

# H. B. 3269

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(Originating in the Committee on Finance)  
[February 23, 2011]

A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to reducing state income tax liability for certain retired public employees, certified by proper authority as permanently and totally disabled, and surviving spouses; increasing the amount of retirement income received from certain state and federal retirement systems that is excluded from the calculation of income subject to state personal income taxes; and establishing an effective date for the increased exclusion.

*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.**

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

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

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

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

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

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

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

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

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

32       (7) Amounts withdrawn from a medical savings account  
33 established by or for an individual under section twenty,  
34 article fifteen, chapter thirty-three of this code or section

35 fifteen, article sixteen of said chapter that are used for a  
36 purpose other than payment of medical expenses, as defined  
37 in those sections.

38 (c) *Modifications reducing federal adjusted gross*  
39 *income.* -- There shall be subtracted from federal adjusted  
40 gross income to the extent included therein:

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

44 (2) Interest or dividend income on obligations or  
45 securities of any authority, commission or instrumentality of  
46 the United States or of the state of West Virginia to the extent  
47 includable in gross income for federal income tax purposes  
48 but exempt from state income taxes under the laws of the  
49 United States or of the state of West Virginia, including  
50 federal interest or dividends paid to shareholders of a  
51 regulated investment company, under Section 852 of the  
52 Internal Revenue Code for taxable years ending after the  
53 thirtieth day of June, one thousand nine hundred eighty-  
54 seven;

55       (3) Any amount included in federal adjusted gross  
56 income for federal income tax purposes for the taxable year  
57 that is not included in federal adjusted gross income under  
58 this article for the taxable year;

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

63       (5)(A) Annuities, retirement allowances, returns of  
64 contributions and any other benefit received under the West  
65 Virginia Public Employees Retirement System, the West  
66 Virginia State Teachers Retirement System and all forms of  
67 military retirement, including regular Armed Forces, reserves  
68 and National Guard, including any survivorship annuities  
69 derived therefrom, to the extent includable in gross income  
70 for federal income tax purposes: *Provided*, That  
71 notwithstanding any provisions in this code to the contrary  
72 this modification shall be limited to the first two thousand  
73 dollars of benefits received under the West Virginia Public

74 Employees Retirement System; and the West Virginia State  
75 Teachers Retirement System ~~and~~, including any survivorship  
76 annuities derived therefrom, to the extent includable in gross  
77 income for federal income tax purposes for taxable years  
78 beginning after the thirty-first day of December, one  
79 thousand nine hundred eighty-six; and the first two thousand  
80 dollars of benefits received under any federal retirement  
81 system to which Title 4 U.S.C. §111 applies: *Provided,*  
82 *however,* That the total modification under this paragraph  
83 shall not exceed two thousand dollars per person receiving  
84 retirement benefits and this limitation shall apply to all  
85 returns or amended returns filed after the last day of  
86 December, one thousand nine hundred eighty-eight;

87 (B) Notwithstanding any provision of paragraph (A) of  
88 this subdivision to the contrary, the modification provided  
89 under paragraph (A) of this subdivision shall be limited to the  
90 first four thousand dollars of benefits received under the  
91 West Virginia Public Employees Retirement System and the  
92 West Virginia State Teachers Retirement System, including

93 any survivorship annuities derived therefrom, to the extent  
94 includable in gross income for federal income tax purposes  
95 for taxable years beginning after the thirty-first day of  
96 December, two thousand eleven; and to the first four  
97 thousand dollars of benefits received under any federal  
98 retirement system to which Title 4 U.S.C. §111 applies to the  
99 extent includable in gross income for federal income tax  
100 purposes for taxable years beginning after the thirty-first day  
101 of December, two thousand eleven. The total modification  
102 under this paragraph shall not exceed four thousand dollars  
103 per person receiving retirement benefits;

104 (6) Retirement income received in the form of pensions  
105 and annuities after the thirty-first day of December, one  
106 thousand nine hundred seventy-nine, under any West  
107 Virginia police, West Virginia firemen's retirement system  
108 or the West Virginia State Police Death, Disability and  
109 Retirement Fund, the West Virginia State Police Retirement  
110 System or the West Virginia Deputy Sheriff Retirement  
111 System, including any survivorship annuities derived from

112 any of these programs, to the extent includable in gross  
113 income for federal income tax purposes;

114 (7) (A) For taxable years beginning after the thirty-first  
115 day of December, two thousand, and ending prior to the first  
116 day of January, two thousand three, an amount equal to two  
117 percent multiplied by the number of years of active duty in  
118 the Armed Forces of the United States of America with the  
119 product thereof multiplied by the first thirty thousand dollars  
120 of military retirement income, including retirement income  
121 from the regular Armed Forces, reserves and National Guard  
122 paid by the United States or by this state after the thirty-first  
123 day of December, two thousand, including any survivorship  
124 annuities, to the extent included in gross income for federal  
125 income tax purposes for the taxable year.

126 (B) For taxable years beginning after the thirty-first day  
127 of December, two thousand two, the first twenty thousand  
128 dollars of military retirement income, including retirement  
129 income from the regular Armed Forces, reserves and  
130 National Guard paid by the United States or by this state after



131 the thirty-first day of December, two thousand two, including  
132 any survivorship annuities, to the extent included in gross  
133 income for federal income tax purposes for the taxable year.

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

140 (8)(A) Federal adjusted gross income in the amount of  
141 eight thousand dollars received from any source after the  
142 thirty-first day of December, one thousand nine hundred  
143 eighty-six, by any person who has attained the age of sixty-  
144 five on or before the last day of the taxable year, or by any  
145 person certified by proper authority as permanently and  
146 totally disabled, regardless of age, on or before the last day  
147 of the taxable year, to the extent includable in federal  
148 adjusted gross income for federal tax purposes: *Provided,*  
149 That if a person has a medical certification from a prior year

150 and he or she is still permanently and totally disabled, a copy  
151 of the original certificate is acceptable as proof of disability.  
152 A copy of the form filed for the federal disability income tax  
153 exclusion is acceptable: *Provided, however,* That:

154 (i) Where the total modification under subdivisions (1),  
155 (2), (5), (6) and (7) of this subsection is eight thousand  
156 dollars per person or more, no deduction shall be allowed  
157 under this subdivision; and

158 (ii) Where the total modification under subdivisions (1),  
159 (2), (5), (6) and (7) of this subsection is less than eight  
160 thousand dollars per person, the total modification allowed  
161 under this subdivision for all gross income received by that  
162 person shall be limited to the difference between eight  
163 thousand dollars and the sum of modifications under  
164 subdivisions (1), (2), (5), (6) and (7) of this subsection;

165 The provisions of this paragraph remain applicable for  
166 taxable years beginning prior to the first day of January, two  
167 thousand twelve, for all persons otherwise eligible, and the  
168 provisions of paragraph (B) of this subdivision are applicable

169 for taxable years beginning after the thirty-first day of  
170 December, two thousand eleven, exclusively for all persons  
171 described in paragraph (B) of this subdivision in lieu of the  
172 provisions of this paragraph, and as to those persons, no  
173 modification shall be allowed under this paragraph for  
174 taxable years beginning after the thirty-first day of  
175 December, two thousand eleven;

176 (B) Notwithstanding any provision of paragraph (A) of  
177 this subdivision to the contrary, federal adjusted gross  
178 income in the amount of sixteen thousand dollars received  
179 from any source after the thirty-first day of December, two  
180 thousand eleven, by any person who has attained the age of  
181 sixty-five on or before the last day of the taxable year, or by  
182 any person certified by proper authority as permanently and  
183 totally disabled, regardless of age, on or before the last day  
184 of the taxable year, where the person during the taxable year  
185 receives benefits under the West Virginia Public Employees  
186 Retirement System or the West Virginia State Teachers  
187 Retirement System, including any survivorship annuities

188 derived therefrom, to the extent includable in gross income  
189 for federal income tax purposes for taxable years beginning  
190 after the thirty-first day of December, two thousand eleven,  
191 or where the person during the taxable year receives benefits  
192 under any federal retirement system to which Title 4 U.S.C.  
193 §111 applies to the extent includable in gross income for  
194 federal income tax purposes for taxable years beginning after  
195 the thirty-first day of December, two thousand eleven:  
196 *Provided*, That if a person has a medical certification from a  
197 prior year and he or she is still permanently and totally  
198 disabled, a copy of the original certificate is acceptable as  
199 proof of disability. A copy of the form filed for the federal  
200 disability income tax exclusion is acceptable: *Provided*,  
201 *however*, That:

202 (i) Where the total modification under subdivisions (1),  
203 (2), (5), (6) and (7) of this subsection is sixteen thousand  
204 dollars per person or more, no deduction shall be allowed  
205 under this paragraph; and

206 (ii) Where the total modification under subdivisions (1),  
207 (2), (5), (6) and (7) of this subsection is less than sixteen

208 thousand dollars per person, the total modification allowed  
209 under this paragraph for all gross income received by that  
210 person shall be limited to the difference between sixteen  
211 thousand dollars and the sum of modifications under  
212 subdivisions (1), (2), (5), (6) and (7) of this subsection;

213 (9)(A) Federal adjusted gross income in the amount of  
214 eight thousand dollars received from any source after the  
215 thirty-first day of December, one thousand nine hundred  
216 eighty-six, by the surviving spouse of any person who had  
217 attained the age of sixty-five or who had been certified as  
218 permanently and totally disabled, to the extent includable in  
219 federal adjusted gross income for federal tax purposes:

220 *Provided, That:*

221 (i) Where the total modification under subdivisions (1),  
222 (2), (5), (6), (7) and (8) of this subsection is eight thousand  
223 dollars or more, no deduction shall be allowed under this  
224 subdivision; and

225 (ii) Where the total modification under subdivisions (1),  
226 (2), (5), (6), (7) and (8) of this subsection is less than eight

227 thousand dollars per person, the total modification allowed  
228 under this subdivision for all gross income received by that  
229 person shall be limited to the difference between eight  
230 thousand dollars and the sum of subdivisions (1), (2), (5), (6),  
231 (7) and (8) of this subsection;

232 The provisions of this paragraph remain applicable for  
233 taxable years beginning prior to the first day of January, two  
234 thousand twelve, for all persons otherwise eligible, and the  
235 provisions of paragraph (B) of this subdivision are applicable  
236 for taxable years beginning after the thirty-first day of  
237 December, two thousand eleven, exclusively for all persons  
238 described in paragraph (B) of this subdivision in lieu of the  
239 provisions of this paragraph, and as to those persons, no  
240 modification shall be allowed under this paragraph for  
241 taxable years beginning after the thirty-first day of  
242 December, two thousand eleven;

243 (B) Notwithstanding any provision of paragraph (A) of  
244 this subdivision to the contrary, federal adjusted gross  
245 income in the amount of sixteen thousand dollars received  
246 from any source after the thirty-first day of December, two

247 thousand eleven, by the surviving spouse of any person who  
248 had attained the age of sixty-five or who had been certified as  
249 permanently and totally disabled, where the surviving spouse  
250 during the taxable year receives survivorship annuities under  
251 the West Virginia Public Employees Retirement System or  
252 the West Virginia State Teachers Retirement System, to the  
253 extent includable in gross income for federal income tax  
254 purposes for taxable years beginning after the thirty-first day  
255 of December, two thousand eleven, or where the surviving  
256 spouse during the taxable year receives survivorship  
257 annuities under any federal retirement system to which Title  
258 4 U.S.C. §111 applies to the extent includable in gross  
259 income for federal income tax purposes for taxable years  
260 beginning after the thirty-first day of December, two  
261 thousand eleven: *Provided, That:*

262 (i) Where the total modification under subdivisions (1),  
263 (2), (5), (6), (7) and (8) of this subsection is sixteen thousand  
264 dollars or more, no deduction shall be allowed under this  
265 paragraph; and

266        (ii) Where the total modification under subdivisions (1),  
267        (2), (5), (6), (7) and (8) of this subsection is less than sixteen  
268        thousand dollars per person, the total modification allowed  
269        under this paragraph for all gross income received by that  
270        person shall be limited to the difference between sixteen  
271        thousand dollars and the sum of subdivisions (1), (2), (5), (6),  
272        (7) and (8) of this subsection;

273        (10) Contributions from any source to a medical savings  
274        account established by or for the individual pursuant to  
275        section twenty, article fifteen, chapter thirty-three of this code  
276        or section fifteen, article sixteen of said chapter, plus interest  
277        earned on the account, to the extent includable in federal  
278        adjusted gross income for federal tax purposes: *Provided,*  
279        That the amount subtracted pursuant to this subdivision for  
280        any one taxable year may not exceed two thousand dollars  
281        plus interest earned on the account. For married individuals  
282        filing a joint return, the maximum deduction is computed  
283        separately for each individual;

284        (11) For the two thousand six taxable year only,  
285        severance wages received by a taxpayer from an employer as



286 the result of the taxpayer's permanent termination from  
287 employment through a reduction in force and through no  
288 fault of the employee, not to exceed thirty thousand dollars.

289 For purposes of this subdivision:

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

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

298 (iii) The term "controlled group" means one or more  
299 chains of corporations connected through stock ownership  
300 with a common parent corporation if stock possessing at least  
301 fifty percent of the voting power of all classes of stock of  
302 each of the corporations is owned directly or indirectly by  
303 one or more of the corporations and the common parent owns  
304 directly stock possessing at least fifty percent of the voting

305 power of all classes of stock of at least one of the other  
306 corporations;

307 (iv) The term “corporation” means any corporation, joint-  
308 stock company or association and any business conducted by  
309 a trustee or trustees wherein interest or ownership is  
310 evidenced by a certificate of interest or ownership or similar  
311 written instrument; and

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

314 (d) *Modification for West Virginia fiduciary adjustment.*  
315 -- There shall be added to or subtracted from federal adjusted  
316 gross income, as the case may be, the taxpayer’s share, as  
317 beneficiary of an estate or trust, of the West Virginia  
318 fiduciary adjustment determined under section nineteen of  
319 this article.

320 (e) *Partners and S corporation shareholders.* -- The  
321 amounts of modifications required to be made under this  
322 section by a partner or an S corporation shareholder, which  
323 relate to items of income, gain, loss or deduction of a

324 partnership or an S corporation, shall be determined under  
325 section seventeen of this article.

326 (f) *Husband and wife.* -- If husband and wife determine  
327 their federal income tax on a joint return but determine their  
328 West Virginia income taxes separately, they shall determine  
329 their West Virginia adjusted gross incomes separately as if  
330 their federal adjusted gross incomes had been determined  
331 separately.

332 (g) *Effective date.* -- (1) Changes in the language of this  
333 section enacted in the year two thousand shall apply to  
334 taxable years beginning after the thirty-first day of  
335 December, two thousand.

336 (2) Changes in the language of this section enacted in the  
337 year two thousand two shall apply to taxable years beginning  
338 after the thirty-first day of December, two thousand two.