

1 **H. B. 2320**

2  
3 (By Delegate Caputo)

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

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

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10 A BILL to amend and reenact §11-21-12 of the Code of West Virginia,  
11 1931, as amended, relating to exempting from state personal  
12 income tax obligations all monetary benefits derived from  
13 Division of Natural Resources conservation officers'  
14 retirement.

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

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

1 with the modifications specified in this section.

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

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

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

8 (2) Interest or dividend income on obligations or securities  
9 of any authority, commission or instrumentality of the United  
10 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  
13 gross income for federal income tax purposes for the taxable year  
14 that is not allowed as a deduction under this article for the  
15 taxable year;

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

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

24 (6) The amount of a lump sum distribution for which the

1 taxpayer has elected under Section 402(e) of the Internal Revenue  
2 Code of 1986, as amended, to be separately taxed for federal income  
3 tax purposes; and

4 (7) Amounts withdrawn from a medical savings account  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

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

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

15 (2) Interest or dividend income on obligations or securities  
16 of any authority, commission or instrumentality of the United  
17 States or of the State of West Virginia to the extent includable in  
18 gross income for federal income tax purposes but exempt from state  
19 income taxes under the laws of the United States or of the State of  
20 West Virginia, including federal interest or dividends paid to  
21 shareholders of a regulated investment company, under Section 852  
22 of the Internal Revenue Code for taxable years ending after June  
23 30, 1987;

24 (3) Any amount included in federal adjusted gross income for

1 federal income tax purposes for the taxable year that is not  
2 included in federal adjusted gross income under this article for  
3 the taxable year;

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

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

1 person receiving retirement benefits and this limitation shall  
2 apply to all returns or amended returns filed after December 31,  
3 1988;

4 (6) Retirement income received in the form of pensions and  
5 annuities after December 31, 1979, under any West Virginia Police,  
6 West Virginia Firemen's Retirement System or the West Virginia  
7 State Police Death, Disability and Retirement Fund, the West  
8 Virginia State Police Retirement System or the West Virginia Deputy  
9 Sheriff Retirement System, including any survivorship annuities  
10 derived from any of these programs, to the extent includable in  
11 gross income for federal income tax purposes. Notwithstanding any  
12 provisions in this code to the contrary, retirement income received  
13 under the West Virginia Public Employees Retirement System by  
14 Division of Natural Resources conservation officers in the form of  
15 pensions and annuities, shall be subtracted from federal adjusted  
16 gross income to the extent included therein. This deduction shall  
17 apply to all returns or amended returns filed after December 31,  
18 2012; and

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

1 and National Guard paid by the United States or by this state after  
2 December 31, 2000, including any survivorship annuities, to the  
3 extent included in gross income for federal income tax purposes for  
4 the taxable year.

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

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

17 (8) Federal adjusted gross income in the amount of \$8,000  
18 received from any source after December 31, 1986, by any person who  
19 has attained the age of sixty-five on or before the last day of the  
20 taxable year, or by any person certified by proper authority as  
21 permanently and totally disabled, regardless of age, on or before  
22 the last day of the taxable year, to the extent includable in  
23 federal adjusted gross income for federal tax purposes: *Provided,*  
24 That if a person has a medical certification from a prior year and

1 he or she is still permanently and totally disabled, a copy of the  
2 original certificate is acceptable as proof of disability. A copy  
3 of the form filed for the federal disability income tax exclusion  
4 is acceptable: *Provided, however, That:*

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

8 (ii) Where the total modification under subdivisions (1), (2),  
9 (5), (6) and (7) of this subsection is less than \$8,000 per person,  
10 the total modification allowed under this subdivision for all gross  
11 income received by that person shall be limited to the difference  
12 between \$8,000 and the sum of modifications under subdivisions (1),  
13 (2), (5), (6) and (7) of this subsection;

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

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

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

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

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

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

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

24 (ii) The term "reduction in force" means a net reduction in



1 the number of employees employed by the employer in West Virginia,  
2 determined based on total West Virginia employment of the  
3 employer's controlled group;

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

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

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

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

24 (e) *Partners and S corporation shareholders.* -- The amounts of

1 modifications required to be made under this section by a partner  
2 or an S corporation shareholder, which relate to items of income,  
3 gain, loss or deduction of a partnership or an S corporation, shall  
4 be determined under section seventeen of this article.

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

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

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

NOTE: The purpose of this bill is to exempt Division of  
Natural Resources conservation officers' retirement pensions from  
state income tax law.

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