

H. B. 2771

(By Delegates Skaff, Stowers, Hall and Reynolds)
[Introduced January 24, 2011; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4 and §11-13BB-5; and to amend and reenact §11-21-12 of said code, all relating to establishing the "Stay Home and Work Income Tax Incentive Act"; providing a tax credit for graduates of a higher education institution for a portion of the interest paid on student loans; providing for the promulgation of rules by the State Tax Commissioner for such purpose; establishing a one-time modification reducing federal adjusted gross income for recent graduates of higher education institutions up to the first \$30,000 with a five year eligibility for such modification; providing that such modification be revoked if the eligible taxpayer establishes residency outside of West

1 Virginia; and providing for the promulgation of rules by the
2 Tax Commissioner for such purpose.

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

4 That the Code of West Virginia, 1931, as amended, be amended
5 by adding thereto a new article, designated §11-13BB-1,
6 §11-13BB-2, §11-13BB-3 and §11-13BB-4; and that §11-21-12 of said
7 code be amended and reenacted, all to read as follows:

8 **ARTICLE 13BB. STAY HOME IN WEST VIRGINIA AND WORK TAX INCENTIVE**

9 **ACT.**

10 **§11-13BB-1. Short Title.**

11 This article is known as the "Stay Home in West Virginia and
12 Work Tax Incentive."

13 **§11-13BB-2. Legislative findings.**

14 The Legislature finds and declares that:

15 (1) The State of West Virginia faces a demographic problem due
16 to the inability of our state in the past two decades to attract
17 and retain the younger generation into our state;

18 (2) The loss of young professionals and skilled workers is a
19 self perpetuating cycle and requires decisive and creative action
20 to reverse the trend;

21 (3) The retention, recruitment and advancement of young talent
22 is critical to the future success of our state's economy,

1 communities and intellectual infrastructure;

2 (4) States are in a stiff competition for the coveted younger
3 demographic and are employing innovative strategies to create an
4 economy and community attractive to this younger generation;

5 (5) The increase of intellectual capital through the
6 attraction of the younger generation will enable the state to
7 become more attractive to national and global companies to relocate
8 to the State of West Virginia; and

9 (6) Providing the younger generation with an incentive to
10 live, work and play in West Virginia will increase the intellectual
11 capital of the state and combat the demographic problem currently
12 facing West Virginia and is therefore in the best interest of the
13 State of West Virginia.

14 **§11-13BB-3. Definitions.**

15 (a) General. -- When used in this article, or in the
16 administration of this article, terms defined in subsection (b) of
17 this section have the meanings ascribed to them by this section,
18 unless a different meaning is clearly required by the context in
19 which the term is used.

20 (b) Terms defined --

21 (1) "Eligible taxpayer" means any taxpayer who has paid
22 interest on a qualified student loan and who has yet to attain the
23 age of forty by December 31 in the tax year for which the credit is

1 being claimed.

2 (2) "Higher education institution" means all regionally
3 accredited post secondary institutions in the United States and all
4 accredited post secondary institutions within the State of West
5 Virginia.

6 (3) "Qualified student loan" means a loan made to a student for
7 the purposes of paying the tuition, books, fees or any other
8 educational expense or living expenses of a student to obtain a
9 two-year degree, four-year degree or advanced degree from a higher
10 education institution.

11 **§11-13BB-4. Tax credits for a portion of the interest paid on**
12 **student loans.**

13 (a) Credit allowed. -- For those tax years beginning on or
14 after January 1, 2011, there is allowed a credit for any eligible
15 taxpayer against personal income taxes as described in subsection
16 (c) of this section for a portion of the interest paid on a
17 qualified student loan by the taxpayer in the tax year that the
18 taxpayer paid the interest on the qualified student loan.

19 (b) Amount of credit. -- The tax credit is in an amount equal
20 to the amount of money paid as interest on a qualified student loan
21 in the tax year up to a maximum amount of \$500.

22 (c) Application of annual credit allowance. -- The amount of

1 credit as determined under subsection (b) of this section is allowed
2 as a credit against the taxes imposed by article twenty-one of this
3 chapter.

4 **§11-13BB-5. Carryover credit allowed; Tax Commissioner to**
5 **promulgate rules.**

6 (a) If the tax credit allowed under this article in any taxable
7 year exceeds the taxpayers tax liability as determined in accordance
8 with article twenty-one of this chapter for that taxable year, the
9 excess may be applied for succeeding taxable years until the earlier
10 of the following:

11 (1) The full amount of the excess tax credit is used;

12 (2) The taxpayer reaches the age of forty, whereupon no tax
13 credit may be claimed in that taxable year.

14 (b) No carryback to a prior taxable year is allowed for the
15 amount of any unused credit in any taxable year.

16 (c) A tax credit is subject to recapture, elimination or
17 reduction if it is determined by the Tax Commissioner that a
18 taxpayer was not entitled to the credit, in whole or in part, in the
19 tax year in which it was claimed by the taxpayer.

20 (d) The Tax Commissioner shall propose for promulgation rules
21 pursuant to the provisions of article three, chapter twenty-nine-a
22 of this code, as may be necessary to carry out the purposes of this
23 article.

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

2 PART I. GENERAL.

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

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

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

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

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

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

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

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

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

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

18 (c) *Modifications reducing federal adjusted gross income.* --
19 There shall be subtracted from federal adjusted gross income to the
20 extent included therein:

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

1 (2) Interest or dividend income on obligations or securities of
2 any authority, commission or instrumentality of the United States or
3 of the State of West Virginia to the extent includable in gross
4 income for federal income tax purposes but exempt from state income
5 taxes under the laws of the United States or of the State of West
6 Virginia, including federal interest or dividends paid to
7 shareholders of a regulated investment company, under Section 852 of
8 the Internal Revenue Code for taxable years ending after June 30,
9 1987;

10 (3) Any amount included in federal adjusted gross income for
11 federal income tax purposes for the taxable year that is not
12 included in federal adjusted gross income under this article for the
13 taxable year;

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

18 (5) Annuities, retirement allowances, returns of contributions
19 and any other benefit received under the West Virginia Public
20 Employees Retirement System, the West Virginia State Teachers
21 Retirement System and all forms of military retirement, including
22 regular Armed Forces, reserves and National Guard, including any
23 survivorship annuities derived therefrom, to the extent includable

1 in gross income for federal income tax purposes: *Provided, That*
2 notwithstanding any provisions in this code to the contrary this
3 modification shall be limited to the first \$2,000 of benefits
4 received under the West Virginia Public Employees Retirement System,
5 the West Virginia State Teachers Retirement System and, including
6 any survivorship annuities derived therefrom, to the extent
7 includable in gross income for federal income tax purposes for
8 taxable years beginning after December 31, 1986 and the first \$2,000
9 of benefits received under any federal retirement system to which
10 Title 4 U.S.C. §111 applies: *Provided, however, That* the total
11 modification under this paragraph shall not exceed \$2,000 per person
12 receiving retirement benefits and this limitation shall apply to all
13 returns or amended returns filed after December 31, 1986;

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

22 (7) (A) For taxable years beginning after December 31, 2000,
23 and ending prior to January 1, 2003, an amount equal to two percent

1 multiplied by the number of years of active duty in the Armed Forces
2 of the United States of America with the product thereof multiplied
3 by the first \$30,000 of military retirement income, including
4 retirement income from the regular Armed Forces, reserves and
5 National Guard paid by the United States or by this state after
6 December 31, 2000, including any survivorship annuities, to the
7 extent included in gross income for federal income tax purposes for
8 the taxable year.

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

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

20 (8) Federal adjusted gross income in the amount of \$8,000
21 received from any source after December 31, 1986, by any person who
22 has attained the age of sixty-five on or before the last day of the
23 taxable year, or by any person certified by proper authority as

1 permanently and totally disabled, regardless of age, on or before
2 the last day of the taxable year, to the extent includable in
3 federal adjusted gross income for federal tax purposes: *Provided,*
4 That if a person has a medical certification from a prior year and
5 he or she is still permanently and totally disabled, a copy of the
6 original certificate is acceptable as proof of disability. A copy
7 of the form filed for the federal disability income tax exclusion is
8 acceptable: *Provided, however, That:*

9 (i) Where the total modification under subdivisions (1), (2),
10 (5), (6) and (7) of this subsection is \$8,000 per person or more, no
11 deduction shall be allowed under this subdivision; and

12 (ii) Where the total modification under subdivisions (1), (2),
13 (5), (6) and (7) of this subsection is less than \$8,000 per person,
14 the total modification allowed under this subdivision for all gross
15 income received by that person shall be limited to the difference
16 between \$8,000 and the sum of modifications under subdivisions (1),
17 (2), (5), (6) and (7) of this subsection;

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

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

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

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

20 (11) For the 2006 taxable year only, severance wages received
21 by a taxpayer from an employer as the result of the taxpayer's
22 permanent termination from employment through a reduction in force
23 and through no fault of the employee, not to exceed \$30,000. For

1 purposes of this subdivision:

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

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

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

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

22 (12) Any other income which this state is prohibited from
23 taxing under the laws of the United States; and

1 (13) Federal adjusted gross income in the amount of \$30,000
2 received from any source after December 31, 2010, by a taxpayer who
3 has yet to attain the age of forty by December 31 of the tax year
4 for which the taxpayer is filing and has graduated from a higher
5 education institution, as that term as defined in section two,
6 article thirteen-bb chapter eleven of this code, with a two-year,
7 four-year or advanced degree in a tax year which is not more than
8 five years prior to the year which the taxpayer is filing; Provided,
9 That a taxpayer is only eligible to take such a modification once:
10 Provided, however, That the modification is permanently revoked upon
11 establishing residency outside of West Virginia: Provided further,
12 That the State Tax Commissioner shall promulgate legislative rules
13 pursuant to the provisions of chapter twenty-nine-a of this code
14 regarding the documentation necessary to claim such a modification.

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 or
22 an S corporation shareholder, which relate to items of income, gain,
23 loss or deduction of a partnership or an S corporation, shall be

1 determined under section seventeen of this article.

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

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

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

NOTE: The purpose of this bill is to establish the "Stay Home and Work Income Tax Incentive Act"; providing a tax credit for graduates of a higher education institution for a portion of the interest paid on student loans; establishing a one-time modification reducing federal adjusted gross income for recent graduates of higher education institutions up to the first \$30,000 with a five year eligibility for such modification; providing that such modification be revoked if the eligible taxpayer establishes residency outside of West Virginia; and the promulgation of rules by the State Tax Commissioner.

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