

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### House Bill 4318

FISCAL  
NOTE

By Delegate McGeehan and Holstein

[Introduced January 10, 2024 ; 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 or  
10 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 the  
14 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 an  
19 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24 (7) Amounts withdrawn from a medical savings account established by or for an individual  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 or  
32 instrumentality of the United States or of the State of West Virginia to the extent includable in gross  
33 income for federal income tax purposes but exempt from state income taxes under the laws of the  
34 United States or of the State of West Virginia, including federal interest or dividends paid to  
35 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, to  
50 the extent includable in gross income for federal income tax purposes for taxable years beginning  
51 after December 31, 1986; and the first \$2,000 of benefits received under any federal retirement  
52 system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total modification under  
53 this paragraph shall may not exceed \$2,000 per person receiving retirement benefits and this  
54 limitation shall apply to all returns or amended returns filed after December 31, 1988;

55 (6) Retirement income received in the form of pensions and annuities after December 31,  
56 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West  
57 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police  
58 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any  
59 survivorship annuities derived from any of these programs, to the extent includable in gross  
60 income for federal income tax purposes;

61 (7) For taxable years beginning after December 31, 2024, any social security benefits  
62 received pursuant to Title 42 U.S.C., Chapter 7.

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 Forces,  
67 Reserves and National Guard paid by the United States or by this state after December 31, 2000,  
68 including any survivorship annuities, to the extent included in gross income for federal income tax  
69 purposes for the taxable year.

70 (B) For taxable years beginning after December 31, 2000, 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 by  
77 the United States or by this state after December 31, 2017, including any survivorship annuities, to  
78 the extent included in federal adjusted gross income for the taxable year. For taxable years  
79 beginning after December 31, 2018, retirement income from the uniformed services, including the  
80 Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National Oceanic  
81 Atmospheric Administration, reserves, and National Guard, paid by the United States or by this  
82 state after December 31, 2018, including any survivorship annuities, to the extent included in  
83 federal adjusted gross income for the taxable year.

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

88 (8) Decreasing modification for social security income.

89 (A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of  
90 social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited  
91 to, social security benefits paid by the Social Security Administration as Old Age, Survivors and  
92 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security  
93 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in  
94 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification  
95 from federal adjusted gross income when determining West Virginia taxable income subject to the  
96 tax imposed by this article, subject to the limitation in §11-21-12(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 the  
104 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 the  
112 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.

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

124 disability income tax exclusion is acceptable: *Provided, however, That:*

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

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

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

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

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

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

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

150 the Internal Revenue Code.

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

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

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

163 (g) Effective date. —

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

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

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

170 (4) Changes in the language of this section enacted in the year 2024 shall apply to taxable  
171 years beginning after December 31, 2024.

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.