

H. B. 2720

(By Delegates Sobonya, Sumner, Moore, C. Miller,
Craig, Rowan and Duke)

[Introduced January 21, 2011; referred to the
Committee on Pensions and Retirement then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-21-12 of the Code of West Virginia,
1931, as amended, relating to exempting certain income
received by retired federal employees from the personal income
tax.

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.

(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2 (7) Amounts withdrawn from a medical savings account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 June
21 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 December 31, 1986. ~~and the first~~
20 ~~two thousand dollars of benefits received under any federal~~
21 ~~retirement system to which Title 4 U.S.C. §111 applies: ~~Provided,~~~~
22 ~~however, That~~ However, the total modification under this paragraph
23 shall not exceed \$2,000 per person receiving retirement benefits
24 and this limitation shall apply to all returns or amended returns

1 filed after the last day of December 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) For taxable years beginning after December 31, 2011,
11 retirement income received by retired federal employees in the form
12 of pensions and annuities from a federal retirement system,
13 including any survivorship annuities, to the extent includable in
14 gross income for federal income tax purposes;

15 ~~(7)~~ (8) (A) For taxable years beginning after December 31,
16 2000, and ending prior to January 1, 2003, an amount equal to two
17 percent multiplied by the number of years of active duty in the
18 Armed Forces of the United States of America with the product
19 thereof multiplied by the first \$30,000 of military retirement
20 income, including retirement income from the regular Armed Forces,
21 reserves and National Guard paid by the United States or by this
22 state after December 31, 2000, including any survivorship
23 annuities, to the extent included in gross income for federal
24 income tax purposes for the taxable year.

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

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

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

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

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

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

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

19 (ii) Where the total modification under subdivisions (1), (2),
20 (5), (6), (7) and (8) of this subsection is less than \$8,000 per
21 person, the total modification allowed under this subdivision for
22 all gross income received by that person shall be limited to the
23 difference between \$8,000 and the sum of subdivisions (1), (2),
24 (5), (6), (7) and (8) of this subsection;

1 ~~(10)~~ (11) Contributions from any source to a medical savings
2 account established by or for the individual pursuant to section
3 twenty, article fifteen, chapter thirty-three of this code or
4 section fifteen, article sixteen of said chapter, plus interest
5 earned on the account, to the extent includable in federal adjusted
6 gross income for federal tax purposes. ~~Provided, That~~ However, the
7 amount subtracted pursuant to this subdivision for any one taxable
8 year may not exceed \$2,000 plus interest earned on the account.
9 For married individuals filing a joint return, the maximum
10 deduction is computed separately for each individual;

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

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

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

24 (iii) The term "controlled group" means one or more chains of

1 corporations connected through stock ownership with a common parent
2 corporation if stock possessing at least fifty percent of the
3 voting power of all classes of stock of each of the corporations is
4 owned directly or indirectly by one or more of the corporations and
5 the common parent owns directly stock possessing at least fifty
6 percent of the voting power of all classes of stock of at least one
7 of the other corporations;

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

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

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

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

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

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

9 (2) Changes in the language of this section enacted in the
10 year 2002 shall apply to taxable years beginning after December 31,
11 2002.

NOTE: The purpose of this bill is to provide a state income tax exemption to retired federal employees retirement pensions.

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