

1 **H. B. 2364**

2
3 (By Delegates Moye, Barker, Stephens and Perry)

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

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

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9
10 A BILL to amend and reenact §11-21-12 of the Code of West Virginia,
11 1931, as amended, relating to reducing state income tax
12 liability for certain retired public employees; increasing the
13 amount of retirement income received from certain state and
14 federal retirement systems that is excluded from the
15 calculation of income subject to state personal income taxes;
16 and establishing an effective date for the increased
17 exclusion.

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

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

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

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

1 (a) *General.* -- The West Virginia adjusted gross income of
2 a resident individual means his or her federal adjusted gross
3 income as defined in the laws of the United States for the taxable
4 year 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) (A) Annuities, retirement allowances, returns of
12 contributions and any other benefit received under the West
13 Virginia Public Employees Retirement System, the West Virginia
14 State Teachers Retirement System and all forms of military
15 retirement, including regular Armed Forces, Reserves and National
16 Guard, including any survivorship annuities derived therefrom, to
17 the extent includable in gross income for federal income tax
18 purposes: *Provided*, That notwithstanding any provisions in this
19 code to the contrary this modification shall be limited to the
20 first \$2,000 of benefits received under the West Virginia Public
21 Employees Retirement System and the West Virginia State Teachers
22 Retirement System ~~and~~, including any survivorship annuities derived
23 therefrom, to the extent includable in gross income for federal
24 income tax purposes for taxable years beginning after December 31,

1 1986; and the first \$2,000 of benefits received under any federal
2 retirement system to which Title 4 U.S.C. §111 applies: *Provided,*
3 *however,* That the total modification under this paragraph shall not
4 exceed \$2,000 per person receiving retirement benefits and this
5 limitation shall apply to all returns or amended returns filed
6 after December 31, 1988;

7 (B) Notwithstanding any provision of paragraph (A) of this
8 subdivision to the contrary, the modification provided under
9 paragraph (A) of this subdivision shall be limited to the first
10 \$4,000 of benefits received under the West Virginia Public
11 Employees Retirement System and the West Virginia State Teachers
12 Retirement System, including any survivorship annuities derived
13 therefrom, to the extent includable in gross income for federal
14 income tax purposes for taxable years beginning after December 31,
15 2010; and to the first \$4,000 of benefits received under any
16 federal retirement system to which Title 4 U.S.C. §111 applies to
17 the extent includable in gross income for federal income tax
18 purposes for taxable years beginning after December 31, 2010. The
19 total modification under this paragraph shall not exceed \$4,000
20 per person receiving retirement benefits;

21 (6) Retirement income received in the form of pensions and
22 annuities after December 31, 1979, under any West Virginia police,
23 West Virginia Firemen's Retirement System or the West Virginia
24 State Police Death, Disability and Retirement Fund, the West

1 Virginia State Police Retirement System or the West Virginia Deputy
2 Sheriff Retirement System, including any survivorship annuities
3 derived from any of these programs, to the extent includable in
4 gross income for federal income tax purposes;

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

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

21 (C) In the event that any of the provisions of this
22 subdivision are found by a court of competent jurisdiction to
23 violate either the Constitution of this state or of the United
24 States, or is held to be extended to persons other than specified

1 in this subdivision, this subdivision shall become null and void by
2 operation of law.

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

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

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

24 The provisions of this paragraph remain applicable for taxable

1 years beginning prior to January 1, 2011, for all persons otherwise
2 eligible, and the provisions of paragraph (B) of this subdivision
3 are applicable for taxable years beginning after December 31, 2010,
4 exclusively for all persons described in paragraph (B) of this
5 subdivision in lieu of the provisions of this paragraph, and as to
6 those persons, no modification shall be allowed under this
7 paragraph for taxable years beginning after December 31, 2010;

8 (B) Notwithstanding any provision of paragraph (A) of this
9 subdivision to the contrary, federal adjusted gross income in the
10 amount of \$16,000 received from any source after December 31, 2010,
11 by any person who has attained the age of sixty-five on or before
12 the last day of the taxable year, or by any person certified by
13 proper authority as permanently and totally disabled, regardless of
14 age, on or before the last day of the taxable year, where the
15 person during the taxable year receives benefits under the West
16 Virginia Public Employees Retirement System or the West Virginia
17 State Teachers Retirement System, including any survivorship
18 annuities derived therefrom, to the extent includable in gross
19 income for federal income tax purposes for taxable years beginning
20 after December 31, 2010, or where the person during the taxable
21 year receives benefits under any federal retirement system to which
22 Title 4 U.S.C. §111 applies to the extent includable in gross
23 income for federal income tax purposes for taxable years beginning
24 after December 31, 2010: Provided, That if a person has a medical

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

5 Provided, however, That:

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

9 (ii) Where the total modification under subdivisions (1), (2),
10 (5), (6) and (7) of this subsection is less than \$16,000 per
11 person, the total modification allowed under this paragraph for all
12 gross income received by that person shall be limited to the
13 difference between \$16,000 and the sum of modifications under
14 subdivisions (1), (2), (5), (6) and (7) of this subsection;

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

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

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

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

6 The provisions of this paragraph remain applicable for taxable
7 years beginning prior to January 1, 2010, for all persons otherwise
8 eligible, and the provisions of paragraph (B) of this subdivision
9 are applicable for taxable years beginning after December 31, 2010,
10 exclusively for all persons described in paragraph (B) of this
11 subdivision in lieu of the provisions of this paragraph, and as to
12 those persons, no modification shall be allowed under this
13 paragraph for taxable years beginning after December 31, 2010;

14 (B) Notwithstanding any provision of paragraph (A) of this
15 subdivision to the contrary, federal adjusted gross income in the
16 amount of \$16,000 received from any source after December 31, 2010,
17 by the surviving spouse of any person who had attained the age of
18 sixty-five or who had been certified as permanently and totally
19 disabled, where the surviving spouse during the taxable year
20 receives survivorship annuities under the West Virginia Public
21 Employees Retirement System or the West Virginia State Teachers
22 Retirement System, to the extent includable in gross income for
23 federal income tax purposes for taxable years beginning after
24 December 31, 2010, or where the surviving spouse during the taxable

1 year receives survivorship annuities under any federal retirement
2 system to which Title 4 U.S.C. §111 applies to the extent
3 includable in gross income for federal income tax purposes for
4 taxable years beginning after December 31, 2010: *Provided, That:*

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

8 (ii) Where the total modification under subdivisions (1), (2),
9 (5), (6), (7) and (8) of this subsection is less than \$16,000 per
10 person, the total modification allowed under this paragraph for all
11 gross income received by that person shall be limited to the
12 difference between \$16,000 and the sum of subdivisions (1), (2),
13 (5), (6), (7) and (8) of this subsection;

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

24 (11) For the 2006 taxable year only, severance wages received

1 by a taxpayer from an employer as the result of the taxpayer's
2 permanent termination from employment through a reduction in force
3 and through no fault of the employee, not to exceed \$30,000. For
4 purposes of this subdivision:

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

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

13 (iii) The term "controlled group" means one or more chains of
14 corporations connected through stock ownership with a common parent
15 corporation if stock possessing at least fifty percent of the
16 voting power of all classes of stock of each of the corporations is
17 owned directly or indirectly by one or more of the corporations and
18 the common parent owns directly stock possessing at least fifty
19 percent of the voting power of all classes of stock of at least one
20 of the other corporations;

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

1 and

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

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

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

14 (f) *Husband and wife.* -- If husband and wife determine their
15 federal income tax on a joint return but determine their West
16 Virginia income taxes separately, they shall determine their West
17 Virginia adjusted gross incomes separately as if their federal
18 adjusted gross incomes had been determined separately.

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

22 (2) Changes in the language of this section enacted in the
23 year 2002 shall apply to taxable years beginning after December 31,
24 2002.

NOTE: The purpose of this bill is to reduce state income tax liability for certain retired public employees and increase the amount of retirement income received from certain state and federal retirement systems that is excluded from the calculation of income subject to state personal income taxes.

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