

Senate Bill No. 215

(By Senators Kessler (Acting President) and Hall,
By Request of the Executive)

[Introduced January 19, 2011; referred to
the Committee on Finance.]

A BILL to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of “federal adjusted gross income” and certain other terms used in the West Virginia Personal Income Tax Act; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

- 1 (a) Any term used in this article has the same meaning as
- 2 when used in a comparable context in the laws of the United

3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of
5 the United States means the provisions of the Internal
6 Revenue Code of 1986, as amended, and any other provisions
7 of the laws of the United States that relate to the determina-
8 tion of income for federal income tax purposes. All amend-
9 ments made to the laws of the United States after December
10 31, ~~2008~~ 2009, but prior to January 1, ~~2010~~ 2011, shall be
11 given effect in determining the taxes imposed by this article
12 to the same extent those changes are allowed for federal
13 income tax purposes, whether the changes are retroactive or
14 prospective, but no amendment to the laws of the United
15 States made on or after January 1, ~~2010~~ 2011, shall be given
16 any effect.

17 (b) *Medical savings accounts.* — The term “taxable trust”
18 does not include a medical savings account established
19 pursuant to section twenty, article fifteen, chapter thirty-
20 three of this code or section fifteen, article sixteen of said
21 chapter. Employer contributions to a medical savings
22 account established pursuant to said sections are not
23 “wages” for purposes of withholding under section seventy-
24 one of this article.

25 (c) *Surtax*. — The term “surtax” means the twenty
26 percent additional tax imposed on taxable withdrawals from
27 a medical savings account under section twenty, article
28 fifteen, chapter thirty-three of this code and the twenty
29 percent additional tax imposed on taxable withdrawals from
30 a medical savings account under section fifteen, article
31 sixteen of said chapter which are collected by the Tax
32 Commissioner as tax collected under this article.

33 (d) *Effective date*. — The amendments to this section
34 enacted in the year ~~2010~~ 2011 are retroactive to the extent
35 allowable under federal income tax law. With respect to
36 taxable years that began prior to January 1, ~~2011~~ 2012, the
37 law in effect for each of those years shall be fully preserved
38 as to that year, except as provided in this section.

39 (e) For purposes of the refundable credit allowed to a low
40 income senior citizen for property tax paid on his or her
41 homestead in this state, the term “laws of the United States”
42 as used in subsection (a) of this section means and includes
43 the term “low income” as defined in subsection (b), section
44 twenty-one of this article and as reflected in the poverty
45 guidelines updated periodically in the federal register by the
46 U.S. Department of Health and Human Services under the
47 authority of 42 U.S.C. §9902(2).

(NOTE: The purpose of this bill is to update the meaning of “federal adjusted gross income” and certain other terms used but not defined in the West Virginia Personal Income Tax Act by bringing them into conformity with their meanings under the Internal Revenue Code for federal income tax purposes.

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