

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4046**

BY DELEGATE KEATON

[Introduced January 12, 2022; 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 allowing a surviving spouse one additional tax exemption of \$20,000 beginning after  
3 December 31, 2022, for two taxable years after the death of the spouse; and defining  
4 surviving spouse.

*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24 (7) Amounts withdrawn from a medical savings account established by or for an individual  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: *Provided, further*, That for taxable years beginning after December 31, 2022, a surviving  
56 spouse shall be allowed one additional exemption of \$20,000 for the two taxable years beginning  
57 after the year of death of the deceased spouse. For purposes of this section a surviving spouse  
58 means a taxpayer whose spouse died during the taxable year prior to the taxable year for which  
59 the annual return is being filed and who has not remarried at any time before the end of the taxable  
60 year for which the annual return is being filed.

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

67 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January  
68 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the  
69 Armed Forces of the United States of America with the product thereof multiplied by the first  
70 \$30,000 of military retirement income, including retirement income from the regular Armed  
71 Forces, Reserves and National Guard paid by the United States or by this state after December

72 31, 2000, including any survivorship annuities, to the extent included in gross income for federal  
73 income tax purposes for the taxable year.

74 (B) For taxable years beginning after December 31, 2000, the first \$20,000 of military  
75 retirement income, including retirement income from the regular Armed Forces, Reserves and  
76 National Guard paid by the United States or by this state after December 31, 2002, including any  
77 survivorship annuities, to the extent included in gross income for federal income tax purposes for  
78 the taxable year.

79 (C) For taxable years beginning after December 31, 2017, military retirement income,  
80 including retirement income from the regular Armed Forces, Reserves and National Guard paid  
81 by the United States or by this state after December 31, 2017, including any survivorship  
82 annuities, to the extent included in federal adjusted gross income for the taxable year. For taxable  
83 years beginning after December 31, 2018, retirement income from the uniformed services,  
84 including the Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National  
85 Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or  
86 by this state after December 31, 2018, including any survivorship annuities, to the extent included  
87 in federal adjusted gross income for the taxable year.

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

92 (8) Decreasing modification for Social Security income.

93 (A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount  
94 of Social Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not  
95 limited to, Social Security benefits paid by the Social Security Administration as Old Age,  
96 Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as  
97 Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381

98 *et seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a  
99 decreasing modification from federal adjusted gross income when determining West Virginia  
100 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-  
101 12(c)(8)(D) of this code.

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

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

118 (D) The ~~deduction~~ deductions allowed by §11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and  
119 §11-21-12(c)(8)(C) of this code are allowable only when the federal adjusted gross income of a  
120 married couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single  
121 individual or a married individual filing a separate return.

122 (9) Federal adjusted gross income in the amount of \$8,000 received from any source after  
123 December 31, 1986, by any person who has attained the age of 65 on or before the last day of

124 the taxable year, or by any person certified by proper authority as permanently and totally  
125 disabled, regardless of age, on or before the last day of the taxable year, to the extent includable  
126 in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical  
127 certification from a prior year and he or she is still permanently and totally disabled, a copy of the  
128 original certificate is acceptable as proof of disability. A copy of the form filed for the federal  
129 disability income tax exclusion is acceptable: *Provided, however*, That:

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

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

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

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

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

147 (11) Contributions from any source to a medical savings account established by or for the  
148 individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account,  
149 to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That

150 the amount subtracted pursuant to this subdivision for any one taxable year may not exceed  
151 \$2,000 plus interest earned on the account. For married individuals filing a joint return, the  
152 maximum deduction is computed separately for each individual; and

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

156 (d) Modification for West Virginia fiduciary adjustment. — There shall be added to or  
157 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as  
158 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-  
159 21-19 of this code.

160 (e) Partners and S corporation shareholders. — The amounts of modifications required to  
161 be made under this section by a partner or an S corporation shareholder, which relate to items of  
162 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under  
163 §11-21-17 of this code.

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

168 (g) Effective date. —

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

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

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



NOTE: The purpose of this bill is to allow a surviving spouse one additional tax exemption of \$20,000 beginning after December 31, 2022, for two taxable years after the death of the spouse. It also defines surviving spouse.

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