustment. — There shall be added to or
153 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
154 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-
155 21-19 of this code.

156 (e) Partners and S corporation shareholders. — The amounts of modifications required to
157 be made under this section by a partner or an S corporation shareholder, which relate to items of
158 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
159 §11-21-17 of this code.

160 (f) Husband and wife. — If husband and wife determine their federal income tax on a joint
161 return but determine their West Virginia income taxes separately, they shall determine their West
162 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been
163 determined separately.

164 (g) Effective date. —

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

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

169 (3) Changes in the language of this section enacted in the year 2019 shall apply to taxable
170 years beginning after December 31, 2018.

NOTE: The purpose of this bill is to fully eliminate state income tax for Social Security benefits received by taxpayers for taxable years beginning in 2022.

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