

H. B. 2916

(By Delegates Ellem, Hamilton, Sumner, Rowan,
Howell, Kump, Snuffer, Walters, Evans,
Romine and Ellington)

[Introduced January 28, 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 exempting social security
benefits from West Virginia personal income.

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 II. RESIDENTS.

**§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.* --
There shall be added to federal adjusted gross income unless

1 already included therein the following items:

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

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

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

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

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

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

1 (7) Amounts withdrawn from a medical savings account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

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

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

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

21 (3) Any amount included in federal adjusted gross income for
22 federal income tax purposes for the taxable year that is not
23 included in federal adjusted gross income under this article for
24 the taxable year;

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

5 (5) Annuities, retirement allowances, returns of contributions
6 and any other benefit received under the West Virginia Public
7 Employees Retirement System, the West Virginia State Teachers'
8 Retirement System and all forms of military retirement, including
9 regular Armed Forces, Reserves and National Guard, including any
10 survivorship annuities derived therefrom, to the extent includable
11 in gross income for federal income tax purposes: *Provided*, That
12 notwithstanding any provisions in this code to the contrary this
13 modification shall be limited to the first \$2,000 of benefits
14 received under the West Virginia Public Employees Retirement
15 System, the West Virginia State Teachers' Retirement System and,
16 including any survivorship annuities derived therefrom, to the
17 extent includable in gross income for federal income tax purposes
18 for taxable years beginning after December 31, 1986; and the first
19 \$2,000 of benefits received under any federal retirement system to
20 which Title 4 U.S.C. §111 applies: *Provided, however*, That the
21 total modification under this paragraph shall not exceed \$2,000 per
22 person receiving retirement benefits and this limitation shall
23 apply to all returns or amended returns filed after December 31,
24 1988;

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

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

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

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

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

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

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

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

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

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

13 (ii) Where the total modification under subdivisions (1), (2),
14 (5), (6), (7) and (8) of this subsection is less than \$8,000 per
15 person, the total modification allowed under this subdivision for
16 all gross income received by that person shall be limited to the
17 difference between \$8,000 and the sum of subdivisions (1), (2),
18 (5), (6), (7) and (8) of this subsection;

19 (10) Contributions from any source to a medical savings
20 account established by or for the individual pursuant to section
21 twenty, article fifteen, chapter thirty-three of this code or
22 section fifteen, article sixteen of said chapter, plus interest
23 earned on the account, to the extent includable in federal adjusted
24 gross income for federal tax purposes: *Provided, That* the amount

1 subtracted pursuant to this subdivision for any one taxable year
2 may not exceed \$2,000 plus interest earned on the account. For
3 married individuals filing a joint return, the maximum deduction is
4 computed separately for each individual;

5 (11) For taxable years beginning after December 31, 2010, for
6 a taxpayer who receives social security benefits paid by the
7 Social Security Administration as Old Age, Survivors and Disability
8 Insurance Benefits as provided in §42 U.S.C. 401 et. seq. or as
9 Supplemental Security Income for the Aged, Blind, and Disabled as
10 provided in §42 U.S.C. 1381 et. seq., to the extent included in
11 gross income for federal income tax purposes for the taxable year;
12 and

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

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

22 (ii) The term "reduction in force" means a net reduction in
23 the number of employees employed by the employer in West Virginia,
24 determined based on total West Virginia employment of the

1 employer's controlled group;

2 (iii) The term "controlled group" means one or more chains of
3 corporations connected through stock ownership with a common parent
4 corporation if stock possessing at least fifty percent of the
5 voting power of all classes of stock of each of the corporations is
6 owned directly or indirectly by one or more of the corporations and
7 the common parent owns directly stock possessing at least fifty
8 percent of the voting power of all classes of stock of at least one
9 of the other corporations;

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

15 ~~(12)~~ (13) Any other income which this state is prohibited from
16 taxing under the laws of the United States.

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

22 (e) *Partners and S corporation shareholders.* -- The amounts of
23 modifications required to be made under this section by a partner
24 or an S corporation shareholder, which relate to items of income,

1 gain, loss or deduction of a partnership or an S corporation, shall
2 be determined under section seventeen of this article.

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

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

11 (1) Changes in the language of this section enacted in the
12 year 2000 two shall apply to taxable years beginning after December
13 31, 2002.

14 (2) Changes in the language of this section enacted in the
15 year 2011, shall apply to taxable years beginning after December
16 31, 2010.

NOTE: The purpose of this bill is to exempt social security benefits from West Virginia personal income tax.

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