

H. B. 2337

(By Delegate Michael)

[Introduced January 12, 2011; referred to the
Committee on Senior Citizen Issues then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-21-12 of the Code of West Virginia,
1931, as amended, relating to West Virginia personal income
tax; creating an exemption for social security benefits.

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.**

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

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

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

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

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

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

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

23 (6) The amount of a lump sum distribution for which the
24 taxpayer has elected under Section 402(e) of the Internal Revenue

1 Code of 1986, as amended, to be separately taxed for federal income
2 tax purposes; and

3 (7) Amounts withdrawn from a medical savings account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

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

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

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

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

1 included in federal adjusted gross income under this article for
2 the taxable year;

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

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

1 apply to all returns or amended returns filed after December 31,
2 1988;

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

11 (7) (A) For taxable years beginning after December 31, 2000,
12 and ending prior to January 1, 2003, an amount equal to two percent
13 multiplied by the number of years of active duty in the Armed
14 Forces of the United States of America with the product thereof
15 multiplied by the first \$30,00.00 of military retirement income,
16 including retirement income from the regular Armed Forces, Reserves
17 and National Guard paid by the United States or by this state after
18 December 31, 2000, including any survivorship annuities, to the
19 extent included in gross income for federal income tax purposes for
20 the taxable year.

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

1 including any survivorship annuities, to the extent included in
2 gross income for federal income tax purposes for the taxable year.

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

9 (8) Federal adjusted gross income in the amount of \$8,000
10 received from any source after December 31, 1986, by any person who
11 has attained the age of 65 on or before the last day of the taxable
12 year, or by any person certified by proper authority as permanently
13 and totally disabled, regardless of age, on or before the last day
14 of the taxable year, to the extent includable in federal adjusted
15 gross income for federal tax purposes: *Provided*, That if a person
16 has a medical certification from a prior year and he or she is
17 still permanently and totally disabled, a copy of the original
18 certificate is acceptable as proof of disability. A copy of the
19 form filed for the federal disability income tax exclusion is
20 acceptable: *Provided, however*, That:

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

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

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

6 (9) Federal adjusted gross income in the amount of \$8,000
7 received from any source after December 31, 1986, by the surviving
8 spouse of any person who had attained the age of 65 or who had been
9 certified as permanently and totally disabled, to the extent
10 includable in federal adjusted gross income for federal tax
11 purposes: *Provided, That:*

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

15 (ii) Where the total modification under subdivisions (1), (2),
16 (5), (6), (7) and (8) of this subsection is less than \$8,000 per
17 person, the total modification allowed under this subdivision for
18 all gross income received by that person shall be limited to the
19 difference between \$8,000 and the sum of subdivisions (1), (2),
20 (5), (6), (7) and (8) of this subsection;

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

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

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

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

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

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

1 the common parent owns directly stock possessing at least fifty
2 percent of the voting power of all classes of stock of at least one
3 of the other corporations;

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

8 (12) Social Security Benefits; ~~Any other income which this~~
9 ~~state is prohibited from taxing under the laws of the United~~
10 ~~States.~~

11 (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 eliminate West Virginia
income tax on social security benefits.

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