

H. B. 2107

(By Delegates Evans, Romine, Azinger and Rowan)
[Introduced January 12, 2011; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to excluding interest income on obligations of the United States and its possessions, to the extent such interest is inclusive in gross income for federal income tax purposes, when applying the \$8,000 income exclusion available to persons age sixty-five or older and to persons who are permanently and totally disabled; and making the change to tax years beginning after December 31, 2011.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

PART I. GENERAL.

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

1 (a) *General.* -- The West Virginia adjusted gross income of a
2 resident individual means his or her federal adjusted gross income
3 as defined in the laws of the United States for the taxable year
4 with the modifications specified in this section.

5 (b) *Modifications increasing federal adjusted gross income.* --
6 There shall be added to federal adjusted gross income unless
7 already included therein the following items:

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

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

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

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

23 (5) Interest on a depository institution tax-exempt savings
24 certificate which is allowed as an exclusion from federal gross

1 income under Section 128 of the Internal Revenue Code, for the
2 federal taxable year;

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

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

12 (c) *Modifications reducing federal adjusted gross income.* --
13 There shall be subtracted from federal adjusted gross income to the
14 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 in
21 gross income for federal income tax purposes but exempt from state
22 income taxes under the laws of the United States or of the State of
23 West Virginia, including federal interest or dividends paid to
24 shareholders of a regulated investment company, under Section 852

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

3 (3) Any amount included in federal adjusted gross income for
4 federal income tax purposes for the taxable year that is 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 provisions in this code to the contrary this
19 modification ~~shall be~~ is limited to the first \$2,000 of benefits
20 received under the West Virginia Public Employees Retirement
21 System, the West Virginia State Teachers Retirement System and,
22 including any survivorship annuities derived therefrom, to the
23 extent includable in gross income for federal income tax purposes
24 for taxable years beginning after December 31, 1986; and the first

1 \$2,000 of benefits received under any federal retirement system to
2 which Title 4 U.S.C. §111 applies: *Provided, however,* That the
3 total modification under this ~~paragraph shall~~ subdivision may not
4 exceed \$2,000 per person receiving retirement benefits and this
5 limitation ~~shall apply~~ applies to all returns or amended returns
6 filed after December 31, 1988;

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

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

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

7 (C) In the event that any of the provisions of this
8 subdivision are found by a court of competent jurisdiction to
9 violate either the Constitution of this state or of the United
10 States, or is held to be extended to persons other than specified
11 in this subdivision, this subdivision shall become null and void by
12 operation of law.

13 (8) Federal adjusted gross income in the amount of \$8,000
14 received from any source after December 31, 1986, by any person who
15 has attained the age of sixty-five on or before the last day of the
16 taxable year, or by any person certified by proper authority as
17 permanently and totally disabled, regardless of age, on or before
18 the last day of the taxable year, to the extent includable in
19 federal adjusted gross income for federal tax purposes: *Provided,*
20 That if a person has a medical certification from a prior year and
21 he or she is still permanently and totally disabled, a copy of the
22 original certificate is acceptable as proof of disability. A copy
23 of the form filed for the federal disability income tax exclusion
24 is acceptable: *Provided, however, That:*

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

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

10 (9) Federal adjusted gross income in the amount of \$8,000
11 received from any source after December 31, 1986, by the surviving
12 spouse of any person who had attained the age of sixty-five or who
13 had been certified as permanently and totally disabled, to the
14 extent includable in federal adjusted gross income for federal tax
15 purposes: *Provided, That:*

16 (i) Where the total modification under subdivisions ~~(1)~~, (2),
17 (5), (6), (7) and (8) of this subsection is \$8,000 or more, no
18 deduction ~~shall be~~ is allowed under this subdivision; and

19 (ii) Where the total modification under subdivisions ~~(1)~~, (2),
20 (5), (6), (7) and (8) of this subsection is less than \$8,000 per
21 person, the total modification allowed under this subdivision for
22 all gross income received by that person ~~shall be~~ is limited to the
23 difference between \$8,000. and the sum of subdivisions ~~(1)~~, (2),
24 (5), (6), (7) and (8) of this subsection;

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

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

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

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

24 (iii) The term "controlled group" means one or more chains of

1 corporations connected through stock ownership with a common parent
2 corporation if stock possessing at least fifty percent of the
3 voting power of all classes of stock of each of the corporations is
4 owned directly or indirectly by one or more of the corporations and
5 the common parent owns directly stock possessing at least fifty
6 percent of the voting power of all classes of stock of at least one
7 of the other corporations;

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

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

15 (d) *Modification for West Virginia fiduciary adjustment.* --
16 There shall be added to or subtracted from federal adjusted gross
17 income, as the case may be, the taxpayer's share, as beneficiary of
18 an estate or trust, of the West Virginia fiduciary adjustment
19 determined under section nineteen of this article.

20 (e) *Partners and S corporation shareholders.* -- The amounts of
21 modifications required to be made under this section by a partner
22 or an S corporation shareholder, which relate to items of income,
23 gain, loss or deduction of a partnership or an S corporation, shall
24 be determined under section seventeen of this article.

1 (f) *Husband and wife.* -- If husband and wife determine their
2 federal income tax on a joint return but determine their West
3 Virginia income taxes separately, they shall determine their West
4 Virginia adjusted gross incomes separately as if their federal
5 adjusted gross incomes had been determined separately.

6 (g) *Effective date.* -- (1) Changes in the language of this
7 section enacted in the year 2000 shall apply to taxable years
8 beginning after December 31, 2000.

9 (2) Changes in the language of this section enacted in the
10 year 2002 shall apply to taxable years beginning after December 31,
11 2002.

12 (3) Changes in the language of this section enacted in the
13 year 2011 shall apply to taxable years beginning after December 31,
14 2011.

NOTE: The purpose of this bill is to exclude federal interest income when applying \$8,000. income exclusion available to persons age sixty-five or older and to persons who are permanently and totally disabled regardless of age and making the change to tax years beginning after December 31, 2011.

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