

1 **H. B. 2426**

2  
3 (By Delegates Givens, Swartzmiller and Talbott)  
4 [Introduced January 12, 2011; referred to the  
5 Committee on Veterans' Affairs and Homeland Security then  
6 Finance.]

7 **FISCAL**  
8 **NOTE**

9  
10 A BILL to amend and reenact §11-21-12 of the Code of West Virginia,  
11 1931, as amended, relating to allowing individuals to utilize  
12 any portion of their federal civil service retirement pension  
13 based on credit for their military service to reduce their  
14 federal adjusted gross income for West Virginia personal  
15 income tax purposes, as well as allowing an individual to  
16 obtain this modification if the claimant can provide to the  
17 State Tax Commissioner a screen print or short form letter  
18 from the United States Office of Personnel Management, or its  
19 successor, with information pertaining to applicable  
20 particular credit for their military service towards their  
21 federal civil service retirement pension.

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

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

1 **ARTICLE 21. Personal Income Tax.**

2 **§11-21-12. West Virginia adjusted gross income of resident**  
3 **individual.**

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

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

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

14 (2) Interest or dividend income on obligations or securities  
15 of any authority, commission or instrumentality of the United  
16 States, which the laws of the United States exempt from federal  
17 income tax but not from state income taxes;

18 (3) Any deduction allowed when determining federal adjusted  
19 gross income for federal income tax purposes for the taxable year  
20 that is not allowed as a deduction under this article for the  
21 taxable year;

22 (4) Interest on indebtedness incurred or continued to purchase  
23 or carry obligations or securities the income from which is exempt  
24 from tax under this article, to the extent deductible in

1 determining federal adjusted gross income;

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

6       (6) The amount of a lump sum distribution for which the  
7 taxpayer has elected under Section 402(e) of the Internal Revenue  
8 Code of 1986, as amended, to be separately taxed for federal income  
9 tax purposes; and

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

15       (c) *Modifications reducing federal adjusted gross income.* --  
16 There shall be subtracted from federal adjusted gross income to the  
17 extent included therein:

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

21       (2) Interest or dividend income on obligations or securities  
22 of any authority, commission or instrumentality of the United  
23 States or of the State of West Virginia to the extent includable in  
24 gross income for federal income tax purposes but exempt from state

1 income taxes under the laws of the United States or of the State of  
2 West Virginia, including federal interest or dividends paid to  
3 shareholders of a regulated investment company, under Section 852  
4 of the Internal Revenue Code for taxable years ending after June  
5 30, 1987;

6 (3) Any amount included in federal adjusted gross income for  
7 federal income tax purposes for the taxable year that is not  
8 included in federal adjusted gross income under this article for  
9 the taxable year;

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

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

1 including any survivorship annuities derived therefrom, to the  
2 extent includable in gross income for federal income tax purposes  
3 for taxable years beginning after December 31, 1986; and the first  
4 \$2,000 of benefits received under any federal retirement system to  
5 which Title 4 U.S.C. §111 applies.: ~~Provided, however, That~~  
6 However, the total modification under this paragraph shall not  
7 exceed \$2,000 per person receiving retirement benefits and this  
8 limitation shall apply to all returns or amended returns filed  
9 after December 31, 1988;

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

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

1 December 31, 2000, including any survivorship annuities, to the  
2 extent included in gross income for federal income tax purposes for  
3 the taxable year.

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

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

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

1 original certificate is acceptable as proof of disability. A copy  
2 of the form filed for the federal disability income tax exclusion  
3 is acceptable. ~~Provided, however, That~~ However:

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

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

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

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

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

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

4 (10) Income from any portion of a federal civil service  
5 retirement pension based on credit for military service of the  
6 individual. This deduction shall be in addition to any other  
7 applicable deduction in this chapter. Notwithstanding any other  
8 provision in this code, the inability of an individual to produce  
9 a 1099-R form shall not prohibit a claimant from obtaining this  
10 modification if the claimant can provide a screen print or short  
11 form letter from the United States Office of Personnel Management,  
12 or its successor, with information pertaining to applicable  
13 particular credit for their military service towards their federal  
14 civil service retirement pension. In addition, the State Tax  
15 Commissioner shall provide by appropriate rule for the reporting,  
16 filing and application of claims for this modification.

17 ~~(10)~~ (11) Contributions from any source to a medical savings  
18 account established by or for the individual pursuant to section  
19 twenty, article fifteen, chapter thirty-three of this code or  
20 section fifteen, article sixteen of said chapter, plus interest  
21 earned on the account, to the extent includable in federal adjusted  
22 gross income for federal tax purposes. ~~Provided, That~~ However,  
23 the amount subtracted pursuant to this subdivision for any one  
24 taxable year may not exceed \$2,000 plus interest earned on the



1 account. For married individuals filing a joint return, the  
2 maximum deduction is computed separately for each individual;

3 ~~(11)~~ (12) For the 2006 taxable year only, severance wages  
4 received by a taxpayer from an employer as the result of the  
5 taxpayer's permanent termination from employment through a  
6 reduction in force and through no fault of the employee, not to  
7 exceed \$30,000. For purposes of this subdivision:

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

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

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

24 (iv) The term "corporation" means any corporation, joint-stock

1 company or association and any business conducted by a trustee or  
2 trustees wherein interest or ownership is evidenced by a  
3 certificate of interest or ownership or similar written instrument;  
4 and

5 ~~(12)~~ (13) Any other income which this state is prohibited from  
6 taxing under the laws of the United States.

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

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

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

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

1           (2) Changes in the language of this section enacted in the  
2 year 2002 shall apply to taxable years beginning after December 31,  
3 2002.

NOTE: This bill shall allow individuals to utilize any portion of their federal civil service retirement pension based on credit for military service to reduce their federal adjusted gross income for West Virginia personal income tax purposes, as well as not prohibiting a claimant from obtaining this modification if the claimant can provide to the State Tax Commissioner a screen print or short form letter from the United States Office of Personnel Management, or its successor, with information pertaining to applicable particular credit for their military service towards their federal civil service retirement pension.

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