

1 **H. B. 2296**

2  
3 (By Delegate Azinger)

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 allowing income deduction for  
12 tax purposes for gifts to West Virginia charities.

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

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

16 **ARTICLE 21. PERSONAL INCOME TAXES.**

17 **§11-21-12. West Virginia adjusted gross income of resident**  
18 **individual.**

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

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

1 There shall be added to federal adjusted gross income unless  
2 already included therein the following items:

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

6       (2) Interest or dividend income on obligations or securities  
7 of any authority, commission or instrumentality of the United  
8 States, which the laws of the United States exempt from federal  
9 income tax but not from state income taxes;

10       (3) Any deduction allowed when determining federal adjusted  
11 gross income for federal income tax purposes for the taxable year  
12 that is not allowed as a deduction under this article for the  
13 taxable year;

14       (4) Interest on indebtedness incurred or continued to purchase  
15 or carry obligations or securities the income from which is exempt  
16 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  
19 certificate which is allowed as an exclusion from federal gross  
20 income under Section 128 of the Internal Revenue Code, for the  
21 federal taxable year;

22       (6) The amount of a lump sum distribution for which the  
23 taxpayer has elected under Section 402(e) of the Internal Revenue  
24 Code of 1986, as amended, to be separately taxed for federal income

1 tax purposes; and

2       (7) Amounts withdrawn from a medical savings account  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

7       (c) *Modifications reducing federal adjusted gross income.* --  
8 There shall be subtracted from federal adjusted gross income to the  
9 extent included therein:

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

13       (2) Interest or dividend income on obligations or securities  
14 of any authority, commission or instrumentality of the United  
15 States or of the State of West Virginia to the extent includable in  
16 gross income for federal income tax purposes but exempt from state  
17 income taxes under the laws of the United States or of the State of  
18 West Virginia, including federal interest or dividends paid to  
19 shareholders of a regulated investment company, under Section 852  
20 of the Internal Revenue Code for taxable years ending after day of  
21 June 30, 1987;

22       (3) Any amount included in federal adjusted gross income for  
23 federal income tax purposes for the taxable year that is not  
24 included in federal adjusted gross income under this article for

1 the taxable year;

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

6 (5) Annuities, retirement allowances, returns of contributions  
7 and any other benefit received under the West Virginia Public  
8 Employees Retirement System, the West Virginia State Teachers  
9 Retirement System and all forms of military retirement, including  
10 regular Armed Forces, reserves and National Guard, including any  
11 survivorship annuities derived therefrom, to the extent includable  
12 in gross income for federal income tax purposes: *Provided*, That  
13 notwithstanding any provisions in this code to the contrary this  
14 modification shall be limited to the first \$2,000 of benefits  
15 received under the West Virginia Public Employees Retirement  
16 System, the West Virginia State Teachers Retirement System and,  
17 including any survivorship annuities derived therefrom, to the  
18 extent includable in gross income for federal income tax purposes  
19 for taxable years beginning after day of December 31, 1986; and the  
20 first \$2,000 of benefits received under any federal retirement  
21 system to which Title 4 U.S.C. §111 applies: *Provided, however*,  
22 That the total modification under this paragraph shall not exceed  
23 \$2,000 per person receiving retirement benefits and this limitation  
24 shall apply to all returns or amended returns filed after December

1 31, 1988;

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

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

20 (B) For taxable years beginning after December 31, 2002, the  
21 first \$20,000 of military retirement income, including retirement  
22 income from the regular Armed Forces, Reserves and National Guard  
23 paid by the United States or by this state after December 31, 2002,  
24 including any survivorship annuities, to the extent included in

1 gross income for federal income tax purposes for the taxable year.

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

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

20       (i) Where the total modification under subdivisions (1), (2),  
21 (5), (6) and (7) of this subsection is \$8,000 per person or more,  
22 no deduction shall be allowed under this subdivision; and

23       (ii) Where the total modification under subdivisions (1), (2),  
24 (5), (6) and (7) of this subsection is less than \$8,000 per person,

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

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

11 (i) Where the total modification under subdivisions (1), (2),  
12 (5), (6), (7) and (8) of this subsection is \$8,000 or more, no  
13 deduction shall be allowed under this subdivision; and

14 (ii) Where the total modification under subdivisions (1), (2),  
15 (5), (6), (7) and (8) of this subsection is less than \$8,000 per  
16 person, the total modification allowed under this subdivision for  
17 all gross income received by that person shall be limited to the  
18 difference between \$8,000 and the sum of subdivisions (1), (2),  
19 (5), (6), (7) and (8) of this subsection;

20 (10) Contributions from any source to a medical savings  
21 account established by or for the individual pursuant to section  
22 twenty, article fifteen, chapter thirty-three of this code or  
23 section fifteen, article sixteen of said chapter, plus interest  
24 earned on the account, to the extent includable in federal adjusted

1 gross income for federal tax purposes: *Provided*, That the amount  
2 subtracted pursuant to this subdivision for any one taxable year  
3 may not exceed \$2,000 plus interest earned on the account. For  
4 married individuals filing a joint return, the maximum deduction is  
5 computed separately for each individual;

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

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

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

19 (iii) The term "controlled group" means one or more chains of  
20 corporations connected through stock ownership with a common parent  
21 corporation if stock possessing at least fifty percent of the  
22 voting power of all classes of stock of each of the corporations is  
23 owned directly or indirectly by one or more of the corporations and  
24 the common parent owns directly stock possessing at least fifty



1 percent of the voting power of all classes of stock of at least one  
2 of the other corporations;

3 (iv) The term "corporation" means any corporation, joint-stock  
4 company or association and any business conducted by a trustee or  
5 trustees wherein interest or ownership is evidenced by a  
6 certificate of interest or ownership or similar written instrument;  
7 and

8 (12) An amount equal to a contribution made within the tax  
9 year to a West Virginia entity operated solely for religious,  
10 educational or charitable purposes; and

11 ~~(12)~~ (13) Any other income which this state is prohibited from  
12 taxing under the laws of the United States.

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

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

23 (f) *Husband and wife.* -- If husband and wife determine their  
24 federal income tax on a joint return but determine their West

1 Virginia income taxes separately, they shall determine their West  
2 Virginia adjusted gross incomes separately as if their federal  
3 adjusted gross incomes had been determined separately.

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

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

NOTE: The purpose of this bill is to permit deductions from federal adjusted gross income, for personal income tax purposes, for contributions to religious, educational or charitable organizations.

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