

1 **H. B. 2043**

2
3 (By Delegates Rodighiero and Barker)

4 [Introduced January 12, 2011; referred to the
5 Committee on Finance.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend and reenact §11-21-12 of the Code of West Virginia,
11 1931, as amended, relating to the reduction of state income
12 taxes for certain state and federal retirees by increasing the
13 exemption on retirement income in calculating the federal
14 gross income for state personal income tax purposes.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §11-21-12 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 21. PERSONAL INCOME TAX.**

19 PART II. RESIDENTS.

20 **§11-21-12. West Virginia adjusted gross income of resident**
21 **individual.**

22 (a) *General.* -- The West Virginia adjusted gross income of a
23 resident individual means his or her federal adjusted gross income

1 as defined in the laws of the United States for the taxable year
2 with the modifications specified in this section.

3 (b) *Modifications increasing federal adjusted gross income.* --

4 ~~There shall be~~ The following items are added to federal adjusted
5 gross income unless already included: ~~therein the following items:~~

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

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

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

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

22 (5) Interest on a depository institution tax-exempt savings
23 certificate ~~which is~~ allowed as an exclusion from federal gross
24 income under Section 128 of the Internal Revenue Code for the

1 federal taxable year;

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

6 (7) Amounts withdrawn from a medical savings account
7 established by or for an individual under section twenty, article
8 fifteen, chapter thirty-three of this code or section fifteen,
9 article sixteen, ~~of said chapter thirty-three that are used~~ of this
10 code for a purpose other than payment of medical expenses as
11 defined in those sections.

12 (c) *Modifications reducing federal adjusted gross income.* --
13 ~~There shall be~~ The following items are subtracted from federal
14 adjusted gross income: ~~to the extent included therein~~

15 (1) Interest income on obligations of the United States and
16 its possessions to the extent includable in gross income for
17 federal income tax purposes;

18 (2) Interest or dividend income on obligations or securities
19 of any authority, commission or instrumentality of the United
20 States or of the State of West Virginia to the extent includable
21 in gross income for federal income tax purposes but exempt from
22 state income taxes under the laws of the United States or of the
23 State of West Virginia, including federal interest or dividends
24 paid to shareholders of a regulated investment company under

1 Section 852 of the Internal Revenue Code for taxable years ending
2 after June 30, 1987;

3 (3) ~~Any~~ Amounts included in federal adjusted gross income for
4 federal income tax purposes for the taxable year that ~~is~~ are not
5 included in federal adjusted gross income under this article for
6 the taxable year;

7 (4) The amount of any refund or credit for overpayment of
8 income taxes imposed by this state, or any other taxing
9 jurisdiction, to the extent properly included in gross income for
10 federal income tax purposes;

11 (5) Annuities, retirement allowances, returns of contributions
12 and any other benefit received under the West Virginia Public
13 Employees Retirement System, the West Virginia State Teachers'
14 Retirement System and all forms of military retirement, including
15 regular Armed Forces, Reserves and National Guard, including any
16 survivorship annuities, ~~derived therefrom~~ to the extent includable
17 in gross income for federal income tax purposes. ~~Provided, That~~
18 Notwithstanding any contrary provisions in this code, ~~to the~~
19 ~~contrary~~ this modification ~~shall be~~ is limited to the first \$2,000
20 of benefits received under the West Virginia Public Employees
21 Retirement System, the West Virginia State Teachers' Retirement
22 System, ~~and,~~ including any survivorship annuities, ~~derived~~
23 ~~therefrom~~ to the extent includable in gross income for federal
24 income tax purposes for taxable years beginning after December 31,

1 ~~one thousand nine hundred eighty six~~ 2011 and the first ~~two~~
2 ~~thousand dollars~~ \$20,000 of benefits received under any federal
3 retirement system to which Title 4 U.S.C. §111 applies. ~~Provided,~~
4 ~~however, That~~ However, the total modification under this ~~paragraph~~
5 ~~shall~~ subdivision may not exceed ~~two thousand dollars~~ \$20,000 per
6 person receiving retirement benefits and this limitation ~~shall~~
7 applies to all returns or amended returns filed for taxable years
8 beginning after December 31, ~~one thousand nine hundred eighty eight~~
9 2011;

10 (6) Retirement income received in the form of pensions and
11 annuities after December 31, 1979, under any West Virginia police,
12 West Virginia Firemen's Retirement System or the West Virginia
13 State Police Death, Disability and Retirement Fund, the West
14 Virginia State Police Retirement System or the West Virginia Deputy
15 Sheriff Retirement System, including any survivorship annuities,
16 ~~derived from any of these programs,~~ to the extent includable in
17 gross income for federal income tax purposes;

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

1 December 31, 2000, including any survivorship annuities, to the
2 extent included in gross income for federal income tax purposes for
3 the taxable year. For taxable years ending after December 31,
4 2011, persons claiming a modification for military retirement
5 pursuant to subdivision (5), subsection (c) of this section and
6 modification under this subdivision may receive a combined
7 modification of \$22,000 total under the two subdivisions.

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

14 (C) ~~In the event that~~ If any ~~of the~~ provision of this
15 subdivision ~~are~~ is found by a court of competent jurisdiction to
16 violate ~~either~~ the Constitution of this state or of the United
17 States or is ~~held to be~~ extended to persons other than specified in
18 this subdivision, this subdivision ~~shall~~ becomes ~~null and void.~~ by
19 ~~operation of law~~

20 (8) Federal adjusted gross income in the amount of \$8,000
21 received from any source after December 31, 1986, by any person who
22 has attained the age of sixty-five on or before the last day of the
23 taxable year or by any person certified by proper authority as
24 permanently and totally disabled, regardless of age, on or before

1 the last day of the taxable year, to the extent includable in
2 federal adjusted gross income for federal tax purposes. ~~Provided,~~
3 ~~That~~ If a person has a medical certification from a prior year and
4 he or she is still permanently and totally disabled, a copy of the
5 original certificate is acceptable as proof of disability. A copy
6 of the form filed for the federal disability income tax exclusion
7 is acceptable. ~~Provided, however, That~~ However:

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

11 (ii) Where the total modification under subdivisions (1), (2),
12 ~~(5)~~, (6) and (7) of this subsection is less than \$8,000 per person,
13 the total modification allowed under this subdivision for all gross
14 income received by that person ~~shall be~~ is limited to the
15 difference between \$8,000 and the sum of modifications under
16 subdivisions (1), (2), ~~(5)~~, (6) and (7) of this subsection;

17 (9) Federal adjusted gross income in the amount of \$8,000
18 received from any source after December 31, 1986, by the surviving
19 spouse of any person who had attained the age of sixty-five or who
20 had been certified as permanently and totally disabled, to the
21 extent includable in federal adjusted gross income for federal tax
22 purposes. ~~Provided, That~~ However:

23 (i) Where the total modification under subdivisions (1), (2),
24 ~~(5)~~, (6), (7) and (8) of this subsection is \$8,000 or more, no

1 deduction ~~shall be~~ is allowed under this subdivision; and

2 (ii) Where the total modification under subdivisions (1), (2),
3 ~~(5)~~, (6), (7) and (8) of this subsection is less than \$8,000 per
4 person, the total modification allowed under this subdivision for
5 all gross income received by that person ~~shall be~~ is limited to the
6 difference between \$8,000 and the sum of subdivisions (1), (2),
7 ~~(5)~~, (6), (7) and (8) of this subsection;

8 (10) Contributions from any source to a medical savings
9 account established by or for the individual pursuant to sections
10 fifteen and twenty, article fifteen, chapter thirty-three of this
11 code ~~or section fifteen, article sixteen, of said chapter~~, plus
12 interest earned on the account, to the extent includable in federal
13 adjusted gross income for federal tax purposes. ~~Provided, That~~
14 However, the amount subtracted pursuant to this subdivision for any
15 one taxable year may not exceed \$2,000 plus interest earned on the
16 account. For married individuals filing a joint return, the
17 maximum deduction is computed separately for each individual;

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

23 (i) The term "severance wages" means any monetary compensation
24 paid by the employer in the taxable year as a result of permanent

1 termination from employment in excess of regular annual wages or
2 regular annual salary;

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

7 (iii) The term "controlled group" means one or more chains of
8 corporations connected through stock ownership with a common parent
9 corporation if stock possessing at least fifty percent of the
10 voting power of all classes of stock of each of the corporations is
11 owned directly or indirectly by one or more of the corporations and
12 the common parent owns directly stock possessing at least fifty
13 percent of the voting power of all classes of stock of at least one
14 of the other corporations;

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

20 (12) Any other income which this state is prohibited from
21 taxing under the laws of the United States.

22 (d) *Modification for West Virginia fiduciary adjustment.* --
23 ~~There shall be added to or subtracted from federal adjusted gross~~
24 ~~income, as the case may be, the A taxpayer's share, as beneficiary~~

1 of an estate or trust, of the West Virginia fiduciary adjustment
 2 determined under section nineteen of this article is added to or
 3 subtracted from federal adjusted gross income, as the case may be.

4 (e) *Partners and S corporation shareholders.* -- The amounts of
 5 modifications required to be made under this section by a partner
 6 or an S corporation shareholder, ~~which~~ relating to items of income,
 7 gain, loss or deduction of a partnership or an S corporation, ~~shall~~
 8 ~~be~~ is determined under section seventeen of this article.

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

14 (g) *Effective date.* -- (1) Changes in the language of this
 15 section enacted in the year 2000 ~~shall~~ applies to taxable years
 16 beginning after December 31, 2000.

17 (2) Changes in the language of this section enacted in the
 18 year 2002 ~~shall~~ applies to taxable years beginning after December
 19 31, 2002.

20 (3) Changes in the language of this section enacted in the
 21 year 2011 apply to taxable years beginning after December 31, 2011.

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 the present law and underscoring indicates new language that would be added.