

Senate Bill No. 233

(By Senators McCabe, Browning, Foster, Unger, Edgell, Wells,
Stollings, Nohe, Klempa, Wills, Miller and Kessler (Acting
President)

[Introduced January 21, 2011; referred to the Committee on
Education; and then 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 a tax credit for graduates of a higher education
institution for a portion of the interest paid on student
loans; requiring the Joint Committee on Government and Finance
to review the effectiveness of the tax credit; establishing a
modification reducing federal adjusted gross income for recent
graduates of higher education institutions; and providing for
the promulgation of rules by the Tax Commissioner.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §11-13BB-1, §11-13BB-2,

1 §11-13BB-3, §11-13BB-4 and §11-13BB-5; and that §11-21-12 of said
2 code be amended and reenacted, all to read as follows:

3 **ARTICLE 13BB. TAX CREDIT FOR PAYMENT OF HIGHER EDUCATION LOANS.**

4 **§11-13BB-1. Legislative findings.**

5 The Legislature finds and declares that:

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

9 (2) The loss of young professionals and skilled workers is a
10 self-perpetuating cycle and requires decisive and creative action
11 to reverse the trend;

12 (3) The retention, recruitment, and advancement of young
13 talent is critical to the future success of our state's economy,
14 communities and intellectual infrastructure;

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

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

22 (6) Providing the younger generation with an incentive to
23 live, work, and play in West Virginia will increase the
24 intellectual capital of the state and combat the demographic
25 problem currently facing West Virginia and is therefore in the best

1 interest of the State of West Virginia.

2 **§11-13BB-2. Definitions.**

3 (a) *General.* - When used in this article, or in the
4 administration of this article, terms defined in subsection (b) of
5 this section have the meanings ascribed to them by this section,
6 unless a different meaning is clearly required by the context in
7 which the term is used.

8 (b) *Terms defined* -

9 (1) "Eligible taxpayer" means any taxpayer who has paid
10 interest on a qualified student loan.

11 (2) "Higher education institution" means all regionally
12 accredited post secondary institutions in the United States and all
13 accredited post secondary institutions within the State of West
14 Virginia.

15 (3) "Qualified student loan" means a loan made to a student
16 for the purposes of paying the tuition, books, fees or any other
17 educational expense or living expenses of a student to obtain a two
18 year degree, four-year degree or advanced degree from a higher
19 education institution.

20 **§11-13BB-3. Tax credits for a portion of the interest paid on**
21 **student loans.**

22 (a) *Credit allowed.* - For those tax years beginning on or
23 after January 1, 2011, there shall be allowed a credit for any
24 eligible taxpayer against personal income taxes as described in
25 subsection (c) of this section for a portion of the interest paid

1 on a qualified student loan by such taxpayer in the tax year that
2 such taxpayer paid the interest on the qualified student loan.

3 (b) *Amount of credit.* -- The tax credit shall be in an amount
4 equal to the amount of money paid as interest on a qualified
5 student loan in the tax year up to a maximum amount of \$500.

6 (c) *Application of annual credit allowance.* -- The amount of
7 credit as determined under subsection (b) of this section is
8 allowed as a credit against the taxes imposed by article twenty-one
9 of this chapter.

10 **§11-13BB-4. Carryover credit allowed; Tax Commissioner to**
11 **promulgate rules.**

12 (a) If the tax credit allowed under this article in any
13 taxable year exceeds the taxpayer's tax liability as determined in
14 accordance with article twenty-one of this chapter for that taxable
15 year, the excess may be applied for succeeding taxable years until
16 the full amount of the excess tax credit is used.

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

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

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

1 article.

2 **§11-13BB-5. Review of Tax Credit by the Joint Committee on**
 3 **Government and Finance.**

4 On or before June 1, 2016 and each year thereafter, the Tax
 5 Commissioner shall submit to the Joint Committee of Government and
 6 Finance all information regarding the use of the tax credit in the
 7 preceding years. The Joint Committee of Government and Finance
 8 shall review such information and any other information deemed
 9 relevant by the Joint Committee of Government and Finance on or
 10 before July 1, 2016 and each year thereafter, to determine the
 11 effectiveness of the tax credit.

12 PART I. GENERAL.

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

14 **§11-21-12. West Virginia adjusted gross income of resident**
 15 **individual.**

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

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

23 (1) Interest income on obligations of any state other than
 24 this state or of a political subdivision of any other state unless

1 created by compact or agreement to which this state is a party;

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

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

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

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

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

22 (7) Amounts withdrawn from a medical savings account
23 established by or for an individual under section twenty, article
24 fifteen, chapter thirty-three of this code or section fifteen,
25 article sixteen of said chapter that are used for a purpose other

1 than payment of medical expenses, as defined in those sections.

2 (c) *Modifications reducing federal adjusted gross income.* --

3 There shall be subtracted from federal adjusted gross income to the
4 extent included therein:

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

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

17 (3) Any amount included in federal adjusted gross income for
18 federal income tax purposes for the taxable year that is not
19 included in federal adjusted gross income under this article for
20 the taxable year;

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

25 (5) Annuities, retirement allowances, returns of contributions

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

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

1 derived from any of these programs, to the extent includable in
2 gross income for federal income tax purposes;

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

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

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

25 (8) Federal adjusted gross income in the amount of \$8,000

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

12 (i) Where the total modification under subdivisions (1), (2),
13 (5), (6) and (7) of this subsection is \$8,000 per person or more,
14 no deduction shall be allowed under this subdivision; and

15 (ii) Where the total modification under subdivisions (1), (2),
16 (5), (6) and (7) of this subsection is less than \$8,000 per person,
17 the total modification allowed under this subdivision for all gross
18 income received by that person shall be limited to the difference
19 between \$8,000 and the sum of modifications under subdivisions (1),
20 (2), (5), (6) and (7) of this subsection;

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

1 purposes: *Provided, That:*

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

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

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

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

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

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

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

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

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

24 (13) Federal adjusted gross income in the amount of \$25,000
25 received from any source after December 31, 2011, by a taxpayer who

1 has graduated from a higher education institution, as that term as
2 defined in section two, article thirteen-bb of this chapter, with
3 a two-year, four-year, or advanced degree in a tax year which is
4 not more than two years prior to the year which the taxpayer is
5 filing; Provided, That no taxpayer is eligible to take the
6 modification for more than any two tax years. The State Tax
7 Commissioner shall promulgate legislative rules pursuant to the
8 provisions of chapter twenty-nine-a of this code regarding the
9 documentation necessary to claim such a modification.

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

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

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

25 (g) *Effective date.* -- (1) Changes in the language of this

1 section enacted in the year 2000 shall apply to taxable years
2 beginning after December 31, 2000.

3 (2) Changes in the language of this section enacted in the
4 year 2002 shall apply to taxable years beginning after December 31,
5 2002.

NOTE: The purpose of this bill is to establish incentives to attract and retain young talent to the State of West Virginia. The bill establishes a tax credit for graduates of a higher education institution for a portion of the interest paid on student loans. The bill requires the Joint Committee on Government and Finance to review the effectiveness of the tax credit. The bill establishes a modification reducing federal adjusted gross income for recent graduates of higher education institutions. The bill also provides for rule-making authority.

Article thirteen-bb is new; therefore, strike-throughs and underscoring have been omitted.

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