

1 **H. B. 2218**

2  
3 (By Delegate Walters)

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 calculation of West Virginia  
12 adjusted gross income for personal income tax purposes;  
13 subtracting social security benefits from federal adjusted  
14 gross income to the extent included in federal gross income  
15 for federal income tax purposes.

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

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

19 **ARTICLE 21. PERSONAL INCOME TAX.**

20 **PART II. RESIDENTS.**

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

23 (a) *General.* -- The West Virginia adjusted gross income of a

1 resident individual means his or her federal adjusted gross income  
2 as defined in the laws of the United States for the taxable year  
3 with the modifications specified in this section.

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

7 (1) Interest income on obligations of any state other than  
8 this state or of a political subdivision of any other state unless  
9 created by compact or agreement to which this state is a 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 deduction 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  
21 determining 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 or section five, article sixteen,  
9 chapter thirty-three that are used for a purpose other than payment  
10 of medical expenses, as defined in those sections.

11       (c) *Modifications reducing federal adjusted gross income.* --  
12 There shall be subtracted from federal adjusted gross income to the  
13 extent included therein:

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

17       (2) Interest or dividend income on obligations or securities  
18 of any authority, commission or instrumentality of the United  
19 States or of the State of West Virginia to the extent includable in  
20 gross income for federal income tax purposes but exempt from state  
21 income taxes under the laws of the United States or of the State of  
22 West Virginia, including federal interest or dividends paid to  
23 shareholders of a regulated investment company, under Section 852  
24 of the Internal Revenue Code for taxable years ending after June

1 30, 1987;

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

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

10 (5) Annuities, retirement allowances, returns of contributions  
11 and any other benefit received under the West Virginia Public  
12 Employees Retirement System, the West Virginia State Teachers  
13 Retirement System and all forms of military retirement, including  
14 regular Armed Forces, Reserves and National Guard, including any  
15 survivorship annuities derived therefrom, to the extent includable  
16 in gross income for federal income tax purposes: *Provided*, That  
17 notwithstanding any provisions in this code to the contrary this  
18 modification shall be limited to the first \$2,000 of benefits  
19 received under the West Virginia Public Employees Retirement  
20 System, the West Virginia State Teachers Retirement System and,  
21 including any survivorship annuities derived therefrom, to the  
22 extent includable in gross income for federal income tax purposes  
23 for taxable years beginning after December 31, 1986; and the first  
24 \$2,000 of benefits received under any federal retirement system to

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

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

14       (7) (A) For taxable years beginning after December 31, 2000,  
15 and ending prior to January 2, 2003, an amount equal to two percent  
16 multiplied by the number of years of active duty in the Armed  
17 Forces of the United States of America with the product thereof  
18 multiplied by the first \$30,000 of military retirement income,  
19 including retirement income from the regular Armed Forces, Reserves  
20 and National Guard paid by the United States or by this state after  
21 December 31, 2000, including any survivorship annuities, to the  
22 extent included in gross income for federal income tax purposes for  
23 the taxable year.

24       (B) For taxable years beginning after December 31, 2002, the

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

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

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

24 (i) Where the total modification under subdivisions (1), (2),

1 (5), (6) and (7) of this subsection is \$8,000 per person or more,  
2 no deduction shall be allowed under this subdivision; and

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

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

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

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

24 (10) Contributions from any source to a medical savings

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

10 (11) For taxable years beginning after December 31, 2010,  
11 social security benefits paid by the Social Security Administration  
12 as Old Age, Survivors and Disability Insurance Benefits as provided  
13 in §42 U.S.C. 401 et. seq. or as Supplemental Security Income for  
14 the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 et.  
15 seq., to the extent included in gross income for federal income tax  
16 purposes for the taxable year; and

17 ~~(11)~~ (12) For the 2006 taxable year only, severance wages  
18 received by a taxpayer from an employer as the result of the  
19 taxpayer's permanent termination from employment through a  
20 reduction in force and through no fault of the employee, not to  
21 exceed \$30,000. For purposes of this subdivision:

22 (i) The term "severance wages" means any monetary compensation  
23 paid by the employer in the taxable year as a result of permanent  
24 termination from employment in excess of regular annual wages or



1 regular annual salary;

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

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

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

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

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

1 determined under section nineteen of this article.

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

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

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

15       (2) Changes in the language of this section enacted in the  
16 year 2002 shall apply to taxable years beginning after December 31,  
17 2002.

NOTE: The purpose of this bill is to subtract social security benefits from federal adjusted gross income to determine West Virginia adjusted gross income for purposes of personal income tax.

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